



Australian Government

# SAFETY, REHABILITATION AND COMPENSATION ACT REVIEW

REPORT OF THE COMCARE SCHEME'S  
PERFORMANCE, GOVERNANCE AND  
FINANCIAL FRAMEWORK

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**For enquiries please contact:**

Safety and Compensation Policy Branch  
Department of Education, Employment and Workplace Relations  
GPO Box 9880  
CANBERRA CITY ACT 2601

**The report can be accessed via the DEEWR website at:**

<http://www.deewr.gov.au>

THE HON BILL SHORTEN MP

Minister for Employment and Workplace Relations

Parliament House

CANBERRA ACT 2600

Dear Minister

I am pleased to provide you with a Report of my part of the Review of the Performance, Governance and Financial Framework of the Comcare scheme (the Review) in accordance with your media release of 24 July 2012.

The Review was tasked with ensuring that the Comcare scheme is exemplary in its scheme design as well as in its service delivery. It was also to ensure that the federal workers' compensation arrangements reflect contemporary social models and best practice, taking into account arrangements within Australian and overseas accident compensation schemes.

This Report deals with my part of the terms of reference relating to:

- the performance of the Comcare scheme and ways to improve its performance; and
- the financial and governance framework of the Comcare scheme.

The Review has consulted with Comcare scheme stakeholders and considered their views in arriving at the recommendations enunciated in this Report.

In essence, the Review found the Comcare scheme to be working satisfactorily. The recent deterioration in return to work outcomes and financial performance has led to premium increases and there are issues arising from the terms of reference that require attention to restore the Comcare scheme to its rightful status in accordance with paragraph two above.

I have taken the liberty of forwarding an embargoed copy to Mr Peter Hanks QC for his consideration while awaiting your consideration of this report.

May I take this opportunity to express my appreciation for the Review Secretariat who undertook much of the research and drafting of the Report. Any errors, omissions or oversights are my responsibility.

Yours sincerely



Allan Hawke AC

7 December 2012

## ABBREVIATIONS AND DEFINED TERMS

10PP	Ten Point Plan.
ACT Government	Australian Capital Territory Government. The ACT Government is covered by the provisions of the <i>Safety, Rehabilitation and Compensation Act 1988</i> and pays premiums to Comcare.
AAT	Administrative Appeals Tribunal.
ADF	Australian Defence Force.
APS	Australian Public Service.
Australian Government agencies	Includes relevant <i>Financial Management and Accountability Act 1997</i> and <i>Commonwealth Authorities and Companies Act 1997</i> bodies who pay premiums under the Comcare scheme.
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i> .
CASA	Civil Aviation Safety Authority.
CCRF	Comcare Retained Fund.
Comcare	The organisation as established pursuant to Section 74 of the <i>Safety, Rehabilitation and Compensation Act 1988</i> .
Comcare scheme	All arrangements covered by <i>the Safety, Rehabilitation and Compensation Act 1988</i> , including self insurance arrangements.
CRF	Consolidated Revenue Fund.
CSO	Claims Service Officer.
DAKPI	Determining Authority Key Performance Indicator.
DEEWR	Department of Education, Employment and Workplace Relations.
DVA	Department of Veterans' Affairs.
Disease claims	Claims usually arising from repeated or long term exposure to an agent or event, including mental disease/stress claims.
FMA Act	<i>Financial Management and Accountability Act 1997</i> .
FTE	Full Time Equivalent.
Licensees	Corporations granted a self insurance licence pursuant to the provisions of the <i>Safety, Rehabilitation and Compensation Act 1988</i> .
LIP	Licensee Improvement Program.
MRCA	<i>Military Rehabilitation and Compensation Act 2004</i> .
MRCC	Military Rehabilitation and Compensation Commission.

Premium payers	Australian Government agencies and the ACT Government who pay premiums to Comcare.
Premium scheme	That part of the Comcare scheme that deals with the premium payers.
PSE	Project Service Excellence.
RSSG	Recovery and Support Services Group.
RTW	Return to Work.
SRC Act	<i>Safety, Rehabilitation and Compensation Act 1988.</i>
SRCC	Safety Rehabilitation and Compensation Commission.
SRCOLA Act	<i>Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007.</i>
WHS Act	<i>Work Health and Safety Act 2011.</i>

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# Executive Summary

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The Hon Bill Shorten MP, Minister for Employment and Workplace Relations' media statement of 24 July 2012 announced that the Federal Workers' Compensation Scheme was to be reviewed and modernised. The aim of the review is to modernise the federal workers' compensation scheme to ensure injured workers are given every opportunity to return to health, independence and work as quickly as possible after a workplace injury.

This Report covers issues announced as part of the review, relating to the Comcare scheme's:

- performance and ways to improve its operation; and
- financial and governance framework.

The Review found that the Comcare scheme is working satisfactorily. Recent deterioration in return to work and financial performance has led to premium increases - something that has been a feature of most other workers' compensation schemes in Australia in recent times. The recommendations included in this Report focus on identifying opportunities for improvement. Implementing these recommendations will assist the Comcare scheme in its efforts to improve overall performance and achieve best practice in workers' compensation arrangements in Australia.

The Report comprises four Chapters.

Chapter One provides an overview of the roles and responsibilities of the various parties involved in the Comcare scheme's operation.

Chapter Two examines the regulatory arrangements of the Safety, Rehabilitation and Compensation Commission (SRCC) and Comcare, and examines the challenges that exist with regulatory roles being shared by SRCC and Comcare. Recommendations are aimed at improving and strengthening the regulatory arrangements for the Comcare Scheme.

Chapter Two further discusses the role of the SRCC in monitoring the performance of determining authorities, including Comcare, under the Comcare scheme, and the challenges the SRCC faces in providing regulatory oversight of Comcare in particular. This is important as both the SRCC and Comcare share the scheme regulatory role and the SRCC relies on Comcare to carry out its regulatory functions. This Chapter also reviews the regulatory framework for licensees and compares it to the framework for Comcare as a determining authority for the premium paying scheme. The performance of the Comcare scheme is examined and the performance outcomes of the premium paying scheme are compared to that of the licensees. The effectiveness of Comcare's recovery and support services are also reviewed.

As a *Commonwealth Authorities and Companies Act 1997* (CAC Act) body, Comcare is unique as its functions centre on both service delivery and regulation, compared with the entrepreneurial or commercial activity typical of such bodies. Chapter Three reviews Comcare's governance structure and current status as a CAC Act body. The respective attributes of CAC Act and *Financial Management and Accountability Act 1997* (FMA Act) bodies are analysed and opportunities for improving Comcare's governance structure are identified.

Chapter Four discusses Comcare's financial arrangements. Comcare recently reported a considerable operating loss, which led to significant increases in the premiums payable by Australian Government agencies and the Australian Capital Territory (ACT) Government (the premium payers). This increase is intended to put Comcare in a better financial position to meet outstanding claims liabilities in coming years. In light of this, Chapter Four addresses Comcare's premium framework, including how premiums are determined and distributed across premium payers and when they are notified and required to pay. At present, premium payers report conflicts between the timing of the development and finalisation of Comcare's premiums and finalisation of their financial year budgets,

which presents a budgeting challenge for them. Similar issues are reportedly experienced by self-insured licensees in relation to the licensing fees paid to Comcare.

Finally, Chapter Four explores Comcare's prudential management arrangements for the premium-funded scheme. Unlike insurance companies operating in the private insurance sector who are subject to the requirements of the Australian Prudential Regulation Authority (ARPA), Comcare is not subject to the supervision of a specific regulatory body in this area and so it needs to establish its own prudential framework.

# Recommendations

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## **Recommendation 1**

That the Minister for Employment and Workplace Relations confer with the Minister for Veterans' Affairs to appoint the CEO of Comcare as an ex-officio member of the Military Rehabilitation and Compensation Commission (MRCC) or a non-ADF member of the Department of Defence, with responsibilities to liaise with Comcare.

## **Recommendation 2**

The Department of Employment and Workplace Relations (DEEWR) should provide administrative support to the Safety Rehabilitation and Compensation Commission (SRCC) to provide a separation of powers from the body (Comcare) that the SRCC is regulating.

## **Recommendation 3**

The SRCC should establish a more robust regulatory framework to monitor the claims management performance of Comcare as a determining authority, using relevant aspects of the arrangements currently in place for licensees.

## **Recommendation 4**

4(a): The Minister appoint a member other than from DEEWR to represent the Australian Government premium payers on the SRCC.

4(b): DEEWR continue to be an SRCC member in its capacity as the policy "owner" of the SRC Act.

## **Recommendation 5**

The SRCC should establish a consistent year-to-year approach to the methodology it uses for setting the licence fees for each tier status under the Licensee Improvement Program (LIP) and engage in an education campaign to explain this to the licensees.

## **Recommendation 6**

The *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) should be amended to allow the SRCC to grant group licences to companies of licenced self-insurers with more than one entity, subject to satisfying all prudential requirements, in order to reduce administrative costs for scheme participation.

## **Recommendation 7**

The moratorium and competition test should be lifted, allowing national employers to join the Comcare scheme.

### **Recommendation 8**

The SRCC should establish a process to satisfy itself that each applicant for self insurance under the SRC Act meets the criteria associated with determining that they are a national employer.

### **Recommendation 9**

The SRC Act be amended to allow the ACT Government and other SRC Act premium payers to apply and be approved as a determining authority, subject to meeting the same audit and performance reporting requirements for licensees under the Comcare Scheme.

### **Recommendation 10**

Comcare and the Department of Finance and Deregulation collaborate to develop the appropriate financial framework to support recommendation 9.

### **Recommendation 11**

Comcare review its position following the *Hardin* decision and consider implementing a revised policy that recognises Comcare's role in supporting premium payers' rehabilitation processes, in an administrative capacity.

### **Recommendation 12**

Further consideration be given to clarifying Comcare's role in rehabilitation under the SRC Act, as part of the Hanks Review.

### **Recommendation 13**

In order to improve rehabilitation and return to work outcomes for the premium payers, Comcare should deploy an audit program to selected premium payers against the requirements of the rehabilitation management systems tool, and work with them to improve their rehabilitation management systems to a comparable level of the licensees, and report progress to the SRCC.

### **Recommendation 14**

The SRCC should modify the LIP and tier model to provide a framework so that the level of regulatory contribution paid by premium payers is linked to their rehabilitation performance. This would provide a direct incentive for improvements to rehabilitation performance.

### **Recommendation 15**

That the Minister for Employment and Workplace Relations consult his State and Territory counterparts about establishing a National Rehabilitation framework for injured workers aimed at optimising the return to work opportunities of injured workers throughout Australia.

### **Recommendation 16**

As the claims manager for the premium paying side of the scheme, Comcare should continue to take steps to proactively manage its claims. As a priority, Comcare should continue to implement strategies to reduce the likelihood and severity of workplace injuries in Comcare and share their learning with other Commonwealth agencies in line with Comcare's Strategy 2015 objectives to "improve return to work practices by sharing best practice and case studies".

### **Recommendation 17**

Comcare review initial claims acceptance rates in order to determine the reasons for the increase in injury claims acceptance rates.

### **Recommendation 18**

18(a): Comcare should establish a reporting and monitoring framework that assesses performance improvements to measure the ongoing effectiveness of its claims management outcomes and report to SRCC.

18(b): Comcare should provide a comprehensive training program for its Claims Service Officers (CSOs) to arm them with the necessary skills and support tools for their roles.

### **Recommendation 19**

Comcare collaborate with premium payers to develop a shared understanding of the processes to be adopted and the outcomes to be achieved by the High Risk Claims Management initiative.

### **Recommendation 20**

Comcare expand its Clinical Panel resources to enable more timely treatment reviews of all current and new claims.

The Hanks Review should consider reviewing the medical treatment provisions of the SRC Act to provide a stronger emphasis on the provision of evidence based treatment.

### **Recommendation 21**

As part of the enhanced regulatory framework for Comcare proposed in this Report, Audit Committee reports should be made available to the SRCC.

### **Recommendation 22**

22(a): All the KPI results reported to the SRCC should be made available to premium payers through publication on Customer Information System (CIS). This should include a comparison of performance of the premium payer side of the scheme and the licensees to enable premium payers to compare their individual performance with broader Comcare scheme trends.

- 22(b): Comcare should consider implementing a process to auto-generate key reports for selected premium payers and provide these reports to nominated staff in order to ensure senior management awareness of performance trends.
- 22(c): Reports should be developed to monitor and report on performance against the SRCC endorsed Key Performance Indicators (KPIs) and targets at an individual premium payer level. The KPI results for each premium payer and licensee should be made available to them through the CIS, along with a comparison with the premium payer side of the scheme and licensees.
- 22(d): The individual KPI outcomes should be communicated with premium payers and Comcare should work with premium payers to develop and implement plans to improve performance on a case by case basis.

### **Recommendation 23**

- 23(a): In order to improve claims management outcomes for the premium payer side of the scheme, SRCC should, as part of its improved regulatory framework for Comcare, develop and implement a detailed and structured program to regularly audit and improve the claims management systems tool and claims management systems.
- 23(b): Comcare implement a follow up claims management systems audit conducted by an external firm with experience in conducting similar audits with licensees.

### **Recommendation 24**

Comcare commission an independent performance audit of its ongoing claims management, focussing on:

- aggravations of pre-existing conditions; and
- secondary medical conditions and the like.

This audit should contain an examination of better practice in this area.

Comcare should develop KPIs that monitor performance in the ongoing management of claims.

### **Recommendation 25**

Comcare commission an independent performance audit of its calculation of incapacity payments, in particular:

- initial calculations;
- calculations made under Section 20, 21, 21A; and
- supporting processes such as Section 8 determinations and notifications under Section 114B.

This audit should also contain an examination of better practice in this area.

### **Recommendation 26**

- Comcare be converted to an FMA Act agency to resolve the complexities and inconsistencies around Comcare as a CAC Act body, while allowing Comcare to retain as little or as much independence to conduct its business as the Government deems appropriate.
- As part of converting Comcare to an FMA Act agency, consideration be given to establishing an advisory board, made up of industry experts, for the purposes of advising and supporting the Chief Executive.

### **Recommendation 27**

- The Commonwealth Government's role in providing supplementary funding to Comcare when its liabilities exceed its assets should be clearly established;
- Comcare should work with DEEWR to finalise the prudential management strategy;
- Consideration should be given to amending the SRC Act to enable Comcare to recognise the full value of the premium fund assets in the CRF in its financial statements;
- Comcare should report a 75 per cent probability of sufficiency for its liability reserving basis in its financial reports; and
- The SRC Act should be amended to make it clear to what extent the Government is able to provide supplementary funding to the Comcare premium-funded scheme (over and above the provisions in Section 90C(3)) in the event of a catastrophe.

### **Recommendation 28**

Comcare should establish two separate funds (one for the Commonwealth and one for the ACT) in the interests of transparency and to enhance the incentives and price signals.

### **Recommendation 29**

Comcare conduct an information campaign to ensure premium paying agencies have a better understanding of the Premium Framework, especially the inputs into and the methodology used to calculate premiums and the distribution of premiums across agencies.

### **Recommendation 30**

In order to assist stakeholders with their budgeting processes, Comcare should develop an estimating tool for use by premium paying stakeholders throughout the financial year to help them understand their likely premium requirements for the upcoming financial year and also consider bringing forward the timing of the premium determination.

### **Recommendation 31**

Comcare to review its current methodology for determining the yearly licensing fees for licensees and engage in a communication campaign to better educate self-insured licensees on the methodology used.

**Recommendation 32**

Comcare to introduce the practice of notifying self-insured licensees no later than 31 January of the current financial year of the licensing fees to be paid to enable the organisation to budget appropriately for their workers' compensation expenses.

**Recommendation 33**

Comcare should seek to have the Minister for Finance and Deregulation reconsider the current notional interest rates applied to the CRF in an effort improve their ability to keep pace with the increasing costs of claims liabilities.

# Chapter 1 – Background to the Review

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## SAFETY, REHABILITATION AND COMPENSATION ACT REVIEW - TERMS OF REFERENCE

- 1.1 The Hon Bill Shorten MP, Minister for Employment and Workplace Relations, issued a media statement on 24 July 2012 announcing a review with the aim of modernising the federal workers' compensation scheme. This is to ensure injured workers are given every opportunity to return to health, independence and work as quickly as possible after a workplace injury, so that the compensation system does not create needless disability.
- 1.2 A copy of the Terms of Reference (ToR) for the review is at [Annex A](#).
- 1.3 The *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) provides rehabilitation and compensation support to injured Australian workers. The SRC Act also covers employees of a small number of private corporations who self-insure under the Comcare scheme, and employees of the Commonwealth and ACT Government.
- 1.4 The impact of workplace harm on workers and their families is significant. The Australian Government is committed to ensuring the SRC Act provides fair and appropriate workers' compensation arrangements for all workers covered by that legislation.
- 1.5 The Government believes that the Comcare scheme should be exemplary in its design as well as in its service delivery. To ensure that federal workers' compensation arrangements reflect contemporary social models and best practice, the review will take into account arrangements within Australia and overseas workers' compensation schemes.
- 1.6 Mr Peter Hanks QC was appointed to review the legislative provisions of the SRC Act, with a view to updating the legislation and operation of the scheme, including any legislative anomalies and updates that need to be addressed. Mr Hanks is expected to report to the Government in February 2013.
- 1.7 The Government tasked me to review the performance, governance and financial framework of the Comcare scheme and make recommendations on ways to improve the scheme's operation and, specifically, to report on the following matters:
  - an examination of the different outcomes achieved by private and public sector employers concerning the recovery and return to work of injured workers;
  - improved delivery of recovery and support services by Comcare;
  - the financial sustainability of the scheme;
  - a premium framework that improves and rewards scheme performance;
  - the governance arrangements for Comcare; and
  - ensuring the financial framework is consistent with contemporary prudential management practice.
- 1.8 Outcomes of this part of the review will be considered by Mr Hanks in his final report. The review will not consider any reduction in the existing benefits afforded to workers covered under the Comcare Scheme, but will seek to improve it further to achieve fair and equitable outcomes for injured workers with a strong focus on rehabilitation.

