Submission by the
Australian Psychological Society to the

Review of the Safety, Rehabilitation
and Compensation Act (1988)

Contacts:
Mr. David Stokes, Executive Manager, Professional Practice
d.stokes@psychology.org.au
Mr. Bo Li, Senior Policy Advisor, Professional Practice
b.li@psychology.org.au
Dr. Leah Collins, Policy Officer, Professional Practice
l.collins@psychology.org.au

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Executive summary

The Australian Psychological Society (APS) is pleased to contribute to the review of the Safety Rehabilitation and Compensation Act 1988 (SRC Act). The APS recommends the following in the new SRC Act:

1. A focus on the capacity of injured workers’ and their ability to attend treatment, rehabilitation and return to work (RTW) rather than their impairments, incapacities and disabilities.

2. Clearer definition of, and a set of criteria for, “mental injury” (S.5A) as assessed and diagnosed by fully qualified and appropriately registered health practitioners with expertise in mental health.

3. A new clinical framework to be implemented addressing the issue of long term “maintenance” treatment within the scheme and also provides a nexus with “mental injury” (S.5A).

4. Clearer distinction made between mental illness and mental health. Whereas the former focuses on the injury, impairment and disability aspects, mental health encompasses health literacy, resilience and preventative services – consistent with the new bio-psycho-social approach of the new SRC Act.

5. Only endorsed clinical psychologists and psychiatrists should be able to conduct Independent Medical Examination (IME) with regard to mental illness under S.57 of the SRC Act.

6. Increased understanding of mental health and promotion of mental health literacy to better inform both the scheme and providers on the importance of timely referrals and early intervention for workplace injuries.

7. Employers should take responsibility to investigate and resolve interpersonal conflicts in the workplace. The new SRC Act can facilitate this process by making all aspects of psychological practice accessible by claimants in order to produce optimal outcomes.

8. Claimants to be able to access 5 sessions of psychological services pre-liability determination, which may prevent the onset of chronicity and may in fact assist with determination of liability.

9. A scheme-wide employment incentive program to facilitate the rehabilitation and RTW focus of the new SRC Act. CRS Australia may well be suited to find and coordinate suitable employment within the program, particularly for claimants no longer with their pre-injury employer.

10. Mandated reconciliation and mediation services before any formal dispute resolution services for medical issues are initiated.
Introduction

The Australian Psychological Society (APS) thanks the review team for the opportunity to provide feedback to the review of the Safety Rehabilitation and Compensation Act (1988) (The SRC Act). In compiling this response, the APS is cognisant of the scope of the review and the range of issues that it covers. It is not possible for the APS to respond comprehensively to all questions raised in the Issues Paper. Instead, this submission will focus predominantly on the rehabilitation aspect of the SRC Act and how it can be enhanced to improve the performance of the scheme and to improve the outcomes for claimants.

In responding to the Issues Paper, the APS drew on its extensive experience in the workers’ compensation context. These include:

- Submission to the NSW review of its Work Cover scheme (including appearing as witnesses to the Joint Select Committee hearing);
- Response to the NSW WorkCover Psychological Counselling Services Regulatory Framework;
- Ongoing work with the NSW Motor Accidence Authority;
- Ongoing discussions with the Health Services Group (WorkSafe and Transport Accident Commission) in Victoria aimed at improving health outcomes of claimants in both systems;
- Member of the WorkSafe/TAC Clinical Framework Advisory Committee; and
- Submissions to work cover schemes in other Australian jurisdictions.

General comment

The APS would like to highlight the following general issues for consideration by the review team of the SRC Act:

- Clearer definition of “mental injury” (S.5A). The APS submits that any mental injury must be assessed and diagnosed by fully qualified and appropriately registered health practitioners with expertise in mental health. Many medical practitioners are poorly equipped to conduct assessments in the mental health domain due to their overt emphasis on bio-medical conditions. Therefore, psychologists and psychological services in particular, need to be included in S.4 of SRC Act alongside medical treatment and therapeutic treatment. Doing so will also tighten up the SRC Act, as, in its current form, the Act exposes Comcare workers to treatment by poorly qualified providers who may exacerbate conditions or do further harm through inadequate treatment. Comcare currently has no legislative power to prevent such treatment as it is “under the referral of a medical practitioner”. Given the large increase in psychological claims, there is a risk of poor outcomes through treatment provision by unaccredited and unregulated ‘counsellors’;

