Submission by the Australian Nursing and Midwifery Federation

An independent review of the *Safety, Rehabilitation and Compensation Act 1988*

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Australian Nursing & Midwifery Federation

Annie Butler
Federal Secretary

Lori-Anne Sharp
Federal Assistant Secretary

Australian Nursing and Midwifery Federation
Level 1, 365 Queen Street, Melbourne VIC 3000
E: **anmffederal@anmf.org.au**
W: **www.anmf.org.au**

About the ANMF

1. The Australian Nursing and Midwifery Federation (**ANMF**) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 330,000 nurses, midwives, nursing assistants and care-workers across the country.

2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

3. Our strong and growing membership and integrated role as both a trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

Introduction

5. The ANMF thanks the Australian Government for the opportunity to provide feedback on the comprehensive independent review of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**). The ANMF believes that this work is long overdue but is grateful that it is being undertaken, nonetheless.

6. This review is a critical step towards ensuring that the Comcare scheme remains responsive to the evolving nature of work and workplace injuries, particularly considering the significant increase in claims for psychological injuries and illnesses. Our submission aims to provide insights and recommendations that will enhance the support and outcomes for injured

employees.

7. Healthy and safe work is a fundamental human right, essential to well-being and decent work. Workers deserve equal access to a safe environment regardless of their role or attributes. Work contributes to health by providing income, purpose, growth opportunities, and social support, while poor working conditions can negatively impact well-being. Workers' compensation schemes are vital for supporting those injured or made ill at work, offering financial, vocational, and health support to enable recovery and reintegration.

8. The SRC Act, introduced by the Hawke Government as the *Commonwealth Rehabilitation and Compensation Act 1988*, was initially designed for safer, predominantly public service roles. Over time, national corporations have joined, significantly altering the scheme's profile. Today, public administration workers represent just 13% of those covered, reflecting substantial shifts in workplace demographics and risks.

9. The SRC Act limits injured workers' rights, including restricted access to common law claims and inferior compensation for permanent impairments. Its claims process is dogged by delays, disputes, and legal hurdles, often exacerbating workers' hardships.

10. Immediate reforms are needed to ensure fair, efficient, and equitable workers' compensation. This includes unrestricted common law access for negligence claims, improved permanent impairment compensation, and extended statutory benefits for seriously injured workers, ensuring durable and high-quality health outcomes.

11. The ANMF's recommendations are informed by the experiences of our members and our extensive involvement in the work health and safety (**WHS**) sphere including advocacy for improved workplace conditions.

12. The ANMF supports the submission of the Australian Council of Trade Unions (**ACTU**) and writes this submission to complement the work of the nations' peak body for workers.

Responses to discussion questions

13. The ANMF believes that adopting best practices in workers' compensation is essential to support employees effectively through treatment, rehabilitation, and return to work. Below the ANMF addresses specific questions where we believe we can assist the independent panel members in reaching their conclusions.

Question 17. What changes are required to the Comcare scheme to ensure injured workers with diverse backgrounds or needs receive appropriate support?

14. The current Comcare scheme does not provide an entitlement to incapacity benefits beyond the pension age of 67. This disproportionately affects older nurses and midwives who remain vital contributors to the healthcare workforce. These professionals, having dedicated their careers to caring for others, should not face financial disadvantage or ruin simply for reaching retirement age. It is therefore recommended that the retirement age provisions be removed from the SRC Act.

15. If this recommendation is not implemented, an alternative position is proposed: for workers injured within five years after becoming eligible for the age pension, payments should continue for 260 weeks thereafter. Best practices from other jurisdictions highlight the need for equitable reforms:

    - Queensland - No retirement age provisions, allowing benefits regardless of age.
    - Western Australia - Eliminated age restrictions in 2011, ensuring inclusive access to support.

16. Adopting these changes would ensure that injured nurses and midwives, irrespective of age, receive the financial security and support they deserve after contributing so significantly to the health and well-being of society.

Question 19: Is it still appropriate for the Comcare scheme to be the pathway to a national scheme for private multi-state employers? Apart from Australian Government entities and companies, who should have access to the Comcare scheme? Give reasons.

17. It is not appropriate that the scheme is a pathway for private multi-state employers to enter a national scheme and the ANMF argues it has never been appropriate. The ANMF would be highly concerned with opening the scheme further to private multi-state employers for the following reasons:

    - **Regulatory burden on Comcare:** The scheme would need to manage a much larger and more diverse pool of employers and industries. This would strain the regulator's capacity to effectively oversee and enforce compliance across all sectors.
    - **Impact on state and territory jurisdictions**. The reduction in premium revenue undermines essential for funding their regulatory functions. With fewer workers covered under state and territory schemes, these regulators would face financial constraints, potentially impacting their ability to effectively oversee and enforce compliance.
    - **Administrative complexity**. Managing claims, benefits, and compliance for a more extensive and diverse group of licensees could increase administrative complexity. This might lead to delays in processing claims and providing timely support to injured workers.

Question 20. What criteria should apply for corporations to join the Comcare scheme?