## SCOPE OF THE REPORT

- 1.9 This Report only covers aspects of the Comcare scheme's operations covered by the SRC Act. It focuses on an examination of the structural and governance arrangements, current regulatory arrangements and the prudential and financial structures that apply to the premium payers and licensees.
- 1.10 The Report therefore does not cover issues relating to the following:
- the regulation of work health and safety matters under the Commonwealth *Work Health and Safety Act, 2011* (WHS Act);
  - the Seacare scheme's governance arrangements; or
  - Comcare's oversight of the Commonwealth Government's asbestos liabilities.
- 1.11 Following consideration by the Council of Australian Governments, new Workplace Health and Safety laws were enacted by the Commonwealth Government on 1 January 2012. All the States and Territories except Victoria and Western Australia have passed similar legislation in their respective jurisdictions.
- 1.12 A separate review of the national compensation scheme for seafarers, announced by Minister Shorten on 16 October 2012, is being carried out by Mr Robin Stewart-Crompton. That review will also report to the Government in February 2013.
- 1.13 In September 2012, Minister Shorten announced the establishment of the Office of Asbestos Safety (OAS) in response to a recommendation of the Asbestos Management Review Report which was delivered in July 2012. The report contains 12 recommendations for a national strategic plan to improve asbestos awareness and management arrangements across all sectors of the Australian community. The report noted that asbestos issues are regulated by each level of government in Australia, and highlighted the need for a measure to improve coordination between government agencies. Initially, the primary function of the OAS will be to work with state, territory and local governments to develop a national strategic plan by 30 June 2013. This report does not seek to revisit or address any of the specific issues arising from the Asbestos Management Review.

## THE REVIEW PROCESS

- 1.14 This review of the Comcare scheme's performance, governance and financial framework was conducted in three phases:
- planning – the first phase consisted of research, data gathering and consultation with key stakeholders, including representatives from Australian Government agencies, unions and business that self-insure under the SRC Act, to identify major issues and to refine the scope of the review;
  - development – the second phase involved circulation of an exposure draft and discussion with some key stakeholders; and
  - finalisation – the final phase concentrated on refining this report and its associated recommendations.
- 1.15 Organisations and individuals invited for face-to-face consultations or via video or teleconference are listed at [Annex B](#).

## THE COMCARE SCHEME

- 1.16 Following enactment of the SRC Act, Comcare was established as a premium-funded workers' compensation and rehabilitation scheme from 1 July 1989 to provide coverage for all Commonwealth and Australian Capital Territory (ACT) Government employees. During the Second Reading Speech, the then Minister for Social Security, the Hon Brian Howe MP, emphasised the importance of ensuring the Comcare Scheme was funded through contributions from the various departments and authorities based on their claims record. The new scheme was also intended to focus on the rehabilitation of injured employees.<sup>1</sup>
- 1.17 The SRC Act was amended in 1992 to enable certain corporations to apply to have their workers' compensation arrangements covered by the Comcare scheme as a licensed authority. This was limited to Commonwealth authorities, former Commonwealth authorities and corporations that are in competition with a Commonwealth authority or former Commonwealth authority.
- 1.18 Since 2004, a number of private sector entities have sought and gained approval as licensees under the Comcare scheme. In order to gain coverage as a licensee, corporations must first be declared by the Minister for Employment and Workplace Relations as being eligible to apply for a licence.<sup>2</sup> Once declared as eligible, a corporation can apply to the Safety Rehabilitation and Compensation Commission (SRCC) for a self-insurer licence.<sup>3</sup>
- 1.19 Following the SRCC's decision to grant Optus a self-insurer licence, the Victorian Government challenged the constitutional validity of the self insurance provisions of the SRC Act in the Courts. In *Attorney General (Vic) v Andrews*,<sup>4</sup> the High Court affirmed the constitutional validity of the SRC provisions enabling large private corporations to seek and be granted self-insurance status under the Comcare scheme.
- 1.20 The Comcare scheme has thus evolved to support two categories of employers:
- premium payers; and
  - licensees.
- 1.21 The Comcare scheme's aim is to:
- prevent workplace harm to workers;
  - empower employers to work with their employees to maintain an injured employee at work or to achieve an early, safe and durable return to work;
  - give employers a duty to provide injured employees with suitable employment; and
  - provide injured employees with a statutory package of economic and non-economic benefits, such as:
    - a high standard of income support (until retirement age if necessary); and
    - medical assistance, household services, permanent impairment aids and appliances, and other benefits.

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<sup>1</sup> Hansard, Minister's Second Reading Speech – *Commonwealth Employees' Rehabilitation and Compensation Act, 1988*, 27 April 1988.

<sup>2</sup> Section 100, SRC Act.

<sup>3</sup> The application must contain those elements as set out in the Safety, Rehabilitation and Compensation Regulations 2002 (Part 4).

<sup>4</sup> *Attorney-General (Vic) v Andrews* [2007] HCA 9; (2007) 233 ALR 389; 81 ALJR 729 (21 March 2007).

- 1.22 The Comcare scheme provides all scheme employers (including licensees) with an integrated work health and safety, rehabilitation and compensation system, no matter what Australian State or Territory an employer operates in, or where its employees are located.
- 1.23 The Comcare scheme provides coverage to a broad range of industries, including banking and finance, building and construction, education, health services, law enforcement, postal services, public administration, telecommunications and transport.
- 1.24 Employees of Australian Government agencies and statutory authorities, and the ACT Government and its agencies are covered under the Comcare scheme. These employers (the premium payers) pay premiums to Comcare which reflect the cost of their claims.
- 1.25 The scheme also provides coverage for large private organisations which have been granted self-insurer status (the licensees) thereby enabling them to manage their own claims (either directly or through contracted third party claims administrators).
- 1.26 Some 57 per cent of all employees covered under the Comcare scheme are employed by the premium payers, with the remainder belonging to the licensees.<sup>5</sup>
- 1.27 The SRC Act also applies to Australian Defence Force (ADF) members who were injured before 1 July 2004, but these claims are managed by the Department of Veterans' Affairs (DVA), not Comcare. From 1 July 2004, ADF members are covered by the *Military Rehabilitation and Compensation Act 2004* (MRCA).

## MORATORIUM ON GRANTING SELF INSURANCE LICENCES

- 1.28 In the lead up to the 2007 federal election, the Australian Labor Party foreshadowed introduction of a moratorium on the future granting of licences to corporations seeking to self-insure until the Comcare scheme arrangements were reviewed. The moratorium was proposed in recognition of concerns raised by the States and Territories about the financial impacts to their schemes as a result of large private corporations moving to Comcare.
- 1.29 Following the election, the then Minister for Education, Employment and Workplace Relations, the Hon Julia Gillard MP, announced on 11 December 2007 a moratorium on new applications from private corporations wanting to move to the Comcare scheme. Companies that had already been declared eligible to apply for a self-insurance licence were not affected by the moratorium.
- 1.30 On 23 January 2008, the Hon Julia Gillard MP announced the terms of reference for a review of the self insurance arrangements under the Comcare scheme.
- 1.31 The report of that Comcare review, which was released on 25 September 2009, noted that it was “...unable to find convincing evidence that self-insurance licensing should no longer be offered by the scheme.” As such, the review recommended retaining the current statutory “in competition” criterion as the precondition for a corporation gaining “eligible corporation” status essential for licensing.<sup>6</sup>
- 1.32 In releasing the review report, the then Deputy Prime Minister, the Hon Julia Gillard MP, announced that the Government would maintain the moratorium on the Comcare scheme until 2011 when uniform occupational health and safety (OHS) laws were to be implemented in all jurisdictions. The basis for this decision was the process being undertaken to harmonise national OHS laws and the proposed transfer of OHS coverage for Comcare self-insurers to

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<sup>5</sup> 2011-2012 Comcare Annual Report.

<sup>6</sup> Report of the Review of Self-insurance arrangements under the Comcare Scheme.

the states and territories.<sup>7</sup> The moratorium was supported by a legislative amendment to Section 100 of the SRC Act to provide explicitly that the Minister is not obliged to consider applications for declarations under that section.

- 1.33 The Workplace Relations Ministers' Council at its 10 August 2011 meeting agreed to transfer OHS coverage of all non-Commonwealth licensees to the States and Territories on 1 January 2013 on the assumption that the model laws would be implemented in all jurisdictions.
- 1.34 The Australian Government's position in regard to the transfer of OHS jurisdiction of licensees to the states and territories has always been predicated on OHS harmonisation being achieved, but has never been tied to OHS harmonisation by a particular date.
- 1.35 On 15 November 2012, the Hon Bill Shorten MP, Minister for Employment and Workplace Relations, wrote to members of the Select Council on Workplace Relations to reaffirm the decision that the transfer of licensees was contingent on all jurisdictions implementing model work health and safety laws. Minister Shorten also advised Select Council members that the transfer of OHS coverage of the licensees to State and Territory jurisdictions would be addressed after the last jurisdiction has implemented the harmonised legislation.
- 1.36 AaE Retail Pty Ltd, a new company arising out of the restructuring of an existing licensee (the AaE Group), was approved on 19 January 2011 to seek a self-insurance licence. As the Comcare scheme does not currently provide for group licences, a separate licence was needed so that the relevant employees could retain their existing coverage under the SRC Act. The Minister issued a declaration on 18 May 2011 and a self insurance licence was granted by the SRCC on 15 June 2011.
- 1.37 Other than the AaE Retail Pty Ltd licence, no other organisations have been declared eligible for self insurance under the Comcare scheme since the 11 December 2007 moratorium.

## ROLE OF THE SAFETY, REHABILITATION AND COMPENSATION COMMISSION (SRCC)

- 1.38 The SRCC, a statutory body established under Section 89A of the SRC Act, has regulatory functions in relation to Comcare and other authorities which determine workers' compensation claims under the Commonwealth scheme (determining authorities).
- 1.39 The SRCC had regulatory functions under the previous *Occupational Health and Safety Act 1991* (OHS Act), but it does not have any such functions under the Commonwealth's WHS Act which came into force on 1 January 2012. Under the Commonwealth WHS Act, the SRCC's functions are to provide a consultative forum between Comcare and the jurisdiction for the Commonwealth WHS Act and to advise and make recommendations to the Minister.
- 1.40 The SRCC's major functions under the SRC Act are to:
  - provide advice to the Minister in relation to the SRC Act;
  - determine applications from Commonwealth authorities and eligible corporations wishing to self-insure under the SRC Act;
  - develop general policy directions for scheme administrators on the SRC Act's operation;

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<sup>7</sup> Media release "Improvements to the Comcare scheme announced"  
<http://ministers.deewr.gov.au/gillard/improvements-comcare-scheme-announced>

- ensure, as far as practicable, equity of outcomes resulting from administrative practices and procedures used by scheme administrators; and
  - act as a review body for premiums and regulatory contributions.
- 1.41 The SRCC is a tripartite body, members being appointed by the Governor-General. It currently relies on Comcare to provide all secretariat and other necessary support and assistance in order to perform its functions. SRCC Membership comprises the following:
- a Chairperson;
  - three members nominated by the Australian Council of Trade Unions;
  - a member who, in the Minister’s opinion, represents the licensees;
  - a member who, in the Minister’s opinion, represents the Commonwealth, and Commonwealth authorities other than licensed authorities;
  - the Chief Executive Officer of Safe Work Australia;
  - a member who, in the Minister’s opinion, represents the interests of members and former members of the Australian Defence Force (ADF);
  - a member who has been nominated by the Chief Minister for the Australian Capital Territory and who, in the Minister’s opinion, represents the interests of the Australian Capital Territory’s public sector employers; and
  - two members with qualifications or experience relevant to the SRCC’s functions, or the exercise of its powers.
- 1.42 The SRCC is responsible for approving licences and monitoring licensees. Licences are granted only after the SRCC is satisfied that the corporation meets all the necessary requirements. To this end, the SRCC has issued Guidelines for the evaluation of licence applications.<sup>8</sup>

## COMCARE’S ROLE

- 1.43 Comcare has both WHS and workers’ compensation regulatory functions. As well as being the claims administrator for the premium-funded scheme, it shares the regulatory functions of the Comcare scheme with the SRCC and supports the SRCC in exercising its functions under the SRC Act.<sup>9</sup> Section 69 of the SRC Act sets out Comcare’s functions as:
- (a) *to make determinations accurately and quickly in relation to claims and requests made to Comcare under this Act;*
  - (b) *to minimise the duration and severity of injuries to its employees and employees of exempt authorities by arranging quickly for the rehabilitation of those employees under this Act;*
  - (c) *to co-operate with other bodies or persons with the aim of reducing the incidence of injury to employees;*

<sup>8</sup> [http://www.srcc.gov.au/\\_\\_data/assets/pdf\\_file/0003/37173/Guidelines\\_License\\_application\\_evaluation\\_Pub\\_39\\_Jan2006.pdf](http://www.srcc.gov.au/__data/assets/pdf_file/0003/37173/Guidelines_License_application_evaluation_Pub_39_Jan2006.pdf)

<sup>9</sup> While the SRCC and Comcare each have regulatory roles, most of the regulatory functions in relation to workers’ compensation lie with the SRCC.

- (d) *to conduct and promote research into the rehabilitation of employees and the incidence and prevention of injury to employees;*
- (da) *to promote the adoption in Australia and elsewhere of effective strategies and procedures for the rehabilitation of injured workers;*
- (e) *to publish material relating to any of the functions referred to in paragraphs (a), (c) and (d) and relating to the rehabilitation of employees under this Act;*
- (ea) *in respect of actions for non-economic loss—to take over the conduct of such actions under section 52A on behalf of the Commonwealth, Commonwealth authorities or employees against whom such actions were taken;*
- (eb) *to determine the premiums payable by Entities and Commonwealth authorities in respect of the financial year starting on 1 July 2002 and each subsequent financial year and, where appropriate, the special premiums payable by Entities and Commonwealth authorities in respect of one or more of the financial years starting on 1 July 1999, 1 July 2000 or 1 July 2001, and to collect such premiums and special premiums;*
- (ec) *to apply such premiums and special premiums, together with interest earned on those premiums, in meeting:*
  - (i) *Comcare’s liability under this Act in relation to compensation in respect of injuries suffered, whether before, on or after 1 July 2002, by employees of such Entities and authorities; and*
  - (ii) *Comcare’s liability under this Act for payment, on behalf of such Entities, authorities and employees, of damages or costs awarded under, or of amounts agreed to be paid in settlement of, actions for non-economic loss in respect of such injuries or for costs in proceedings against third parties; and*
  - (iii) *the cost incurred by Comcare in managing such claims for compensation and in conducting such actions for non-economic loss and claims against third parties;*
- (ed) *to determine, under section 97D, the amount of the regulatory contributions payable by Entities, and by Commonwealth authorities, and to collect such contributions;*
- (ee) *to collect application and licence fees payable under Part VIII by Commonwealth authorities and eligible corporations;*
- (ef) *to apply such regulatory contributions and application and licence fees, together with interest earned on those contributions and fees, in meeting:*
  - (i) *the cost incurred by the Commission and Comcare in carrying out their respective functions under this Act (other than the function referred to in paragraph (ec)); and*
  - (ii) *the cost incurred by the Commission and Comcare in carrying out their respective functions under the Occupational Health and Safety Act 1991, the Work Health and Safety Act 2011 and the Work Health and Safety (Transitional and Consequential Provisions) Act 2011.*
- (f) *to maintain contact with each rehabilitation authority to the extent necessary to ensure that, in performing or exercising its functions or powers under Part III, the authority is complying with any guidelines issued under section 41;*
- (fa) *to advise the Minister about anything relating to Comcare’s functions and powers;*
- (fb) *such other functions as are conferred on Comcare by the regulations;*

(g) such other functions as are conferred on Comcare by any other Act.

- 1.44 Commencement of the Commonwealth WHS Act means that Comcare is now the sole regulator of work health and safety in the Comcare scheme.
- 1.45 Comcare also manages the Commonwealth's asbestos-related claims liabilities under the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005*.
- 1.46 Comcare is a *Commonwealth Authorities and Companies Act 1997* (CAC Act) body, the Chief Executive Officer being the sole director of Comcare for CAC Act purposes.
- 1.47 Generally, each CAC Act body is:
- a statutory authority (a Commonwealth authority), or a company controlled by the Commonwealth (a Commonwealth company);
  - established for a public purpose that holds money on its own account;
  - in most cases, governed by a board of directors;
  - legally financially separate from the Commonwealth; and
  - subject to a range of directors' duties.
- 1.48 Comcare employs its staff under the *Public Service Act 1999*, is a material entity (comprising 99 per cent of revenues, expenses, assets and liabilities), and is one of three Commonwealth authorities that has a single director at its apex, rather than a multi-member board.<sup>10</sup>
- 1.49 Comcare's 2010-2015 Strategic Plan focuses on three main inter-related outcomes:
- keeping workers healthy and safe at work (healthy at work, safe at work);
  - supporting workers when they are injured (back at work); and
  - ensuring a sustainable and high performing Comcare (scheme at work).
- 1.50 In seeking to achieve these objectives, Comcare focuses on three key themes:
- innovation – providing new services and support for workers;
  - collaboration – initiatives partnering with stakeholders, business and governments; and
  - impact – improved, efficient business practices, capacity and capability to deliver better services.

## DEPARTMENT OF VETERANS' AFFAIRS (DVA)

- 1.51 As noted above, the DVA manages claims made under the SRC Act by ADF members for work related injuries sustained up to 30 June 2004.
- 1.52 Claims for injuries suffered by members of the ADF from 1 July 2004 are covered by the *Military Rehabilitation and Compensation Act 2004* (MRCA).
- 1.53 The Military Rehabilitation and Compensation Commission (MRCC) is responsible for claims relating to ADF members, managed by the DVA under both the SRC Act and MRCA.

