



Australian Government

Comcare

Senate Legal and Constitutional Affairs References Committee

Inquiry into the MRH-90 Taipan Helicopter Incident

OPENING SUBMISSION BY COMCARE

1 May 2026

Summary

1. On 4 February 2026, the Senate referred an inquiry into the MRH90 Taipan Helicopter incident to the Legal and Constitutional Affairs References Committee (**the Inquiry**) for inquiry and report. The Inquiry has invited Comcare to make a submission addressing any or all of the following terms of reference:
 - a. airworthiness assessments of the MRH-90 platform and associated equipment,
 - b. Army Aviation compliance with the Defence Aviation Safety Regulations,
 - c. findings of the Comcare investigation into the incident,
 - d. any other investigations into the incident,
 - e. the appropriateness of the decision not to prosecute any matters arising from the incident, and
 - f. any other related matters.
2. Comcare wishes to assist the Senate Committee with its Inquiry to the fullest extent possible, although notes the important public interest in preserving (and not jeopardising) potential future regulatory options that may be open to Comcare in relation to the MRH-90 Taipan Helicopter incident, including potential further referral of offences to the Office of the Director of Public Prosecutions (Cth) (**CDPP**) for consideration of prosecution proceedings. Comcare's investigation in respect of the incident remains open due to these regulatory options, discussed further below.
3. In Comcare's submission, this important public interest may mean that there are limitations on the information or documents that Comcare can provide to the Inquiry at this time. Comcare welcomes further engagement on how it can best assist the Inquiry to ensure that the objectives of the Inquiry are met while protecting and preserving the integrity of Comcare's ongoing investigations and potential future regulatory or prosecutorial options under the *Work Health and Safety Act 2011* (Cth) (**WHS Act**).

Background

4. On the evening of Friday, 28 July 2023, Australian Army MRH-90 Taipan helicopters were participating in a large multinational training activity, Exercise Talisman Sabre, near

Lindeman Island off the Queensland coast. During this training activity one of the helicopters crashed into the sea near Lindeman Island, killing the four crew members on board (**the incident**), being Captain Danniell Lyon, Lieutenant Maxwell Nugent, Warrant Officer Class 2 Joseph 'Phillip' Laycock and Corporal Alexander Naggs.

5. On 1 August 2023, Comcare commenced an investigation into the circumstances surrounding the incident including the Department of Defence's (**Defence**) compliance with the WHS Act.
6. On 27 March 2025, Comcare referred a brief of evidence to the CDPD for consideration of commencing prosecution proceedings for potential offences by Defence against the WHS Act in relation to the management of fatigue. A further brief of evidence was referred to the CDPD on 25 June 2025 regarding the Top Owl flight helmet-mounted sight display navigation system (**Top Owl system**).
7. On 22 July 2025, the CDPD advised Comcare that it had determined that there was insufficient evidence to commence prosecution proceedings, in relation to both fatigue and the Top Owl system.
8. A Senate Order to Produce Documents (No. 115) (**OPD**) moved by Senator Malcolm Roberts was agreed on 27 August 2025 requiring the tabling of Comcare's brief of evidence and final investigation report. A public interest immunity claim was made over Comcare's brief of evidence, and two (redacted) investigation summary documents responsive to the OPD were tabled in the Senate on 1 September 2025.

Comcare's regulatory role and functions

9. Comcare is a statutory authority of the Australian Government established under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**). Comcare is responsible for regulating the Commonwealth's work health and safety jurisdiction under the WHS Act and *Work Health and Safety Regulations 2011* (Cth) (**WHS Regulations**). The WHS Act applies to the Commonwealth, including Australian government agencies and authorities (including Defence and the Australian Defence Force (**ADF**)), public authorities, and a small number of licenced organisations. As the national regulator, Comcare's functions include the following:
 - a. monitor and enforce compliance with the WHS Act and WHS Regulations,
 - b. provide advice and information to duty holders and the community,
 - c. foster a cooperative, consultative relationship between duty holders, workers and their representatives,
 - d. promote and support education and training on matters relating to work health and safety,
 - e. engage in, promote and coordinate the sharing of information to achieve the objectives of the WHS Act, including the sharing of information with other health and safety regulators,
 - f. conduct and defend legal proceedings under the WHS Act, and
 - g. collect, analyse and publish statistics.

