Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015

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Date introduced: 26 February 2015
House: House of Representatives
Portfolio: Employment
Commencement: Schedule 1, Part 1 and Schedule 2, Part 2 commence the day after the Act receives Royal Assent. For other items, see the text of this Digest.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
Purpose of the Bill

The purpose of the Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015 (the Bill) is to amend the Safety, Rehabilitation and Compensation Act 1988\(^1\) (the Act) to provide for financial and other arrangements for a Commonwealth authority to exit the Comcare scheme; clarify that premiums should be calculated so that current and prospective liabilities are fully funded; change the appointment process and membership of the Safety, Rehabilitation and Compensation Commission; and make consequential and technical amendments.

Structure of the Bill

The Bill has two schedules. Schedule 1 contains the main amendments and also some amendments to the Act which are contingent on another bill to amend the Act that is currently before the Parliament. Schedule 2 deals with membership of and appointments to the Safety, Rehabilitation and Compensation Commission, and some technical amendments.

Background

The Safety, Rehabilitation and Compensation Act 1988 provides for the rehabilitation and compensation of injured employees of the Commonwealth and its agencies and statutory authorities, and of eligible corporations. To do this it establishes the Safety, Rehabilitation and Compensation Commission (the Commission), which makes policy and oversees the operation of Comcare; it also establishes Comcare, which operates the scheme. Most of the Commonwealth agencies and statutory authorities pay premiums to Comcare and are referred to as premium payers, but some Commonwealth authorities have been granted self-insurance licences. Eligible corporations which join the scheme are also granted self-insurance licences.\(^2\)

The Australian Capital Territory has been declared a Commonwealth authority under section 4A of the Act, and is a premium payer in the scheme.

The Act provides for the exit of bodies from the scheme. Section 4A(2) provides that the Minister can revoke the declaration of the Australian Capital Territory as a Commonwealth authority, and section 4A(3) provides that the Australian Capital Territory can leave the scheme on the initiative of the Minister for Employment or of the Chief Minister of the Australian Capital Territory, with a year’s notice, or less by agreement.

The Act sets out detailed provisions concerning responsibility for rehabilitation of injured employees and for calculation and payment of premiums. Comcare has access to income from premiums and earnings from them, plus special appropriations from the Commonwealth and some payments for special matters including asbestos related injuries, plus regulatory contributions from members. This income was not sufficient to prevent it from declaring a loss in 2011–12. Comcare has stated an intention of having assets equal to liabilities within five to 10 years of 2011–12, and to this end it has raised its premiums.\(^3\)

The Act does not at present include detailed provisions for rehabilitation or the calculation of premiums and continuing contributions for a premium payer which exits the scheme where the scheme retains responsibility for the rehabilitation of employees of the former premium payer.

In February 2015 the Government of the Australian Capital Territory announced its intention to leave the Comcare scheme on the grounds that premiums are excessive, the scheme involves long delays, and its rehabilitation is ineffective.\(^4\) The Territory is the fourth largest premium payer in the scheme, so its departure is significant.\(^5\) One purpose of this Bill is presumably to prepare for that exit. To provide for Commonwealth agencies’ exit in the past (for example, when Medibank Private was sold), the Parliament passed separate enabling legislation.\(^6\) This Bill would create a general set of provisions.

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3. Ibid., p. 75.
5. Ibid.
In March 2014 the Government introduced the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 which would, among other provisions, extend the licensing provisions to corporations which operate under two or more state or territory workers’ compensation schemes, and enable the granting of group licences to related corporations. That legislation has not yet passed the Senate.7

Committee consideration

Senate Education and Employment Committee
The Bill has been referred to the Senate Education and Employment Legislation Committee for inquiry and report by 8 May 2015. Details of the inquiry are at the inquiry webpage.8

Senate Standing Committee for the Scrutiny of Bills
The Senate Standing Committee for the Scrutiny of Bills had no comment on the Bill.9

Parliamentary Joint Committee on Human Rights
The Parliamentary Joint Committee on Human Rights has not to date reported on the Bill.

Financial implications
According to the Explanatory Memorandum, the Bill has no financial implications.10 This refers to impact on the Commonwealth budget. As the Department of Employment’s submission makes clear, the impact of the Bill is essentially financial: it is intended to secure the Comcare scheme financially, and protect continuing members of the scheme.11

Statement of Compatibility with Human Rights
As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.12 It does not alter existing protections but creates a framework for ensuring those protections continue after an employer has left the scheme.

