

Department of Employment and Workplace Relations  
**Review of the Safety, Rehabilitation & Compensation Act 1988 Issues Paper**

Dec 2024

**Advocacy and collaboration  
to  
improve access and equity**

# Royal Australian and New Zealand College of Psychiatrists submission

## Review of the *Safety, Rehabilitation & Compensation Act 1988* Issues Paper

### About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is responsible for training, educating and representing psychiatrists in Australia and New Zealand. The RANZCP has more than 8500 members, including around 6100 fully qualified psychiatrists.

The recommendations contained within this submission are based on consultation with the RANZCP committees, including the Faculty of Adult Psychiatry Committee, Section of Leadership and Management Committee and the Section of Social, Cultural and Rehabilitative Psychiatry Committee, which are made up of community members and psychiatrists with direct experience. As such, the RANZCP is well positioned to provide assistance and advice about this issue due to the breadth of academic, clinical and service delivery expertise it represents.

### Introduction

The RANZCP welcomes the opportunity to contribute to the Department of Employment and Workplace Relations' [independent review of the Safety, Rehabilitation & Compensation Act 1988 issues paper](#) (Issues Paper).

The RANZCP supports the decision to make mental health a primary focus of the review. Mental health conditions are the leading cause of long-term disability worldwide.[1] In Australia, it is estimated that loss of productivity and participation in employment due to mental ill health costs \$39b annually.[2] Beyond addressing the economic costs of workers being unable to continue in, or find employment, the RANZCP recognises the health benefits of returning to work after an injury, and is a signatory to both the [Health Benefits of Good Work](#) Charter of Principles and the [Equally Well Consensus Statement](#). However, effective, equitable and accessible compensation schemes are necessary to support people while they are unable to work, and while they are transitioning back into the workforce.

### Recommendations

To ensure the principles of recovery and best practice are enshrined in the Comcare scheme the RANZCP makes the following recommendations.

- Embed evidence based and trauma informed practices in compensation process to ensure that claimants receive fair and effective support.
- Promote transparency and fairness by regulating against bad-faith actions such as doctor shopping, ensuring a more equitable process for claimants.
- Revise the 'link to employment' tests to reflect the unique and complex nature of mental health injuries.
- Develop mediation and negotiation procedures to resolve disputes efficiently and minimise adversarial claim and appeal processes.
- Ensure that independent medical experts possess the appropriate expertise and experience to assess psychological injuries, with psychiatrists and specialist mental health professionals reviewing relevant claims.

The RANZCP recommendations are designed to ensure a person-centred approach to compensation, especially for those people who are making mental health related claims. People with mental health conditions face several additional challenges when seeking compensation. These challenges contribute to the stigma surrounding mental illness and discourage many people from making claims after being diagnosed with a work-related mental injury. Over 70% of people surveyed in the 2018 National Return to

Work Survey believed they would be treated differently when submitting a mental health related compensation claim.[3] Furthermore, there is a growing body of evidence that compensation systems can cause negative mental health outcomes due to their structure and focus.[1, 4] As noted in our [Position Statement 94: Public insurance schemes: advocating for mental injury claimants](#), the RANZCP advocates for an end to this discrimination and calls for the restructuring of compensatory schemes to promote greater equity for workers who experience mental injury.

The RANZCP has addressed the discussion questions in the [issues paper](#) that are most relevant to the scope of practice for psychiatrists and their consumers. The recommendations in this document are based on previous submissions and key RANZCP documents, including:

- [Position Statement 37: Principles of mental health systems](#)
- [Position Statement 73: Mental health for the community](#)
- [Position Statement 92: Mental health legislation and psychiatrists: putting the principles into practice](#)
- [Position Statement 94: Public insurance schemes: advocating for mental injury claimants](#)
- [Position Statement 100: Trauma-informed practice](#)
- Submission: [Bringing evidence-informed practice to work injury schemes](#),
- Submission: [First Review of the workers compensation scheme](#)

### Discussion questions

**Question 2** - *What are best practice design principles for a workers' compensation scheme? For example, can you provide examples (from other schemes) of best practice approaches to early intervention, rehabilitation (including supporting employees with psychological injuries), vocational support and return to work?*

The RANZCP recommends embedding trauma and evidence informed care practice into worker's compensation systems. Claimants who are experiencing mental ill health as a result of psychological injuries are vulnerable to traumatisation and further harm by opaque and adversarial systems. To ensure an equitable and effective compensation process for psychological injuries, the system must prioritise ease of use, transparency, and trauma-informed procedures. As highlighted above, complex compensatory systems often delay claims and cause unnecessary distress, which can exacerbate ill health and lead to negative health outcomes.[4] The design of compensatory schemes should minimise adversarial practices and focus on evidence-based, trauma informed practices.