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<sup>10</sup> Flipchart of FMA Act Agencies / CAC Act Bodies  
<http://www.finance.gov.au/publications/flipchart/index.html>

- 1.54 The cost of SRC Act claims managed by DVA on behalf of the MRCC is not part of the Comcare premium scheme's liability. Section 160 of the SRC Act provides for Consolidated Revenue Fund (CRF) appropriations "... for the purposes of paying compensation and other amounts payable in relation to defence service under this Act". DVA maintains a liability provision in respect of the future SRC Act claims it manages. This liability is reassessed each year by the Australian Government Actuary and DVA makes an annual adjustment to the liability provision based on the actuarial report.
- 1.55 The SRC Act states that as part of its functions relating to the management of defence-related claims, the MRCC is to maintain contact with the SRCC "... and with Comcare to ensure that as far as practicable, there is equity of outcomes resulting from administrative practices and procedures used by Comcare and the MRCC in the performance of their respective functions".<sup>11</sup>
- 1.56 Section 89E(1) was amended by the Work Health and Safety (Transitional and Consequential Provisions) Act 2011 which meant that from 1 January 2012 the CEO of Comcare was no longer a member of the SRCC.
- 1.57 Removal of the CEO of Comcare as a member of the SRCC was made at the suggestion of the current Comcare CEO in order to improve the governance arrangements of the SRCC and Comcare. Specifically, the CEO had noted that as a member of the SRCC he was in the difficult position of being responsible for consultation and oversight of his statutory functions as the sole Director of Comcare.
- 1.58 Removal of the CEO of Comcare as a member of the SRCC has had the unintended consequence of also making the CEO of Comcare ineligible to be a member of the MRCC. This has created a gap in access to Comcare and whole-of-government perspectives of workers' compensation and WHS matters for the MRCC. The MRCC have indicated that Comcare's participation in MRCC would be beneficial.
- 1.59 The Government response to the Review of Military Compensation Arrangements, which was delivered in May 2012, accepted that review's recommendation (18.4); that "*The Government consider expanding the membership of the MRCC by including a second member nominated by the Minister for Defence from the Department of Defence or the ADF*"<sup>12</sup> with the specific aim of improving information sharing between DVA and Defence. This has not yet occurred, and the appointment of a non-ADF member of the Department of Defence could provide an alternative option (with clear responsibilities) to inform the MRCC of whole-of-government perspectives on workers' compensation and WHS matters.

#### **Recommendation 1**

That the Minister for Employment and Workplace Relations confer with the Minister for Veterans' Affairs to appoint the CEO of Comcare as an ex-officio member of the MRCC or a non-ADF member of the Department of Defence, with responsibilities to liaise with Comcare.

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<sup>11</sup> Section 142 of the SRC Act.

<sup>12</sup> Government Response to the Review of Military Compensation Arrangements, May 2012.

## EMPLOYERS

1.60 Three broad groups of employers are covered under the Comcare scheme:

- the Australian Government;
- the ACT Government; and
- licensees.

## AUSTRALIAN GOVERNMENT

1.61 The premium system for Australian Government employers was introduced with effect from 1 July 1989 as a fully funded scheme, such that the premium charged to each Australian Government employer takes account of the future liabilities associated with claims incurred during the injury year covered by the premium. The premium charged covers:

- all benefit payments, e.g., incapacity, medical and travel expenses;
- the cost of rehabilitation undertaken by approved service providers; and
- legal and administrative costs associated with running the scheme.

1.62 The premium for each Australian Government employer is experience-rated, that is, it responds to trends in an employer's claims performance, as well as trends across the whole premium system. This is meant to act as a direct financial incentive to Australian Government employers to reduce their workers' compensation costs by implementing effective work health and safety and return to work measures.

1.63 To reduce the premiums payable by them, employers can invest in work health and safety systems to reduce the incidence and likelihood of injury. As the rehabilitation authority under the SRC Act, employers have a range of obligations to rehabilitate injured employees. Employers are obliged to actively and systematically manage the rehabilitation and return to work process for an employee injured at work. Each year, Comcare publishes a "Guide to Premiums" to assist premium payers in understanding how their premiums are calculated.<sup>13</sup>

## ACT GOVERNMENT

1.64 Arrangements for the ACT Government and its agencies are the same as those for Australian Government employers, the only difference being that their premiums are calculated separately from the Australian Government employers.

1.65 In this context, there are two premium-funded pools managed by Comcare – one for the Australian Government employers and the other for the ACT Government – but the governance and claims arrangements for both schemes are the same.

## LICENSED SELF INSURERS

1.66 Licensed self insurers (licensees) are large national employers who have been granted a self-insurer licence under the SRC Act to manage their own claims.

1.67 The SRCC has the power under Sections 104 and 105 of the SRC Act to grant, extend and/or deny an application for self insurance. In order to be granted and to retain a self-insurer

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<sup>13</sup> See for example, *Comcare Premiums, Your Guide to 2012 – 13*, Comcare publication, PUB26, June 2012.

licence, employers have to meet prudential requirements aimed at ensuring appropriate funding is in place to meet their workers' compensation claims cost liabilities.

- 1.68 The SRCC and Comcare share the regulatory functions relating to the oversight and monitoring of self insurer performance. A joint SRCC/Comcare "Licensee Handbook"<sup>14</sup> provides guidance to licensees on licence requirements.
- 1.69 Licensees are regulated via the Licensee Improvement Program (LIP), the overall objective of which is to provide a framework that:
- links the level of regulatory oversight to performance;
  - is easy to understand and administer; and
  - focuses on a holistic approach to performance evaluation.
- 1.70 Licensees' self insurance conditions require compliance with the SRC Act and the Commonwealth WHS Act relating to occupational health and safety matters. Licensees are subject to audits, OHS investigations and other evaluations and must meet financial, prudential, and performance reporting requirements as part of their licence conditions.
- 1.71 The performance standards of a self insurance licence require licensees to develop and implement effective management systems for prevention, rehabilitation and claims management, and to work towards the attainment of outcome-based performance goals.
- 1.72 The SRCC receives reports on licensee performance against Determining Authority Key Performance Indicator (DAKPI) specifications and associated performance targets. The indicators cover prevention, rehabilitation, claims management and scheme administration.
- 1.73 The prudential conditions require a licensee to obtain on a yearly basis:
- an actuarial assessment of current and projected outstanding workers' compensation liabilities;
  - a bank guarantee based on the 95th percentile of their outstanding workers' compensation liabilities, subject to a minimum of \$2.5 million;
  - a reinsurance policy for a single claim with a reinsurance retention amount as approved by the SRCC; and
  - certification by the principal officer of the licensee that the actuarial assessment has been made in accordance with the licence conditions, provision has been made in the accounts for meeting the estimated liabilities and the licensee has the capacity to meet any single claim up to the reinsurance retention amount.

## EMPLOYEES

- 1.74 The Comcare scheme provides coverage to all employees of employers who are either insured by the Comcare scheme through the premium-payer side of the scheme or who have been granted a self-insurer licence.
- 1.75 It is a "no fault" scheme and the following benefits are available to injured workers, subject to legislative requirements:
- incapacity payments;

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<sup>14</sup> Published January 2012, and available at [http://www.srcc.gov.au/publications/guidance\\_for\\_employers](http://www.srcc.gov.au/publications/guidance_for_employers)

- medical expenses;
  - a permanent impairment lump sum;
  - household and attendant care services; and
  - aids and appliances.
- 1.76 The SRC Act also focuses on ensuring rehabilitation support is provided to injured workers to assist their recovery and return to work following a work-related injury. Employers of injured workers have obligations to facilitate this support.
- 1.77 In the context of this Review, it is worth drawing attention to the Australian Law Reform Commission’s (ALRC) “Age Barriers to Work” inquiry. This inquiry was initiated as part of the Australian Government’s response to population ageing. The ALRC has been asked to consider Commonwealth legislation and related legal frameworks that either directly, or indirectly, impose limitations or barriers that could discourage older persons from participating, or continuing to participate, in the workforce or other productive work.
- 1.78 The ALRC released a Discussion Paper for its inquiry into legal barriers to older persons participating in the workforce and other productive work—*Grey Areas: Age Barriers to Work in Commonwealth Laws* (ALRC DP 78, 2012) on 2 October 2012. The ALRC’s views as expressed in its Discussion Paper have been drawn to my attention. The issues canvassed in that Discussion Paper are however outside the scope of this part of the review. Legislative changes to the SRC Act that address this issue will be considered by Mr Hanks.

## INTERNATIONAL COMPARISONS

- 1.79 Workers’ compensation arrangements in Australia are quite different to arrangements in most other countries in the developed world. In countries such as the United Kingdom, workers’ compensation arrangements are heavily integrated into the national social security system. New Zealand operates a national accident compensation scheme and compensates all accidents in the same way regardless of their origin. It does, however, maintain a separate fund for workplace accident compensation claims as part of this arrangement with employers paying levies.
- 1.80 Only three countries, Australia, Canada and the United States, have workers’ compensation arrangements being managed at a sub-national level, with the Canadian arrangements most closely resembling those of Australia.
- 1.81 While workplace health and safety arrangements are controlled at a federal level in the USA, workers’ compensation arrangements are controlled by the various States. In Canada, as in Australia, both workplace health and safety arrangements and workers compensation are controlled by the respective states, and concurrently at a federal level.
- 1.82 Although a Federal Act provides cover for federal employees, there is no federal workers’ compensation scheme in Canada comparable to the Comcare scheme. Instead, the Canadian Government relies on State workers’ compensation boards and commissions to process their employees’ claims and provide compensation for services such as medical and rehabilitation and loss of earnings. The Canadian Government then reimburses the states for related costs. Federal Government employees therefore receive the same level of compensation and benefits as other employees in the state where they work.
- 1.83 Various governance models are employed by the various states in both the United States and Canada. These include:
- government-run premium schemes with no provision for self insurance;

- government-run premium schemes with limited opportunities for self insurance; or
  - fully privatised insurance arrangements, with or without self insurance;
- 1.84 The governance arrangements in British Columbia are the most similar to the Comcare scheme arrangements.

### **British Columbia**

- 1.85 The Workers' Compensation Board of British Columbia (WorkSafeBC) is an independent statutory body established by the Government of British Columbia and is responsible for administering the Workers' Compensation Act (WCA). WorkSafeBC is governed by an independent Board of Directors.
- 1.86 In administering the WCA, WorkSafeBC remains separate and distinct from government; however, it is accountable to the public through the government, which is responsible for protecting and maintaining the overall well-being of the workers' compensation system.
- 1.87 WorkSafeBC has legislated responsibility for:
- establishing and enforcing occupational health and safety standards;
  - compensating and rehabilitating injured, ill, and disabled workers, or providing benefits to their dependants; and
  - assessing and collecting employer premiums to support and administer the workers' compensation system.
- 1.88 WorkSafeBC assesses and collects employer premiums and invests those funds to cover current and future costs of compensation benefits as well as the costs of administering the workers' compensation system.
- 1.89 The WorkSafeBC Board of Directors responsibilities include to:
- set and revise, as necessary, the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;
  - set and supervise the direction of WorkSafeBC;
  - select the president of WorkSafeBC and determine the president's functions;
  - approve the operating and capital budgets of WorkSafeBC;
  - establish policies and accounting systems to ensure adequate funding of the Accident Fund;
  - approve major programs and expenditures of WorkSafeBC;
  - approve the investment of WorkSafeBC funds in accordance with the requirements imposed under the Act;
  - plan for the future of WorkSafeBC;
  - enact bylaws and pass resolutions for the conduct of WorkSafeBC's business and the functions of the Board of Directors, including enacting bylaws regarding the manner in which the policies of the Board of Directors are to be published; and
  - on or before March 31 of each year, provide the Minister of Labour with a service plan that addresses the three-year period starting on January 1 of that year and achieves the following:
    - sets out WorkSafeBC's priorities;

- identifies specific objectives and performance measures for WorkSafeBC;
- provides a fiscal forecast for WorkSafeBC, including a statement of all material assumptions and policy decisions underlying the forecast;
- compares actual results of the previous year with the expected results identified in the previous year's service plan; and
- presents other information WorkSafeBC considers appropriate.

## **Sweden**

- 1.90 A compulsory workers' compensation system exists in Sweden as part of the national social insurance system. This broader system provides comprehensive social security benefits including sickness and parental insurance, pension insurance, child allowance, maintenance advances and housing allowances and work injury insurance.
- 1.91 All employees are covered by the system, including those undergoing training or education, if the injury or disease is as a result of the training or education. All employers are part of the scheme and self insurance is not permitted.
- 1.92 The national insurance system is governed by a National Social Insurance Board, an independent government body. The National Social Insurance Board is led by a Committee comprising the Director General and other Board members appointed by Government. Regional Social Insurance Offices across the country are responsible for administration of the scheme and service delivery.
- 1.93 The National Social Insurance Board is answerable to Government in the development and implementation of policies and programs in line with the Government's objectives.

# Chapter 2: The Comcare Scheme's Performance and Ways to Improve its Operation

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- 2.1 This Chapter reviews the regulatory roles played by the SRCC and Comcare and the challenges that a shared regulatory role poses for the Comcare scheme. Consultations indicate some confusion about current arrangements, which require further clarification to ensure more effective regulation of the Comcare scheme.
- 2.2 The SRCC's role in monitoring the performance of determining authorities, including Comcare, and the challenges in providing regulatory oversight of Comcare as a determining authority are discussed. This is particularly important because the SRCC and Comcare share the Comcare scheme regulatory role. The regulatory framework for the licensees is reviewed and compared to what applies to Comcare as a determining authority for the premium-payer side of the scheme.
- 2.3 The overall performance of the Comcare scheme is also examined as well as a comparison between the performance outcomes of the premium-paying scheme and the licensees. Opportunities for improvement are identified and recent efforts by Comcare to improve its service delivery, including its claims management governance framework are reviewed.

## COMCARE SCHEME PERFORMANCE

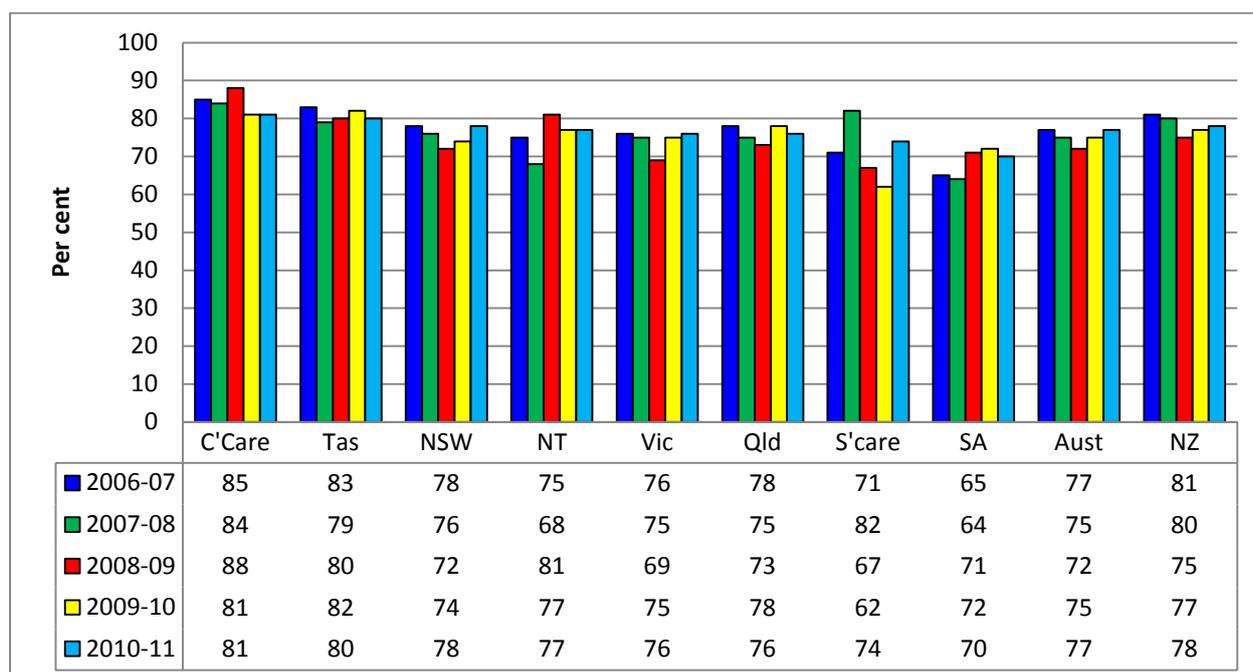
### HISTORY OF SCHEME PERFORMANCE

- 2.4 Historically, the Comcare scheme has performed comparatively well compared to other state and territory workers' compensation schemes, particularly when considering the outcomes for injured employees, and in terms of the total cost of the scheme.
- 2.5 The recent Comparative Performance Report on work health and safety and workers' compensation schemes in Australia and New Zealand<sup>15</sup> shows that the Comcare scheme has had one of the highest durable Return to Work (RTW) rates when compared with other jurisdictions. Since 2005-06, the Comcare scheme has consistently had one of the highest RTW rates of all jurisdictions across Australia, as shown in Figure 2.1.
- 2.6 The average Comcare premium (for Australian Government agencies) was also one of the lowest across all Australian jurisdictions as shown in Figure 2.2.

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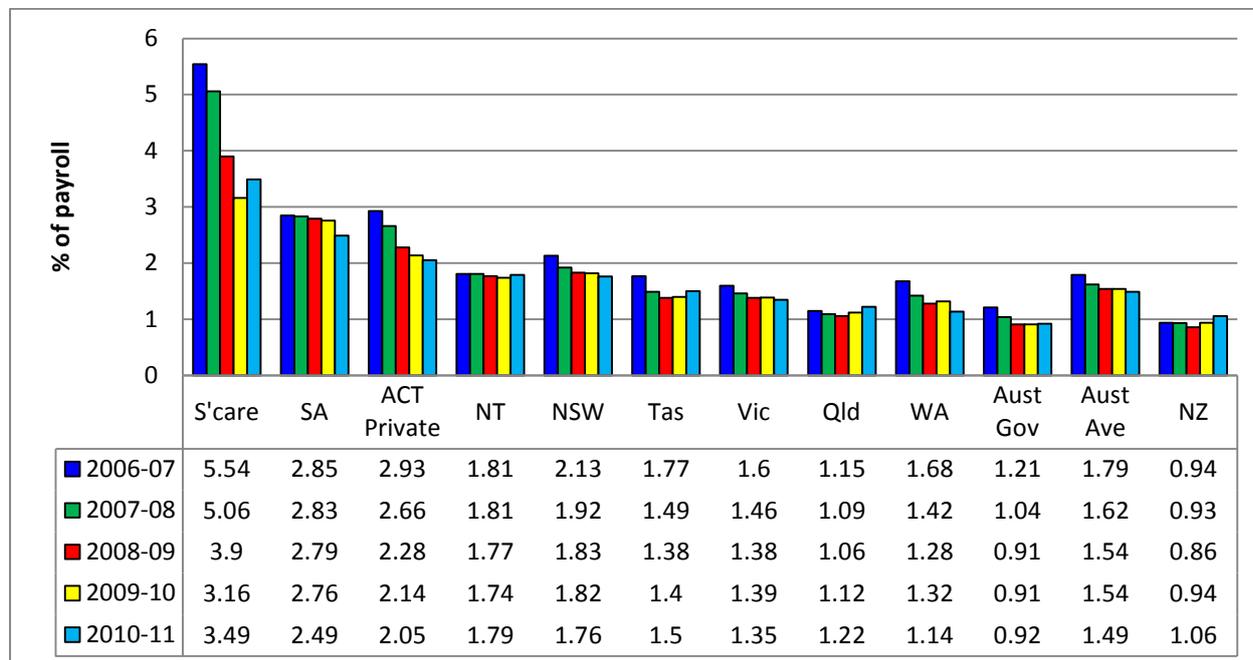
<sup>15</sup> Safe Work Australia *Comparative Performance Monitoring Report, 14th Edition*: October 2012.