Key issues and provisions

Schedule 1—general amendments

Item 4 of Schedule 1 inserts provisions for continued rehabilitation of employees of bodies leaving the scheme. Proposed section 41B applies the definition of rehabilitation authority in the Act to a Commonwealth authority leaving the scheme as if it had not left the scheme. Proposed section 41C extends this to bodies that are successors to Commonwealth authorities. The Minister can make a legislative instrument which makes a body a successor to a Commonwealth authority, and the successor may or may not be a Commonwealth entity. The successor becomes the rehabilitation authority. Proposed section 41D specifies that, if the Australian Capital Territory leaves the scheme, it will retain responsibility for employees injured while it was in the scheme. The effect of these new sections is that a body leaving the scheme will retain responsibility for rehabilitation of workers who were injured while the body was in the scheme. Essentially, this item provides continuity for workers who are injured, whatever their employer’s status in the scheme.

Section 69 of the Act sets out the functions of Comcare. These include the determination and collection of premiums and regulatory contributions. Item 5 inserts proposed paragraphs 69(ec) and (ecb) to give Comcare the function of determining exit contributions and applying those contributions and the interest on them to its
activities. Item 6 inserts **proposed paragraph 69(eda)** which gives Comcare the power to determine and collect regulatory contributions. Item 8 provides that exit contributions and the interest on them will be included in Comcare-retained funds as defined in subsection 90C(5).

According to the Department of Employment the method of calculating exit contributions mirrors the existing method of determining premiums.13

Item 9 inserts **proposed section 96A** which provides for Comcare to make reasonable assumptions and estimates in calculating what part of the available scheme funds are attributable to a specific member.

Item 10 makes explicit that the amount of funds in the scheme attributable to a particular entity or Commonwealth authority should be sufficient to meet any liabilities of that entity or authority, and requires Comcare to take this into account in determining premiums. Item 11 provides that those liabilities include future liabilities (for example, for an injury that occurs while the entity or authority is a member of the scheme but for which liability is not established until after it leaves the scheme).

Item 12 inserts **proposed sections 97CA, 97CB, and 97CC** which provide for Comcare to reassess exit contributions for up to seven years after an entity or authority leaves the scheme. Any additional contribution cannot be more than the excess of the liabilities attributable to the entity or authority over the available scheme funds attributable to it.

Item 14 inserts **proposed section 97DA**. It makes a similar provision with respect to regulatory contributions, which cover the entity or authority’s share of the cost of running the scheme.

Section 97E allows the Commission to issue written principles in relation to determining regulatory contributions to be paid by entities and Commonwealth authorities. Item 17 enables the Commission to issues similar guidelines applying to bodies corporate and the Australian Capital Territory, and specifies that such principles will be a legislative instrument. Similarly, item 18 extends to entities and authorities that have exited the scheme, the requirement under section 97F to give Comcare information that it requires to determine exit contributions and regulatory contributions.

Section 97I provides for reviews of determinations of premiums or regulatory contributions by Comcare, and section 97K provides for further review by the Commission. Items 22 and 26 extend these rights of review to bodies corporate and the Australian Capital Territory. Similarly, item 32 inserts **proposed section 97MA** to mirror the provisions for variation of a determination that are set out in section 97M. Item 39 provides for penalties on non-payment of exit contributions or regulatory contributions and item 40 provides for refunds of excess premiums. Paragraph (8) of government amendments to the Bill provide similarly for refunds of excess exit contributions.14

The amendments in Part 2 of Schedule 1 will be required if and when the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 is passed. Their purpose is to ensure that the amendments in Part 1 of Schedule 1 are not affected by that legislation. They will take effect on commencement of the provisions in Part 1, or after commencement of Schedule 2 to the **Safety, Rehabilitation and Compensation Legislation Amendment Bill 2015** if that is later.

**Schedule 2—Membership of the Safety, Rehabilitation and Compensation Commission**

Section 89E sets out the membership of the Commission. Items 1 and 2 in effect replace the existing representative of the Australian Capital Territory with a second representative of the Commonwealth, nominated by the Minister for Employment. Item 3 provides for appointments to the Commission to be by the Minister rather than the Governor-General.

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