



Australian Government

Comcare

PUTTING YOU *FIRST*

30 May 2014

Secretariat

Education and Employment Legislation Committee

SG.52 | Parliament House | PO Box 6100 | Canberra ACT 2600

Dear Senators,

I write to provide information to support the Committee's inquiry assessing the potential impact of proposed changes to federal law on work health and safety (WHS) coverage for workers within the Comcare scheme.

Comcare's submission is attached. Its key message is that Comcare has the appropriate regulatory model and operational capacity to monitor and enforce WHS obligations both in Australia and overseas.

The WHS outcomes achieved by an integrated WHS, rehabilitation and compensation system, together with Comcare's regulatory approach have been consistently delivered good performance and outcomes.

Please do not hesitate to contact me with any questions you may have or if you require clarification.

Yours sincerely

Paul O'Connor



## Purpose

This is Comcare's submission to the Senate's Committee on Education and Employment Legislation in respect of its inquiry assessing the potential impact of proposed changes to federal law<sup>1</sup> on work health and safety (WHS) coverage for workers within the Comcare scheme.

## Background

Comcare is a federal WHS regulator and underwriter of workplace liabilities. Its purpose is to prevent workplace harm and support those affected by it. Comcare's work is derived from four statutory charters described in **Attachment 1**.

Comcare is largely self-funded<sup>2</sup> for its three programs of work<sup>3</sup>:

<b>Outcome 1</b>	Protection of workers' health, safety and welfare at work
<b>Outcome 2</b>	Early and safe return to work and access to compensation through best practice rehabilitation and claims management
<b>Outcome 3</b>	Managing the Commonwealth's liability for compensation for asbestos-related diseases

Outcome 1 is relevant to the Committee's inquiry.

The Comcare 'scheme' provides WHS coverage for some 438,000 Australian people working for the Australian Defence Force<sup>4</sup> and a mix of public and private sector employers. Federal workers' compensation law covers employees of self-insured licensees, Commonwealth employees and public sector workers in the ACT Government.<sup>5</sup>

It's expected that Comcare's WHS coverage will expand with the entry of new national companies if the proposed amendments to federal law are passed.

The Department of Employment's submission provides information regarding the Comcare scheme and its legislative base. It also describes the role and activity of the Safety, Rehabilitation and Compensation Commission (SRCC) that has licensed 29 organisations<sup>6</sup> to be self-insured in the Comcare scheme.

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<sup>1</sup> Amendments proposed to the *Safety, Rehabilitation and Compensation Act, 1988* (SRC Act)

<sup>2</sup> In Comcare's 2013-14 funding (\$554 million) 87 per cent (\$481.3 million) is independent income while special appropriations account for 12 per cent (\$66.3 million) with the 1 per cent balance (\$6.3 million) funded by appropriation.

<sup>3</sup> *Portfolio Budget Statements 2013-14*, Budget related paper 1.5

<sup>4</sup> This includes 78,000 members of the Australian Defence Force, its reserves and cadets and 3,000 workers in Commonwealth agencies that only have WHS coverage.

<sup>5</sup> ADF members have compensation coverage administered by the Department of Veterans Affairs.

<sup>6</sup> As at 30 May 2014

## Regulatory operations

Comcare's regulatory work uses federal WHS law to focus duty holders on the prevention of workplace harm and to hold them to account where they fail to do so.<sup>7</sup> Comcare uses federal compensation law to ensure scheme employers are clear about their role in an ill or injured worker's recovery, rehabilitation and return to work.

Comcare believes it provides an efficient and effective system of integrated WHS, rehabilitation and compensation regulation for national employers.<sup>8</sup>

## Integration of WHS with rehabilitation and compensation

The integration of WHS, rehabilitation and compensation arrangements is a key feature of the design and operation of the Comcare scheme. It's the model adopted in several, but not all, Australian and Canadian schemes.