- The definition of therapeutic treatment (S.4) should be updated to ensure it is producing an outcome for workers. This will require a new clinical
framework to be implemented addressing the issue of long term “maintenance” treatment within the scheme and also provide a nexus with “mental injury” (S.5A). The new framework will require an active partnership between the scheme, its providers and employers. The scheme should have access to a panel of expert clinicians reflective of its new bio-psycho-social focus, backed up with new guidelines on evidence-based clinical assessment and interventions. These expert clinicians have the responsibility to educate providers and employers on the new treatment framework and powers to direct providers to resubmit their treatment plans that do not comply. Employers on the other hand will be supported by expert clinicians who can assist them with early identification and intervention of claims (as well as prevention programs). Providers will be accessed in an appropriate and timely manner based on their training and qualifications and willingness to provide goal-oriented and evidence-based interventions;

- Quality rehabilitation services to injured workers must be delivered by fully trained and qualified health practitioners. Registered health practitioners such as psychologists are the most appropriate clinicians, as they are trained to work with claimants on their functional strengths and capacities, focusing on return to work. Their goal-oriented treatment and intervention plans contrasts with those from other providers who may seek to maintain dependence by claimants without justification or suitable evidence;

- The ability to gazette fees for health services should be incorporated to allowed certainty for providers and workers as to what amounts will be paid;

- Only endorsed clinical psychologists and psychiatrists should be able to conduct Independent Medical Examination (IME) with regard to mental illness under S.57 of the SRC Act. The APS contends that clinical psychologists are as appropriately qualified in the assessment and diagnosis of mental illness conditions as medical examiners, especially those without appropriate training in mental health. This is consistent with Commonwealth policy that is moving toward restricting mental illness diagnoses to professions with specific mental health training (e.g., Centrelink no longer accepts mental illness diagnoses from GPs unless a clinical psychologist or psychiatrist is involved).

**Mental health is not just absence of mental illness**

Psychologists, particularly Clinical Psychologists, are often described as experts in the treatment of people with mental illness. While this is true for a significant portion of the APS membership (over 20,000 Australian Psychologists), it should be noted that mental health is not just an absence of mental illness and that generalist psychologists and psychologists in other areas of endorsed practice (e.g., Health, Counselling and Organisational psychologists) can contribute toward the mental health and wellbeing of people within a workers’ compensation scheme. This was argued in a previous submission from the APS to NSW WorkCover calling for equal treatment for all psychologist providers in the Scheme and not adopting the Medicare mental illness focused approach, which was aimed at a specific population (i.e. those with diagnosed psychiatric conditions).
A better way of describing mental health is to speak of a person’s ability to manage mental demands and stressors and draw more effectively upon their existing resources to seek appropriate support as required. Fundamental to mental health is “mental health literacy” – a grasp of, and access to, information that can inform their awareness of stressors in life, as well as that pertinent to their general wellbeing. Increased mental health literacy normalises significant distress and mood changes and accepts the fact that many people will experience reduced mental health and wellbeing at some point in their lives, particularly in response to a major stressor such as a workplace injury or interpersonal conflicts.

In a workers’ compensation scheme context, increased understanding of mental health and promotion of mental health literacy will better inform both the scheme and other providers on the importance of timely referrals and early intervention for workplace injuries. There will then be an improved understanding of the ways to delay the onset or prevent psychological conditions associated with their original injuries and with protracted claims management. Prevention of mental health issues should be as high a priority as returning to work. It is widely accepted that returning to some form of work (if possible) is a highly protective factor for reducing the onset of mental health disorders and has broader benefits to health (Royal Australian College of Physicians [RACP], 2010).

Finally, the APS would like to stress the notion that physical and mental health are inseparable and seriously integrated aspects of overall health. For any physical injury that occurs, there are inevitable and important-to-acknowledge psychological consequences or associated features. Likewise, any psychological injury is undoubtedly associated with physical health impacts and consequences. The recognition of the unavoidable interrelationship of physical and psychological aspects of health underlies much of the APS’s membership work in the community, with its work with government policy development and particularly with injury compensation schemes.

**Response to specific review questions**

*What key principles do you suggest guide the design and drafting of amendments to the SRC ACT? What do you suggest the objects and purposes of the SRC Act should be?*

The APS agrees with the key principles as outlined by the review team under paragraph 55. In particular, the APS congratulates the team on 55.5 “rehabilitation should be based on a bio-psycho-social model of assessment and treatment“ – this must be the key to the rehabilitation focus of the new SRC Act.

In addition, the APS suggests that, the SRC Act should focus on the capacity of injured workers’ and their ability to attend treatment, rehabilitation and return to work (RTW) rather than their impairments, incapacities and disabilities. This can be achieved by:

- Maintaining the primary role and duty of employers to offer suitable duties and should engage with standards of RTW for injured workers with mental health difficulties in particular (see [http://www.returntowork.net.au/](http://www.returntowork.net.au/));
- Promoting active partnerships between injured workers, their employers, rehabilitation professionals and the scheme;
Increasing focus on injury management with input of clinical expertise in the scheme to improve outcomes via implementing goal oriented rehabilitation programs;

- Early identification and resolution of barriers and conflicts preventing RTW; and

- Training and supervision of claims staff within the scheme on injury management, clinical evidence and goal setting to promote and enhance a learning system within the scheme.

