Report of the Review of Self-insurance arrangements under the Comcare Scheme

January 2009
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Executive Summary


This scheme, known as the Comcare scheme, comprises a mix of premium-payers—predominantly Commonwealth agencies—and corporations licensed to self-insure under the scheme.

On 23 January 2008, the Hon Julia Gillard MP, Minister for Employment and Workplace Relations, announced the terms of reference for a review of the self-insurance arrangements under the Comcare scheme.

The review’s main purpose was to determine whether, particularly in relation to self-insurers:

- the scheme’s benefit structure and exclusive Commonwealth OHS coverage were appropriate;

- the scheme had the capacity to meet satisfactory standards in its regulation of workers’ compensation and OHS requirements; and

- the current self-insurance licensing arrangements posed risks for the scheme’s viability or the viability of state or territory workers’ compensation schemes.

The review examined a range of issues relating to the Comcare scheme, including safety, compensation, consultation, financial viability, access to the scheme and governance arrangements.

The Department found that, overall, the scheme’s range of compensation benefits and approach to OHS regulation were comparable with other Australian workers’ compensation schemes. In this respect, the provision of self-insurance licenses to private-sector corporations was not seen as placing them or their employees at a disadvantage. Similarly, the Department found no evidence that licensing posed risks to the scheme’s viability or the viability of state or territory schemes.

The Department noted that the scheme’s OHS performance has been consistently good and not such that it could be seen as detrimental to the interests of self-insurers or their employees.

Notwithstanding the relatively encouraging findings overall, a number of concerns were raised in submissions to the review and during consultations. These included the prerequisites for self-insurance licensing, the suitability of the OHS Act for self-insurers, benefits offered by the scheme, Comcare’s performance in OHS enforcement and claims management practices.

The Department was unable to find convincing evidence that self-insurance licensing should no longer be offered by the scheme. For this reason and also in
light of evidence of the scheme’s comparatively effective performance, the Department has recommended the retention of the current statutory ‘in competition’ criterion as the precondition a corporation’s gaining ‘eligible corporation’ status essential for licensing.

However, to ensure that there is no erosion of the protections and entitlements enjoyed by employees of private-sector corporations seeking to migrate to the Comcare scheme as self-insurers, the Department has recommended a revision of the Minister’s guidelines for the assessment of ‘eligible corporations’ applications to ensure that only high-performing and soundly-motivated employers are eligible to be granted a self-insurance licence.

In relation to the other issues raised, the Department has recommended a range of measures to improve the scheme’s regulation which include:

- more pro-active OHS enforcement by Comcare;
- the formulation of higher penalties to apply for breaches of the OHS Act;
- improved arrangements for genuine and thorough consultation between employers and employees on issues that affect their health and safety at work;
- Comcare’s review of the permanent impairment arrangements; and
- the introduction of statutory time limits for claims determinations.

The longer-term reform of the OHS Act will be undertaken in the context of the Council of Australian Governments’ agenda to achieve harmonised OHS legislation. The Commonwealth, states and territories have agreed to work together to develop and implement model OHS legislation as the most effective way to achieve harmonisation. Harmonisation of OHS laws will cut red tape, boost business efficiency and provide greater certainty and protections for all workplace parties.

As part of its review, the Department briefly looked at the scheme’s governance. It concluded that, while aspects of the scheme’s structure and allocation of responsibilities were not always consistent with best practice governance, potential problems were largely overcome through practical measures adopted by the bodies established to manage and regulate the scheme - Comcare and the Safety, Rehabilitation and Compensation Authority (SRCC).
1. Overview of the Review

Background

1.1 On 23 January 2008, the Hon Julia Gillard MP, Minister for Employment and Workplace Relations, announced the terms of reference for a review of self-insurance arrangements under the Comcare Scheme (the review).

1.2 The Terms of Reference for the review are provided at Appendix A.

Scope and objectives

1.3 The objectives of the review were to examine the appropriateness of the self-insurance arrangements available under the Comcare scheme and to ensure that employees of licensed self-insurers were protected by rigorous OHS safeguards and appropriate workers’ compensation benefits.

Review Methodology

1.4 In March 2008, the Department engaged Taylor Fry Actuaries to collect information and provide expert advice to inform its report to the Minister. The Taylor Fry report was one component of the review.

1.5 A copy of the Taylor Fry Report is at Appendix B.

1.6 The review entailed an analysis of 80 written submissions, and consultations with 20 stakeholders including government, non-government, employer, union and legal bodies. In addition to the Taylor Fry report, other relevant proposals for reform were also examined, including the Productivity Commission’s 2004 National Workers’ Compensation and OHS Frameworks Report.

1.7 A list of submissions received is provided at Appendix C.
Recommendations

Recommendation 1: The Department recommends that, in relation to the requirement that a corporation be declared an ‘eligible corporation’ as a precondition to seeking a self-insurance licence:

- the legislated ‘in competition’ requirement be retained;
- the Minister’s guidelines for the assessment of ‘eligible corporation’ applications be revised to introduce higher standards; and
- options be explored to remove the role of the Minister in granting declarations of eligibility and instead confer the assessment of the ‘competition test’ and other criteria onto the SRCC.

Recommendation 2: The Department recommends that:

- the Comcare scheme’s OHS coverage for self-insurers be retained;
- regulations clarify that authorised persons under state/territory OHS laws have the right of entry to Commonwealth–covered employer premises to investigate possible breaches of State OHS laws by State-covered employers, employees and contractors; and
- it commence work to review sections 14 and 15 of the OHS Act.

Recommendation 3: The Department recommends that:

- the Minister issue a direction to the SRCC that self-insurance licence applications and licence variations only be granted to corporations where Comcare has the capacity and expertise to properly regulate the industry or industries in which the applicant is engaged.

Recommendation 4: The Department recommends that:

- the Minister issue a direction to Comcare to:
  - adopt a more proactive OHS enforcement approach;
  - develop guidance material which appropriately reflects a proactive enforcement policy; and
  - implement measures to increase the expertise of investigators and the inspectorate.
Recommendation 5: The Department recommends that:

- in consultation with the Attorney-General’s Department, consideration be given to:
  - increasing criminal penalty levels in the OHS Act in line with the National OHS Review recommendations; and
  - reviewing the relationship between the level of criminal and civil penalties under the OHS Act.

Recommendation 6: The Department recommends that:

- the Department, in consultation with the Attorney-General’s Department, commence work to amend the OHS Act to introduce infringement notices.

Recommendation 7: The Department recommends that:

- the Minister write to Comcare emphasising the rights and responsibilities of Health and Safety Representatives (HSRs), in particular, to:
  - ensure investigators notify and inform HSRs of their presence at a workplace and of any powers exercised by them in relation to the visit;
  - ensure investigators inform HSRs of their right to accompany them during an investigation at a workplace; and
  - issue guidance material regarding refresher training for HSRs and training for deputy HSRs.