Comcare argues the integration of these functions allows alignment of prevention efforts with the consequences of workplace harm. It creates mutually beneficial incentives for both WHS and compensation. It aligns the financial performance and social impact of outcomes.

Critics of integration argue that WHS priorities become misplaced when there is joint management of the two activities. Comcare's stakeholders have not raised this as an issue.

## Commonwealth regulation of national employers

It's important that the Commonwealth continue to regulate WHS, rehabilitation and compensation arrangements for the national employers, both public and private sector, in the Comcare scheme. The proposed amendments ensure new licensees are regulated by Comcare for WHS.

As federal law stands, new entrant employers<sup>9</sup> and their workers would be subject to the fragmented and uncoordinated systems of WHS regulation in each State and Territory in which they operate. Comcare suggests this is remarkably inefficient and increases the regulatory burdens, uncertainty and the costs of compliance at two levels:

- A local response from a state WHS regulator achieves local outcomes; a local response from a national regulator is more likely to achieve national outcomes for all workers in that business; and

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<sup>7</sup> Comcare inspectors provide proactive advice and assistance to WHS duty holders to promote prevention of harm and also apply enforcement measures following WHS breaches and pursue appropriate justice outcomes.

<sup>8</sup> Comcare's regulatory compliance model and its regulatory policy is published at [http://www.comcare.gov.au/Forms\\_and\\_Publications/publications/corporate\\_publications/comcare\\_regulation\\_policy](http://www.comcare.gov.au/Forms_and_Publications/publications/corporate_publications/comcare_regulation_policy)

<sup>9</sup> For example, the SRCC will soon consider applications from DHL Supply Chain and Bank West.

- There is no common approach, coordination or harmonisation of WHS, rehabilitation and compensation laws, regulatory policies, systems, processes or cost structures across Australia. Where systems are common they are inconsistently applied.

### An efficient system

The Comcare scheme represents a highly efficient model for the national employers licenced to self-insure their workers' compensation risks. They deal with one regulatory system for their WHS and compensation arrangements. Their workers have common coverage and entitlements regardless of where they live or work within Australia.

National companies outside the Comcare scheme have to navigate the complexity of fragmented State and Territory regulatory and insurance systems.

### Comcare service is highly regarded

Recent market research explored the service experience of employers, workers and others with Comcare and its people. Highlights from recent independent surveys include an overall Comcare service index of 72.5 per cent (up almost two percentage points from 2011-12). Licensed self-insurers report a more positive experience with Comcare, with their index increasing almost 10 percentage points to 77.7 per cent (2011-12: 68 per cent).

Other service results<sup>10</sup> include:

<b>Comcare's WHS regulation</b>	HSRs (per cent agree)	WHS managers (per cent agree)	Injury managers (per cent agree)
Comcare cares about WHS	83	89	82
Comcare is trusted	70	68	62
Comcare is respected	67	70	62

<b>Comcare services</b>	HSRs <sup>11</sup> (per cent agree)	WHS managers (per cent agree)	Injury managers (per cent agree)	Injured workers (per cent agree)
Satisfied with Comcare	64	70	70	76

### Comcare has reshaped its business regulation

Comcare adopted a new business model in early 2014 that established a stand-alone scheme management and regulatory division, headed by the Deputy CEO. Its aim is to be an effective and modern workplace regulator and scheme manager to improve overall WHS, rehabilitation, return to work and compensation outcomes for all scheme employers.

<sup>10</sup> What people think about Comcare, April 2013

<sup>11</sup> Health and safety representatives

As a regulator, Comcare:

- Works in partnership with employers and their employees to prevent workplace injuries and achieve high standards in injury management and return to work;
- appropriately uses regulatory sanctions for any demonstrable failure of compliance with the requirements of federal law;
- Provides policy, guidance and encouragement for improvements in WHS and rehabilitation performance, systems and standards.
- Provides performance and licensing support to the SRCC's licensing decisions.

#### **A focus on continuous improvement**

The SRCC's self-insurance licensing model requires continuous improvement in WHS, rehabilitation and claims management systems to meet set performance standards and outcome-based performance goals as a condition of licence.

