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Australian Government

Comcare

# INQUIRY INTO THE ESTABLISHMENT OF A COMMONWEALTH WORKPLACE PROTECTION ORDERS BILL 2024 [PROVISIONS]

Comcare Submission

26 February 2025

## Submission to

Legal and Constitutional Affairs Legislation Committee

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# COMCARE SUBMISSION TO THE INQUIRY: ESTABLISHMENT OF A COMMONWEALTH WORKPLACE PROTECTION ORDERS BILL 224 [PROVISIONS]

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## Purpose

1. The purpose of this document is to provide Comcare's submission to the Legal and Constitutional Affairs Legislation Committee's Inquiry into the establishment of a scheme for the courts to make Commonwealth workplace protection orders to prevent personal violence against Commonwealth workers or in Commonwealth workplaces (**the Inquiry**). This submission addresses the Commonwealth Workplace Protection Orders Bill 2024 (**the Bill**).

## Introduction

2. Comcare welcomes the opportunity to provide this submission to the Inquiry. Comcare is a statutory authority established under federal legislation,<sup>1</sup> and is the national authority for work health and safety and workers' compensation.
3. Comcare promotes the objectives of the *Work Health and Safety Act 2011* (Cth) (**the WHS Act**) including to protect workers and other persons against harm to their health and safety through the elimination or minimisation of risks arising from work. The focus of this submission is to provide Comcare's views as a regulator, a service provider and a Commonwealth employer.
4. Comcare's submission draws on observations made by Comcare since the WHS Act was introduced on 1 January 2012, from Comcare's experience with managing workers' compensation claims related to Commonwealth workplaces, and as an employer of Commonwealth workers.

## Comcare's role

5. Comcare is a statutory authority established under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**) and has powers and functions conferred under the WHS Act and SRC Act.
6. Comcare's jurisdiction under the WHS Act includes workers in Commonwealth and non-Commonwealth licensee workplaces, contractors, labour-hire workers, volunteers and interns. Comcare's approach to its regulatory functions and powers under the WHS Act are set out in its [Compliance and Enforcement Policy](#) and [Regulatory Guides](#).
7. Under the SRC Act, Comcare is the workers' compensation insurer for Commonwealth departments and agencies and is the claims manager for workers' compensation for most

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<sup>1</sup> *Safety, Rehabilitation and Compensation Act 1988* (Cth), s 68.

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Commonwealth departments and agencies.<sup>2</sup> The Comcare workers' compensation scheme is a no-fault, long-tail scheme with Comcare and its delegates responsible for determining claim eligibility and ongoing claims management including the determination of incapacity and medical treatment benefits.

8. The Inquiry is relevant to Comcare's role as a regulator, workers' compensation authority, scheme administrator, service delivery agency and as a Commonwealth employer. Comcare's purpose is to promote and enable safe and healthy work. A critical element in achieving this goal is ensuring that workplaces are free from occupational violence, and are places where all workers feel safe. As an organisation that delivers services to the public, Comcare recognises the challenges associated with the provision of support to people who experience violence at work.

### Duties, duty holders and regulation under the WHS Act

9. The WHS Act sets out the duties and obligations of a range of duty holders including 'persons conducting a business or undertaking' (**PCBUs**), workers and officers.<sup>3</sup> Duty holders at a workplace may change depending on the work being undertaken at the relevant workplace at any given time. More than one PCBU or person can concurrently have the same duty for a matter, and each must comply with that duty to the standard required under the WHS Act. Each retains responsibility for their duty and must discharge their duty to the extent to which they have the capacity to influence and control the matter.<sup>4</sup> The duties specified in the WHS Act aim to protect workers and other persons against harm to their physical and psychological health, safety and welfare through the elimination or minimisation of risks.
10. Comcare notes that in accordance with work health and safety laws,<sup>5</sup> a successful risk management system must identify hazards and risks to workers, assess those risks, and put measures in place to control them. An important element of this process is applying 'reasonably practicable'<sup>6</sup> measures to control the risks.
11. Comcare's online [Office Safety tool](#) provides guidance for workers and employers about what they can do to prevent and manage workplace bullying, harassment and conflict. Comcare also offers relevant free self-paced online learning, e-learns, 'Micro-learns' and a range of other educational products through an open online [Learning Management System](#).
12. In line with Commonwealth work health and safety laws, control measures should be reviewed by a PCBU to maintain a work environment that is without risks to health and safety.<sup>7</sup> This includes reviewing control measures in the event that the risk has not been controlled adequately by the control measures and at identified times, including before changes are made at the workplace and when a new or relevant hazard or risk is identified.<sup>8</sup>