**Reasonable administrative action as cause for compensation**

The APS is concerned about the increased incidence of “bullying” and “harassment” claims. Such increases can be explained by increased awareness of bullying and harassment, or, the “medicalisation” of interpersonal conflict (or both). In the case of interpersonal conflicts manifesting as bullying claims, administrative actions may not be appropriate or a fair course of action. However, in absence of access to alternative dispute resolution mechanisms such as early intervention (pre-liability) mental health services and early assessment and investigation of these conflict situations, lodgement of a Comcare claim by individual employees is often the only choice. It is unfair and inappropriate that the Comcare scheme has to shoulder the financial liability for such problems. The APS reiterates its earlier recommendation for employers to be encouraged to engage in early identification and resolution of barriers and conflicts preventing or hindering successful RTW with assistance from the scheme and its expert clinicians.

**Should the Comcare scheme provide for the redemption of medical or rehabilitation costs?**

Long term participation in compensation schemes predicts poor health outcomes (RACP, 2010). Where injured workers are receiving minimal medical treatment after a period of time, say 3-5 years, a redemptive process may be preferable to remaining on the scheme. Redemptive payments as a method of reducing long term dependence on Comcare, particularly in smaller claims would appear reasonable on health grounds. However, this is predicated up on the completion of a suitable rehabilitation program with early intervention provided by registered providers focusing on RTW. Psychologists and other registered health practitioners must also be involved in the independent assessment of claimants’ overall health and residual capacity for work as part of the redemption process.

**Should the weekly benefit cut-off age of 65 be increased to 67? If so, should that increase mirror the changes in the age pension age?**

The APS agrees that benefit cut-off age should be increased to 67, mirroring the changes in the age pension age.

**Should the SRC Act be amended to include access to early intervention? Should early intervention be contingent on the acceptance of liability?**

The APS agrees that the SRC Act should be amended to include access to early interventions, as this would not only facilitate early recovery and rehabilitation; it also has the potential to allow for reduction in (inappropriate) claims. However,
access to early intervention should not be contingent on the acceptance of liability. This could mean that claimants can have access to 5 sessions of psychological services prior to the determination of liability, which may prevent the onset of chronicity and may in fact assist with determination of liability.

**Should the regulatory tools of the SRC Act relating to rehabilitation obligations be strengthened?**

**In cases where an injured employee is unable to return to the employee’s pre-injury employment, but has a capacity to work, are the obligations on employers to provide, and injured employees to accept, suitable employment sufficient?**

**Should a scheme-wide employment incentive scheme be established?**

The APS agree that currently there is little incentive for employers to participate and to provide suitable duties for injured workers and that these provisions need to be strengthened under the new SRC Act. Where injured workers have been separated from their employers, the scheme should have the ability to initiate rehabilitation for the claimants particularly when a work capacity certificate indicates that there is a partial capacity. Provider agencies such as CRS Australia may well be suited to find and coordinate suitable employment in a scheme-wide employment incentives program.

The APS supports the notion of a scheme-wide employment incentive program, as this would facilitate the rehabilitation and workplace placement with RTW focus of the new SRC Act. Other options include broader definition of suitable employment to assist claimants finding suitable employment in a different division of the employer and/or with a different employer within the scheme. Once again, all these procedures require claimants to be independently assessed by expert and qualified health care professionals.

In the rehabilitation and return to work context, the APS would like to highlight to the review team the diversity of the discipline of psychology. In addition to experts in mental health conditions (clinical psychologists), other areas of psychological practice, as endorsed by the Psychology Board of Australia, which are relevant to the workers’ compensation context include:

**Organisational psychology**: psychologists who are experts in working with organisations, teams and individual employees to improve their motivation, effectiveness and productivity. Organisational psychologists conduct workplace assessments, ergonomics and staff training and development.

**Health psychology**: psychologists who are experts in understanding the relationships between psychological factors (e.g. behaviours, attitudes, beliefs) and health and illness. Health psychologists practice in two main areas: health promotion (prevention of illness and promotion of healthy lifestyles) and clinical health (application of psychology to illness assessment, treatment, and rehabilitation). Health psychologists are able to develop and evaluation interventions to enhance health and wellbeing while also identifying and treating the psychological impact of injuries and illness.

**Counselling psychology**: psychologists who are experts in the provision of counselling and psychotherapy. They provide psychological assessment and
psychotherapy for individuals, couples, families, and groups and treat a wide range of psychological problems and mental health disorders including grief and loss, significant life transitions, developmental issues, relationship difficulties, assault/trauma, maintaining healthy lifestyles, vocational assessment and career development.

