



Australian Government

Department of Employment

**Senate Standing Committee on
Education and Employment Legislation**

**Inquiry into the
Safety, Rehabilitation and Compensation
Legislation Amendment Bill 2014**

**Submission of the
Department of Employment**

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Introduction

1. The Department of Employment (the Department) welcomes the opportunity to make a written submission to the Senate Education and Employment Legislation Committee Inquiry into the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (the Bill).
2. The Bill was introduced into the House of Representatives on 19 March 2014 and will significantly reduce the cost of the regulatory burden on corporations that operate across two or more states and/or territories.
3. The key provisions of the Bill amend the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) and the *Work Health and Safety Act 2011* (WHS Act) to:
 - enable corporations currently required to meet workers' compensation obligations, under the relevant legislation, in two or more states or territories to apply to the Safety, Rehabilitation and Compensation Commission (the Commission) to join the Comcare scheme;
 - allow a Commonwealth authority that ceases to be a Commonwealth authority to apply directly to the Commission for approval to be a self-insurer in the Comcare scheme;
 - enable the Commission to grant group licences to related corporations;
 - extend the coverage provisions of the WHS Act to those corporations that obtain a licence to self-insure under the SRC Act; and
 - exclude access to workers' compensation where injuries occur during recess breaks away from an employer's premises or where a person engages in serious and wilful misconduct.

Purpose of the Submission

4. In this submission, the Department addresses one aspect of the Bill only, as stated in the terms of reference of this Inquiry.
5. This submission provides an overview of how the Comcare scheme works, the process adopted by the Commission to regulate licensees and the performance of licensees under the Comcare scheme and provides data showing that the Comcare scheme is one of the safest in Australia.

Overview of the Comcare scheme

6. The two key pieces of legislation which form the Comcare scheme are the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) and the *Work Health and Safety Act 2011* (WHS Act).
7. The SRC Act provides rehabilitation and workers' compensation for injured Australian Government and Australian Capital Territory Government workers (collectively known as premium payers) and for the workers of 29 licensees, comprising current and

former Commonwealth authorities and private corporations, who self-insure under the Comcare scheme. Attachment A provides a list of current licensees.

8. The SRC Act also applies to members of the Australian Defence Force injured during non-operational service before 1 July 2004. Coverage for injuries incurred after this date is provided by the *Military Rehabilitation and Compensation Act 2004* (MRC Act). The Department of Veterans' Affairs administers member claims under the SRC Act and MRC Act on behalf of the Military Rehabilitation and Compensation Commission.

9. The WHS Act applies to persons conducting a business or undertaking in the Commonwealth jurisdiction including the Commonwealth public sector, the Australian Defence Force and licensees.

10. The objective of the WHS Act is to provide for a balanced framework to secure the health and safety of workers and workplaces. It achieves this objective by:

- a. protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work;
- b. providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety;
- c. encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment;
- d. promoting the provision of advice, information, education and training in relation to work health and safety;
- e. securing compliance with this Act through effective and appropriate compliance and enforcement measures;
- f. ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act;
- g. providing a framework for continuous improvement and progressively higher standards of work health and safety; and
- h. maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.¹

11. The Commonwealth Work Health and Safety framework consisting of the WHS Act, Regulations and Codes of Practice is based on the provisions of the Model Work Health and Safety Act and Regulations developed by all state and territory jurisdictions and peak union and employer organisations through Safe Work Australia.

Regulation of the SRC and WHS Acts under the Comcare scheme

12. Comcare is the regulator for the WHS Act and supports the Safety, Rehabilitation and Compensation Commission (the Commission) in the regulation of performance of licensees.

¹ Section 3 of the *Work Health and Safety Act 2011*

Comcare

13. Comcare is an independent authority within the employment portfolio with staff working to a Chief Executive Officer.

14. With the exception of a small amount of funding provided through the 2013-14 Additional Estimates, Comcare's regulatory function operates on a cost-recovery basis for employers covered by the Comcare scheme. Regulatory contributions are used to fund:

- a. the regulation by Comcare of rehabilitation under the SRC Act and work health and safety under the WHS Act; and
- b. oversight by the Commission of the regulation by Comcare of work health and safety under the WHS Act.