Workplace compensation can be associated with stigma, especially for priority populations and those submitting claims for mental health related injuries. The RANZCP acknowledges the harmful effect that this stigma can have on people, and its negative effects on their recovery. Designing compensatory systems includes providing clear information to employees and managers about the function and availability of these programs. Implementation of workplace mental health promotion programs, delivery of staff training and supervision for key staff, including senior management leadership, and implementation of workplace intervention can help reduce the number of claims and lessen the impact of stigma on claimants.[5] Reducing stigma allows claimants to effectively access compensation and ensures a smoother return to work.

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**Question 6** - *What changes are required to the Comcare scheme to better manage complex psychological claims?*

To ensure the best recovery outcomes for consumers with complex psychological claims there must be increased transparency and fairness the operation of the Comcare scheme. While some challenges are inevitable due to the nature of mental injuries, such as self-reported symptoms, and the subjective determination of their cause and severity, fairness and transparency are essential to ensuring equitable access for claimants.

The RANZCP has previously highlighted the harmful practice of doctor shopping within compensation schemes. Doctor shopping occurs when agents refer claimants to numerous clinicians to obtain favourable diagnoses that support the denial of compensation. This practice often involves selective case histories, or the use of leading questions to undermine the claim.[6] The NSW Parliament has recognised that doctor shopping 'encourages poor outcomes for injured workers and is economically unsound', and has recommended penalties for agents engaging in such practices.[6]

The RANZCP highlights that the Comcare scheme is adversarial in nature, which can foster doctor shopping in order to 'win' cases.[7] This practice has been well documented by Comcare agents.[7] For the best recovery outcomes and experience for consumers and claimants the regulatory framework should limit the number of independent medical officers a claimant can be required to see. Additionally increasing the time that claimants have to object to specific clinicians, currently limited to just 3 days, would improve transparency and ensure more equitable access to compensation, in line with best practice trauma informed care.

**Question 36** - *What is best practice for determining injuries and diseases? For example, is it still appropriate to separate these conditions? Is there a different approach needed for certain injuries, for example psychological?*

The RANZCP acknowledges that mental health conditions and injuries are often more complex and difficult to link to a specific precipitating action compared to physical injuries. Pre-existing mental health conditions may make claimants more susceptible to harm, while those without such conditions may not be as affected. It is important that the Comcare scheme operates to protect and support consumers with pre-existing conditions and does not marginalise or discriminate against them. Pre-existing conditions should not be considered the 'reason' for a claimant's ill health. When assessing mental health impacts, it is important to focus on the harm itself and consider pre-existing conditions only in terms of vulnerability, not as the primary cause.

It is important to note that harm can be both immediate and ongoing and may not be immediately evident following an acute incident or series of events affecting a claimant's mental health.

**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?*

The RANZCP recommends clarifying the test for whether an injury occurs "in the course of employment" and adjusting the criteria in Section 5A(1) and 6(1) of the *Safety, Rehabilitation & Compensation Act 1988* to account for the unique nature of mental health. Mental health can be affected by several actions and events that have no direct equivalent in physical health, such as micro-aggressions, feelings of exclusion, bullying, systemic racism and discrimination. These factors may not be immediately visible to outside

observers or assessors but can significantly impact mental health. The Scheme must consider the unique nature of mental health when determining whether injuries or harm are related to a claimant's employment.

**Question 56** - *Is there a role for medical panels to contribute to the dispute resolution process, and if so, how should such a panel be constituted and should the panel's opinion be binding?*

The RANZCP recommends prioritising mediation and non-adversarial processes preferred over medical panels for dispute resolution. The adversarial nature of claims processes can have serious negative health impacts on claimants, so minimising 'zero sum games' is crucial. Regulating mediation and inquisitorial rather than adversarial practices will improve case management for psychological injury claims.

If medical panels are used, they should consist of independent clinicians who have been reviewed and agreed upon by both parties. As noted above, doctor shopping is a prevalent issue in compensation schemes, and medical panels are not immune to concerns regarding bias. It is crucial that medical experts are specialists in the relevant field, namely, psychiatrists must be a part of any medical panel assessing psychological injury claims.

The decisions of medical panels must be transparent, adhere to the highest standards of practice, and ensure fairness and administrative and procedural justice. The option to request reassessment or appeal must be available, but balanced with the need for finality in the claims process.

## Conclusion

The RANZCP appreciates the opportunity to engage with the Issues Paper and the review. We recommend that any changes take into account the recommendations made here and in our [Position Statement 94: Public insurance schemes: advocating for mental injury claimants](#).

If you have any questions or wish to discuss any details further, please contact Nicola Wright, Executive Manager, Policy, Practice and Research via [nicola.wright@ranzcp.org](mailto:nicola.wright@ranzcp.org) or on (03) 9236 9103.

## References

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