

SRC Act Amendments One Step Closer to Being Introduced

The Education and Employment Legislation Committee released its report on 8 July 2014 into its review of the *Safety, Rehabilitation & Compensation Bill 2014*.

Split along party lines, the Coalition Majority recommended that the Senate pass the Bill. Whether the Bill ultimately becomes legislation will of course depend upon the support it receives in the Senate.

Given the views expressed by members of the ALP and Greens, the Bill is unlikely to receive its support and there is likely to be some prospect that the cross-bench will consider and adopt some or all of the recommendations made by the ALP when negotiating the passage of the Bill through the Senate.

The Bill in summary

The Bill proposes to amend the SRC Act and the *Work Health Safety Act 2011* by:

- removing the requirement for the Minister for Employment to declare a corporation to be eligible to be granted a licence for self-insurance, while retaining the ability of the Minister to give direction to the SRCC;
- enabling corporations currently required to meet workers' compensation obligations under two or more workers' compensation laws of a state or territory to apply to the SRCC for approval to be a self-insurer;
- allowing a former Commonwealth authority to apply directly to the SRCC for approval to be a self-insurer and be granted a group licence if the authority meets the 'national employer' test;
- enabling the SRCC to grant 'group employer licenses' to related corporations;
- making consequential changes to extend the coverage provisions of the WHS Act to those corporations that obtain a licence to self-insure; and
- excluding access to workers' compensation where:
 - (i) a person engages in serious and wilful misconduct even if the injury results in death or serious and permanent impairment; or
 - (ii) injuries occur during recess breaks away from an employer's premises; or
 - (iii) injuries are sustained because a person voluntarily and unreasonably submitted to an abnormal risk of injury.

The Majority report

The Coalition members of the Committee noted that the Bill seeks to implement certain recommendations of the *Hawke Review* and is seen by the Government as a commitment to its

policy of building a stronger and more prosperous economy through the decrease in regulatory impact.

The Committee also noted that the Bill proposes to respond to community expectations concerning personal accountability through the amendments relating to serious and wilful misconduct, recess breaks and submitting to an abnormal risk of injury.

In these cases, they noted that premiums for employers may disproportionately increase as a direct result of access to workers' compensation schemes where the employee could claim compensation from the person or organisation that owed them the duty of care during a recess, rather than from their employer.

The Majority concluded that on balance, the legislative response was proportional and reasonable, responding to community expectations and ensuring that high importance was placed on adhering to work health and safety requirements.

The Dissenting report

The dissenting report of the ALP noted several areas of concern and recommended that the Bill be rejected. The areas of concerns included that the proposed amendments do not reduce 'red tape'. The Senators noted that confusion may arise for workers determining what jurisdiction they are covered under should they be injured in the workplace.

With modern employment arrangements and contractors on site, it was felt that the proposed amendments could result in workers on the same site being covered under multiple jurisdictions. Further, employers would be required to maintain extensive records and collect evidence as it relates to claims of serious or wilful misconduct.

The ALP members also considered that the proposed amendments undermine the workers' compensation scheme as a 'no fault' scheme by excluding the 'serious and wilful misconduct of the employee' and introducing increased risk to workers who suffer injury during ordinary recess breaks and in relation to an abnormal risk of injury.

The ALP Senators suggested that recommendations of the Hanks Review be adopted and recommended the following:

- the introduction of timeframes for decision making and reviews.
- provisional liability to allow for medical intervention and return to work while a claim is being assessed.
- increase the age restriction of payments to coincide with the age of pension.
- self-insurance should only be provided to employers who have an exemplary record in health and safety and a dedicated commitment to workers' rights.
- self-insurance licenses to be automatically revoked in cases where there is a workplace death or serious injury, regardless of fault.
- workers to have access to an independent body that can review an employer's self-insurance status.

- the Government should establish an inquiry to examine cost shifting from workers compensation into the public health and social security system.
- the administration of workers' compensation by self-insurers be conducted by arrangements that separate the insurer from the employer, in the same manner as the relationship between a private insurer and the employer as a client.
- the Government immediately guarantee that no worker will be worse off under the scheme.

The Greens agreed with the dissenting report of the ALP.

What's next?

The Bill will now be introduced into the Senate for its consideration.

It is unclear what support the Bill will receive from the minor parties that did not form part of the Committee.

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