Comcare's regulatory activity

15. Comcare is the sole work health and safety regulator for the 29 scheme licensees, thus ensuring consistent work health and safety obligations and protections for workers regardless of the state or territory in which they are located.

16. Comcare's regulatory activities in administering the WHS Act and related regulations include:

- managing compliance and enforcement activities under the WHS Act;
- promoting prevention as the primary means of reducing the human and financial costs of injury and disease;
- targeting inspection activities toward priority areas; and
- developing and administering safety policy aimed at improving the regulatory framework to make sure it provides strong accountability, reflects risks and is outcome based.

17. The Commonwealth WHS Act commenced on 1 January 2012. The duties contained in the WHS Act ensure that all workers are provided protections while at work, whether they are employees, contractors, labour hire workers, outworkers, apprentices, trainees, work experience students or volunteers due to the expanded definition of worker and are supported by a strengthened compliance and enforcement regime.

18. Under the Model Work Health and Safety Act each jurisdiction is required to identify an 'external review' body to review the decisions of the regulator, including decisions made following internal review. The Fair Work Commission performs this role under the WHS Act and is empowered to deal with disagreements about the establishment of designated work groups and to determine appeals of decisions.

The Safety, Rehabilitation and Compensation Commission (the Commission)

19. The Commission is an independent body established under the SRC Act and is comprised of 11 members: a chair; three members nominated by the Australian Council of Trade Unions; one member represents licensees; one member represents the Commonwealth and Commonwealth authorities; one member represents the interests of the Australian Capital Territory public sector employers; one member represents the

interests of members and former members of the Defence Force; the Chief Executive Officer of Safe Work Australia and two members with qualifications or experience relevant to the Commission's functions or exercise of its powers.

20. The Commission has a number of general and specific functions conferred on it by the SRC and WHS Acts.

21. The main functions of the Commission are to:

- ensure that, as far as practicable, there is equity of outcomes resulting from administrative practices and procedures used by Comcare and each licensee in the performance of their respective functions;
- act as a review body for premiums and regulatory contributions charged by Comcare;
- advise the Minister about anything relating to the operations of the SRC Act or to the Commission's functions and powers;
- advise the Minister on the administration of the WHS Act;
- advise and make recommendations on the most effective means of giving effect to the objects of the WHS Act;
- enquire into and make recommendations to the Minister on any matter relating to work health and safety referred to the Commission by the Minister; and
- provide a forum for consultation on matters relating to work health and safety between Comcare and persons conducting businesses or undertakings, workers and the bodies that represent them.

22. The Commission usually meets four times a year to consider licence applications and extensions and the performance of the scheme. The Commission measures Comcare scheme performance against key scheme performance indicators concerned with work health and safety, claims management, compensation and rehabilitation and return to work, and related matters. The Commission produces an annual report which its Chairperson submits to the Minister for Employment.

23. The Commission applies stringent standards to assess applications for self-insurance licences and regularly monitors licensees' performance. The Commission conducts a rigorous assessment of prudential, financial, work health and safety and other matters as specified in the SRC Act. The Commission has regard to issues such as:

- (a) the resources of the corporation applying for the licence - the capacity of the applicant to meet standards set by the Commission for claims management, rehabilitation and work health and safety;
- (b) financial and prudential information - such as the financial viability of the corporation, funding of liabilities and obtaining the required guarantees;

- (c) the claims management systems information of the corporation, including whether the systems are capable of making accurate and quick determinations and payments, ensuring equity of outcomes and the capacity to comply with the conditions of licence; and
- (d) the past performance of the applicant corporation in complying with and conforming to applicable laws or statutory guidelines in relation to the health and safety of employees, rehabilitation of employees, premium payment and claims management obligations.

24. Successful applicants are usually granted an initial two year self-insurance licence by the Commission. If the licensee has met the requirements of the licence following external audits of work health and safety, claims management, rehabilitation and related outcomes, the Commission will usually grant a four year licence.

25. The Commission requires licensees to continuously improve their work health and safety, rehabilitation and claims management performance outcomes, to comply with licence conditions and to meet performance standards of the licence.

26. The 'conditions of licence' for each licensee requires compliance with the SRC Act and the WHS Act. A licensee is subject to audits, work health and safety investigations and other evaluations and is required to meet financial, prudential and performance reporting requirements as part of the conditions of licence.