**Figure 2.1: Durable Return to Work**



Source: Safe Work Australia *Comparative Performance Monitoring Report 14th Edition* October 2012  
 Note: C'Care refers to the Comcare Scheme, S'Care refers to the Seacare Scheme.

**Figure 2.2: Standardised Average Premium Rates (including insured and self-insured)**



Source: Safe Work Australia *Comparative Performance Monitoring Report 14th Edition* October 2012  
 Note: Comcare Scheme premiums (excl. ACT Government) are referred to in this figure as Aust Gov.

2.7 Despite this, the recent deterioration in return to work performance for the premium-payer side of the scheme has led in part to significant premium increases.

## SCHEME REGULATION OVERVIEW

- 2.8 Regulatory oversight of all determining authorities under the SRC Act lies with the SRCC. Under Section 89B of the SRC Act, the SRCC's functions are to ensure that, as far as practicable, equity of outcomes resulting from administrative practices and procedures used by Comcare and licensees in the performance of their respective functions. In practice, because the SRCC has no staff, it has delegated duties to Comcare in relation to its regulatory functions under the SRC Act. [Annex C](#) provides a summary of the SRCC's responsibilities under the SRC Act and WHS Act and how it exercises those functions.
- 2.9 A "determining authority" under the Comcare scheme is the body or organisation which, under the provisions of the SRC Act, has the delegation to make claim determinations. There are different determining authorities under the SRC Act:
- Comcare is the determining authority for all claims managed under the premium-funded scheme (all Commonwealth agencies and the ACT Government);
  - all licensees are determining authorities in relation to claims lodged by their employees; and
  - DVA is the determining authority with respect to the ADF member claims it manages under the SRC Act on behalf of the MRCC.
- 2.10 Licensees are the determining authorities for claims made by their employees. Some licensees manage their claims in-house while others outsource this function to a third party (typically an insurer with workers' compensation claims management experience) who manages claims on their behalf. In either of these arrangements, the licensed insurers exercise a much greater level of control over the determination-making process when compared with employers in the premium-funded scheme.
- 2.11 The SRCC's relationship with the various determining bodies under the SRC Act also differs. While licensees are "at arm's length" from the SRCC, the same cannot be said for Comcare. Not only is Comcare a determining authority under the scheme, it also shares the scheme regulatory functions with the SRCC. Moreover, the SRCC relies on Comcare to provide secretariat support to the SRCC in the performance of its functions, including briefing and advice on matters to be considered.
- 2.12 As noted in Chapter One, the SRC Act regulatory powers for the Comcare Scheme are shared by the SRCC and Comcare. In practice, most of the regulatory functions relating to workers' compensation rest with the SRCC.
- 2.13 Section 73A of the SRC Act gives the SRCC the power to issue written general policy guidelines to Comcare and licensed insurers in relation to the SRC Act's operation. Comcare and the licensed insurers are obliged to comply with these guidelines.
- 2.14 While the SRCC has regulatory functions under the SRC Act, it relies on Comcare to provide the necessary advice and support to discharge its functions. Comcare is responsible for preparing papers and providing the information necessary for the SRCC's decision making at its meetings. This reliance on Comcare raises a potential, if not real, conflict of interest for the SRCC in managing its relationship with the body which it is also regulating. Indeed, some commentators argued that the SRCC faced a danger of being seen as simply a "rubber-stamp" for Comcare.
- 2.15 This perceived lack of independence was noted by some premium payers who felt that the SRCC's regulation of Comcare could be improved. They pointed to instances where they felt

that the SRCC was too reliant on Comcare and was not able to demonstrate appropriate independence of decisions in its role as the regulator.

- 2.16 An example of this potential partiality is any instance in which a premium payer wishes to challenge their premium calculations as determined by Comcare. In the first instance, the premium payer is required to apply to Comcare for a review. Following Comcare's review, if the premium payer is still dissatisfied, it can then ask the SRCC for a further review pursuant to Section 97K of the SRC Act. In undertaking such a review, however, the SRCC would rely on the expertise, resources and advice of Comcare which was the original decision-maker. Such an approach would not provide the SRCC with clear independence to perform its regulatory functions effectively. It is important to note, however, that no premium payer has ever requested a review under Section 97K of the SRC Act.
- 2.17 Since the SRCC does not have its own staff, relying on Comcare's support, some stakeholders questioned whether the SRCC was carrying out its functions as originally intended. Specifically, there is a perception that the SRCC has become a way to formalise decisions being made at the scheme's operational level by Comcare; and that Comcare is in effect the main regulator of the scheme. The lack of practical separation between the SRCC and Comcare highlights the problematic situation given Comcare's determining authority role.
- 2.18 The role (and composition) of the SRCC has been the subject of consideration in previous reviews. This has included consideration of the SRCC's independence. In 2004 the Productivity Commission recommended that *"... the current regulatory framework for the oversight of the Australian Government's workers' compensation schemes and occupational health and safety regimes be strengthened by progressively developing the Safety, Rehabilitation, and Compensation Commission as a stand-alone regulator. The SRC Commission to:*
- *be controlled by a board of independent directors appointed for a fixed term on the basis of their expertise and skills;*
  - *have a full time director appointed as a chairperson; and*
  - *be provided with its own staff and funding."*<sup>16</sup>
- 2.19 This recommendation by the Productivity Commission was made in the context of proposals for establishing a national workers' compensation scheme under the Comcare scheme. While a number of private companies have now been granted self insurance licences since then, the recommendation above has not been implemented.
- 2.20 The SRCC's reliance on Comcare for material support does not provide an adequate separation of powers from an organisation that the SRCC is required to regulate. Current arrangements where both the SRCC and Comcare share regulatory functions under the SRC Act can lead to confusion, if not the potential to affect scheme performance. A more robust regulatory framework could mitigate this, and three options are considered below.

#### **Option 1**

- 2.21 One option would be to make the SRCC sole regulator of the Comcare scheme. All regulatory functions under the SRC Act would reside with the SRCC providing it with greater independence in performing its regulatory functions. Subject to appropriate resourcing, this would provide greater clarity for stakeholders and enable the SRCC to increase its regulatory oversight of Comcare as a determining authority. An example of this arrangement can be

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<sup>16</sup> Productivity Commission Inquiry Report No.27, 6 March 2004; National Workers Compensation and Occupational Health and Safety Frameworks.

found in the Queensland workers' compensation scheme where the scheme regulator, Q-COMP, is completely separate from the claims managers in the scheme. Q-COMP's regulatory functions include:

- monitoring insurers' compliance with the Queensland *Worker's Compensation and Rehabilitation Act 2003*;
- monitoring insurers' performance under the Act, including the consistent application of the Act; and
- deciding self-insurance applications.

- 2.22 The Queensland Government is currently conducting an inquiry into the operation of the Queensland workers' compensation system. The associated Information Paper does not raise any major issues about the scheme's structural arrangements, focusing instead on ensuring current arrangements are working effectively.
- 2.23 Under option 1, Comcare would revert to being a determining authority and perform no regulatory functions under the SRC Act.
- 2.24 Implementation would require an amendment to the SRC Act to remove all regulatory powers currently with Comcare and invest them in the SRCC. The SRC Act could also provide for the SRCC to retain its own staff to undertake this function independently as the scheme regulator. Alternatively, administrative support to the SRCC could be provided by the Department of Education, Employment and Workplace Relations (DEEWR). If DEEWR were to provide administrative support for the SRCC, the Commonwealth member of the SRCC should not be someone from DEEWR, but rather from another Australian Government employing agency, such as the Australian Public Service Commission or the Department of Finance and Deregulation.

### **Option 2**

- 2.25 A second option would be to make Comcare the sole scheme regulator. This would be similar to jurisdictions such as New South Wales, South Australia and Victoria where the regulatory power for workers' compensation is vested in the same body responsible for claims management outcomes. It is, however, important to note that in these jurisdictions the claims management function has been outsourced to third party providers (who are still answerable to the regulator). These regulatory bodies are also responsible for premium-setting for their respective schemes, a role which Comcare would keep.
- 2.26 Some stakeholders as well as Comcare, raised the concern that separating the WHS and SRC Act regulatory functions could lead to fragmented outcomes and might not benefit injured workers in the long term. Having one integrated regulator, it is argued, enables provision of a seamless regulatory framework so that rehabilitation and compensation are part of a continuum under the WHS framework.

### **Option 3**

- 2.27 A third option would be to maintain the current regulatory arrangements, with both the SRCC and Comcare sharing the regulatory powers, but with the SRCC establishing a more robust regulatory framework for monitoring the performance of Comcare as a determining authority. This framework already exists for licensed insurers and what is missing is a similar arrangement for Comcare's premium funded scheme. The regulatory framework for licensees covers all the prudential requirements necessary for them to meet their licence conditions and includes prevention, rehabilitation and claims management requirements. For Comcare, however, only a regulatory framework in respect of its claims management functions would be required.

- 2.28 As with option 1, a more transparent separation of powers could be achieved if the SRCC secretariat was provided by DEEWR. A review of current arrangements in the states and territories reveals that there is no clearly discernible preferred approach. New South Wales and Victoria have the same regulator for WHS and workers' compensation matters. In other states and territories, the regulatory responsibilities reside with two separate bodies. The success or otherwise of a scheme does not appear to be heavily dependent on whether or not it has a single regulator for both WHS and workers' compensation matters. What seems to be critical is the level of interaction between regulators, if there is more than one.
- 2.29 On balance, and having regard to paragraphs 2.26 and 2.28 above, I favour the third option outlined at paragraph 2.27, with DEEWR providing SRCC administrative support.

#### **Recommendation 2**

DEEWR should provide administrative support to the SRCC to provide a separation of powers from the body (Comcare) that the SRCC is regulating.

#### **Recommendation 3**

The SRCC should establish a more robust regulatory framework to monitor the claims management performance of Comcare as a determining authority, using relevant aspects of the arrangements currently in place for licensees

## **SRCC MEMBERSHIP**

- 2.30 In the context of the current SRCC, some stakeholders also raised concerns with the SRCC membership, a tripartite body with membership described in Chapter One, consisting mainly of key stakeholder members in the Comcare scheme – workers, premium-payers and licensees.
- 2.31 In particular, some Australian Government premium payers believed that their representation was inadequate. They noted that there was currently only one Australian Government representative on the SRCC (DEEWR) and the extent to which DEEWR is able to represent both the Government and the Australian Government agencies is not clear.<sup>17</sup> Some stakeholders saw a conflict of interest in DEEWR representing the Australian Government premium payers when it also has policy responsibility under the SRC Act.
- 2.32 Agencies noted that there was generally little or no coordination of Australian Government premium payers to ensure that their views are conveyed at SRCC meetings. It was suggested that SRCC membership be expanded to enable greater representation of Commonwealth premium paying agencies.
- 2.33 DEEWR's membership of the SRCC is pursuant to Section 89E of the SRC Act which provides for one member nominated by the Minister to represent "the Commonwealth, and Commonwealth authorities other than licensed insurers". However as DEEWR has policy responsibility for both the SRC Act and the Commonwealth WHS Act, it could be perceived to have a conflict of interest when an issue arises where the interests of both the Australian Government and Australian Government agencies are at odds.

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<sup>17</sup> One member of the SRCC is an ADF member who is there to represent members of the uniformed forces, not the civilian side of the Department of Defence.

- 2.34 Accordingly it seems more appropriate to have a separate SRCC member representing the views of Commonwealth authorities. This member will be able to establish processes to actively seek and represent the views and opinions of all Commonwealth authorities at SRCC meetings, a role similar to the licensee representative on the SRCC. An agency that already undertakes some cross-portfolio activity such as the Australian Public Service Commission (APSC) or the Department of Finance and Deregulation would be best suited to this role. The appointment would be made by the Minister in accordance with paragraph 1.41. As the agency with policy responsibility for the SRC Act and WHS Act, there are compelling reasons for DEEWR to continue to be a member of the SRCC in this capacity.

#### **Recommendation 4**

- 4(a): The Minister appoint a member other than from DEEWR to represent the Australian Government premium payers on the SRCC.
- 4(b): DEEWR continue to be an SRCC member in its capacity as the policy “owner” of the SRC Act.

## **SELF INSURANCE REGULATORY FRAMEWORK**

- 2.35 Under Section 100, the Minister responsible for the SRC Act may declare a corporation eligible to be granted a self insurance licence. In doing so, the Minister must be satisfied that it is desirable for the SRC Act to apply to employees of the corporation, and that the corporation:
- is, but is about to cease to be, a Commonwealth authority; or
  - was previously a Commonwealth authority; or
  - is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority.

There are currently 30 licensees under the SRC Act (see [Annex D](#)).

- 2.36 When satisfied, the Minister will issue a declaration, by way of a legislative instrument, declaring the corporation to be eligible to be granted a self insurer licence under the SRC Act. Section 100 makes it clear that the Minister is not obliged to consider a request for a declaration under the section.
- 2.37 Once the Minister makes a declaration, the corporation in question can then apply to the SRCC for a self insurer licence. The SRCC is responsible for approving applications for a self insurance licence and monitoring compliance with the legislation and licence conditions. Applications granting a self insurer licence are made in line with the requirements of the SRC Act and the Safety, Rehabilitation and Compensation Regulations 2002 (SRC Regulations).
- 2.38 To assist corporations, the SRCC has issued detailed Guidelines on the process it will follow in accepting and evaluating applications for a self insurer licence.<sup>18</sup> The SRCC may also have regard to any other matter that it considers relevant for the purposes of assessing whether a licence should be granted, as outlined in Section 104(1) of the SRC Act.

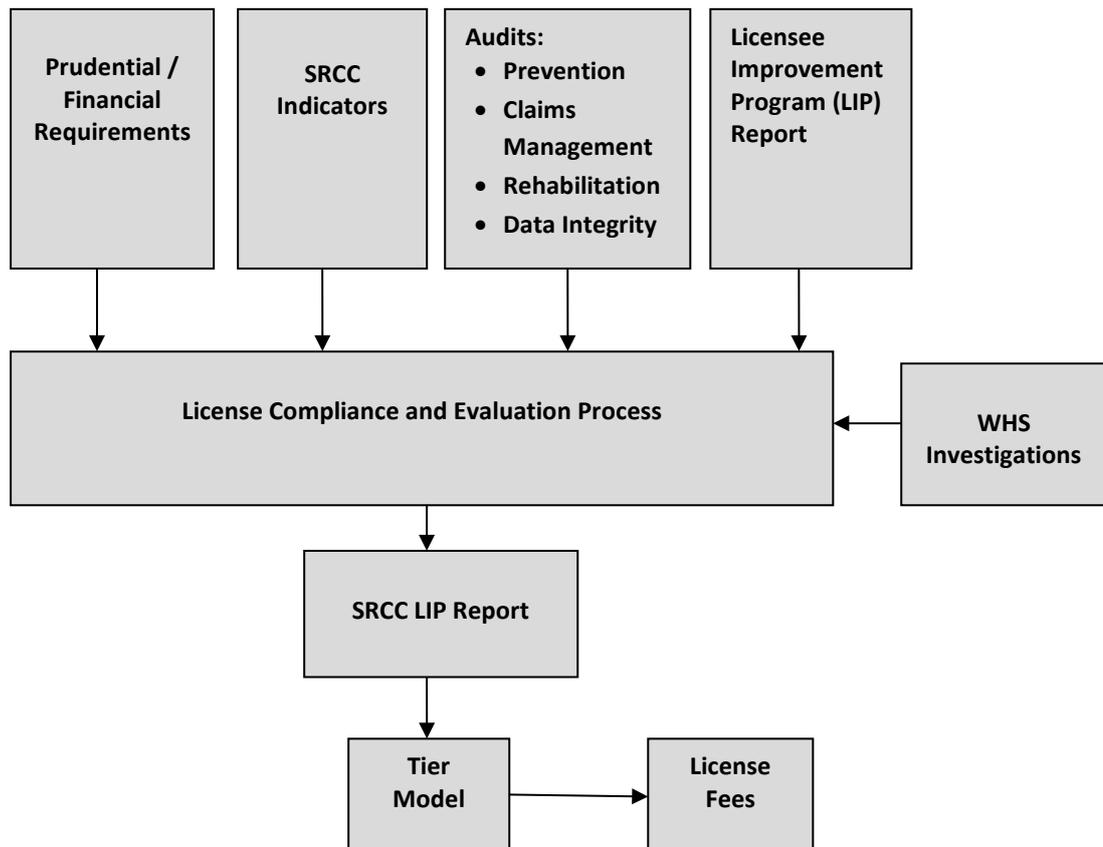
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<sup>18</sup> Available at:

[http://www.srcc.gov.au/\\_\\_data/assets/pdf\\_file/0003/37173/Guidelines\\_Licence\\_application\\_evaluation\\_Pub\\_39\\_Jan2006.pdf](http://www.srcc.gov.au/__data/assets/pdf_file/0003/37173/Guidelines_Licence_application_evaluation_Pub_39_Jan2006.pdf)

- 2.39 Subject to a declaration of eligibility by the Minister, Comcare supports the SRCC in regulating self insurer arrangements and manages all subsequent aspects of the licensing arrangements, including reporting to the SRCC.
- 2.40 Section 108D (Division 5 of Part VIII) of the SRC Act gives the SRCC the power when granting a licence to subject the licensee to any conditions that it considers are necessary to achieve the objects of the SRC Act. Without limiting the matters the conditions of licence may deal with, the conditions may include the following:
- a condition that the licensee and any person acting on its behalf will comply with the requirements of the Act and any directions given by the SRCC;
  - a condition that the licensee will pay such licence fees and other fees, and payable at such times, as the SRCC specifies;
  - a condition that the licensee will maintain such funds, and in such form, as the SRCC directs for the purpose of discharging its liabilities under the SRC Act;
  - a condition that the licensee will obtain bank or other guarantees for the discharge of liabilities as the SRCC directs;
  - a condition that the licensee will comply with the requirements of any applicable laws of the Commonwealth, States and Territories with respect to the safety, health and rehabilitation of employees;
  - a condition that the licensee will not cause or permit to be made on its behalf to a court or tribunal any submission that Comcare or the SRCC has requested the licensee not to make;
  - conditions concerning performance of functions in relation to the licence by persons other than the licensee; and
  - conditions requiring provision of information and notifications in respect of specified events.
- 2.41 Ongoing licensee regulation and management is via the Licensee Improvement Program (LIP), whose overall objective is to provide a regulatory framework that:
- links the level of regulatory oversight to performance;
  - is easy to understand and administer; and
  - focuses on a holistic approach to performance evaluation.
- 2.42 The LIP Regulatory Framework is illustrated as follows:

**Diagram 2.1: Licence Compliance and Evaluation Process**



2.43 The SRCC uses its Licensee Improvement Program (LIP) to evaluate licensees with respect to:

- compliance with the licensee’s prudential and financial conditions of licence;
- reporting against the Determining Authority Key Performance Indicators (DAKPIs);
- audit outcomes in prevention, rehabilitation, claims management and data integrity;
- results of any OHS investigations;
- 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;
- licence compliance results and performance outcomes, assessed annually in the context of the tier model. This is the lever for continuous improvement as it identifies the level of regulatory oversight to be applied in the following year through the assignment of a tier status in each of prevention, rehabilitation and claims management;
- the tier status that is applied to each of prevention, rehabilitation and claims management functions is based on the self-insurer’s capacity to meet the SRCC’s requirements and capacity to self-manage the function(s) effectively;
- under the tier model, licensees with a function(s) in the first tier are subject to external audit by Comcare, on behalf of the SRCC;
- licensees with a function(s) in the second tier are subject to a desktop review of their own audits by Comcare;

- licensees with a function(s) in the third tier must provide executive summaries of their own audits to Comcare; and
- all licensees are subject to external audit in the last year of licence regardless of their tier status.