18. Similar to the ACTU, the ANMF asserts that this scheme should primarily serve Australian Government entities. If the ACT Government is included under the SRC Act, it should participate as a premium payer.

19. We propose that the scheme should focus on the Australian Public Service and exclude coverage of the private sector, except for genuine former Commonwealth authorities. Under current arrangements Ramsay Healthcare Australia Pty Ltd was able to enter the scheme. This was even though it has little connection to the Commonwealth. The *Safety,*

Rehabilitation and Compensation (Licence Eligibility—Ramsay Health Care Australia Pty Ltd) Declaration 2019 (**Declaration**) Explanatory Memoranda states:

> Ramsay Health Care Australia Pty Ltd (ACN 003 184 889; ABN 36 003 184 889) ('Ramsay Health Care Australia') is a corporation carrying on business in competition with current or former Commonwealth authorities, including the Australian Capital Territory's ACT Health. Ramsay Health Care Australia has requested that the Minister declare it to be an eligible corporation under subsection 100(1) of the Act.[1] (Emphasis added)

20. The ANMF fails to understand how Ramsay Health Care Australia (**Ramsay**) can be, in any significant way, in competition with the Australian Capital Territory (**ACT**). Ramsay's principal business is that of operating private hospitals. None of its private hospitals are in the ACT. The ACT does not operate private hospitals. No other current or former Commonwealth authority is identified in the Declaration. In any event, supposed competition with the ACT Government should not have been grounds to enter the scheme.

21. If this recommendation is not adopted, the ANMF suggests the following criteria for private multi-state employers:

    - The scheme remains dedicated to the Australian Public Service, with private multi-state employers meeting these conditions:
        - Operate across all states and territories.
        - Compete exclusively or predominantly with the Commonwealth.
        - Obtain agreement from the relevant unions and most of their workforce.

22. Furthermore, private multi-state employers should only participate as premium payers, with no option to self-insure.

[1] https://www.legislation.gov.au/F2019L00402/asmade/text/explanatory-statement

Case study: Ramsay

i. When Ramsay originally wanted to join Comcare in 2019 it did not undertake any meaningful consultation with its employees. Ramsay largely required staff to access information about the application in their own time.

ii. Face-to-face meetings were only run at six of the 70 health facilities that Ramsay wanted to cover by their application, with staff at the other facilities reliant upon attending these sessions via video conferencing, if they could. Alternatively, they watched the session later, on a Ramsay intranet.

iii. On 10 October 2019, Ramsay informed staff at Greenslopes Private Hospital about a Comcare information session for all staff at this hospital. This email was only sent to department heads at this hospital on the same day that this session was run. It was the first time these department heads had been informed of this session, who were somehow expected to inform all staff in less than 6 hours that it was being run and plan for them to attend.

iv. The QNMU Branch of the ANMF was informed by members they were not aware that Ramsay was attempting to move into the Comcare system. Those members that do recall being advised of Ramsay wanting to move into Comcare were not aware of subsequent information sessions conducted by Ramsay as part of the consultation process.

v. Overall, consultation was flawed and perfunctory. To quote from our further supplementary submission of 30 September 2020:

> In its most recent consultations, RHCA (Ramsay) has run one session for each state, irrespective of the number of health facilities and workers in that state. These sessions were run during business hours when many of its staff would have been working. This is not sufficient action to secure employees' responses and give their views proper attention. RHCA employs more than 30,000 people with the vast majority of these workers covered by their application are proposed to move to Comcare. Running only 5 zoom video conference sessions is not the sufficient level of consultation required in order for RHCA to demonstrate that consultation has been done correctly. Multiple consultation sessions should have been

conducted with the size reflective of the number of employees in that state.[2]

vi. This case study highlights the failures in the current system around the current criteria being used to assess corporations moving into Comcare. ANMF provided detailed submissions highlighting multiple concerns, including those highlighted in this case study. There was no meaningful follow-up on the matters raised by Comcare or Ramsay.[3]

Question 22. Should self-insured licensees be regulated by Comcare under Commonwealth WHS laws, or state and territory WHS laws and regulators? Please give reasons.

23. Self-insured licensees should be regulated under the relevant state and territory WHS jurisdictions. There is no logical reason to maintain the current arrangements, especially now that WHS laws are largely harmonised across jurisdictions.

24. The diverse range of work undertaken by licensees under the Comcare scheme presents challenges for the Commonwealth regulator. This diversity spans various industries, including healthcare, construction, mining, transport, and more; each with distinct risks, hazards, and safety requirements. For healthcare settings, ensuring the safety of both workers and patients involves addressing complex factors such as exposure to infectious diseases, manual handling risks, occupational violence and psychosocial hazards.

Question 37. Is there sufficient clarity as to when an employee sustains an injury 'in the course of their employment' if they are away from their usual place of employment or injured during an interval within their usual period of employment?

25. Comcare does not provide coverage for injuries sustained while travelling to or from work. To address this gap, it is essential that journey claims and recess claims be covered by the scheme. This would ensure that employees are protected not only while performing their work duties but also during their commute and breaks, reflecting a more comprehensive understanding of modern work environments and the realities of employees' daily routines.