27. Licensee performance is assessed against a number of performance targets which are reported to the Commission twice-yearly. The indicators cover work health and safety, rehabilitation, claims management and scheme administration. The full year performance of licensees against selected Commission indicators is published in the Commission's annual report.

Licensee Improvement Program

28. The Commission drives the performance outcomes of licensees by evaluating licence compliance through its annual Licensee Improvement Program (LIP). The LIP involves the annual evaluation of licensees with respect to:

- compliance with prudential and financial conditions of licence;
- reporting against Key Performance Indicators;
- audit outcomes in prevention rehabilitation, claims management and data integrity;
- results of any work health and safety investigations; and
- provision of an annual performance report by each licensee which provides an overview of key activities undertaken by the licensee in the previous 12 months, outcomes achieved in that period and objectives for the next 12 months.

29. The Commission assesses the licensees' compliance results and performance outcomes in the context of the tier model. This model identifies the level of regulatory oversight to be applied in the following year through the assignment of a tier level to each licensee in each of prevention, rehabilitation and claims management.

30. The tier level that is applied to each of prevention, rehabilitation and claims management functions is based on the licensee’s capacity to meet the Commission’s requirements and capacity to effectively self-manage the function(s).

Table 1. Tier Model for Licensees

| First Tier (Elementary Level) | Second Tier (Secondary Level) | Third Tier (Advanced Level) |
|--|--|--|
| Focus is on compliance through the establishment of policies, procedures, resources and management systems. | Focus is on development of quality assurance and self-audit capabilities. | Focus is on positive and material corporate change in injury prevention and injury management. |
| Applies to new licensees or licensees experiencing difficulties in compliance. | Applies to compliant and conformant licensees who are developing strong management systems to prepare for self-audit status in the future. | Applies to licensees with a high standard of internal quality assurance and strong management systems. Licensees must have self-audit status to be at this level. |
| Comcare audits First Tier licensees each year. | Comcare assesses the quality of licensee audits each year (desktop review). Comcare audits in the last year of licence. It is open to Comcare to conduct more regular and detailed audits should it see fit. All licensees are subject to external audit in the last year of licence (prior to extension) regardless of the tier level. | Comcare audits in last year of licence. It is open to Comcare to conduct more regular and detailed audits should it see fit. All licensees are subject to external audit in the last year of licence (prior to extension) regardless of the tier level. |
| Higher Cost | Medium Cost | Lower cost |

31. The performance targets set by the Commission include the incidence and frequency of injury, timeliness of claims management decisions, rehabilitation and return to work rates, including those which incorporate the *Australian Work Health and Safety Strategy 2012-2022*. Licensees are also subject to periodic data quality audits to verify the accuracy of base data used to calculate performance against the Commission’s indicators.

32. There are significant financial consequences for licensees (including potentially losing their licence) if they are unable to meet the performance and safety targets. The Commission may also increase regulatory oversight of a licensee and reduce their tier status in the area in which they are underperforming, thereby increasing licensee auditing costs (see Table 1).

The Commission has adopted a staged approach to regulation of licensees comprising encouragement, direction, restriction, suspension and revocation of licence

Scheme work health and safety performance

33. Comcare has regulated all licensees covered by the Comcare scheme for their compliance with work health and safety obligations since March 2007.

Ministerial Directions

34. In response to concerns raised during the 2009 review of the Comcare scheme, on 16 November 2009, the then Minister for Employment and Workplace Relations, the Hon. Julia Gillard MP, issued a Ministerial Direction.² This directed:

‘Comcare, having regard to the relevant provisions of the [*Occupational Health and Safety Act 1991*], to:

- adopt a more proactive approach to occupational health and safety compliance and enforcement including undertaking a greater number of investigations each year with the aim of reducing the incidence of injury and disease in under-performing sectors;
- implement measures to ensure that investigators possess the qualifications, knowledge and skills to exercise their statutory functions in relation to the broad range of industries covered by the scheme; and
- develop guidance material which appropriately reflects that proactive compliance and enforcement policy.’