**Table 2.1 Comcare Licensee Tier Model**

<b>First Tier (Elementary Level)</b>	<b>Second Tier (Secondary Level)</b>	<b>Third Tier (Advanced Level)</b>
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 prevention and injury management.
Applies to new licensees or licensees with a newly contracted claims management service provider or licensees experiencing difficulties in compliance.	Applies to compliant and conformant licensees who are developing strong management systems and who may wish to seek self audit status in the future.	Applies to licensees with a high standard of internal quality assurance and strong management systems who are achieving corporate change. Licensees must have self audit status to be at this level.
Comcare Audits each year.	Comcare assesses the quality of licensee audits each year (desktop review). Comcare audits in the last year of licence.	Comcare audits in last year of licence.
<b>Higher Cost</b>	<b>Medium Cost</b>	<b>Lower Cost</b>

- 2.44 The LIP examines any significant variations in the licensees’ prudential profile, results of internal and external audits in prevention, rehabilitation and claims management and performance against SRCC-defined indicators. At the end of March each year, licensees are required to provide an annual LIP report certified by senior management. It identifies material changes to the licensee’s prevention, rehabilitation and claims management systems, and provides a statement of management achievements against the licensee’s management objectives, targets for the year under review, and its goals for the coming year.
- 2.45 The LIP report also documents and evaluates the licensee’s performance against the SRCC’s performance measures. It summarises the outcomes of audits of the licensee’s prevention, rehabilitation and claims management functions and details of corrective actions, concluding with the licensee’s request for tier level in each of these functions for the coming year.
- 2.46 The LIP outcomes and annual LIP report provide the basis for the SRCC’s consideration of licence extensions, calculation of licence fees, and to determine the following year’s level of regulatory oversight applicable to each licensee using the tier model.

- 2.47 The SRCC's tier model is designed to allow the level, intensity and nature of regulatory oversight to be determined, having regard to each licensee's performance outcomes and relative maturity. The tier model comprises three levels, and each licensee is given a tier ranking for each of its prevention, rehabilitation and claims management functions. External audits are performed for those functions in the first tier, desktop audits for the second tier and licensee self-audit status applies to the third tier. There are specific instances when external audits are required to be conducted, regardless of the tier level of a licensee or its performance. These include a new licensee in the first year of its licence, any licensee in the last year of its current licence, or a change in the licensee's claims management provider.
- 2.48 As part of the LIP, licensees are assessed against the SRCC indicators. The SRCC also sets performance targets against a number of these indicators, such as incidence and frequency of injury, timeliness of claims management decisions, and rehabilitation and return to work rates, including those which incorporate the National OHS Strategy targets (i.e. incidence of injuries resulting in five or more days' compensation and incidence of fatalities caused by traumatic injury). Licensees are also subject to periodic data quality audits to verify the accuracy of base data used to calculate performance against the SRCC's indicators.
- 2.49 There are clear financial consequences for a licensed insurer (including potentially losing their self-insurer status) if they are unable to meet their DAKPI targets.
- 2.50 Most licensees that were consulted felt that the current regulatory arrangements were satisfactory though some raised concerns in relation to some issues, specifically:
- the inability of the Comcare scheme to grant group licences. Some licensees currently hold a number of individual licences for different parts of their business as there is no provision for granting group licences under the SRC Act. This results in higher administrative costs which are necessary to maintain each licence – costs that could be reduced if group insurance was available;
  - the inability for current licensees to obtain additional licences for businesses they acquire because of the current moratorium. A group licence arrangement would enable a current licensee to integrate any new entity into their self insurer arrangements (whether or not to allow group self insurance under the Comcare scheme was considered as part of the 2009 Review of self insurance arrangements under the Comcare scheme which recommended that group self insurance arrangements be allowed under the scheme);
  - the need for greater transparency around how self insurer regulatory contributions and licence fees are determined year-on-year. A concern was expressed about the lack of a consistent approach in the calculation which leads to volatility in the amounts paid by licensed insurers from year to year. Additionally, one licensee indicated that the current licence fee cost structures are such that it makes the benefits of having Tier 3 self insurer status difficult to justify from a financial perspective; and
  - concern that the basis of measurement (claims per Full Time Equivalent (FTE)) of the DAKPIs disadvantages some licensees as some of the claims included in this base are ex-employees.
- 2.51 There was also some opposition to the self insurance scheme. Notably, the ACTU signalled its in-principle opposition to self insurance arrangements because of the potential for significantly large numbers of employers to opt out of contributing to the premium pool of workers' compensation schemes either at an individual, state or national level. It suggested the Comcare scheme should revert to its original function as a scheme applying only to Australian Government public servants and that self insurance licensees should return to the applicable state or territory run scheme(s).

- 2.52 The ACTU argued that self-insurance should remain part of the Comcare scheme in very limited circumstances and must involve a high level of ongoing oversight and monitoring by the SRCC. Self-insurance should be viewed as a privilege not a right. Employers wishing to become or remain self-insurers should be required to have workers' compensation practices that demonstrate superior performance in all areas of injury prevention, claims management and occupational health and safety standards.
- 2.53 As discussed later in this Chapter, available scheme performance data shows that the licensee performance on SRCC scheme performance measures is better than that of premium payers. This Review finds that the regulatory oversight of licensees is very robust and ensures a regime of continuous improvement.
- 2.54 As noted in Chapter One, the Report of a separate Comcare review of self-insurer arrangements under the Comcare scheme by DEEWR was released on 25 September 2009. This Review concluded that the self insurance arrangements should continue, but with some modifications. The report contained a number of recommendations aimed at improving the self insurance governance arrangements under the Comcare scheme.
- 2.55 That report recommended that group licences be issued, but in responding the Government did not support this recommendation. All other recommendations that impact on self insurance governance arrangements were supported by the Government and have been implemented. While this review also received submissions from key stakeholders opposing the granting of group licences, it finds that there are sufficient safeguards in place to warrant the granting of Group Licences and recommends accordingly.
- 2.56 Having regard to paragraphs 1.33 to 1.35, it would be a retrograde step to remove the coverage of the present Comcare scheme to licensees and return them to the State/Territory jurisdictions as previously intended.
- 2.57 As discussed in this Report, the licensees have consistently been able to achieve better outcomes on performance measures when compared to the premium payers. This has been possible largely because of the regulatory framework that has been put in place by the SRCC. This framework ensures continuous improvement in licensee performance and can be modified by the SRCC if necessary. As a member of the SRCC, the ACTU has been actively involved in the development and ongoing monitoring of this regulatory framework and will continue to have the opportunity to influence the performance outcomes of licensees.
- 2.58 Indeed, the performance of the licensees is such that the moratorium and competition test should be lifted altogether for all national employers.
- 2.59 Adoption of recommendations 6, 7 and 8 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. This would be welcomed by business, while the major concerns raised by the ACTU will be satisfied by the SRCC processes.

#### **Recommendation 5**

The SRCC should establish a consistent year-to-year approach to the methodology it uses for setting the licence fees for each tier status under the Licensee Improvement Program (LIP) and engage in an education campaign to explain this to the licensees.

**Recommendation 6**

The SRC Act should be amended to allow the SRCC to grant group licences to companies of licenced self-insurers with more than one entity, subject to satisfying all prudential requirements, in order to reduce administrative costs for scheme participation.

**Recommendation 7**

The moratorium and competition test should be lifted, allowing national employers to join the Comcare scheme.

**Recommendation 8**

The SRCC establish a process to satisfy itself that each applicant for self insurance under the SRC Act meets the criteria associated with determining that they are a national employer.

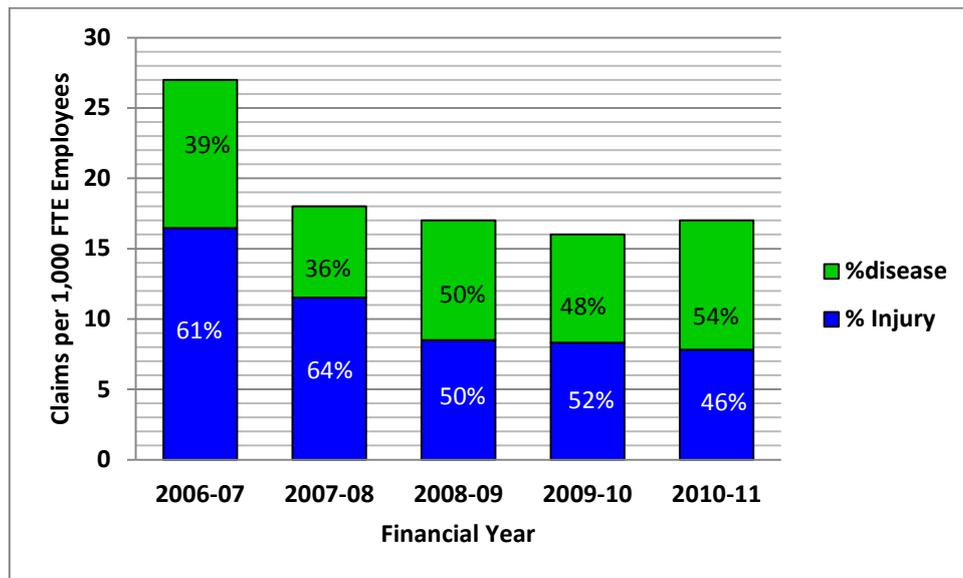
## THE PERFORMANCE OF DETERMINING AUTHORITIES

- 2.60 Performance of the premium payer side of the scheme has deteriorated in recent years, especially in relation to claims continuance rates. Compared with the previous year, the actuarial review of premiums for the 2012-13 financial year has resulted in:
- an increase in the central estimate of premiums for Australian Government employers from \$201.7m the previous year to \$268.3m; and
  - an increase in the central estimate of premiums for the ACT Government from \$48.5m the previous year to \$62m.
- 2.61 These increases are largely attributable by the actuaries for Comcare to:
- a marked deterioration in both short term (up to ten years) and long term (ten years or more) “claim continuance rates” (the length of time an injured worker is expected to stay in receipt of compensation);
  - an increase in the number of mental health claims expected to receive payments; and
  - changes in economic assumptions as a result of a large reduction in the future rates of interest assumed for discounting, consistent with reductions in market yields on Commonwealth Government bonds.<sup>19</sup>
- 2.62 Two of the three reasons identified by the actuaries for Comcare for the increase in premiums relate to claims performance. Specifically, not only are injured workers staying on benefits for longer periods, but there has also been an increase in the number of mental health claims being accepted. Comcare and stakeholders consider these latter claims to be more difficult to manage.
- 2.63 The percentage of disease (including mental health) claims being accepted fluctuates year to year, but the overall trend is increasing from 2006-07 onwards as shown in Figure 2.3.

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<sup>19</sup> *Estimate of the Premium Pool for both the Commonwealth and Act Schemes*; prepared by Taylor Fry (both dated 8 June 2012).

Figure 2.3: Claims by Injury/Disease (premium payers)



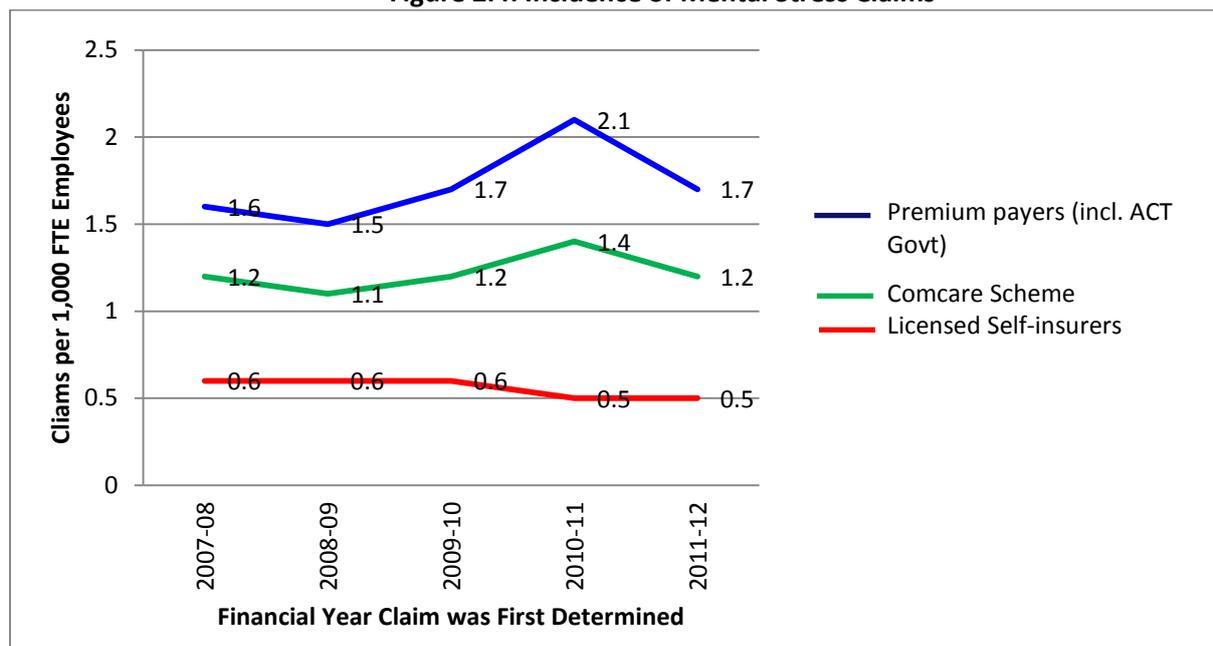
Source: Comcare 2012

- 2.64 Stakeholders pointed to a number of reasons for the difficulties associated with managing mental health claims including:
- a perceived lack of employer control over circumstances that lead to such claims (for example a reliance on the perception of the employee of the injury, however formed);
  - the difficulties faced with early identification for such claims (they often develop over long periods of time);
  - the scope of the legislative limitations on the types of mental health claims covered by the SRC Act appears to be quite restricted; and
  - difficulties with achieving an early and sustainable return to work, especially if the claim arises out of a workplace conflict.
- 2.65 Mental stress claims for premium payers have increased by 30 per cent in the past three years to four times higher than the incidence among licensees (e.g. Commonwealth Bank, Linfox, NAB and Telstra). This variance may be attributable to differing work profiles between premium payers and licensed insurers. Data for licensees indicates a much lower rate of mental health claims, while rates for other incident types (e.g., vehicle incidents and other) are significantly higher than premium payers. This may suggest that mental health claims are predominantly a white collar employment phenomenon.
- 2.66 Legislative amendments contained in the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* (SRCOLA Act) placed restrictions on mental health types that can be claimed. Those caused as a result of “reasonable administrative action taken in a reasonable manner in respect of the employee’s employment” are not covered by the SRC Act.<sup>20</sup> This amendment led to an initial reduction in the number of accepted mental disease claims, but the trend has subsequently reversed.

<sup>20</sup> Section 5A of the SRC Act.

- 2.67 Notwithstanding that amendment, the Administrative Appeals Tribunal (AAT) in the matter of *Martinez v Comcare*, recently found that although the employer had taken reasonable administrative action as part of a performance management process, it had not taken these actions in a reasonable manner thus entitling the injured worker to compensation.<sup>21</sup>
- 2.68 Whatever the case, this increasing cost of mental health claims has contributed significantly to the upward pressure on premiums. Indeed the incidence of mental health/stress claims under the whole Comcare scheme has increased by approximately 20 per cent since 2008-09, with the majority of that increase in the premium-paying scheme, as described in paragraph 2.65.<sup>22</sup> Although the decision might yet be appealed, it coincides with a Federal Government inquiry into bullying which was due to report on 30 November 2012.
- 2.69 The recent Commonwealth State of the Service report says about one in six government employees believes they were harassed in the workplace during 2011-12. Almost half of the alleged bullying is thought to be based on personality differences, while a further one in three cases relate to attempts to improve staff performance.
- 2.70 An unpublished 2011 study of workplace behaviour conducted by Risk to Business contradicts academic and practitioner notions of bullying.<sup>23</sup> The Australian Electoral Commission's Respect at Work Policy represents a contemporary guide to dealing with inappropriate behaviour, giving concrete examples of bullying, including criticism of performance or behaviour.