10. Section 19 of the WHS Act imposes a primary duty of care on persons who conduct a business or undertaking (**PCBU**) to ensure, so far as is reasonably practicable:
 - the health and safety of workers at work in the business of undertaking, and
 - that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
11. Comcare's compliance and enforcement activities concern the regulation of duties and obligations contained within the WHS Act, including the primary duty of care that PCBUs have under the WHS Act. Comcare conducts compliance and enforcement activities in accordance with its Compliance and Enforcement Policy.¹
12. Comcare utilises a range of mechanisms to ensure compliance with the WHS Act and WHS Regulations. These mechanisms include:
 - a. **providing information and advice** to PCBUs within Comcare's WHS jurisdiction, which can include providing general advice, information, education and training across the jurisdiction and undertaking targeted engagement activities with individual PCBUs, including Defence. Comcare's approach to these activities is proactive, preventative and consultative, and is intended to encourage stakeholders to engage with and improve workplace safety,
 - b. **monitoring and enforcing compliance of duty holders** by undertaking what Comcare generally refers to as 'monitoring compliance' activities. These can be proactive or reactive in nature and might include WHS audits, proactive inspection programs, scheduled or unannounced site visits, and 'inspections'. These activities may result in enforcement outcomes such as issuing improvement notices and prohibition notices, and
 - c. **investigating possible contraventions** where, in particular circumstances, Comcare has formed a view (during a monitoring compliance activity or based on other information) that a contravention, or potential contravention, of the WHS Act may have occurred and is of a seriousness that could warrant prosecution. The investigation process and its relevance to this Inquiry is discussed further below.
13. An investigation is directed towards gathering relevant evidence to establish whether an offence may have occurred. Following an investigation, Comcare may determine that an incident:
 - a. requires 'no further action' (i.e. that the evidence gathered does not indicate a contravention of the WHS Act),
 - b. warrants other monitoring compliance activities, or
 - c. warrants a referral to the CDPP for prosecution prospects advice on alleged offences against the WHS Act or WHS Regulations.
14. Under the WHS Act, the applicable limitation period to commence criminal proceedings is usually 2 years after the offence first comes to the notice of the regulator (s 232(1)(a) of the WHS Act). In specific instances, the WHS Act makes allowances for proceedings for an offence to be brought outside of that timeframe, which is discussed in more detail below, from paragraph [30].

¹ [Compliance and Enforcement Policy](#).

Comcare's activities in respect of the Taipan incident

15. While the relevant PCBU is the Commonwealth, the responsible agency in respect of the incident is Defence – see s 248 of the WHS Act. Defence is a non-corporate Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013* (Cth), and is therefore part of the Commonwealth.
16. The WHS Act applies to Defence subject to specified exemptions/modifications:
 - a. an express statutory exemption from the requirement to comply with the WHS Act insofar as the WHS Act requires or permits a person to act in a way which is prejudicial to Australia's defence, which may foreseeably apply to Defence's operations (see s 12D of the WHS Act), and
 - b. certain exemptions or modifications which are declared by the Chief of the Defence Force by instrument in writing pursuant to s 12D(2) of the WHS Act, which currently include:
 - *Work Health and Safety Act 2011 (application to Defence activities and Defence members) Declaration 2023* (Cth), and
 - *Work Health and Safety (Operations Sovereign Borders) Declaration 2024* (Cth).

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17. On 1 August 2023, Comcare commenced an investigation into the circumstances surrounding the incident.
18. The purpose of the investigation was to assess Defence's compliance with the WHS Act in respect of the incident. The investigation scoped several lines of enquiry including the:
 - a. management of fatigue risks,
 - b. Top Owl system, and
 - c. potential mechanical or structural issues associated with the aircraft.
19. As a result of evidence obtained during the investigation, Comcare formed the view that Defence was aware of the risk to the health and safety of workers in respect of fatigue and failed to implement control measures available to minimise the risk so far as was reasonably practicable. At that time, Comcare considered there was evidence that Defence may have committed one or more offences under the WHS Act.
20. Following the investigation, on 27 March 2025, Comcare referred a brief of evidence to the CDPP for consideration of prosecution proceedings for potential offences against the WHS Act in relation to the management of fatigue. A further brief of evidence was referred to the CDPP on 25 June 2025 regarding the Top Owl system.
21. On 22 July 2025, the CDPP advised Comcare that following its review of the material on the briefs of evidence, it did not consider there was a reasonable prospect of obtaining a conviction for any offence under the WHS Act, in relation to either fatigue or the Top Owl system.
22. Comcare's investigation into the incident remains open pending the outcomes of the ongoing external inquiries discussed later in this submission.