Recommendation 8: The Department recommends that:

- the Minister write to Comcare requesting they issue guidance material to employers which strongly encourages them to consult with all workers at or near the workplace as part of their health and safety management arrangements and also reminding them that consultation is an ongoing process.

Recommendation 9: The Department recommends that:

- the OHS Act be amended to enable Comcare to release information to relevant authorities.

Recommendation 10: The Department recommends that:

- the Minister agree to the development of statutory time limits for the determination of claims; and
- where the statutory time frames are not met, the claim be provisionally accepted in favour of the claimant, with no requirement for repayment if the claim is subsequently rejected.

Recommendation 11: The Department recommends that:

- Comcare undertake a practical review of the permanent impairment provisions under the SRC Act, including the Permanent Impairment Guide, and report its findings within 12 months.
Recommendation 12: The Department recommends that:
• the suspension provisions in the SRC Act be amended so that medical and related benefits are excluded from those provisions.

Recommendation 13: The Department recommends that:
• claims arising from injuries sustained during travel to and from work and off-site recess breaks, continue to be excluded.

Recommendation 14: The Department recommends that:
• the current disease and exclusionary provisions be retained.

Recommendation 15: The Department recommends that:
• the current provisions for retirees be retained.

Recommendation 16: The Department recommends that:
• the Minister direct the SRCC to release guidelines setting out comprehensive consultation requirements to be followed by prospective licence applicants, and by licensees requesting a variation to their licence conditions to bring new employees under an existing licence.

Recommendation 17: The Department recommends that:
• the SRC Act be amended so that for the purposes of section 100, corporations forming part of a group of related corporations are able to be assessed as a group.

Recommendation 18: The Department recommends that:
• the SRC Act be amended to enable the SRCC to grant a group licence to related eligible corporations.

Recommendation 19: The Department recommends that:
• further consideration and consultation be undertaken to develop appropriate options for the Comcare scheme’s governance and accountability arrangements; and
• in developing these options, the Department will consider the appropriateness of Comcare’s statutory obligations to provide administrative support to the Seafarers Safety, Rehabilitation and Compensation Authority in the administration of the Seacare Scheme.
2. Self-Insurance Arrangements under the Comcare Scheme

2.1 The SRC Act establishes the statutory framework of workers’ compensation in the Commonwealth jurisdiction and for corporations licensed to self-insure their workers’ compensation liabilities.

2.2 Since March 2007, self-insurers under the SRC Act have been subject to a single national OHS regime under the provisions of the OHS Act.

2.3 In the lead-up to the 2007 federal election, the Australian Labor Party proposed a moratorium on the future granting of licences to corporations seeking to self-insure, until the arrangements of the Comcare scheme were reviewed.

2.4 On 11 December 2007 the Hon Julia Gillard MP, Minister for Employment and Workplace Relations, announced a moratorium on granting further self-insurance declarations (of eligibility to apply for a self-insurance licence under the Comcare scheme).

2.5 Self-insurance arrangements in the Comcare scheme were introduced to provide competitive neutrality for those corporations competing in the marketplace with Commonwealth-owned, or formerly Commonwealth-owned, businesses to ensure that the Commonwealth did not have an unfair advantage.

2.6 For a number of years, all the self-insurers under the Comcare scheme were either owned or formerly owned Commonwealth authorities. Following the High Court’s decision in Attorney-General (Vic) v Andrews [2007] HCA 9, which upheld the validity of the SRC Act’s self-insurance provisions, a number of corporations sought to self-insure under the Comcare scheme.

2.7 Following the decision to grant a licence to Optus, other corporations with no prior connection to the Commonwealth have been granted licences to self-insure under the Comcare scheme.

2.8 There are currently 29 self-insurers under the Comcare scheme, covering more than 410,000 employees. This represents an increase of 45 per cent during the past 18 months. The increase also means the Comcare scheme covers more employees in industries such as transport and logistics, construction, security, banking and communications, than previously.

2.9 The significant increase in corporations securing licenses to self-insure under the Comcare scheme has prompted this review. Issues of specific interest include:

- the appropriateness of OHS and workers’ compensation coverage under the Comcare scheme for workers employed by self-insurers;
- whether the current arrangements for self-insurers pose any risk to the Commonwealth or to state and territory schemes;
- why corporations seek to join the scheme; and
• whether there should be changes to the eligibility rules for obtaining a licence to self-insure.

2.10 A list of corporations granted licences is at Appendix E.

The self-insurance process

2.11 The SRC Act provides that certain Commonwealth or former Commonwealth authorities and other eligible corporations may be granted a licence to self-insure. Under the licensing arrangements, self-insurers become liable to pay compensation and other amounts under the SRC Act. There is also provision for self-insurers to manage workers’ compensation claims.

2.12 Licensing involves two stages:
   • a declaration by the Minister under section 100 of the SRC Act that the applicant is an ‘eligible corporation’; and
   • the grant of a licence by the Safety, Rehabilitation and Compensation Commission (SRCC) under Part VIII of the SRC Act.

Access

2.13 In their submissions to the review, a number of employer associations, existing licensees and other multi-state businesses proposed expanding access to the Comcare scheme by removing the current competition requirement prescribed in the SRC Act. This approach would potentially open the scheme to all multi-State corporations. In its report to the Department, Taylor Fry also supported the removal of the competition test, albeit by replacing it with stringent rules to ensure that potential self-insurers have best practice arrangements in place.

2.14 Reasons advanced by businesses and their representative organisations for seeking to join the Comcare scheme focused on a desire to overcome the perceived highly complex and varied state arrangements and to achieve an integrated approach to injury prevention, rehabilitation and workers’ compensation, under a single national regime. They also highlighted their view that self-insurance is a significant driver of high performance in OHS and injury management.

2.15 However, some businesses or their representative organisations, while supporting the continuation of the Comcare scheme arrangement, did not endorse the Comcare scheme as the right vehicle for a cross-border self-insurance regime. Instead, they saw it as the only vehicle readily available and an improvised response to the lack of progress by states towards achieving meaningful national consistency. Furthermore, Comcare self-insurance was seen as a means by which corporations could overcome regulatory and financial disincentives entailed in complying with multi-state regimes.
By contrast, unions proposed that no further corporations should be declared eligible to gain self-insurance licences, until such time as a number of conditions were met. These included the substantial tightening of eligibility criteria, provision for meaningful consultation by employers, a guarantee of no loss of rights and entitlements, and the value of self insurance to a workers' compensation system being determined.

In examining the financial arrangements for self-insurers under the Comcare scheme, the Taylor Fry report found no evidence that the arrangements posed any risk to premium-payers in the scheme or to the Commonwealth. Taylor Fry considered that the scheme's current prudential and financial requirements of licensees, including reinsurance, the provision of bank or other guarantees and independent actuarial reviews of liabilities, were sufficient to minimise the risk.