**Figure 2.4: Incidence of Mental Stress Claims**



Source: Comcare 2012

- 2.71 In 2010-11, the proportion of accepted mental stress claims for the premium paying scheme was 12 per cent. This compares with one per cent of all claims for licensees. For both the

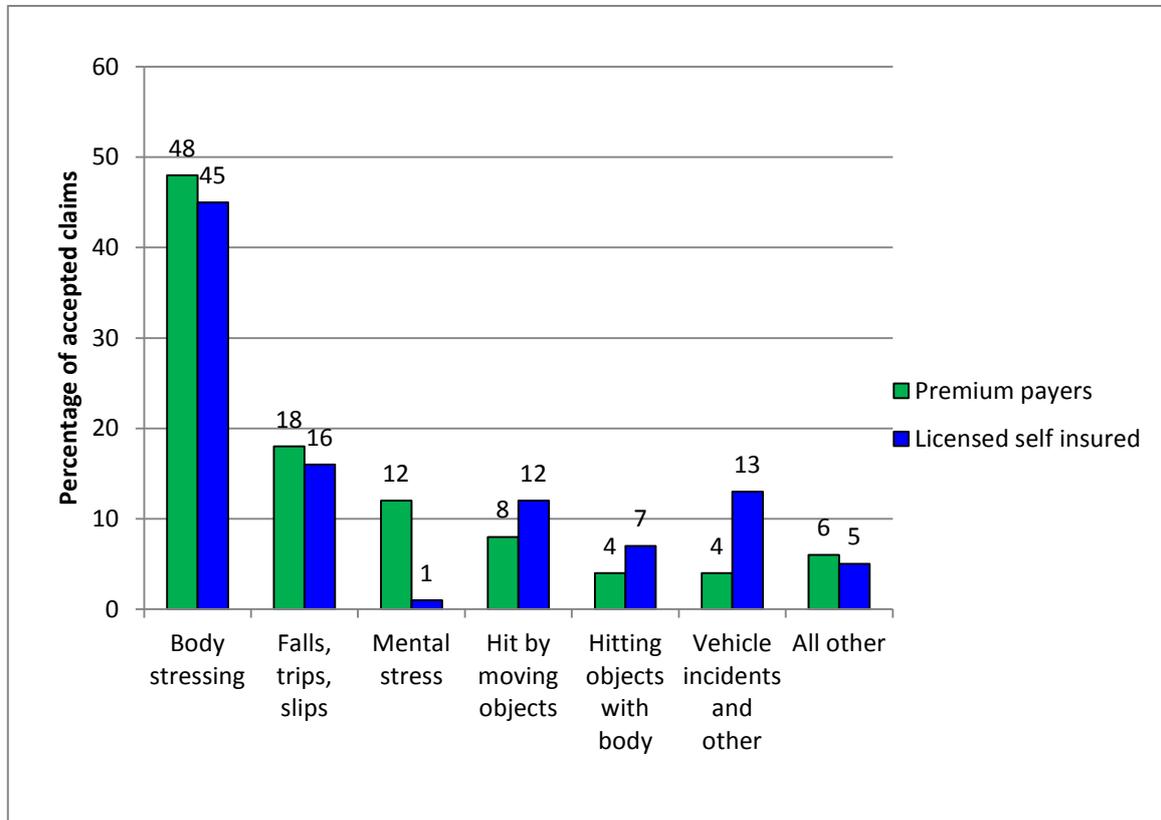
<sup>21</sup> [2012] AATA 795 (14 November 2012).

<sup>22</sup> Comcare data.

<sup>23</sup> Contact Stuart King (stuart@risktobusiness.com) or John Evans (john@culturalimprint.com.au).

premium payers and licensees, however, body stressing claims continue to account for almost 50 per cent of all claims.

**Figure 2.5: Claims by Mechanism of Incident**



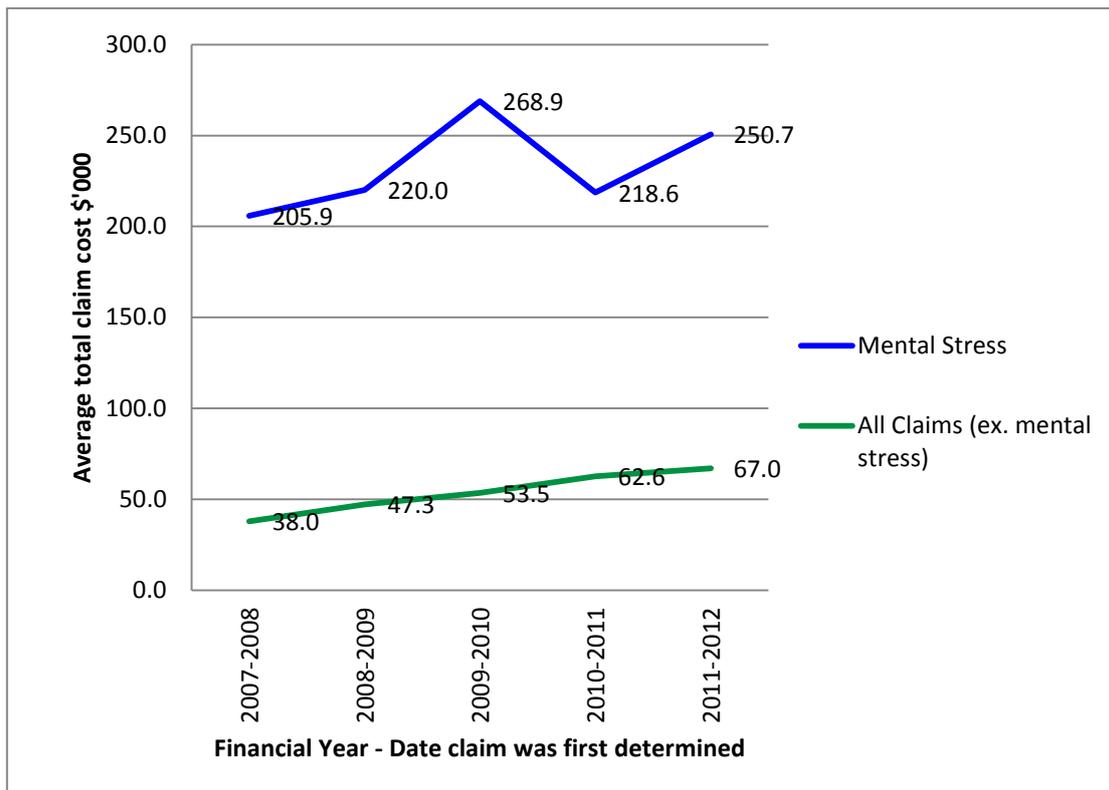
Source: Comcare 2012

2.72 The total average cost<sup>24</sup> of mental stress claims in the premium payer side of the scheme is higher than all other claims. Based on 2011-12 data, the average cost of mental stress claims was around \$250,000 compared to about \$67,000 for all other claims.<sup>25</sup>

<sup>24</sup> The total average cost is the cost paid to date plus the estimated outstanding liability.

<sup>25</sup> Comcare data.

**Figure 2.6: Average Total Cost of Mental Stress Claims (premium payers)**



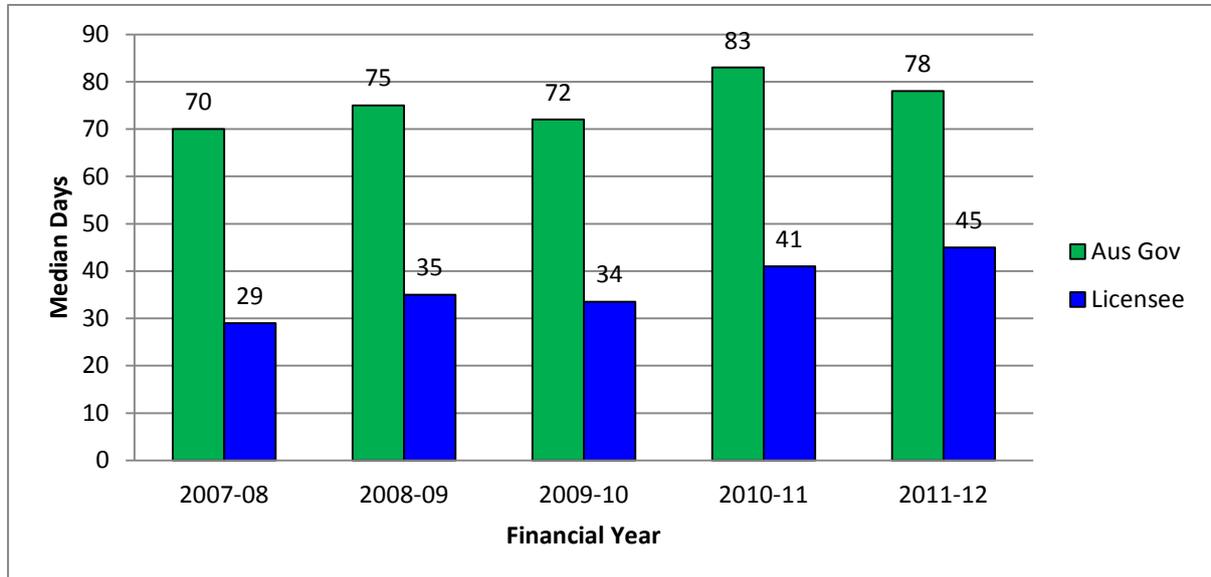
Source: Comcare 2012

- 2.73 The other main reason cited for the recent increase in premiums recently relates to a deterioration in claims continuance rates (defined as a measure of how long injured workers remain on incapacity payments). It is noted that on this key measure, licensee performance on the 13 weeks continuance rate DAKPI (the percentage of claims reaching four weeks of incapacity payments that subsequently reached 13 weeks or more incapacity) is much better than that for the premium payers. Licensees have pointed to the ability to integrate fully their claims management and rehabilitation processes as a significant advantage in improving their return to work outcomes. Unlike the licensees who have direct cost incentives to manage their claims costs, premium payers work within a premium framework which tends to blunt these direct cost impacts.
- 2.74 As a result of the upward cost pressures and underlying scheme cost, average premium rates for premium payers are now running at about 1.77 per cent of payroll levels, similar to the previous high points in 1996-97 and 2006-07. The premium rate responds to trends in the number and cost of claims from each agency as well as trends in claim frequency and the average claim cost for all agencies combined.<sup>26</sup>
- 2.75 A comparison on some other data trends indicates that licensee performance is better than that for the premium-payers. Licensees perform better in some key areas, including a preparedness to intervene more quickly to develop a rehabilitation plan aimed at an early and sustainable return to work for an injured worker.

<sup>26</sup> Comcare's publication *Comcare Premiums, Your Guide to 2012 – 13*, Comcare publication, PUB26, June 2012 provides information on how employer premiums are calculated.

2.76 The delay between injury and claim lodgement is seen as a significant contributor to the cost of a claim – the quicker a claim is lodged, the more likely it is that rehabilitation and return to work support can commence.

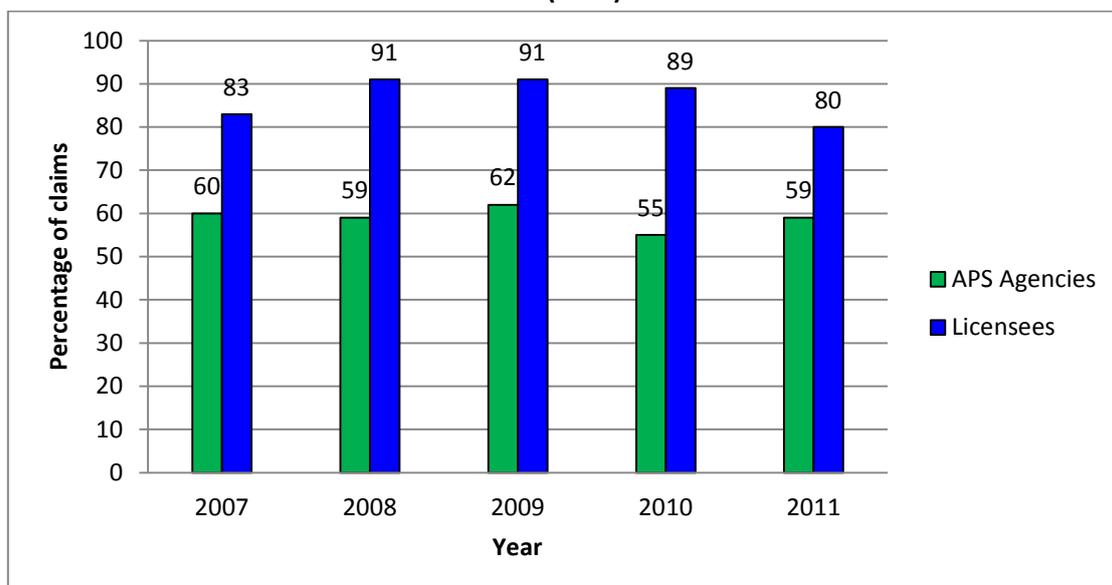
**Figure 2.7: Calendar Days between Incident and Claim Lodgement (Mental Stress Claims)**



Source: Comcare 2012

2.77 Similarly, the number of Australian Government agency claims with a rehabilitation plan is low when compared with licensees.

**Figure 2.8: Percentage of Claims with Two or More Weeks Lost Time with a Return to Work (RTW) Plan**



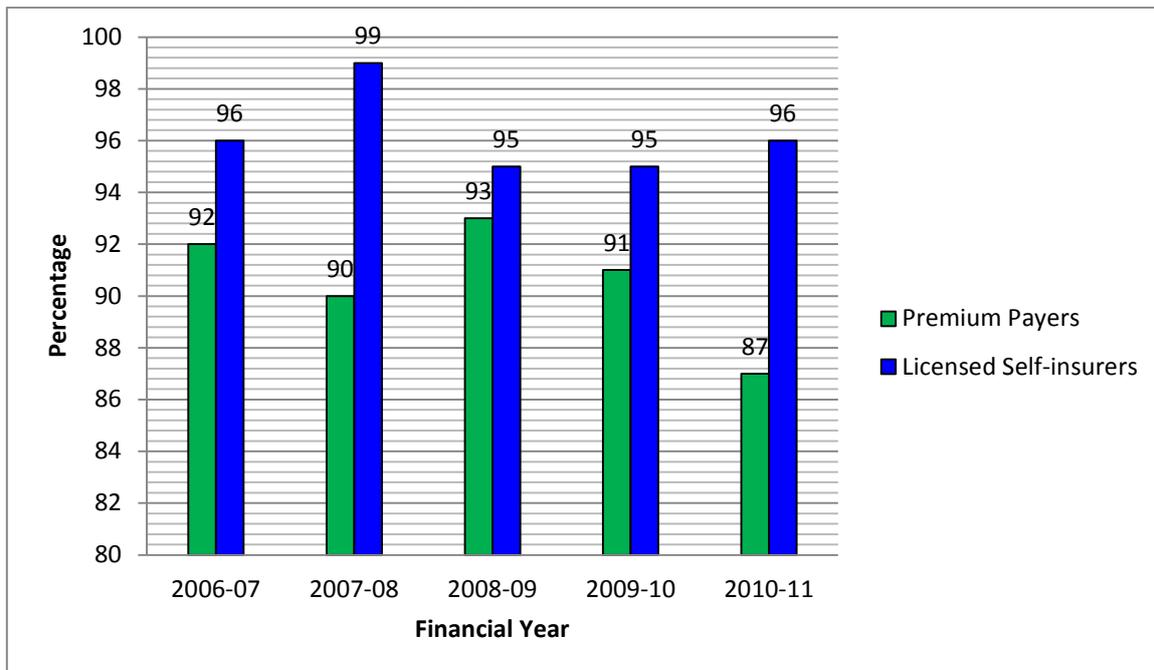
Source: Comcare 2012

2.78 As the graph above shows, licensees generally develop RTW plans much earlier than the premium payers. In 2010-11, licensees had developed RTW plans on 80 per cent of their

claims with two weeks lost time, compared to only 59 per cent for the premium-payer side of the scheme. In the previous year, the figures were 89 per cent and 55 per cent respectively.

- 2.79 Similarly, in 2010-11, the incidence of claims with six weeks lost time per 1,000 FTE was higher for the premium payer side of the scheme (5.3 per cent) compared to the licensees (3.9 per cent).<sup>27</sup>
- 2.80 Scheme RTW performance has also deteriorated in recent times. In 2010–11, the Comcare scheme recorded a RTW rate of 87 per cent, which is above the national RTW Rate (86 per cent), but the lowest rate recorded since 1998–99. At the same time, the durable RTW rate of the Comcare scheme remained stable (84 per cent) in comparison to 2009–10 and above the national average of 77 per cent.<sup>28</sup> It should be noted, however, that the 2010-11 durable RTW rate was also one of the lowest rates Comcare has recorded.<sup>29</sup>
- 2.81 The RTW rate for the premium payer side of the scheme has been consistently lower than that of the licensees. In 2010-11, there was a slight increase in the RTW rate for licensees (96 per cent), while there was a decrease in the rate for premium payers (87 per cent).

**Figure 2.9: Return to Work Rate**



Source: Comcare 2012

- 2.82 This clear disparity in the RTW rate for the two types of employers highlights the need for Comcare and premium payers to work more closely to identify opportunities and implement strategies that will help to improve the RTW outcomes for injured workers.
- 2.83 Comcare has indicated that an improvement in the time taken from when an injury incident occurs and when a premium-payer sends a compensation claim to Comcare would provide a

<sup>27</sup> SRCC Annual Report 2010-11.

<sup>28</sup> Heads of Workers' Compensation Authorities, 2010-11 Australian and New Zealand Return to Work Monitor.

<sup>29</sup> The figures reported in the RTW Monitor do not include responses from injured workers employed by the licensees.

greater opportunity to ensure workers with these injuries are getting the support they need as early as possible. The quicker support is provided to an injured worker after injury, the higher the likelihood that an injured worker will make an early and successful RTW.

- 2.84 Additionally, the absence of a rehabilitation plan to support the RTW of an injured worker increases the risk of poor return to work practice. Comcare indicated it has been exploring ways of increasing the take up of rehabilitation plans, including the use of regulatory measures and an explicit premium penalty regime. As part of this process, it has recently reviewed and issued updated Rehabilitation Guidelines to provide greater assistance to employers in the Comcare scheme in managing the rehabilitation process.<sup>30</sup>
- 2.85 Responsibility for managing rehabilitation and RTW activities in the premium payer side of the scheme rests with the premium-payers, while claims processing is managed by Comcare. The 2010 Ernst and Young report notes that this approach is appropriate, but that it does present some risks, notably:
- *“it creates a layer between the employer and Comcare that can reduce Comcare’s ability to intervene early and implement effective and timely injury management and return to work strategies,*
  - *it requires agencies to build their own OHS and rehabilitation capabilities and capacity.”<sup>31</sup>*

The report noted that on average premium payers report a claim around 90 days after the date of injury compared to an industry average of around ten days. The segmentation of responsibilities was noted by a number of stakeholders consulted by Ernst and Young as a reason for this. This seems to me a self-serving argument. Perhaps the recent premium increases, combined with the new WHS responsibilities, will lead premium payers to focus more attention on their WHS and rehabilitation capabilities and capacity.