35. Comcare has increased its field inspectors (including other staff undertaking non-inspectorate activities) from 22 in 2005–06, to currently 53 inspectors. Comcare maintains an audit and inspectorate workforce of 1 per 10 000 employees which is comparable in numbers to other jurisdictions such as New South Wales, which also has 1 inspector per 10 000 employees and Victoria which has 0.9 inspectors per 10 000 employees.

Table 2: Number of field active inspectors per 10 000 employees

| | NSW | VIC | QLD | WA | SA | TAS | NT | ACT | Comcare |
|---------|-----|-----|-----|-----|-----|-----|-----|-----|---------|
| 2011-12 | 1.0 | 0.9 | 1.1 | 1.0 | 1.3 | 1.5 | 1.1 | 1.7 | 1.0 |

Source: Safe Work Australia – Comparative Performance Monitoring Report Oct 2013 (Note: Safe Work Australia will release data for 2012-13 later in 2014)

36. As new licensees join the scheme, Comcare will adjust and increase the regulatory workforce accordingly. The cost is funded by the licensees under its user pays model.

² *Occupational Health and Safety Directions (Comcare) 2009 (1)*

Licensee performance under the Comcare scheme

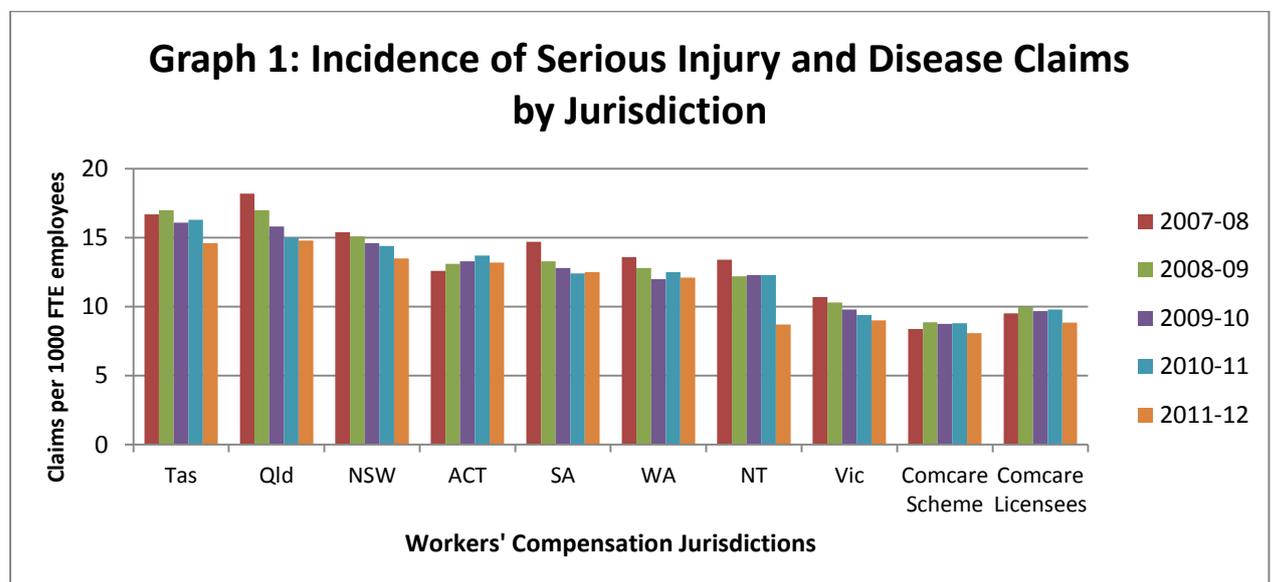
37. As outlined earlier in this submission, the work health and safety, rehabilitation and return to work performance of licensees under the Comcare scheme is assessed by the Commission using the Tier Model. Self-insurers benefit directly from the Tier Model both by having safer workplaces and lower claim costs.

38. As evidenced by internal and external audits reported to the Commission, licensees score strongly against benchmarks demonstrating:

- mature work health and safety prevention management systems;
- robust rehabilitation systems;
- high levels of senior leadership engagement in work health and safety; and
- good post-injury return to work outcomes for their workers.

39. Safe Work Australia releases the *Comparative Performance Monitoring Report* annually, which provides trend analysis of work health and safety and workers' compensation schemes operating in Australia and New Zealand.