Licensees are subject to a range of regulatory and monitoring activities, including:

- Prudential financial performance monitoring and assessment;
- Reporting against the Commission's key performance indicators;
- System audits for the prevention, rehabilitation, and claims management functions;
- Complaints monitoring; and
- WHS interventions and enforcement actions.

#### **Comparative assessment with other WHS schemes**

The *Comcare Review*, conducted in 2009 by then Department of Education, Employment and Workplace Relations found that, overall, the Comcare scheme's approach to WHS regulation was comparable with other Australian schemes. The provision of self-insurance licenses to private sector corporations was not seen as placing them or their employees at a disadvantage.<sup>12</sup>

Assessment of the WHS frameworks which protect the interests of workers and others requires an assessment of:

- The legislative and regulatory policy framework(s);
- The capacity and approach of the regulator; and
- The scheme's WHS outcomes.

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<sup>12</sup> DEEWR, 2009, Report of the Review of Self-insurance arrangements under the Comcare Scheme, p.2

Each state and territory may have differing WHS priorities and regulatory models and behaviours. This means that the events related to the death or injury of a worker in one place may be responded to differently in another state for similar incidents involving the same employer. It also means that improvements levied on an employer cannot be required nationally, leaving those national employers covered by multiple jurisdictions with the choice of whether or not they implement change across their workforce and systems.

The Comcare WHS regime is based on a nationally directed and outcomes-based approach to WHS management. The approach focusses on prevention. It encourages compliance through assistance and education, balanced with proactive and reactive inspections and workplace and work system audits.

Comcare's approach reflects the nature of the employers and workplaces being regulated. The defining characteristics include (both at a general level and relative to other schemes):

- A relatively small number of employers (approximately 250);
- Large workforces (95 per cent of employees are in workforces over 100 people);
- Geographic spread across Australia;
- A mature and well-developed national WHS system; and
- The capacity and capability to respond effectively to Comcare's regulatory model.

Comcare's regulatory approach is not significantly influenced by occupational type. The scheme's risk and occupation types have always been diverse, extending well beyond low risk, white collar occupations. They include:

- Defence, law enforcement and border protection operations, in Australia and overseas;
- Scientific, medical and research operations including nuclear science;
- Maritime and aviation operations, in Australia and overseas;
- Technical, manual occupations, often in remote, challenging locations;
- Telecommunications including field work and construction;
- Road and rail transport and logistics;
- Manufacturing, construction and mining services; and
- Banking and financial services.

The Comcare scheme has a ratio of inspectors to employees comparable<sup>13</sup> to the other state and territory schemes.

Comcare has a national team of 53 authorised inspectors who have nationally accredited qualifications. They are supported by a team of specialists.

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<sup>13</sup> Safe Work Australia, 2013, Comparative Performance Monitoring Report: 15th Edition, p.47

The inspectors:

- Undertake proactive WHS interventions;
- Respond promptly to a serious incident or alleged WHS breaches, regardless of location;
- Provide advice and education;
- Resolve disputes; and
- Provide audit services.