- 2.86 A key difference in the claims management arrangements for premium payers and the licensed insurers is that licensed insurers as the employer also have direct responsibility for claims management outcomes. Licensees noted the benefits of being able to manage their own claims in-house. In particular, the self insurance model provides a more holistic approach to the management of workplace injuries, as the licensee holds two key roles in the compensation process, those of rehabilitation authority and determining authority. Licensees are able to ensure that these roles are closely aligned in order to ensure the best possible outcomes for the injured worker and employer.
- 2.87 This option is not available for the premium payers, who manage their rehabilitation functions separately from Comcare, which as noted previously is the determining authority for claim matters.
- 2.88 These arrangements for premium payers and the comparative rehabilitation and compensation outcomes achieved by licensed insurers poses an obvious question: Were a premium payer to become a determining authority under the SRC Act, could it achieve improvements in RTW outcomes that trend more towards those of the licensed insurers? Some premium payers have been critical of the claims management functions performed by Comcare and providing a mechanism for those employers to take full accountability for outcomes would remove any capacity for blame shifting. The separation of rehabilitation and claims management determining authority functions means that the accountability for compensation, rehabilitation and RTW outcomes does not wholly reside with one party.

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<sup>30</sup> *Guidelines for Rehabilitation Authorities, 2012*; Comcare publication.

<sup>31</sup> *Comcare in the Future – Recommendations for a New Strategy*, Ernst and Young, p. 19, 2010.

- 2.89 More than three quarters of all claims by employees of premium payers come from six large government agencies. If the ACT Government or an agency with the critical size to support the required claims management capability was willing and able to satisfy the same audit requirements mandated for licensed insurers under the SRC Act, such an arrangement would provide the integration that licensed insurers claim is a vital element of achieving the best RTW outcomes. This would reveal a level of transparency and accountability for that premium payer that is not currently possible. Such a premium payer would essentially be a self insurer under the scheme. Provision of this mechanism under the SRC Act would provide Comcare and the Government with an invaluable model to observe and identify improvement opportunities for the Scheme over the longer term, for both Comcare as a determining authority and premium payers as model employers.
- 2.90 This model raises financial issues aside from the practical issues of a Government agency operating as a determining authority. It invites consideration of whether the current premium model would continue to operate, or whether an alternative funding model should be considered where a current premium payer is approved as a determining authority
- 2.91 Separation of rehabilitation and claims determination responsibilities is not unique to Comcare. In NSW and Victoria for example, responsibility for rehabilitation and return to work lies with the employer while the authorised claims agent/insurer has the responsibility for decision-making in relation to an injured worker’s claim. In order to ensure effective communication and coordination of the activities of both employers and agents, these respective jurisdictions ensure information and guidance material is available to support the claims management and return to work process.<sup>32</sup> In these jurisdictions, claims agents also have the legislative power to commence the rehabilitation process in some instances, for example, where the employer refuses or is unable to commence the rehabilitation process or the employer of the injured worker no longer exists.
- 2.92 Unlike other jurisdictions where the claims agent/insurer is able to commence and manage a rehabilitation process, following the 1995 Federal Court decision of *Hardin vs Comcare*<sup>33</sup>, Comcare is not a rehabilitation authority (except, of course, for the workers’ compensation claims of its own employees), so it is unable to undertake any rehabilitation activity. Prior to this decision, Comcare organised and managed the rehabilitation process on behalf of premium paying employers. In *Hardin*, the Court decided that Comcare is unable to undertake any rehabilitation activities itself in the absence of a determination by the rehabilitation authority.
- 2.93 The ability for Comcare to organise rehabilitation for an injured worker is important in circumstances where the injured worker is no longer employed by the injury employer and the employer is unwilling to commence rehabilitation for the injured worker.
- 2.94 Accordingly, Comcare should re-visit its interpretation of the *Hardin* decision to determine whether under the current legislative provisions there is scope for it to coordinate rehabilitation services for injured workers in certain circumstances. Best practice in rehabilitation requires agreement of the three key parties – the injured employee, the employer and the treating doctor. It seems to me that the *Hardin* decision was simply pointing out to Comcare that approval from the employer (or the “rehabilitation authority”) is required as a prerequisite, rather than an absolute prohibition of an administrative process – that of Comcare coordinating rehabilitation services.

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<sup>32</sup> See for example: <http://www.worksafe.vic.gov.au/return-to-work>

<sup>33</sup> [1995] FCA, 1246; 1995 21 AAR 392.

- 2.95 To ensure greater clarity around the rehabilitation provisions in the SRC Act and Comcare's role, the SRC Act rehabilitation provisions should be reviewed. This issue is being considered as part of the complementary Hanks Review which will address legislative anomalies within the SRC Act and updates that need to be addressed including improving rehabilitation of injured workers and fair and equitable rehabilitation support.

**Recommendation 9**

The SRC Act be amended to allow the ACT Government and other SRC Act premium payers to apply and be approved as a determining authority, subject to meeting the same audit and performance reporting requirements for licensees under the Comcare Scheme.

**Recommendation 10**

Comcare and the Department of Finance and Deregulation collaborate to develop the appropriate financial framework to support recommendation 9.

**Recommendation 11**

Comcare review its position following the *Hardin* decision and consider implementing a revised policy that recognises Comcare's role in supporting premium payers' rehabilitation processes, in an administrative capacity.

**Recommendation 12**

Further consideration be given to clarifying Comcare's role in rehabilitation under the SRC Act, as part of the Hanks Review.

## REHABILITATION MANAGEMENT SYSTEMS

- 2.96 An examination of rehabilitation systems forms part of the Licensee Improvement Program (LIP). As previously discussed, the LIP examines any significant variations in the licensees' prudential profile, results of internal and external audits in prevention, rehabilitation and claims management and performance against SRCC-defined performance indicators. The LIP report also documents and evaluates the licensee's performance against the SRCC's performance measures and summarises the outcomes of audits of the licensee's prevention, rehabilitation and claims management functions and details of corrective actions.
- 2.97 Licensees' rehabilitation management systems are regularly audited as part of their licence arrangements. Results from these audits show that generally all licensees perform well in this area. The results are reported to the SRCC as one of the DAKPI's (DAKPI 6). The results from 2011-12 show that the licensees achieved an average compliance rate of 97 per cent against a Comcare scheme target of 91 per cent. During consultation, some licensees pointed to the existence of a regulatory regime which requires them to develop and implement a rehabilitation management system (and which is regularly audited) as a reason for their generally good return to work performance.
- 2.98 An important deliverable of the Comcare 2015 Strategic Plan is to expand national safety and rehabilitation audit programs to premium-paying employers. As a result, Comcare on 1 July 2012 issued the Guidelines for Rehabilitation Authorities 2012 (the Guidelines) under Section 41 of the SRC Act that require, among other things, that all rehabilitation authorities develop and implement a rehabilitation management system that delivers effective rehabilitation and meets the performance standards and measures prescribed therein.
- 2.99 During the 2011-12 financial year, prior to finalisation of the Guidelines, Comcare conducted a pilot assessment of the rehabilitation management systems of three Australian

Government agencies to assess their level of compliance with the draft Guidelines, and to provide these premium payers with guidance on improving their performance.

- 2.100 The outcome of these assessments, especially when compared with the results of the licensees, suggests that more work needs to be done with the premium payers if they are to improve on their rehabilitation outcomes. Comcare plans to conduct assessments of the rehabilitation systems of ten premium payers in 2012-13. As indicated by the licensees, regular auditing of their systems assists them in achieving good return to work outcomes. It is therefore important that a comprehensive audit program is put in place to assess the performance of premium payers against the Guidelines.
- 2.101 The LIP and tier model provides a framework that could be modified to link the level of regulatory contribution paid by premium payers to their rehabilitation performance.

#### **Recommendation 13**

In order to improve rehabilitation and return to work outcomes for the premium payers, Comcare should deploy an audit program to selected premium payers against the requirements of the rehabilitation management systems tool, and work with them to improve their rehabilitation management systems to a comparable level of the licensees, and report progress to the SRCC.

#### **Recommendation 14**

The SRCC should modify the LIP and tier model to provide a framework so that the level of regulatory contribution paid by premium payers is linked to their rehabilitation performance. This would provide a direct incentive for improvements to rehabilitation performance.

## **A NATIONAL REHABILITATION FRAMEWORK?**

- 2.102 Rehabilitation services are aimed at assisting injured workers return to health and work. While the principle of returning injured workers to the same job or same duties is sound and ensures there is no discrimination against injured workers in returning them to work, it can sometimes get in the way of successful outcomes if this is not a realistic goal, e.g., in a mental stress claim where the reason for the incapacity is because of a workplace conflict that prevents the injured worker from returning to their previous workplace.
- 2.103 The Comcare premium-paying scheme has not been very successful in considering suitable employment opportunities outside the public sector. This is partly because of SRC Act provisions such as the definition of “suitable employment” which does not include non-Commonwealth employment, and issues relating to the determination of who is the rehabilitation authority for injured workers no longer employed by the Commonwealth. It is also partly because of an approach by agencies in considering rehabilitation purely within the context of the public service and, mostly, only with the agency with which the worker was employed at the time of injury. There has generally not been much success with considering rehabilitation which contemplates a successful RTW as including returning an injured worker to employment with another agency or outside the public service.
- 2.104 This inflexibility of approach to finding “suitable duties” is one of the drivers of poorer RTW performance in the premium-paying scheme compared to the licensees and is largely due to the lack of engagement by senior managers to find suitable duties and get someone back to work, including consideration of retraining options for work outside the public service. Establishment of a national rehabilitation framework, coupled with legislative amendments to the SRC Act, would assist in addressing these issues.

- 2.105 The recent national *Clinical Framework for the Delivery of Health Services* to injured workers provides a good opportunity for consideration to be given to a national rehabilitation framework. The framework would seek to establish key principles and approaches to be applied in the rehabilitation process aimed at returning injured workers to health and employment most suited to them, whether with their current employer or otherwise.
- 2.106 Like the National Disability and Insurance Scheme (NDIS), there would be merit in a national approach to rehabilitation and the development of a National Rehabilitation Strategy. This would be a quite complex task and you might in the first instance ask your Department and Comcare to develop a submission for you outlining the way ahead.
- 2.107 This could be achieved through consultations with the States and Territories and other key stakeholders (medical practitioners, rehabilitation providers, employers, workers, unions, etc.,) to develop a framework that embraces the “good work is good for you/recover at work” principles and values supported by all stakeholders.

#### **Recommendation 15**

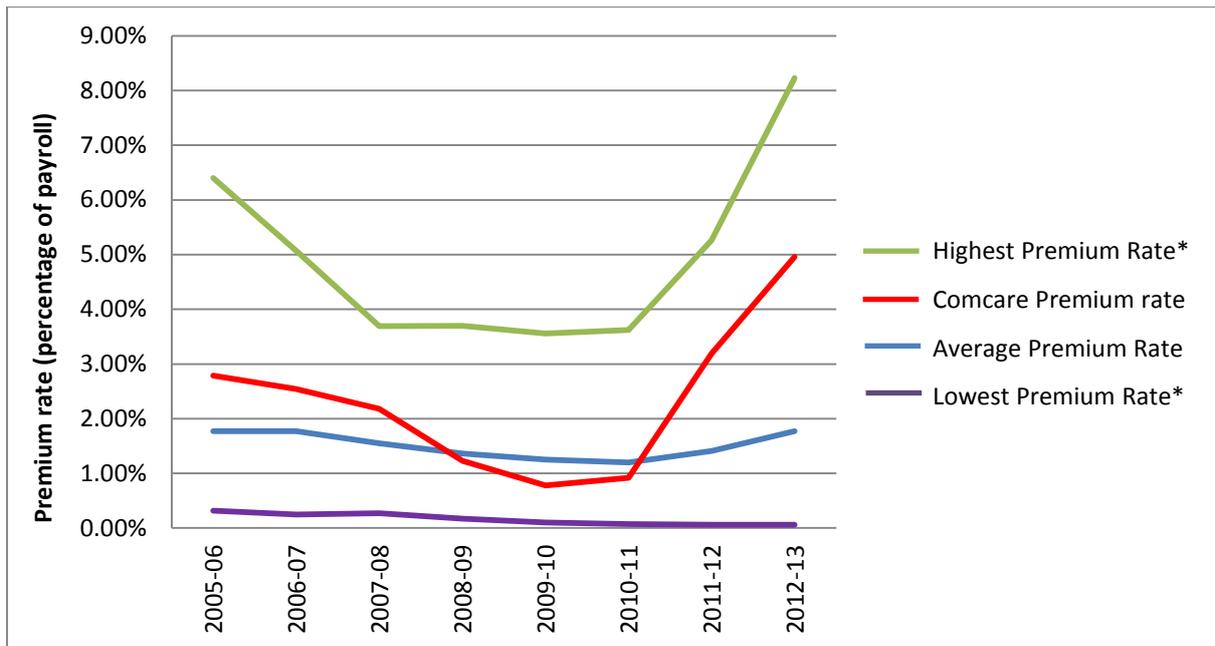
That the Minister for Employment and Workplace Relations consult his State and Territory counterparts about establishing a National Rehabilitation framework for injured workers aimed at optimising the return to work opportunities of injured workers throughout Australia.

## **COMCARE’S RECOVERY AND SUPPORT SERVICES**

### **COMCARE’S PERFORMANCE AS A PREMIUM PAYING EMPLOYER**

- 2.108 Until recently, Comcare’s premium rates have been at levels close to the average Australian Government agency premium rate for each year. However, in the last two years Comcare’s premium rate has increased to well above the average.
- 2.109 Comcare’s claims data shows an increase in the number of accepted claims, particularly in 2011-12. Expressed as a claims rate per 1000 FTE, Comcare’s performance from 2005-06 to 2008-09 significantly improved compared to previous years. Since 2008-09 however, this performance has steadily deteriorated.
- 2.110 While the current rate of claims per 1000 FTE is not as high as it was in 2005-06, a notable change in Comcare’s claims profile has been an increase in the number of mental stress claims being received. In 2011-12, Comcare received twice as many mental stress claims than in any previous year. The average cost for mental stress claims in the Comcare scheme is significantly higher (approximately \$250,000) compared with injury claims (approximately \$67,000). This increase in the number of mental stress claims has contributed to the increase in Comcare’s premium rate in recent years.

**Figure 2.10: Premium Rates**



\* Agencies with 100 or more employees

Source: Comcare 2012

**Table 2.2: Comcare Claims Data by Financial Year**

Financial Year	Count of Claims	Claim Rate per 1000 FTE	Average weeks incapacity per accepted claim
2005-06	14	39.0	17.7
2006-07	9	22.8	8.4
2007-08	3	6.5	11.2
2008-09	1	1.9	n.p.
2009-10	8	14.1	56.7
2010-11	9	15.5	9.7
2011-12	20	34.7	8.4

Source: Comcare 2012

- 2.111 Comcare's increasing premium rates in recent years are consistent with the overall scheme performance trends.
- 2.112 Comcare is uniquely placed to be an exemplar to other Australian Government premium payers and the ACT Government with respect to best practice WHS, rehabilitation and workers' compensation performance.

### Recommendation 16

As the claims manager for the premium paying side of the scheme, Comcare should continue to take steps to proactively manage its claims. As a priority, Comcare should continue to implement strategies to reduce the likelihood and severity of workplace injuries in Comcare and share their learning with other Commonwealth agencies in line with Comcare's Strategy 2015 objectives to "improve return to work practices by sharing best practice and case studies".

2.113 Ernst and Young was appointed by Comcare in 2010 to assist in formulating its new five year strategy (Strategy 2015). As part of that process, Ernst and Young consulted extensively (internally within Comcare and externally with premium-payers) and provided some significant insights on perceptions about Comcare.

2.114 Ernst and Young noted that:<sup>34</sup>

- *"In relation to claims management, stakeholders, including Comcare staff, commented that Comcare is internally focussed and needs to improve its business analyst capability. There was a general recognition of a need for Comcare to improve the use of its data and claims management practices to meet standards being set by other schemes."*
- *"During the internal claims management workshops, Comcare staff expressed concerns about the capability and capacity of agencies to provide quality injury management to injured employees. Comcare staff also spoke of high caseloads, difficulty with staff retention and trouble recruiting suitably qualified staff."*
- *"Stakeholders commented that Comcare has been internally focussed and has fallen behind best practice in a number of areas, in particular the development of claims management strategies and injured worker satisfaction."*
- *"Other jurisdictions have invested significantly in developing their approach to scheme wide claims initiatives designed to continually drive down the liabilities at the same time as improving service to injured workers."*
- *"Examples where Comcare appears deficient in better practice claims management include the lack of Customer Relationship Management approach to its key employer clients, the lack of follow up on claimants' experience and the lack of the use of clinical panels..."*

2.115 Ernst and Young's recommendations to Comcare aimed at improving its claims management outcomes focussed on the following key themes:<sup>35</sup>

- early intervention;
- manageable caseloads;
- effective claims management strategies;
- strong customer service;
- strong leadership;

<sup>34</sup> *Comcare in the Future, Recommendations for a New Strategy*; Ernst and Young report to Comcare, March 2010, pages 19 and 20.

<sup>35</sup> The detailed recommendations can be found on pages 30 & 31 of the above report.

- structure;
- resource base and expertise; and
- continuous improvement.