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[2] ANMF Submission to Comcare (30 September 2020)
[3] ANMF Submissions to Comcare dated 29 January 2020, 19 February 2020 and 30 September 2020

Question 45. Should access to common law continue to be restricted?

26. The ANMF supports the ACTU submissions made on this topic. The ANMF strongly opposes the continued restriction of access to common law under the Comcare scheme. Workers should have the option to pursue a common law claim, regardless of their degree of impairment, and, if successful, be entitled to all types of damages.

27. Currently, Comcare has a cruelly restrictive cap of $110,000 which has not changed in nearly 40 years. The limitations to pain and suffering damages leave injured workers significantly worse off than under state schemes, where claims can also cover economic loss, superannuation, and future medical needs. Nurses and midwives injured at work due to negligence face financial insecurity, with inadequate compensation that can affect their ability to meet living expenses and access necessary care.

28. The inability to claim for economic loss under Comcare leaves injured workers “stuck” on the scheme, subject to ongoing medical assessments, indeterminate statutory benefits, and no option to exit through a lump sum payment. For nurses and midwives, this prolonged process can harm recovery and increase stress, impacting both their health and future career prospects.

29. The absence of meaningful common law access also fails to hold employers accountable, reducing incentives to improve workplace safety. As a result, nurses and midwives remain at risk of preventable workplace injuries.

30. Like the ACTU, the ANMF calls for unrestricted access to common law claims for Comcare-covered employees, ensuring all damages are available. This is essential for fair outcomes and workplace safety accountability.

Question 47. Do the provisions in the SRC Act aimed at preventing double-dipping in relation to like-remedies need changing following Comcare v Friend?

31. The ANMF was appalled that Comcare wasted taxpayers’ money on trying to force a victim of sexual harassment to repay monies she had been paid because of an accepted workers’

compensation claim. As noted by Wilson and Pender:

> *Comcare v Friend* therefore at last brings clarity…. rights under Comcare are not impacted by their (workers) electing to bring a discrimination claim, and vice versa. This is a just, sensible outcome. The limitations in the Comcare legislation were intended to prevent double-dipping in relation to like-remedies – compensation in negligence claims. It is extremely unlikely that Parliament, when enacting the *SRC Act* not long after legislating some of Australia's foundational anti-discrimination laws, intended to limit public servants' access to them.[4]

32. Compensation for sexual harassment and discrimination addresses distinct harms separate from those covered by workers' compensation. While workers' compensation focuses on injuries arising from or during employment, the settlement in question provides redress for the significant emotional and psychological distress caused by unlawful discrimination and harassment. These represent fundamentally different types of harm, and conflating them undermines the purpose of each form of compensation.

33. Permitting sexual harassment settlements ensures that victims of workplace discrimination and harassment receive fair and complete redress for their suffering without being unfairly penalised through the recovery of workers' compensation payments. Therefore, the provisions in the SRC Act should be interpreted to allow these distinct remedies to coexist, ensuring victims are not deprived of justice under the guise of "double-dipping".

53. What is your experience of dispute resolution in the scheme? What improvements would you suggest arising from that experience?

34. Feedback from ANMF branches indicate that current dispute resolution processes are overly legalistic, time-consuming, and unclear. Each decision, from approving physiotherapy to return-to-work plans, can be challenged, leaving injured nurses and midwives in a constant state of financial uncertainty and stress.

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[4] John Wilson and Kieran Pender, 'Does this mean public servants will be properly compensated for workplace injuries?' Australian Lawyers Alliance, 11 April 2024 <https://www.lawyersalliance.com.au/opinion/does-this-mean-public-servants-will-be-properly-compensated-for-workplace-injuries> (accessed 11 December 2024)

35. To improve the situation alternative mechanisms like independent review officers, mediation, or conciliation should be introduced to resolve disputes early, avoiding escalation to the Administrative Review Tribunal. These processes would offer quicker, less adversarial resolutions. Workers should not bear any costs for these processes and should have access to free legal assistance.

54. Should the legislative framework provide for pre-litigation dispute resolution processes prior to external review by the Tribunal? If so, at what point in the process and by whom?

36. The ANMF strongly supports including pre-litigation dispute resolution in the legislative framework and the ACTU's recommendations concerning timely mediation or conciliation of disputes, arbitration orders and pre-litigation dispute resolution.

55. Should the legislative framework be changed to adopt best practice in dispute resolution from other schemes? If so, please specify.

37. State schemes emphasise pre-litigation resolution, using mediation, arbitration, or conciliation. Unlike other schemes, Comcare focuses only on the appealed decision without offering whole-of-claim reviews. We recommend amending the Comcare scheme to prioritise early resolution, with no costs imposed on injured workers for these processes.

Conclusion

38. The ANMF appreciates the opportunity to provide feedback to the independent comprehensive review of the SRC Act. The SRC Act is nearly four decades old and not fit for purpose with its current provisions. The ANMF is hopeful that this review will lead to meaningful changes to the SRC Act, which needs a complete revamp to meet the needs of workers in 2024.