Ongoing investigations and regulatory activities

23. Comcare remains focused on the safety issues associated with this incident, noting that criminal prosecution is not the only potential outcome of a Comcare investigation.
24. Comcare is undertaking proactive and reactive work in respect of Defence's compliance with the WHS Act. These activities are summarised below, noting that details of ongoing operational activities are ordinarily kept confidential given the legislative obligations of confidentiality pursuant to s 271 of the WHS Act.

Management of psychosocial risks, including fatigue, in the Department of Defence

25. Comcare's Psychosocial Regulation team is scheduled to conduct an inspection of Defence in the second half of 2026, under Comcare's Psychosocial Inspection Program. A pilot inspection is currently underway within the Royal Australian Air Force.
26. Inspections under Comcare's Psychosocial Inspection Program cover five systems-level criteria related to the prevention of psychological injuries:
 - organisational environment and psychosocial safety context,
 - performance of work health and safety duties in relation to psychosocial risks,
 - psychosocial risk management process,
 - consultation and communication, and
 - responding to psychosocial hazard reports, complaints and incidents.
27. In addition to the five systems-level criteria, inspectors consider the PCBU's management of specific psychosocial risks observed to be prevalent within the workplace. Fatigue is one of the 17 specific psychosocial hazards which is considered.
28. Non-compliance identified during Comcare's Proactive Psychosocial Inspection Program is addressed in accordance with Comcare's Compliance and Enforcement Policy. Depending on the circumstances, inspectors may provide information and advice, direct compliance by way of improvement notices, or refer the matter for further enquiries and/or investigation.

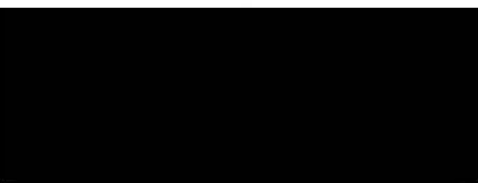
Impact of ongoing external inquiries

29. Comcare is aware of the following inquiries into the incident that remain on foot at the time of this submission (other than the Inquiry the subject of this submission):
 - a. the Inspector-General of the Australian Defence Force (**IGADF**) inquiry (commenced on 31 October 2023), in which hearings concluded on 9 May 2025,
 - b. the Queensland Coroner is conducting an investigation into the incident.
30. As set out above, in the usual course, the applicable limitation period for commencing proceedings under the WHS Act is 2 years. However, in specific instances, the WHS Act makes allowances for legal proceedings for an offence against the WHS Act to be brought outside of that timeframe.
31. Section 232(1) of the WHS Act provides that a proceeding can be brought within the latest of:

- a. within 2 years after the offence first comes to the notice of the regulator, or
 - b. within 1 year after a coronial report was made or a coronial inquiry or inquest ended, or an official inquiry ended if it appeared from the report or the proceedings at the inquiry or inquest that an offence had been committed against the WHS Act.
32. An official inquiry is defined by s 232(3) of the WHS Act as including a commission of inquiry of the Commonwealth or of a State or Territory (s 232(3)(c)) and a commission of inquiry conducted under regulations made under the *Defence Act 1903* (s 232(3)(d)).
 33. Comcare remains focused on the safety issues arising from the circumstances surrounding this incident and notes that the operation of s 232(1)(b) of the WHS Act may enable Comcare to refer a further brief of evidence to the CDPP, subject to the outcomes and/or reports of the inquiries referred to at [29] (that is, if it appears that an offence has occurred).
 34. Separately and in addition, a proceeding for a Category 1 offence (s 31 of the WHS Act) may be brought after the end of the applicable limitation period (referred to above) if fresh evidence relevant to the offence is discovered and the court in which the proceedings are brought is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period (WHS Act, s 232(2)).
 35. Comcare wishes to assist the Senate Committee to the greatest extent possible, and to provide information and documents where appropriate.
 36. However, having regard to the ongoing nature of the investigation and the potential for future regulatory or prosecutorial action, including possible referral to the CDPP, there will likely be limitations on the information or material that Comcare is able to provide at this time. These limitations will be necessary to ensure that Comcare does not prejudice the integrity of the investigation or any future proceedings, and to preserve all available options under the WHS Act.

Conclusion

37. Accordingly, Comcare's approach to engaging with the Inquiry as outlined in the above submission seeks to strike an appropriate balance between transparency and accountability to the Senate and the Australian people, and the public interest in protecting the integrity of ongoing investigations and preserving potential future regulatory or prosecutorial options under the WHS Act.



Colin Radford

Chief Executive Officer