Taylor Fry's report also stated that there would be minimal impacts on state workers' compensation schemes if private corporations were to join the Comcare Scheme as self-insurers. This is consistent with the findings of the 2004 Productivity Commission report.

In its submission to the Comcare Review, the Victorian Government advised that a review it conducted, following the introduction of legislative safeguards in Victoria in 2005, had concluded that the financial risks to the Victorian workers' compensation scheme of exiting corporations were not material.

A number of submissions argued that self-insurance should be seen as a privilege, not a right, and that self-insurance should provide direct incentives to improve injury prevention and rehabilitation performance, ensure that workers are treated fairly and equitably, contribute to continuous improvement in workplace safety and return-to-work outcomes, and facilitate best practice across the scheme.

The Department considers self-insurance under the Comcare scheme is appropriate for multi-state corporations with sound OHS track records that would otherwise continue to incur significant compliance burdens as a result of their operation in more than one jurisdiction. These are corporations that the Department envisages would be able to demonstrate improved OHS performances under a single regulatory regime.

However, the Department does not support removing the competition test in section 100 of the SRC Act which must be satisfied before a corporation is eligible to apply for a self-insurance licence. In the Department’s view, removal of this test has the potential to open up the scheme to high-risk industries that the scheme is not designed to regulate.

Accordingly, the Department favours tightening the criteria to require corporations to demonstrate that they have effective injury prevention, employee rehabilitation and claims management systems in place.

Details of the proposed eligibility criteria are outlined below.
Strengthening the eligibility guidelines

2.25 The Department proposes:

- retaining the legislated competition requirement for a licensee to self-insure under the Comcare scheme; and
- introducing higher standards for new entrant eligibility to ensure only large, high performing, multi-state corporations are able to apply for a self-insurance licence.

2.26 The Department considers that new ministerial guidelines be introduced to assist the Minister in considering whether it is desirable for the SRC Act to apply to the corporation and its employees and to achieve consistency of approach.

2.27 The new guidelines would require a corporation applying for a declaration of eligibility to:

- demonstrate the potential for genuine productivity improvements to be gained by joining the Comcare scheme (proposed parameters for this ‘productivity test’ are set out below);
- provide evidence of consultation undertaken with employees about joining the scheme prior to lodging an application for declaration;
- scope the costs and benefits for achieving certification against Australian Standard AS4801: OHS Management Systems (or equivalent) of its safety management system;
- demonstrate whether competition with a current or former Commonwealth authority is a substantial part of the corporation’s business; and
- employ a minimum of 500 employees and operate in a minimum of two jurisdictions.

2.28 The proposed productivity parameters would include both qualitative and quantitative measures, such as identification and documentation of:

- benefits and savings through the implementation of a single workers’ compensation regime;
- improvements and savings from being a self-insurer, including as a determining and rehabilitation authority for compensation claims;
- benefits and savings from having a single OHS framework, including any anticipated improvements in OHS;
- cross border issues and problems caused by current state/territory arrangements;
- opportunities to invest and expand nationally as a result of achieving coverage under a single regime; and
- a commitment to redirect potential savings to education and injury prevention.

2.29 The Department considers that the AS4801 proposal be complemented by a Ministerial Direction to the SRCC directing it to include in its licensing conditions
a requirement for licensees to have a safety management system that is fully operational and independently certified as being compliant with AS4801 or equivalent.

- Certification against AS4801 or an equivalent international standard (e.g. OHSAS 18001) establishes a best practice benchmark for ensuring a corporation has effective safeguards to prevent workplace accidents and injuries. Certification against AS4801 or OHSAS 18001 is a requirement for accreditation with the Federal Safety Commissioner and is well understood and supported by large corporations in Australia.

- The requirement to scope the costs and benefits (to be included in the ministerial guidelines) would ensure that applicants are aware of the implications of achieving compliance before requesting a ministerial declaration.

2.30 The additional factors outlined above are designed to ensure that substantial, high-performing employers with sound workplace safety and financial track records are eligible to be granted a licence.

2.31 The Department notes that most existing licensees already meet AS4801 standards or standards largely equivalent to these. For comparatively new licensees, AS4801 accreditation would be expected to take between 6 months and 2 years.

2.32 The Department has proposed that the 500 minimum employee guideline should be retained on the basis that economies of scale in the administration of self-insurance requirements are more likely to be achievable in larger—as opposed to smaller—organisations.

2.33 Eligible corporations would have access to Comcare’s OHS and workers’ compensation regime, thus reducing red tape, jurisdictional inconsistency and maximising equity for employees in terms of injury management, compensation and return to work, as well as enabling these corporations to achieve an integrated approach to prevention, rehabilitation and return to work.

2.34 The Department proposes that, in assessing an application for a declaration of eligibility, Comcare’s OHS regulatory framework would be examined to ensure it has the capability to regulate that corporation. In the current environment, the Department envisages that the new guidelines could preclude the granting of eligible corporation status to an applicant engaged in certain high-risk activities such as mining.

2.35 The Department’s view is that the proposed guidelines would prevent the expansion of the Comcare scheme without some reference to the scheme’s ability to accommodate the operational and regulatory requirements associated with each applicant.

2.36 In examining the self-insurance arrangements, the Department also had regard to the Minister’s role in the existing two-step process for corporations to self-insure with Comcare. The Department considered whether an assessment of a
corporation’s eligibility for a self-insurance licence could be undertaken by the SRCC in one step and the Minister’s role removed.

2.37 The Department notes that to achieve any changes in this area will require legislative amendment and legal advice on options to give effect to this would need to be obtained. In the meantime, the two step process will continue to apply in accordance with the toughened eligibility requirements as set out in the proposed new ministerial guidelines.

Recommendation 1: The Department recommends that in relation to the requirement that a corporation be declared an ‘eligible corporation’ as a precondition to seeking a self-insurance licence:

- the legislated ‘in competition’ requirement be retained;
- the Minister’s guidelines for the assessment of ‘eligible corporation’ applications be revised to introduce higher standards; and
- options be explored to remove the role of the Minister in granting declarations of eligibility and instead confer the assessment of the ‘competition test’ and other criteria onto the SRCC.
3. Occupational Health and Safety Arrangements

3.1 A consistent theme arising from submissions and consultations was that OHS was the most important issue for stakeholders.

3.2 The review identified that there are differences in approach to OHS between the Commonwealth and state and territory schemes and that the Comcare scheme could be enhanced by legislative changes to the OHS Act, the adoption of a more proactive approach to OHS enforcement and other operational initiatives.

3.3 The review recommends the implementation of a range measures to address potential weaknesses in the current arrangements. It is intended that these measures will complement the work being undertaken through the Council of Australian Governments (COAG) and the Workplace Relations Ministers’ Council (WRMC) to develop and implement model OHS legislation by 2011.