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<sup>2</sup> The Federal Court confirmed that MOP(S) Act workers are engaged on behalf of the Commonwealth. MOP(S) Act workers meet the definition of an employee under section 5(1) of the SRC Act and are therefore eligible for workers' compensation under the SRC Act.

<sup>3</sup> See generally: *Work Health and Safety Act 2011* (Cth), Part 2.

<sup>4</sup> See section 16 of WHS Act – More than one person can have a duty.

<sup>5</sup> *Work Health and Safety Regulations 2011* (Cth), reg 34.

<sup>6</sup> *Work Health and Safety Act 2011* (Cth), s 18.

<sup>7</sup> *How to manage work health and safety risks: Code of Practice*, May 2018, pages 7; 23–24.

<sup>8</sup> *Ibid.*

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13. As the WHS regulator, Comcare investigates incidents involving matters of customer aggression to frontline workers where it occurs at Commonwealth workplaces or while Commonwealth workers are 'at work'. While Comcare is unable to provide detailed comment on active investigations, we note that Comcare is conducting an ongoing investigation in relation to the incident which occurred at a Services Australia workplace in Airport West Victoria on 23 May 2023 where a Commonwealth worker was assaulted by a member of the public. This incident triggered the Services Australia Security Management Review (**the Ashton Review**) and its recommendation that the Australian Capital Territory's Workplace Protection Order framework be adapted for use by the Commonwealth as a staff protection mechanism nationwide.<sup>9</sup>
14. Between 1 July 2021 and 31 December 2024, Comcare received 98 incident notifications that were categorised as involving 'being assaulted by a person (or persons)' or 'exposure to workplace or occupational violence'.<sup>10</sup> The primary difference between these categories is that the latter is used where the harm caused by mental stress is more significant than any physical injury that may have been sustained.<sup>11</sup> Approximately 50 percent of the notified assaults involved detainees in immigration detention (the majority of which involved altercations between detainees) – with a small number involving detainees assaulting workers (approximately 10 percent).
15. Incidents involving workplace violence and aggression represent 1.5 percent of all the incident notifications made to Comcare in the same period. Of the 98 notifications, 67 were classified as 'not notifiable'. Of the total notifications made of this kind, Comcare commenced 19 compliance monitoring inspections — 19 percent of the total number of incident notifications of that type.
16. Comcare notes in respect of the work carried out by its own inspectors under the WHS Act, that it is an offence to assault, threaten or intimidate an inspector.<sup>12</sup>
17. Comcare further notes that the object of the Bill is to protect Commonwealth workers from harm and threats of harm, to ensure that services delivered by the Commonwealth can be accessed by the public in a safe environment, and to deter violence and aggression against Commonwealth workers. Comcare observes that the definitions of a 'Commonwealth worker' and a 'Commonwealth workplace' in the Act are largely consistent with such terms in the WHS Act.<sup>13</sup> To this extent, Comcare supports any additional tool that Commonwealth employers or PCBUs can use in providing and maintaining safe and healthy workplaces.

## The Commonwealth Workplace Protection Orders Bill 2024

18. Comcare notes the broader legislative environment in which the Bill would operate including the various State, Territory and Commonwealth regimes in place regarding Commonwealth and corresponding WHS laws, apprehended and domestic violence orders, stop bullying

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<sup>9</sup> Recommendation 17.