40. The most recent confirmed data, which compares incidence rates of serious injury and disease by jurisdiction, demonstrates that the Comcare scheme is the best performing scheme in Australia for injury prevention. When considering the performance of licensees in the Comcare scheme, their performance against this criteria is consistently better than most state and territory jurisdictions (see Graph: 1³). This data covers serious injury and disease lasting for one week or more in duration.



³ Comcare scheme and Comcare licensee data is based on full-time equivalent (FTE) data supplied by Comcare. The FTE of all other jurisdictions is based on that supplied by the Australian Bureau of Statistics for the *Comparative Performance Monitoring Report*.

41. Critics of the Comcare scheme have claimed that Comcare's strong regulatory performance reflects that it only regulates public servants. The industry profile of the Comcare scheme is varied and covers the Australian Defence Force as well as 29 self-insurers who are private corporations across a range of industries including:

- Construction;
- Manufacturing;
- Financial and insurance services;
- Transport, postal and warehousing; and
- Information media and telecommunications.

Other benefits for workers and their employers under the Comcare scheme

42. The issues of national employers having to maintain multiple workers' compensation arrangements and comply with different jurisdictions for work health and safety have been raised and consulted on through several reviews and inquiries over the past two decades.

43. The 2004 Productivity Commission Inquiry Report on *National Workers' Compensation and Occupational Health and Safety Frameworks* (2004 Productivity Commission Report), found that costs for national employers meeting the requirements of the various jurisdictions, rather than those of a single national scheme, can be in the order of millions of dollars a year⁴. In addition, scheme differences result in inequities for workers of the same corporation but working in different jurisdictions.

44. Most recently in 2012-2013, a review of the SRC Act (SRC Act Review) was undertaken by Mr Peter Hanks QC and Dr Allan Hawke AC. The SRC Act Review concluded that allowing national employers to join the Comcare scheme 'would assist in reducing red tape, while broadening the Comcare scheme to allow a national approach for employers who satisfy the associated set of criteria and would build on the national disability strategy and approach'.

45. A comprehensive analysis of the benefits of the Comcare scheme for national employers is contained in the Regulation Impact Statement *Licensing and other immediate amendments under the Safety, Rehabilitation and Compensation 1988* prepared by the Department of Employment in February 2014. The Regulation Impact Statement is attached to the explanatory memorandum for the Bill.

⁴ Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks*

Attachment A

Current licensees under the Comcare scheme

| Name | Commencement date of licence |
|---|-------------------------------------|
| Australian Postal Corporation | 30/06/1992 |
| Telstra Corporation Ltd | 30/06/1992 |
| CSL Ltd | 3/06/1994 |
| Thales Australia | 7/02/1996 |
| Reserve Bank of Australia | 1/05/1996 |
| Australian air Express Pty Ltd | 1/07/1999 |
| Visionstream Pty Ltd | 1/07/1999 |
| Asciano Services Pty Ltd | 1/07/2001 |
| Optus Administration Pty Ltd | 30/06/2005 |
| Linfox Australia Pty Ltd | 3/04/2006 |
| Linfox Armaguard Pty Ltd | 3/04/2006 |
| K&S Freighters Pty Ltd | 1/07/2006 |
| John Holland Group Pty Ltd | 1/01/2007 |
| John Holland Pty Ltd | 1/01/2007 |
| John Holland Rail Pty Ltd | 1/01/2007 |
| National Australia Bank Ltd | 13/04/2007 |
| National Wealth Management Services Ltd | 13/04/2007 |
| Prosegur Australia Pty Limited | 1/07/2007 |
| Border Express Pty Ltd | 1/01/2008 |
| Avanteos Pty Ltd | 31/03/2008 |
| Colonial Services Pty Ltd | 31/03/2008 |
| Commonwealth Bank of Australia Ltd | 31/03/2008 |
| Commonwealth Insurance Ltd | 31/03/2008 |
| Commonwealth Securities Ltd | 31/03/2008 |
| TNT Australia Pty Ltd | 1/07/2008 |
| Transpacific Industries Pty Ltd | 1/07/2008 |
| BIS Industries Ltd | 1/10/2008 |
| Fleetmaster Services Pty Ltd | 1/04/2009 |
| StarTrack Retail Pty Ltd | 1/07/2011 |