Clarify OHS coverage of self-insurers

3.4 In March 2007, coverage of the Commonwealth OHS Act was extended to all self-insurers. Section 4 of the OHS Act was amended to exclude the application of state and territory OHS-related laws to employment covered by Commonwealth OHS laws, except those laws specifically prescribed by regulation.

3.5 Prior to this amendment, state and Commonwealth OHS laws could apply concurrently in the Commonwealth jurisdiction, provided there was no direct inconsistency.

3.6 The amendments made no changes to the duty of care provisions which provide that the OHS Act applies to the employer’s duty of care towards employees and to contractors of the employer in relation to matters over which the employer has control.

3.7 Submissions from the states and unions argued that this amendment had created confusion, duplication and safety gaps in relation to the health and safety of contractors. They argued that priority must be given to removing, through legislative amendment, OHS coverage for national self-insurers who had been moving to the Comcare scheme since 2003.

3.8 Before the coverage amendments to the OHS Act, there was already scope for different OHS regimes to apply to common workplaces where, for example, Commonwealth Government authorities, the Australian Defence Force or Telstra operated alongside state-regulated contractors.

3.9 Under current arrangements, there limited instances where a workplace is shared between an employer covered by Commonwealth OHS laws and an employer covered by state or territory OHS laws. Any potential difficulties arising from jurisdictional overlaps are resolved through the cooperative efforts of Comcare and state and territory regulatory bodies.
3.10 The Department is aware that OHS right of entry provisions would benefit from clarification and notes Taylor Fry’s proposal in this regard.

3.11 Taylor Fry also identified a lack of clarity surrounding the application of sections 14 and 15 of the OHS Act to workplaces controlled by contractors and to employees working on non-Commonwealth premises. Sections 14 and 15 deal with complex relationships at worksites in circumstances where workplace is controlled by a contractor for construction or maintenance purposes and regarding employees working in non-Commonwealth premises. These provisions have created confusion and have been open to interpretation as to who has control of the workplace, having the potential to compromise the health and safety of employees.

3.12 The Department’s recommendations endorse Taylor Fry’s proposals.

3.13 On the issue of coverage overlaps, the Department considers these could be effectively managed by Comcare with the cooperation of state and territory regulators. Indications from the WRMC are that it would support further collaboration on OHS investigations.

3.14 It is proposed that this could be achieved through Memoranda of Understanding between Comcare and state and territory regulators. The Memoranda would focus on the provision of investigation services and protocols for cooperative working arrangements, particularly where investigations at sites of shared jurisdictions are concerned.

3.15 The National OHS Review is also addressing the issue regarding coverage for contractors. The Department will take into account the recommendations of the National OHS Review and the timing for implementation of the Model OHS Act when developing options to resolve identified problems.

**Recommendation 2: The Department recommends that:**

- the Comcare scheme’s OHS coverage for self-insurers be retained;
- regulations clarify that authorised persons under state/territory OHS laws have the right of entry to Commonwealth-covered employer premises to investigate possible breaches of state OHS laws by state-covered employers, employees and contractors; and
- it commence work to review sections 14 and 15 of the OHS Act.
Consider Comcare’s capacity to regulate OHS in self-insurance applications

3.16 The review examined Comcare’s capacity to regulate OHS to ensure self-insurers and their employees are provided with safe workplaces.

3.17 Submissions from state governments and unions argued that employee safety could be compromised by what they perceived to be a lack of expertise, power and resources in Comcare’s inspectorate. Union submissions argued that expertise was lacking in high-risk industries such as mining, construction and transport.

3.18 While Comcare maintains it has the capacity to, and does regulate high-risk industries such as defence and transport, it was the Department’s view that in some areas such as mining, Comcare presently lacks expertise.

3.19 Taylor Fry recommended Comcare’s inspectorate resources be reviewed before any expansion in Comcare scheme coverage is considered, to preclude the possibility of creating a regulatory vacuum.

3.20 To address these matters, the Department proposes that Comcare’s capacity and expertise to regulate certain industries should be taken into account by the SRCC when considering self-insurance licence applications. The SRCC would then be able to consider the latest information concerning Comcare’s inspectorate capacity and expertise at the time of application.

3.21 To ensure the SRCC has regard to this requirement, a Ministerial Direction under section 89D of the SRC Act can be issued.

**Recommendation 3: The Department recommends that:**

- the Minister issue a direction to the SRCC that self-insurance licence applications and licence variations only be granted to corporations where Comcare has the capacity and expertise to properly regulate the industry or industries in which the applicant is engaged.

Improve proactive OHS enforcement by Comcare

3.22 A key issue identified in the review was that most respondents, other than employers and employer associations, were critical of Comcare’s approach to enforcement and investigation. One of the principal issues was that Comcare was reactive rather than proactive in enforcement. It was suggested that under-resourcing was one reason for this approach.

3.23 In the past 12 months, Comcare has undertaken measures to improve proactive enforcement. The Department notes that Comcare currently employs 68
OHS regulators (appointed investigators and auditors) but considers its performance could be improved in the first instance by increased inspectorate resources and expertise. This would then allow for a more vigorous inspection program and greater participation in OHS campaigns which target high risk industries. It would also promote better enforcement to clarify the powers of investigators.

3.24 While Comcare has in place recruitment strategies to engage more investigators, Comcare’s investigator capacity could be enhanced through the engagement of external experts. Comcare is also negotiating Memoranda of Understanding with the states to access expertise in those jurisdictions.

**Recommendation 4: The Department recommends that:**

- the Minister issue a direction to Comcare to:
  - adopt a more proactive OHS enforcement approach;
  - develop guidance material which appropriately reflects a proactive enforcement policy; and
  - implement measures to increase the expertise of investigators and the inspectorate.

**Raise penalties**

3.25 The adequacy of penalty levels in the OHS Act compared with penalty levels in eastern states’ OHS legislation was identified by unions, states, Taylor Fry and the Department as requiring attention.

3.26 Recent amendments to penalties in other jurisdictions have seen maximum penalties raised to $1 million or more in the ACT and Victoria and to $1.65 million for reckless endangerment offences in New South Wales.

3.27 Under the Commonwealth OHS Act, the current maximum criminal penalty is $495,000 and maximum civil penalty is $242,000. Criminal penalties do not apply to the Commonwealth or a Commonwealth authority (other than a Government business enterprise) and are only available where there has been a death or serious bodily harm or where an employer has exposed an employee to a substantial risk of death or serious bodily harm. Only Tasmania has lower maximum penalties than the Commonwealth.

3.28 In the First Report of the National Review into Model OHS laws, the panel recommended a significant increase in penalties, where the highest penalties - up to $3 million - would be reserved for the most serious cases, for example, recklessness or gross negligence resulting in fatalities or grievous injuries or a very high risk of them. In respect of the nature and structure of offences relating to duties of care, it is also recommended that the offences should be criminal rather than civil, should be ‘absolute liability’ offences, and that Crown immunity for OHS offences be removed.
3.29  To strengthen the perceived weaker enforcement provisions in the Commonwealth OHS Act, the Department recommends commencing work, in consultation with the Attorney-General’s Department, to review offences, penalties and penalty levels in the context of the recommendations of the National OHS Review.

