



Comcare Permanent Impairment Guide Consultation

Submission by the Australian Council of Trade Unions to
Comcare

ACTU Submission, 24 August 2021
ACTU D. No 46/2021

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Introduction

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For 90 years, the ACTU has played the leading role in advocating in the Fair Work Commission, and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

ACTU and affiliated unions have members employed in the self-insured and premium paying sections of the Comcare scheme and workers under Seacare. The comments below apply to both schemes.

The ACTU draws Comcare's attention to the submissions made by affiliates and requests careful consideration of those submissions.

Comment

Any proposed changes to the lump sum compensation system must be cognisant that with the introduction of the SRC Act injured workers were asked to trade an increase in statutory benefits for the loss of common law rights. It is in this context that adoption of systems used to assess permanent impairment in other workers' compensation systems, where injured workers can sue under common law, cannot be automatically transferred to Comcare/Seacare.

By design the Seacare and Comcare systems must provide a more generous lump sum system for permanent impairment, to ameliorate the loss of access to common law.

It is also important to remember that all Australian jurisdictions continue to use the American Medical Association Impairment Guide (AMA5) for purposes of calculating direct financial rewards. Whilst revisions of the AMA Guide have led to improvements the fundamental problem still exists.

Given the complexity of the assessment of permanent impairment and our inability to access American Medical Association Impairment Guide 5 (due to the paywall), our comments are brief and general in nature.

The ACTU acknowledges and appreciates the time and effort Comcare have taken to brief unions, but without individual case comparison it is highly probable that changes will be made that "generally" benefit some people but for other groups the changes will be detrimental.

In fact, contrary to the "general" statements by Comcare, the ACTU has been advised by numbers of experts that an injured worker who would otherwise be assessed as suffering from a 10% impairment under the current Guide would meet only 6% under the draft Guide. This is detrimental to a growing number of workers and cannot be supported.

It is our understanding that the benefits of adopting AMA5 are:

1. Increased national consistency between schemes
2. A subsequent increase in the pool of specialists who may be trained to conduct the assessments.

However, such benefits don't outweigh the costs to some groups of injured workers.

It is the ACTUs understanding that:

1. There are factors in Chapter 14.4 of the AMA5, which have not been included in the assessment of the impairment in the proposed draft Guide, which narrows the criteria used. These include but are not limited to:
 - Suicidal ideation
 - Social factors
 - Sexual function
 - The effects of treatment and the individual's adaptations to minimise the negative effects of the psychiatric disability.

The decision to not adopt AMA5 will lead to the calculation of a lower level of impairment.

2. The reasons for exclusion of Chapter 18 of AMA5 is not articulated well. Comcare should reconsider this decision as the "cherry picking" of AMA5 possibly undermines the intentions of the drafters of AMA5.
3. The Comcare scheme needs to ensure that the fundamentals of section 24 and 27 of the SRC Act are not compromised. Injured workers' access to compensation for non-economic loss cannot be supported. The proposal to amend the Guide regarding the impact on activities of daily living (ADL) – which are extremely important to individual injured workers – are not supported. Note, there are important differences between impairment, disability and capacity. The impact on ADL needs to be taken into account as part of the impairment assessment and separately.

Conclusion

The ACTU cautions Comcare and Seacare on the adoption of variations to AMA5 and removal of current provisions which will have the effect of decreasing access to permanent impairment lump sums for some categories of workers, in particular, those with mental health injuries.

Given these injuries are increasing in numbers and often lead to long term impairments the ACTU is opposed to any changes which will disadvantage these injured workers.

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