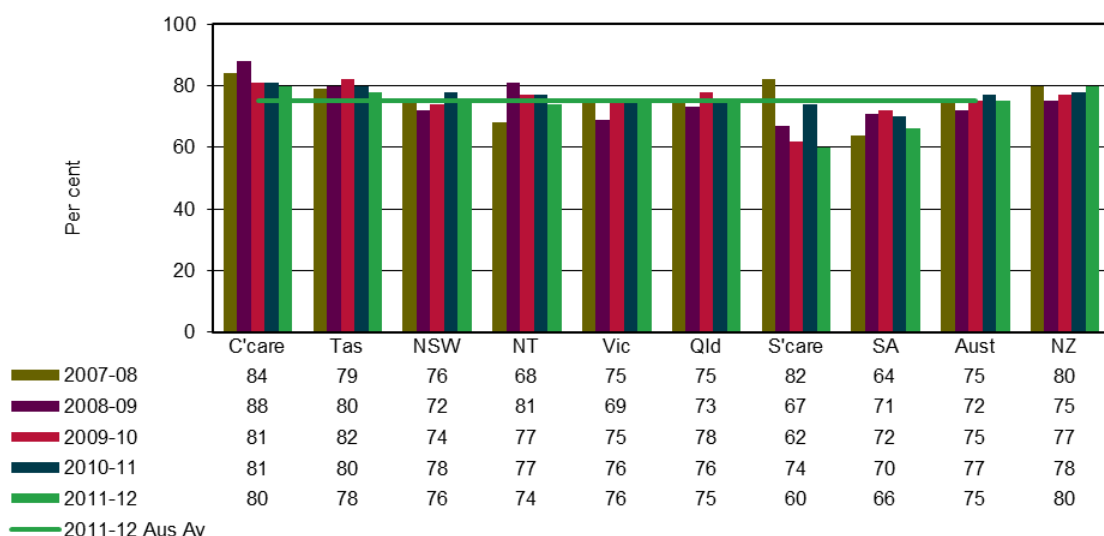
Consistent with the integrated nature of the Comcare scheme, inspectors deal with WHS issues as well as return to work, health standards and injury management performance in order to address the full consequences of a workplace injury.

## Results

The WHS outcomes achieved by having an integrated regulatory approach within the scheme, particularly the incidence and frequency of injury as reported in the comparative performance monitoring reports, have consistently demonstrated the scheme's good performance.

According to the latest published comparative figures, the Comcare scheme has fewer workplace injuries and better return to work outcomes for injured employees than any other Australian scheme. **Attachment 2** is a comparative performance table that depicts Comcare scheme performance results being better than the Australian average for every indicator. Comparing rehabilitation outcomes, reports show that the Comcare scheme has consistently had one of the highest durable return-to-work rates of all jurisdictions across Australia and New Zealand: see **Figure 1**:

Figure 1: Durable return to work<sup>14</sup>



<sup>14</sup> Safe Work Australia, Comparative Performance Monitoring Report, 15th Edition, October 2013

## ATTACHMENT 1

<b>Work Health and Safety Act, 2012 (WHS Act)</b>	Implements, in the federal jurisdiction, model work health and safety arrangements agreed by Australian Governments. The WHS Act calls out Comcare as the federal work health and safety regulator and describes its related functions and powers. The WHS Act also allocates oversight and consultation functions to the Safety, Rehabilitation and Compensation Commission (SRCC).
<b>Safety, Rehabilitation and Compensation Act, 1988 (SRC Act)</b>	Establishes Comcare as a statutory agency and describes a range of functions and powers related to the regulation of workers' compensation and the claims management of workers' compensation liabilities. It also establishes the SRCC and describes its functions and powers. It calls out the SRCC as the regulator of certain national companies approved by the Minister to be licenced for self-insurance of their workers' compensation liabilities. The SRC Act divides and allocates regulatory responsibility for workers' compensation arrangements to each of Comcare and the SRCC and in some cases, jointly (in that sense they co-regulate). The SRC Act requires Comcare to provide staff and funding for the SRCC's work.
<b>Asbestos-related Claims (Management of Commonwealth Liabilities) Act, 2005 (ARC Act)</b>	Provides for Comcare to assume and manage the common law liabilities of the Australian Government and, with certain exceptions, its agencies and controlled companies, for asbestos-related conditions claims made by certain Australian workers.
<b>Seacare legislation</b>	A series of five related pieces of federal law create the scheme of work health and safety, rehabilitation and workers' compensation arrangements that apply to certain Australian seafarers and establish the Seacare Authority and its functions. The scheme is Australia's only example of an industry-based scheme. Its workers' compensation arrangements are modelled on the SRC Act. The SRC Act requires Comcare to provide the secretariat for Seacare Authority.