**Recommendation 5: The Department recommends that:**

- in consultation with the Attorney-General’s Department, consideration be given to:
  - increasing criminal penalty levels in the OHS Act in line with the National OHS Review recommendations; and
  - reviewing the relationship between the level of criminal and civil penalties under the OHS Act.

**Introduce infringement notices**

3.30  The SRCC submitted that Comcare has the enforcement policy and operational capacity to ensure self-insurers provide safe workplaces. Nevertheless, the SRCC suggested consideration could be given to enhancing the enforcement provisions in the OHS Act and proposed the introduction of infringement notices (on-the-spot fines).

3.31  Taylor Fry agreed with the SRCC submission on this point and noted that New South Wales, Queensland, Tasmania, the ACT and the Northern Territory all have legislation that allows for inspectors to issue infringement notices. In a similar vein, the South Australian Government’s submission was critical of the lack of provision for infringement notices in the Commonwealth OHS Act.

3.32  In the interests of improving Comcare’s capacity to be a responsive OHS enforcement agency, the Department believes that consideration should be given to the introduction of infringement notices. In this regard, the Department notes that the 2002 Australian Law Reform Commission Report into Security Compliance (referred to by Taylor Fry) and the recommendations of the National OHS Review will be useful sources of guidance when developing a suitable framework for the operation of infringement notices.

3.33  It is envisaged that such a framework would provide for quick and inexpensive enforcement which is not the case now.

**Recommendation 6: The Department recommends that:**

- the Department, in consultation with the Attorney-General’s Department, commence work to amend the OHS Act to introduce infringement notices.
Reinforce Health and Safety Representatives’ (HSRs’) rights

3.34 The SRCC submission noted that HSRs can play a key role in ongoing consultation between employers and employees at the workplace level, and stated that the SRCC will work with Comcare to ensure that the network of HSRs is fully supported.

3.35 Union submissions argued strongly for reinstating the role of unions in assisting workers in OHS on the basis that an active union presence, supported by legislation, leads to fewer injuries and disease.

3.36 The ACTU submission criticised Comcare’s investigation policy in relation to the role of HSRs to access information, to be present during an interview and to ensure the investigator has access to relevant information. The ACTU claimed that investigators do not advise the HSR of any information collected from the employer or advise when they will be conducting interviews.

3.37 A related issue is that HSR training is a statutory requirement and is clearly necessary to enable the HSR to perform his or her duties responsibly and effectively. The OHS Act is, however, silent on refresher training for HSRs and training for deputy HSRs.

3.38 Previous consultations suggested refresher training for HSRs be undertaken four years after the last completed course or in the third consecutive term of office. As a deputy HSR may be called on to undertake the role of HSR, deputies should be required to undertake training to enable them to perform this function in an appropriate manner.

3.39 The important role of HSRs and unions in OHS is being examined by the National OHS Review. In the interim, Comcare should ensure that the existing HSR rights under the OHS Act in relation to workplace inspections are observed and guidance is issued in respect of training.

Recommendation 7: The Department recommends that:

the Minister write to Comcare emphasising the rights and responsibilities of HSRs, in particular, to:

- ensure investigators notify and inform HSRs of their presence at a workplace and of any powers exercised by them in relation to the visit;
- ensure investigators inform HSRs of their right to accompany them during an investigation at a workplace; and
- issue guidance material regarding refresher training for HSRs and training for deputy HSRs.
Improve consultation arrangements between employers and workers and clarify employers’ responsibilities given the changing nature of the workforce

3.40 The review examined current consultation requirements to determine whether the consultation between employers and workers was genuine and consistent with the Government’s commitment to ensure fair representation on OHS issues in the Comcare scheme.

3.41 Currently there is no requirement under the OHS Act to extend consultation arrangements beyond the traditional employer/employee relationship. However, contemporary worksites can comprise a mix of employees, head contractors, subcontractors and independent contractors.

3.42 Western Australia’s Worksafe submission specifically criticised health and safety consultation arrangements which do not apply to parties other than employees working at Commonwealth workplaces and noted that contractors are not represented by a Commonwealth-elected HSR.

3.43 The SRCC submitted that consideration should be given to making the objects of the OHS Act more explicit by including references to contractors as well as to employees.

3.44 Some union submissions were critical of the OHS Act for not specifically requiring ongoing consultation on OHS matters.

3.45 In the interests of promoting and implementing measures designed to protect the health and safety of all workers (including contractors), Taylor Fry’s recommendation to expand the current consultation arrangements to include workers who are not employees of the employer is supported.

3.46 This issue is also being examined by the National OHS Review Panel. While a legislative amendment may be needed, in the interim, guidance material addressing the consultation process in workplace health and safety arrangements should be developed and issued by Comcare.

Recommendation 8: The Department recommends that:

- the Minister write to Comcare requesting they issue guidance material to employers which strongly encourages them to consult with all workers at or near the workplace as part of their health and safety management arrangements and also reminding them that consultation is an ongoing process.
Enable Comcare to provide information to other Government agencies

3.47 There is currently a barrier to the smooth exchange of information between Comcare and state/territory regulators when it conducts joint investigations. Due to the narrow terms of section 54 of the OHS, Comcare is unable to release and exchange information it may have obtained, unless the states submit a freedom of information request.

Recommendation 9: The Department recommends that:

• the OHS Act be amended to enable Comcare to release information to relevant authorities.
4. Workers’ Compensation Arrangements

4.1 This section outlines the issues raised in the review, relevant to the Safety, Rehabilitation and Compensation Act 1988.

4.2 The review found that the Comcare Scheme provides appropriate workers’ compensation coverage for workers employed by self-insurers covered by the scheme. The scheme has a primary focus on rehabilitation and return to work. This focus results in a benefits structure designed to provide ongoing incapacity benefits and coverage of medical expenses and treatment. The range and level of benefits available to injured workers is comparable with those available under other Australian workers’ compensation schemes.

4.3 Unions, lawyers and some state governments were critical of the scheme’s permanent impairment benefits regime, in particular, the preconditions to accessing these benefits and the amounts payable.

4.4 Other criticisms concerned the scheme’s workers’ compensation claims management practices and the inadequacy of its lump sum death benefit.

4.5 Divergent views were expressed about whether the scheme should provide coverage for journeys between home and work and for recess breaks. This coverage was removed in 2007.

4.6 The Department proposes a number of measures, including legislative amendments, to address some of these issues.

**Introduce time limits for claims determination**

4.7 There is currently no requirement under the SRC Act for claims decision-makers to act within specified time limits.

4.8 A number of submissions by unions and lawyers’ associations raised concerns that the absence of statutory time limits provided scope for considerable delays in determining and reconsidering claims.

