

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2014-2015

Agency - Comcare

Department of Employment Question No. EM1601_15

Senator Cameron asked on 23 October 2014 on proof Hansard page 50

Question

Analysis of a company

Senator CAMERON: I accept that. Could you then, on notice, provide details of how the analysis of a company—particularly a mining company, because that is what I am talking about—would be done and how Comcare would look at the existing legislation and regulation. What weight would they give that legislation and regulation when it brings someone over? Would that legislation and regulation disappear or would aspects of it come across? I am genuinely interested in how that could work. Could you take that on notice. cont pg. 51 Senator CAMERON: Ms Parker has very kindly agreed to take on notice my question about some of the details of how the analysis would be worked through on an industry coming in, such as the mining industry. I do not want to double up on this, but I am not sure, Ms Parker, whether you would be consulting with Ms Skippington on this. Ms Parker: I think I gave it to her, didn't I? Senator Abetz: It would be their responsibility. Senator CAMERON: That is all I wanted to hear. Ms Skippington will do the work and report back. Ms Skippington: If I can just confirm this, because the question I believe you asked was about entry into the scheme. It is the commission that has the authority to make that decision. We are responsible for supporting the commission in that, but the commission is still working through any processes that it might want to decide to make to that. So I can only answer your questions at this point in time about what we would be considering as work, health and safety regulators subject to the commission's response; but if at that time the commission has made some decisions, I am sure they would be happy to share with you.

Answer

The Safety, Rehabilitation and Compensation Commission (the Commission) is a statutory body established under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). The Commission has specific statutory powers in relation to granting, varying, extending, suspending or revoking self-insurance licences, and the determination of licence conditions and licence fees.

Comcare works with the Commission to ensure effective operation of the scheme. It achieves this through regulation of work health and safety under the *Work Health and Safety Act 2011* (WHS Act), and rehabilitation and compensation under the SRC Act.

Currently when assessing a licence application, the Commission must consider sections 104(2) and 104(2A) of the SRC Act to determine whether it is appropriate to grant a self-insurance licence. In doing so, the Commission must be satisfied that:

- The applicant has sufficient resources to fulfil the responsibilities imposed on it under the licence. This includes:
 - Assessment of the structure and resourcing of the applicant in relation to its claims management, rehabilitation and work health and safety management systems
 - Prudential assessment of the applicant against licence conditions including the provision of a bank or other guarantee for an amount as specified in the liability report¹ provided with the application
 - Ongoing annual prudential, financial and performance assessment and review by the Commission of licensees.
- The applicant has the capacity to meet the standards set by the Commission for the work health and safety, rehabilitation and management of its employees' claims. This includes:
 - Pre-licence audits (based on relevant national standards) covering prevention, claims and rehabilitation management systems, and
 - Provision of information by the applicant on its history in managing work health and safety, rehabilitation and workers' compensation claims.
- It is likely that the applicant will meet the standards set by the Commission for claims management, rehabilitation and workplace health and safety (includes the applicant's performance in complying with relevant State and Territory laws). This includes:
 - Pre-licence audits focussed on testing this criterion
 - Engagement with State and Territory jurisdictions on previous performance, and
 - Disclosure by the applicant of any impediments or issues to be overcome prior to a licence being granted.
- Granting a licence will not be contrary to the interests of the employees covered by the licence.

Further detail on the self-insurance licence process and the analysis completed by Comcare for the Commission can be found at www.srcc.gov.au.

Any request from a potential self-insurer to be covered for operating mines would be considered by the Commission. If the Commission is not satisfied that the applicant had the capacity to meet the standards set by the Commission for the rehabilitation and occupational health and safety of its employees (s104(1)(d) of the (SRC Act)), their application for licence could be rejected.

The Commonwealth has not regulated mine safety under its WHS or OHS laws to date. This is because no Commonwealth agency or Commonwealth self-insurer currently conducts mining activities (though some self-insurers are conducting or have conducted mining operations in the broader group of companies to which a self-insurer belongs). BIS industries, a Commonwealth self-insurer currently have a special condition placed on its licence by the Commission which excludes mining activities.

The *Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014* currently before parliament enables the Commission to grant licences to corporations who meet a new 'national employer test'. This change will allow a broader range of corporations to apply for a self-insurance licence. The Bill also makes consequential changes to extend the coverage provisions of the WHS Act to those corporations that obtain a licence to self-insure under the SRC Act.

A 'national employer' company wanting to transfer to the Comcare scheme as a self-insurer will need to apply to and satisfy the Commission in relation to the factors outlined above.

In coming to its decision, the Commission would consider whether or not Comcare is equipped to cover a particular industry. It would be expected that the Commission would not approve any self-insurance licences unless it could be satisfied that the relevant Commonwealth legislation and its enforcement was sufficiently robust to ensure safe and efficient workplaces. Given that the Comcare scheme does not currently have any regulations that cover the mining sector, mining companies could not enter the scheme at this stage.

ⁱ This report is a pre-licence assessment of potential workers compensation liability for the applicant based on previous years claims data. A minimum liability of \$2.5 million has been set by the Commission.