Clinical neuropsychology: psychologists who are experts in the assessment, diagnosis, and treatment of psychological disorders associated with conditions affecting the brain (e.g., acquired brain injury, neurological conditions). They have highly specialised training in the structure and function of the brain and it relates to, and is expressed through, domains of cognition, language, memory, concentration, planning, problem-solving, emotions, and behaviour.

Consistent with the new bio-psycho-social approach of the new SRC Act, the APS contends that all aspects of psychological practice should be accessible and utilised by claimants in order to produce optimal outcomes.

Should the SRC Act be amended to identify clearly the rehabilitation authority for an injured employee, in the case of employees who have separated from their employers? Who should be the rehabilitation authority for employees who are no longer employed by the liable employer?

Comcare should be the rehabilitation authority for employees who are no longer employed by the liable employer. As stated previously, many mental health claims are due to workplace conflicts, where claimants did not have adequate avenues to identify and resolve such conflicts and therefore lodged claims as a last resort option. Until such a time when the SRC Act provides explicit guidelines, procedures and services (through fully trained and qualified clinicians) to provide early intervention around such issues, Comcare should remain the rehabilitation authority even for employees who are no longer employed with their original employer.

Should permanent impairment compensation be calculated on the basis of “whole person” impairment by combining all impairments resulting from multiple injuries that arise from a single incident (for example, a motor vehicle accident or a fall)?

The current SRC Act does not actively promote a rehabilitation and RTW focus. Permanent impairment provisions therefore need to be considered with the current rules for incapacity payments which are very generous. As argued above, the APS contends that successful outcomes for injured workers are achieved where claimants, employers, the scheme and expert clinicians are working in a collaborative partnership. This will require the scheme to employ and actively seek out views of expert clinicians who can act both as mentors and supervisors to claims staff and to set out appropriate clinical guidelines based on current evidence. Employers and claimants will need to be confident in their dealings with the schemes that clear rules are set out and followed, offering timely assessment, early intervention and appropriate follow up.

Therefore any increases in Permanent Impairment benefits need to be balanced against more stringent rules and guidelines on incapacity payment policies and
regulations emphasising the responsibilities of claimants and their employers and the rehabilitation authority to help claimants exit the scheme to alternative work. Combined impairment values would also appear more consistent with modern compensation scheme provisions found in other jurisdictions. As stated above, the current make up of the independent medical review panel needs to be reviewed and expanded so as to obtain access to senior clinicians such as psychologists, for expert assessment and advice regarding claimants’ impairment in order to truly reflect the bio-psycho-social model of rehabilitation of a new SRC Act.

Finally, the APS would like to highlight the following:

- Chronic mental health conditions may not meet the criteria of being permanent and therefore are difficult to deal with under permanent impairment provisions.

- Invalidity or medical retirement is often what an employer or claimant may resort to when rehabilitation efforts have failed and leads to employees of work age permanently exiting the work force and leading a life of disability.

**Should the SRC Act’s dispute resolution mechanisms be altered in any way?**

**Should the legislation be amended to allow or require disputes about medical issues to be referred to a medical panel/tribunal for resolution of the medical issue alone, or for resolution of the entire dispute?**

**Should the legislation require alternative dispute resolution as a precursor to AAT review in appropriate cases?**

The APS contends that a number of “circuit breakers” need to be enshrined in the new SRC Act. The current system is unnecessarily adversarial and does not promote best practice conflict resolution. As a minimum, the APS would recommend mandated reconciliation and mediation services before any formal dispute resolution services for medical issues are initiated.

Independent assessment is the key in dispute resolution regarding reasonable treatment. This should be resolved initially by the independent medical examiner (IME). As stated above, the APS is the of view that psychologists are more appropriately qualified and trained to assess and diagnose mental health conditions and therefore should be part of a wider independent clinical examination panel alongside medical practitioners and other suitably qualified and trained health professionals involved in the overall rehabilitation and RTW of claimants.
About the APS

The Australian Psychological Society (APS) is the peak national body for the profession of psychology, with over 20,000 members, representing around 60% of registered psychologists, and including nine specialist colleges. As the representative body for psychologists, the APS has access to a vast pool of psychological expertise from both academic and professional service delivery perspectives. The APS has responsibility for setting professional practice standards, providing ongoing professional development and collaborating over the accreditation of university psychology training programs across Australia. It is represented on a number of advisory groups involved in the planning, implementation and ongoing monitoring of Government policy initiatives. Constant communication with its members, plus access to high level psychological expertise and detailed involvement in Government initiatives, enables the APS to significantly influence the psychology workforce to ensure best practice in health service delivery.

The APS has a proud history of working in collaboration with Australian Government departments and other organisations in the successful delivery of policies and programs aimed at improving the health outcomes of Australians.
References