4.9 According to data provided by Comcare, the average time to determine new claims under the scheme is 10 days which is not an unreasonable result. For example, the Department noted that the Queensland scheme reported over 80 per cent of claims are determined within 10 days.

4.10 The Department envisages that statutory limits could be imposed along the following lines.

4.11 Time would start to run from lodgement of a claim with the determining authority, with scope for extension of that time frame to accommodate later lodgement of supporting evidence (say, 20 business days for injuries). A longer time frame (to be determined after consultation) could apply to the determination of disease claims, bearing in mind that these can be more difficult to assess.
4.12 As an incentive towards the expeditious determination of claims, provision could be made for provisional acceptance of claims not finalised within set time limits. Subsequent rejection of the claim would not entitle the determining authority to recover benefits already paid.

4.13 Time limits could also apply to other stages in claims determination, including the reconsideration of claims and the submission of employer statements to the determining authority.

4.14 The Department notes evidence that claims determined quickly tend to be shorter in duration and less costly. As statutory targets come with greater incentives for compliance, the Department proposes their introduction, subject to further investigation and consultation on what specific time frames should apply and what sanctions should be imposed for failure to meet these time frames.

Recommendation 10: The Department recommends that:

- the Minister agree to the development of statutory time limits for determination of claims; and
- where the statutory time frames are not met, the claim be provisionally accepted in favour of the claimant, with no requirement for repayment if the claim is subsequently rejected.

Review the permanent impairment provisions under the SRC Act

4.15 The permanent impairment provisions of the SRC Act are highly complex and there was not sufficient time for the Comcare review to examine these in detail. A number of union submissions to the review were critical of the current provisions.

4.16 A practical review of the permanent impairment arrangements within the Comcare scheme would assess whether the current provisions provide reasonable access to, and reasonable levels of, compensation.

4.17 A particular focus of the review would be to examine how to better align the impairment ratings under the Permanent Impairment Guide with the compensation threshold in the Act (which requires, in most cases, that there be 10 per cent permanent impairment for lump sum benefits to be payable).

4.18 As recommended by Taylor Fry, arrangements would also be reviewed in light of the Canute decision\(^1\) to ensure that injuries arising from the same incident are compensated appropriately.

\(^1\) High Court decision, Canute v Comcare [2006] HCA 47. The decision in this matter provided direction as to how permanent impairment assessment should be calculated where a subsequent injury (e.g. psychological injury) arose from an injury for which permanent impairment benefits under s24 of the SRC Act had already been paid.
Recommendation 11: The Department recommends that:

- Comcare undertake a practical review of the permanent impairment provisions under the SRC Act, including the Permanent Impairment Guide and report its findings within 12 months.

Amend suspension provisions in the SRC Act

4.19 This issue was raised as a concern by the Transport Workers’ Union and by a number of employers in the Comcare scheme.

4.20 Currently, the right to compensation under the SRC Act is suspended if an employee refuses or fails without reasonable excuse to undergo a medical examination or to undertake a rehabilitation program.

4.21 Suspending weekly compensation benefits can be a useful incentive to encourage claimants to comply with these requirements.

4.22 Under the Act, however, compensation includes medical and related benefits. The Department is concerned that suspending medical payments could be counterproductive to early rehabilitation and return to work. It therefore proposes amendments to the SRC Act that will protect the payment of medical and related benefits to claimants notwithstanding the suspension of their weekly benefits and notes that similar provision is made in the Military Rehabilitation and Compensation Act 2004 (MRC Act).

Recommendation 12: The Department recommends that:

- the suspension provisions in the SRC Act be amended so that medical and related benefits are excluded from those provisions.

Retain the exclusion from workers’ compensation coverage of journey and recess claims

4.23 Submissions to the review revealed strong support by unions for the reinstatement of workers’ compensation coverage for journeys between home and work and during off-site recess breaks (e.g. lunch breaks taken away from the workplace).

Where a compensable injury gives rise to a subsequent injury, that satisfies the definition of injury in s4 of the SRC Act, that subsequent injury is to be treated as a separate injury, with all entitlements of a separate injury, this includes entitlements to a separate assessment for compensation under ss24 and 27 of the SRC Act. The decision in Canute also means that where an injury occurrence results in a number of injuries, each injury is assessed as a separate injury which individually must satisfy the required 10% threshold of 10% degree of impairment.
4.24 The removal of this coverage from the SRC Act in April 2007 adopted a recommendation made by the Productivity Commission in its 2004 report. The principle underlying that recommendation is that employers should be liable only for injuries and illnesses resulting from activities which they are in a position to control.

4.25 Employers cannot control circumstances associated with journeys to and from work or with recess breaks away from employers’ premises. It was therefore decided by the previous Government that it is not appropriate for injuries sustained at these times to be covered by workers’ compensation.

4.26 An alternative view regarding journeys to and from work was submitted by a number of unions, for example, the Community and Public Sector Union which stated that:

‘Getting to and from work is an activity closely connected with employment and it is not correct to say that it is an activity entirely beyond or outside of the employment relationship.’

4.27 The removal of journey claims from workers’ compensation coverage has brought the scheme into line with the majority of state schemes (Victoria, South Australia, Western Australia and Tasmania). Moreover, as most injuries of this type involve motor vehicle accidents, other forms of financial support, through compulsory third-party insurance, are available for the injured in many cases.

4.28 In common with all jurisdictions in Australia and New Zealand, Comcare provides on-site recess break coverage. The removal of coverage for off-site recess break under the scheme brought it in line with provisions in South Australia and Tasmania.

Recommendation 13: The Department recommends that:

- claims arising from injuries sustained during travel to and from work and off-site recess breaks continue to be excluded.

Increase death benefits

4.29 The level of death benefits was raised in submissions to the review by various unions and has been raised directly in correspondence to the Government by a number of employees under the Comcare scheme.

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4.30 The Government announced in the 2008-09 Budget that lump sum death benefits will be increased to $400,000 and weekly benefits for each dependent child to $110.

4.31 The legislation to increase death benefits was introduced into the Parliament on 3 December 2008.

Retain the current disease and exclusionary provisions under the SRC Act

4.32 A number of union submissions to the review raised concerns with the current disease and exclusionary provisions under the SRC Act.

4.33 The disease provisions (whereby a ‘disease’ means an ailment suffered by an employee that was contributed to, to a significant degree, by the employee’s employment) are consistent with the provisions in most state and territory schemes.

4.34 Prior to April 2007, ‘disease’ was defined in the Act as being an ailment suffered by an employee that was contributed to, to a material degree, by the employee’s employment. Under this earlier definition, some diseases which only had a very limited linkage to an employee’s employment were ruled by the courts as being compensable. This applied especially in the case of certain stress claims and psychological injuries.