<sup>10</sup> Categories based on the Australian Safety and Compensation Council guide *Types of Occurrence Classification System* (TOOCS) 3<sup>rd</sup> Edition, Revision 1, May 2008.

<sup>11</sup> Ibid, see code 29 'Being assaulted by a person or persons' and code 82 'Exposure to workplace or occupational violence'.

<sup>12</sup> See section 190 WHS Act – Offence to assault, threaten or intimidate inspector. Section 188 of the WHS Act also creates an offence to hinder or obstruct an inspector in exercising his or her compliance powers.

<sup>13</sup> See ss 7 and 8 respectively of the WHS Act.

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orders (under the *Fair Work Act 2009* (Cth)<sup>14</sup>) and the pre-existing workplace protection order framework — all of which currently provide a range of protections for workers against personal violence.<sup>15</sup>

19. Comcare considers that there may be some operational issues or limits to the effectiveness of orders associated with the implementation of the Bill which include:
- a. difficulties where a worker has experienced or has been threatened with personal violence and seeks assistance from their employer to make an application in circumstances where their employer does not support it;
  - b. the personalised nature of the workplace protection order framework in circumstances where respondents have grievances against the organisation rather than against a specific worker, although this may be overcome by seeking orders applying to a workplace as a whole;
  - c. the practical application of an order where the respondent is the partner of the worker and the order extends to the worker's place of residence (although presumably an apprehended violence order may be more appropriate in such circumstances).
20. To this end, the experience of the ACT, in terms of the number of orders that have been made and whether they are working practice, may be illustrative.

#### Comcare as a service delivery agency and employer

21. Comcare is Commonwealth entity and an employer of Commonwealth workers within the definition of the Bill. As at 30 June 2024, Comcare employed 722 employees based in 9 locations around Australia. Comcare's workers work from a variety of locations outside of Comcare's offices, including remote-based work at their homes, site visits to other employers' or PCBU's workplaces (including at isolated, regional or rural locations), conference centres, and other locations.
22. Many of Comcare's workers are engaged in frontline service delivery functions, such as contact centre work, workers' compensation claims management, and WHS Act regulatory inspections and investigations. These workers regularly have direct contact with members of the public, and may be exposed to customer aggression or workplace violence as a result of their status and the work they carry out as Commonwealth workers.
23. Comcare has experience as a service delivery agency and employer which deals with customer aggression and workplace violence from clients and members of the public. Comcare has experienced difficulties managing this conduct through existing protection order frameworks, particularly where the conduct occurs in a jurisdiction where it cannot apply for protection orders on behalf of the affected worker. In Comcare's experience, workers are hesitant to apply for protection orders in their personal capacity as they can be concerned about reprisals from the respondent and disclosure of their personal information as evidence to support the application. Workers may also require financial support so that they can obtain independent legal advice in relation to their application.
24. Comcare has also experienced challenges in relation to existing protection order frameworks where the threatening, harassing, or intimidating conduct occurs online or across

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<sup>14</sup> See s 789FC – Application for an FWC order to stop bullying.

<sup>15</sup> See *Personal Violence Act 2016* (ACT).

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jurisdictions. In these cases, there is complexity in identifying the correct jurisdiction, ensuring compliance with any special procedures relating to interstate service of applications, and enforcing protection orders.

25. Accordingly, Comcare supports the proposed protection order framework that:
- a. allows applications to be made on behalf of the affected worker;
  - b. recognises the varied nature of employment and workplaces, including remote work;
  - c. can apply to circumstances where social media is used to stalk and harass workers; and
  - d. protects the affected workers' personal information.
26. Comcare acknowledges the Bill and its Explanatory Memorandum deal with these complexities. However, Comcare observes there may be further opportunities to reinforce the drafting intention in the Bill itself or any guidance material by way of notes or examples.

## Conclusion

27. On balance, Comcare notes that the Bill appears capable of complementing and supporting the work health and safety duties provided for in the WHS Act. Comcare supports the provision of measures for the deterrence of acts of violence and harmful behaviours by members of the public that will promote securing the health and safety of workers and workplaces.