4.35 The 2007 amendment of the definition of ‘disease’ followed a recommendation of the Productivity Commission.

4.36 The SRC Act also includes exclusionary clauses, which address situations whereby an injury has resulted from reasonable administrative or disciplinary action taken by the employer. Consequently, these situations are not covered by workers’ compensation.

4.37 These exclusionary clauses, which generally involve stress claims and psychological injuries resulting from reasonable administrative action against employees (e.g. performance counselling), are consistent with provisions in the state and territory schemes.

Recommendation 14: The Department recommends that:
- the current disease and exclusionary provisions be retained.

Retain the current workers’ compensation arrangements for retirees

4.38 After 45 weeks on weekly compensation benefits, weekly benefits reduce from 100 to 75 per cent of pre-injury normal weekly earnings.
4.39 In the case of injured workers who retire early as a result of their work injuries and are in receipt of superannuation, workers’ compensation benefits have always been reduced by the amount of superannuation benefits received. This is to ensure that workers who retire early do not receive a higher level of income than those workers who return to work.

4.40 Weekly benefits for retired workers are also reduced by a further 5 per cent of the employee’s normal weekly earnings’.

4.41 Prior to Safety, Rehabilitation and Compensation and Other Legislation Act 2007 amendments in April 2007, this deduction was referred to in the SRC Act as a ‘notional superannuation deduction’. The deduction could vary between zero and 5 per cent depending on the superannuation scheme to which the worker contributed.

4.42 The previous arrangements caused considerable confusion because of the complexity of the formula used and the misconception that the notional superannuation deduction was being paid into a superannuation fund.

4.43 For employees who retired before April 2007, the previous arrangements continue to apply. Some of these claimants continue to be critical of these arrangements. The reason for the retention of these arrangements is to ensure that no one among this group would be disadvantaged.

4.44 Furthermore, all retirees have benefited from a significant reduction in the deemed interest rate which is applied to superannuation lump sums. This has resulted in an increase in weekly workers’ compensation benefits to retirees.

**Recommendation 15: The Department recommends that:**

- the current provisions for retirees be retained.

**Strengthen the consultation arrangements for self-insurance applicants**

4.45 In submissions to the review, unions considered that the legislation is unclear and inadequate regarding the processes that employers should follow when consulting with their employees about their intention to apply for a self-insurance licence.

4.46 As set out in Chapter 1 of this report, the review proposed that new Ministerial policy guidelines be developed to assist the Minister in deciding whether to exercise her discretion, under section 100 of the SRC Act, to grant a declaration of eligibility to enable a corporation to apply for a self-insurance licence.
4.47 The proposed guidelines would include provisions to take into account whether the applicant corporation has provided evidence that consultation with employees about joining the scheme has been undertaken prior to lodging an application for a declaration.

4.48 This could be complemented by the SRCC issuing guidelines to improve the level of consultation with employees by prospective licence applicants and by existing licensees proposing to transfer employees to the licensed corporation from other entities.

**Recommendation 16: The Department recommends that:**

- the Minister direct the SRCC to release guidelines setting out comprehensive consultation requirements to be followed by prospective licence applicants and by licensees requesting a variation to their licence conditions to bring new employees under an existing licence.

**Enable declarations under section 100 of the SRC Act to be applied on a group basis for eligible corporations**

4.49 Although this proposal was not specifically raised in submissions to the review, it would nevertheless complement recommendation 18 relating to the granting of group licences.

4.50 Before a corporation can apply to the SRCC for a licence to self-insure, it must first obtain the Minister’s declaration under section 100 of the SRC Act that the corporation is an ‘eligible corporation’.

4.51 The threshold requirement for eligible corporation status under section 100, is that a corporation is a current or former Commonwealth authority, or can demonstrate that it is in competition with a current or former Commonwealth authority. Once this is established, the Minister must then be satisfied that it would be desirable for the Act to apply to employees of a corporation before she can make a declaration.

4.52 Currently, applicant corporations must be assessed individually against the requirements in section 100.

4.53 Applications have been received from corporate groups comprising a range of different sized corporations. While most of the larger members of the group can meet all requirements, there are instances where a small minority can only partially meet requirements. The inability of these smaller corporations to qualify for a declaration as a precondition to seeking a licence, can create significant inequities among those corporations within the group that subsequently obtain a licence and those not able to do so.

4.54 In these circumstances, it is proposed that the Department investigate how the SRC Act can be amended to produce more equitable outcomes that do not frustrate the policy intentions underlying the self-insurance licensing provisions.
Recommendation 17: The Department recommends that:
- the SRC Act be amended so that for the purposes of section 100, corporations forming part of a group of related corporations are able to be assessed as a group.

Enable the SRCC to grant a group licence for related eligible corporations

4.55 Licensees who made submissions to the review strongly advocated the introduction of group licences.

4.56 The ability for the SRCC to grant a single licence to related eligible corporations that are owned by the same holding company would be in line with current commercial realities and self-insurance provisions in the state workers’ compensation systems.

4.57 Introduction of group licences would reduce red tape and costs for corporations as it would result in eligible corporations only requiring one bank guarantee, one reinsurance policy and one set of auditing requirements. This would enable the Commonwealth Bank, for example, to be granted one licence to cover its main employing entities, instead of the current five licences. For the purposes of licensing, the SRCC should be given the choice to treat corporations as a group or to treat them as separate corporations.

Recommendation 18: The Department recommends that:
- the SRC Act be amended to enable the SRCC to grant a group licence to related eligible corporations.
5 Governance Arrangements

5.1 The review looked briefly at governance arrangements for the Comcare scheme, in particular, the role of the Safety, Rehabilitation and Compensation Commission (SRCC). Comcare’s role in providing administrative support to the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) was also examined.

Comcare scheme overview

5.2 The SRCC and Comcare are the statutory authorities established to ‘run’ the scheme.

5.3 The SRCC is the scheme’s principal regulator and is required to monitor Comcare’s and self-insurers’ performance within the scheme to ensure adherence to requirements. It must also determine self-insurance licence applications and has a broad responsibility to ensure that OHS requirements of the OHS Act are complied with.

5.4 Because the SRCC does not have its own resources, it performs many of its functions through their delegation to Comcare. Comcare also has statutory responsibilities to provide the SRCC with the administrative support it needs to function.

5.5 In addition to these responsibilities, Comcare manages the scheme’s premium pool and, in relation to premium-payers, manages rehabilitation and return-to-work programs and determines and pays workers’ compensation claims. Comcare also undertakes most of the scheme’s OHS functions, including those relating to enforcement.

Issues

5.6 The Department identified some governance shortcomings in the scheme but noted also that the scheme’s performance had been relatively good.  

5.7 The Department’s principal concern arose from the fact that the SRCC, as the scheme’s principal regulator, performs many of its functions through their delegation to, or support provided by, Comcare. As Comcare is one of the bodies regulated by the SRCC, this raises scope for conflicts of interests which should be addressed.

5.8 The Department is developing options to improve the scheme’s design and promote best practice governance. It proposes to consult with the Department of Finance and Deregulation on preferred governance and accountability models.

5.9 In the development of these options, the Department will consider whether Comcare’s statutory obligation to provide administrative support to the Seafarers Safety, Rehabilitation and Compensation Authority (the Seacare Authority) should continue.

3 For example, in 2007-08, the scheme recorded an injury incidence rate of 8.3 claims per 1,000 employees (claims with one week lost time) representing a 33 per cent improvement since 2001-02. In the same year, Comcare recorded the highest return to work of any Australian jurisdiction. The record of self-insurers in the scheme has been similarly impressive.
5.10 The Seacare Authority is a seven-member statutory authority established as the administrator and principal regulator of the Seacare Scheme. The Seacare Scheme is a workers’ compensation and OHS scheme applying to certain seafarers in the Commonwealth’s jurisdiction and currently comprises around 35 employers, 200 ships and 6,000 seafarers. The Scheme has no premium pool and employers take out insurance cover with private insurers.

Recommendation 19: The Department recommends that:

- further consideration and consultation be undertaken to develop appropriate options for the Comcare scheme’s governance and accountability arrangements; and

- in developing these options, the Department will consider the appropriateness of Comcare’s statutory obligations to provide administrative support to the Seafarers Safety, Rehabilitation and Compensation Authority in the administration of the Seacare Scheme.
Appendix A

Terms of Reference

Safety and compensation
a) Does the scheme provide appropriate OHS and workers’ compensation coverage for workers employed by self-insurers?
b) Does the scheme regulator now have the enforcement policy and operational capacity to ensure self-insurers provide safe workplaces? What are the likely operational requirements should the scheme’s coverage be expanded?
c) What arrangements are required to ensure that all workers and contractors working at workplaces controlled by self-insurers have their health and safety protected, regardless of coverage by Commonwealth, or State and Territory OHS legislation?
d) What effect have the recent changes to the Safety, Rehabilitation and Compensation Act 1988 had on the rehabilitation and return to work of injured workers?
e) Does the scheme achieve effective return to work outcomes?

Consultation
f) Does the requirement that employees be consulted about their employer’s intention to apply for a self-insurance licence with Comcare (or vary an existing licence) result in meaningful discussion about occupational health and safety and workers’ compensation coverage?
g) Does the scheme ensure ongoing consultation with, and the involvement of, employees and their representatives in relation to workplace safety arrangements at workplaces of self-insurers?

Finance
h) Do the financial arrangements for self-insurers present any risk to premium payers in the scheme or to the Commonwealth?
i) What are the likely impacts on state and territory workers’ compensation schemes of corporations exiting those schemes to join Comcare?

Access
j) Why do private companies seek self-insurance with Comcare? Are there alternatives available to address the costs and red tape for employers with operations across jurisdictions having to deal with multiple occupational health and safety and workers’ compensation systems?
k) If self-insurance under the Comcare scheme remains open to eligible corporations, should there be changes to the eligibility rules for obtaining a licence to self-insure under Comcare?
Appendix C

Submissions

ACCI (Australian Chamber of Commerce and Industry)
ACTU (Australian Council of Trade Unions)
Adecco Australia
AMWU (Australian Manufacturing Workers’ Union)
Andersons Solicitors
Aon Consulting Pty Ltd
Association of Consulting Engineers Australia (ACEA)
Australian Rehabilitation Providers Association (ARPA) National
Australian Bankers’ Association Inc
Australian Industry Group
Australian Lawyers Alliance
Australian Postal Corporation
Australian Rail, Tram and Bus Industry Union and combined unions
Australian Workers’ Union- Queensland Branch
BIS Industrial Logistics
Bourne Lawyers
Comcare
Commonwealth Bank of Australia
CEPU (Communications, Electrical Plumbing Union) Combined Unions
CEPU Communications Division
CEPU Postal and Telecommunications Branch Victoria
CFMEU ACT Branch joint submission
CFMEU – Mining and Energy Division
Community and Public Sector Union (CPSU)
Dennett, Harley (private individual)
Department of Defence
Emery, Ian (private individual)
Finance Sector Union of Australia
Government of New South Wales
Government of Queensland
Government of South Australia
Government of Tasmania – Department of Justice
Government of Victoria
Government of Western Australia – WorkCover WA
Government of Western Australia – Worksafe WA
Housing Industry Association
Insurance Australia Group Limited
Insurance Council of Australia
Institute of Public Affairs (IPA)
John Holland Group Pty Ltd
Johnston Withers Lawyers
K&S Freighters Pty Ltd
Law Council of Australia
Law Society of New South Wales
Law Society of Queensland
The department also received:

- five confidential submissions from individuals and
- five confidential submissions from organisations
Appendix D

Consultations

ACTU (Australian Council of Trade Unions)
Australian Industry Group
Australian Lawyers Alliance
Australian Postal Corporation
Australian Rail, Tram and Bus Industry Union and combined unions
Comcare
CFMEU – Mining and Energy Division
Community and Public Sector Union (CPSU)
Finance Sector Union of Australia
Government of Queensland
Government of Tasmania – Department of Justice
Government of Victoria - VicWorksafe
Institute of Public Affairs (IPA)
K&S Freighters Pty Ltd
Linfox Australia Pty and Linfox Armaguard Pty Ltd
National Council of Self Insurers Inc
Safety Rehabilitation and Compensation Commission (SRCC)
Telstra Corporation Ltd
Visy Industries Holdings Pty Ltd

+ one confidential consultation with an organisation
Current Self Insurers

**Commonwealth Authorities**
Australian Postal Corporation  
Reserve Bank of Australia  

**Former Commonwealth Authorities**
Asciano (formerly Pacific National (ACT) Limited)  
Australian air Express Pty Ltd  
Commonwealth Bank of Australia Ltd  
CSL Limited  
Telstra Corporation Limited  
Thales Australia (formerly ADI Limited)  
Visionstream Pty Ltd

**Other Corporations**
Avanteos Pty Ltd  
BIS Industries Ltd  
Border Express Ltd  
Chubb Security Services Ltd  
Colonial First State Property Management Pty Ltd  
Colonial Services Pty Ltd  
Commonwealth Insurance Ltd  
Commonwealth Securities Ltd  
Fleetmaster Services Pty Ltd  
Optus Administration Pty Limited  
John Holland Group Pty Ltd  
John Holland Pty Ltd  
John Holland Rail Pty Ltd  
K&S Freighters Pty Ltd  
Linfox Armaguard Pty Ltd  
Linfox Australia Pty Ltd  
National Australia Bank Ltd  
National Wealth Management Services  
TNT Australia Pty Ltd  
Transpacific Industries Ltd
Appendix F

List of Abbreviations

ASCC  Australian Safety and Compensation Council
COAG  Council of Australian Governments
WRMC  Workplace Relations Ministers’ Council
SRCC  Safety Rehabilitation and Compensation Commission