2.116 Comcare responded to this report in July 2010, restructuring its claims management team into a Recovery and Support Services Group (RSSG), comprising:

**Table 2.3: Recovery and Support Services Group (RSSG)**

Team	Functions
First Contact	<ul style="list-style-type: none"> <li>• Initial liability claim investigation and determination, and</li> <li>• Contact centre (all incoming 1300 phone calls to Comcare)</li> </ul>
Stay at Work	Manage claims for injured employees who remain at work post-injury, or who have had less than 20 days off work and require minimal support to return or stay at work
Return to Work	Manage claims for injured employees who have had more than 20 days off work and require assistance to return to work
Return to Independence	Manage claims for injured employees who are unable or unlikely to return to employment or who require significant rehabilitation before they can return to work
Asbestos and Lump Sum	Manage claims for permanent impairments, death benefits, third party recoveries, common law asbestos claims and Comcare staff claims
Health Services	<ul style="list-style-type: none"> <li>• Implementing and managing the Clinical Panel</li> <li>• Liaising with Health Care professionals on claims related issues</li> <li>• Reviewing claims for medical treatment</li> <li>• Implementing and supporting medical policy</li> <li>• Providing rehabilitation support and advice internally and externally</li> </ul>
Compensation Delivery Support	<ul style="list-style-type: none"> <li>• Providing internal and external operational policy advice</li> <li>• Formulating operational policy</li> <li>• Drafting, reviewing, maintaining operational materials (standard letters, Claims Policy and Procedures Manual, electronic Claims Policy Manual)</li> <li>• Support and development of Pracsys (Comcare’s electronic claims management system)</li> <li>• Operational reporting</li> <li>• Business improvement activities (managing High Risk Trial, Developing QA Framework)</li> </ul>
Employer Relationship Coordination	Maintain and coordinate relationships with premium paying agencies

## KEY ISSUES IMPACTING RECENT PREMIUM SCHEME PERFORMANCE

### Mental Health Claims

- 2.117 While mental disease claims are generally covered under the SRC Act, Section 5A provides that “an injury (including a disease) suffered as a result of reasonable administrative action, taken in a reasonable manner in respect of the employee’s employment” is not covered under the provisions of the SRC Act.
- 2.118 Introduction of this exclusion in 2007 resulted in a decline in the number of mental health claims for the first few years, but this trend has reversed in recent times with the number now being accepted having increased to almost pre-2007 levels.
- 2.119 The Federal Court decision in *Commonwealth Bank of Australia v Reeve*<sup>36</sup> provides guidance on the extent to which the exclusionary provisions can exclude liability.
- 2.120 The increase in these types of claims is one of the reasons given by actuarial consultants, Taylor Fry, the actuary for Comcare, for the increase in claims outstanding liabilities.
- 2.121 During the review consultation process, stakeholders expressed concern about the increase in the number of accepted mental health claims and felt that the exclusionary provisions that were introduced in 2007 were not now working as intended.
- 2.122 It was suggested by some premium payer stakeholders that Comcare has in recent times been accepting more mental health claims than had been the case in previous years. This view is not borne out by the data available on initial liability claims acceptance rates by Comcare which show that there has been little increase in the claims acceptance rates since 2008-09. In 2007-08, some 60 per cent of all disease claims were accepted, but this had increased to almost 75 per cent in 2011-12. However, if one excludes the results for 2007-08 (when the SRCOLA amendments were first introduced) the acceptance rate from 2008-09 to date has only experienced a slight percentage increase.

**Table 2.4: Initial Liability Claims Acceptance Rates**

Financial Year of Initial Determination											
		2007–08		2008–09		2009–10		2010–11		2011–12	
		Injury	Disease								
Initial Liability Determined	Accepted	2142	1082	1641	1517	1628	1439	1547	1768	1729	1503
	Rejected	398	767	183	683	162	666	111	603	118	551
	% Accepted	87.8%	58.5%	90.0%	69.0%	90.9%	68.4%	93.3%	74.6%	93.6%	73.2%

Source: Comcare 2012

<sup>36</sup> [2012] FCAFC 21.

## Claim Acceptance Rates

- 2.123 The initial claim acceptance rates for injury claims by Comcare have increased from 87.8 per cent in 2008-08 to 93.6 per cent in 2011-12 in concert with a reduction in the number of injury claims received. The combined initial claims acceptance rate has increased from 63.9 per cent in 2007-08 to 79 per cent in 2011-12.
- 2.124 The increase in initial liability injury claims acceptance rates has arisen at the same time as an improvement in decision-making timeframes. This requires some further investigation by Comcare to understand the reasons behind the increased initial claims acceptance rate.

### Recommendation 17

Comcare review initial claims acceptance rates in order to determine the reasons for the increase in injury claims acceptance rates.

## Claim Continuance Rates

- 2.125 Claim continuance rates measure how long injured workers who lodge claims remain on incapacity payments. Claim continuance rates are one of the tools used by actuaries to assess the scheme's outstanding liability. The longer injured workers stay on benefits, the more the cost to the scheme.
- 2.126 Continuance rates can be a good indicator of the Comcare scheme's RTW performance. The shorter the continuance rates, the more likely it is that injured workers are returning to work in a timely manner.
- 2.127 Comcare has developed and implemented continuance rate measures at 13 and 26 weeks post claims receipt as part of its KPIs. DAKPI 5 reports the percentage of claims reaching four weeks or more of incapacity payments that subsequently reached 13 weeks or more incapacity. The denominator for the continuance rate measure is claims reaching four weeks of incapacity. A number of incapacity claims do not receive four weeks' incapacity payments and are therefore excluded from this measure. Comcare data however shows that the proportion of claims reaching four weeks paid incapacity has been increasing every year.

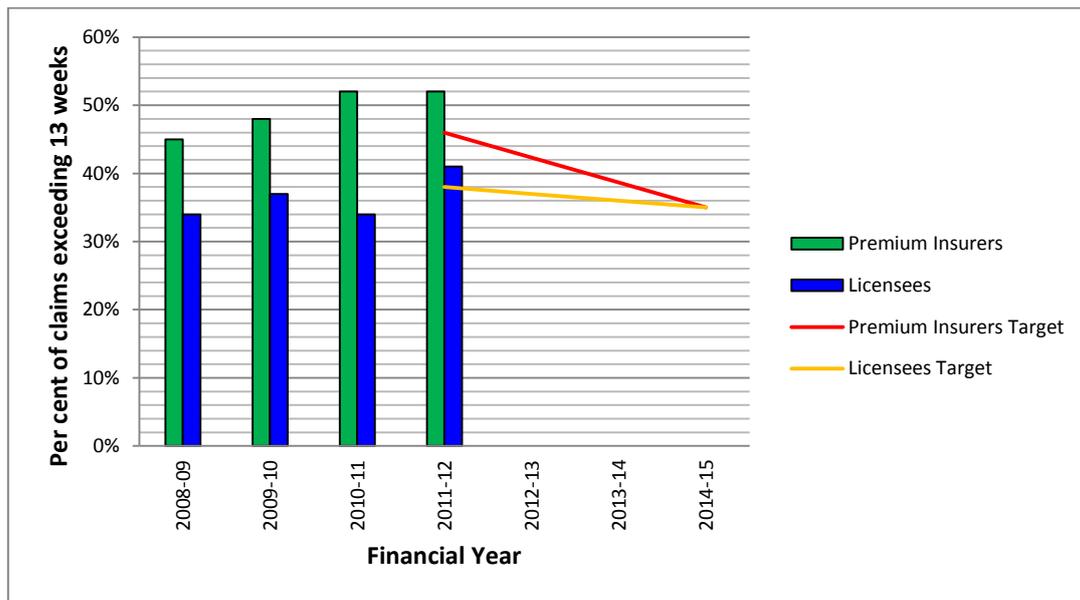
**Table 2.5: Claims Reaching 4 Weeks Paid Incapacity**

	2008-09	2009-10	2010-11	2011-12
<b>No. of claims reaching 4 weeks incapacity</b>	1537	1602	1818	1965
<b>No. of claims received</b>	4027	3895	4029	3901
<b>Percentage of claims reaching 4 weeks incapacity</b>	38.2%	41.1%	45.1%	50.4%

Source: Comcare 2012

- 2.128 Premium payers recorded 52 per cent of claims continuing to 13 weeks for the 2011-12 financial year, outside the 2011-12 target of 46 per cent. The data shows a progressive deterioration in premium payers' performance from year to year. Moreover, claim continuance rates for disease claims (59 per cent) is worse than injury claims (40 per cent).
- 2.129 Licensees, by comparison, have 41 per cent of claims continuing past 13 weeks for 2011-12, above the 2011-12 target of 38 per cent. Licensees' continuance rate are, however, significantly better than premium payers and, unlike the premium payers, there is little difference between continuance rates for injury and disease claims.

**Figure 2.11: DAKPI 5 – Claims Continuance Rate – 13 weeks**



Source: Comcare 2012

2.130 Recent actuarial assessments of the scheme’s premium payer side attributed the increase in outstanding actuarial liabilities partly to an increase in claims continuance rates for both short term and long term claims.

## RECENT COMCARE INITIATIVES

### PROJECT SERVICE EXCELLENCE

2.131 Comcare commissioned a project in 2010 called Project Service Excellence (PSE) which aimed to deliver the following:

- implementation of a new Service Delivery Model;
- clearly defined staff roles, responsibilities and caseloads;
- tools to support the new Service Delivery Model;
- introduction of “Return to Work” and “Return to Health” goals for injured workers and employers for all new claims;
- improved communication channels with employers and injured workers;
- refined tools and processes to make key decisions throughout the “end-to-end” claims process;
- establishment of a Clinical Framework and a Clinical Panel; and
- clearly defined metrics to monitor benefits.

2.132 PSE’s major deliverables were geared towards improving claims management issues identified in the Ernst and Young report and a greater focus on the needs of the injured worker to improve claims management and return to work outcomes.

2.133 The benefits aimed to be achieved from PSE were stated to be:

- increased satisfaction of injured workers;
- increased satisfaction of employers;
- clear understanding of roles and responsibilities in the new claims team structure;
- increased satisfaction and engagement of Recovery and Support employees;
- reduced time from injury to injury management activity/improved return to work outcomes;
- reduction in complaints related to delays in decision making;
- reduction in decisions overturned relating to inaccurate initial decisions on claims; and
- reduced outstanding liabilities.

2.134 The project concluded in February 2011 with the implementation of a new Service Delivery Model for the Recovery and Support Services Group (RSSG). Major deliverables included:

- development of clearly defined roles and responsibilities for RSSG staff;
- development and implementation of guidelines to assist in determining how each claim would be assessed for segmentation;
- implementation of a new Claims Services Officer (CSO) workload model;
- establishment of a Clinical Panel to assist with the management of treatment-related issues;
- establishment of teams within each segment focussing on specific claims and/or injury profiles;
- development of new processes and tools to support the new Service Delivery Model;
- establishment of a dedicated Employer Relationship team to coordinate employer contact on strategic issues; and
- changes to Comcare's claims management system, Pracsys, to support the changes.

2.135 An Internal Audit review of PSE in mid 2012 concluded that more work was required in fine-tuning the model and that it was too early to determine whether or not it had actually achieved all of its key objectives.<sup>37</sup> The report:

- noted that PSE was implemented within a comparatively short timeframe that precluded piloting and detailed post-trial evaluation and refinement of tools, practices and mechanisms prior to their implementation;
- found that planned PSE deliverables had largely been implemented: and
- noted that a number of areas required further refinement in order for their benefits to be fully realised.

2.136 With regards to an assessment of PSE's intended benefits, the audit report noted that there were no clearly defined mechanisms in place to monitor achievement of the project's intended outcomes. Rather, the expectation was that PSE's achievements would be reflected in the overall Comcare results as measured by Comcare's KPIs such as the claims continuance rates and outstanding liabilities.

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<sup>37</sup> Comcare Internal Audit report, Audit Number 2011/8.

- 2.137 Since PSE was implemented, the Comcare scheme's financial performance has deteriorated, especially with regard to claims continuance rates and return to work performance. The KPI reports do, however, show improvements in performance have been made in some areas, notably decision-making timelines. Annex E shows the performance of RSSG as at 30 June 2012 against the major KPIs relating to its role. While PSE has only recently been implemented, the improvement in decision making timeframes needs to be considered against the upward trend for overall claims acceptance rates. This is discussed further below, noting the imperative for improvements in service timing to not adversely impact on the quality of claims assessments.
- 2.138 Comcare recognises that its overall performance needs to improve to realise the full intended benefits of PSE. There are some indicators of improvement in the KPIs and Comcare has recently implemented claims management initiatives to address performance which are discussed below.
- 2.139 In terms of effectiveness, it is important that trend indicators are developed which measure the effectiveness of PSE against its stated objectives. It may be too short a time since commencement to assess fully the impact of PSE and Comcare's response to the recent deterioration in scheme performance is a positive initiative.
- 2.140 Some of the measures that can be used to assess PSE's success or otherwise are new so it is not possible to compare current performance with the past. They nevertheless provide a benchmark against which future improvements can be measured.

#### Increased Satisfaction of Injured Employees

- 2.141 The table below shows the overall satisfaction of injured employees for the premium payers in 2009-10 and again in 2011-12. The data for 2009-10 was collected by Colmar Brunton in a one off survey, while the data for 2011-12 collected by the Social Research Centre (SRC) was based on two surveys conducted in November 2011 and again in May 2012.

**Table 2.6: Overall Satisfaction with Comcare**

	Colmar Brunton 2009-10	SRC 2011-12
Very satisfied	32%	32%
Satisfied	26%	45%
Neither	22%	5%
Dissatisfied	8%	11%
Very dissatisfied	10%	6%
Don't know	1%	1%

Source: Comcare

- 2.142 The overall satisfaction of injured employees has risen from 58 per cent (net satisfaction) in 2009-10 to 77 per cent (net satisfaction) in 2011-12. More importantly, the proportion of injured employees who were dissatisfied or very dissatisfied has dropped from 11 per cent in 2010 to seven per cent in 2011-12, and the proportion of injured employees who indicated that they were neither satisfied nor dissatisfied has also dropped from 22 per cent in 2009-10 to just five per cent in 2011-12.
- 2.143 While it is not possible to attribute the improvements shown in the survey results solely to PSE, they indicate injured employees' perceptions of RSSG in providing claims and injury management support services following PSE implementation.

#### Increased Satisfaction of Employers

- 2.144 The only data available comes from the results of the overall employer satisfaction survey of premium paying employers taken after PSE was implemented. While this does not provide an assessment of PSE's success to date, it nevertheless provides a benchmark from which future improvements can be measured.

**Table 2.7: Overall Satisfaction with Comcare (Employer Representatives)**

	November 2011	May 2012	Combined 2011-12 Result
<b>Very satisfied</b>	11%	9%	10%
<b>Satisfied</b>	56%	53%	54%
<b>Neither</b>	12%	17%	14%
<b>Dissatisfied</b>	16%	17%	16%
<b>Very dissatisfied</b>	5%	2%	4%
<b>Don't know</b>	0%	2%	1%

Source: Comcare

- 2.145 As with the injured employee survey, the survey results cannot be attributed solely to PSE.

#### **Clear Understanding of Roles and Responsibilities in the New Claim Structure**

- 2.146 The results of a recent survey of CSOs in RSSG showed a 73 per cent satisfaction rate with Comcare as an employer. While most CSOs felt they had the skills to do their job, and they had control over their work, only four per cent felt they had enough time to manage all their claims and/or found it easy to cope with their current workload.
- 2.147 In recognition of some of the issues raised in this survey, especially with regards to the CSOs understanding of their role and ability to manage their workloads effectively, Comcare recently commenced a project to develop a CSO capability framework, including a workload allocation model, drawing on learnings from other jurisdictions.
- 2.148 The effectiveness of the CSO role is critical to Comcare's ability to improve further its service delivery to key stakeholders and to improve overall scheme performance outcomes. Some stakeholders have pointed to the skills-mix of CSOs as critical in improving scheme outcomes. CSOs are required on a daily basis to assess and apply complex legal and medical concepts and issues while at the same time improving their customer service delivery. In order to make the appropriate decisions, CSOs need to be properly trained and supported in the decision-making process.

#### **Reduced Time from Injury to Injury Management Activity/Improved Return to Work Outcomes**

- 2.149 Claims continuance rate results, combined with the deterioration in scheme financial performance, shows that RTW performance has not improved since PSE implementation.

#### **Reduced Outstanding Liabilities**

- 2.150 Comcare's claims continuance rates and financial performance has deteriorated in recent years, leading to an increase in premiums. The role of the RSSG in improving Comcare's performance is crucial.
- 2.151 Comcare has recently commenced a project to improve its claims management processes. The Claims Management Systems Improvement project (CMSI) was established to investigate and recommend changes to the claims management operating model to strengthen the recovery and support services for workers with injuries and invest in Comcare staff to improve quality service delivery. CMSI aims to develop IT and procedural

enhancements to the claims management process and to automate these processes, wherever possible.

#### **Recommendation 18**

- 18(a): Comcare should establish a reporting and monitoring framework that assesses performance improvements to measure the ongoing effectiveness of its claims management outcomes and report to SRCC.
- 18(b): Comcare should provide a comprehensive training program for its CSOs to arm them with the necessary skills and support tools for their roles.

## **THE TEN-POINT PLAN**

- 2.152 In response to recent deterioration in performance of the premium payer side of the scheme, and the need to improve its overall claims management systems framework to identify and manage key risks, Comcare has developed a Ten-Point Plan (10PP).
- 2.153 The 10PP is managed internally within Comcare with project plans developed for all the initiatives and ongoing monitoring of each project. A Steering Committee provides governance oversight to ensure implementation is proceeding as planned, in line with the development of a systems approach to claims management. A number of initiatives in the 10PP focus specifically on improving claims management outcomes.

### **High Risk Claims Management**

- 2.154 Not all claims require assistance. The vast majority of injured employees return to work without any special intervention or assistance. Those that do not can become difficult to manage longer term, if not identified early. While it has been relatively easy to apply the knowledge of hindsight to long term claims and identify the reasons why they became long term claims, the challenge has always been to develop a process to identify those claims that are likely to become long term claims as early as possible. Early identification of these claims would improve RTW outcomes due to early intervention processes and procedures being implemented from the SRCOLA.
- 2.155 As part of the 10PP, Comcare has commendably been working to identify the specific claim characteristics that can be used as an early predictor of long term claims. Using information contained in an injured worker's claim form when it is lodged, Comcare has identified certain factors which point to the likelihood of a claim developing into a long term and/or costly claim (high risk claim). Using this analysis, appropriate claim interventions are then implemented by Comcare, such as direct contact with injured workers.
- 2.156 Such an approach can only be effective in reducing claims cost liabilities if the claims identified are the claims that would have indeed become long term and/or costly claims without the planned interventions.
- 2.157 During consultations with stakeholders, premium payers expressed concern over some aspects of this project, especially about the contacting of injured employees directly by Comcare as soon as a claim is received. Stakeholders were concerned that this contact by Comcare could harm the injured employee's relationship with the employer and their attempts to achieve a return to work.
- 2.158 This suggests the need for increased communication between Comcare and the premium payers about this useful initiative and collaboration to determine how best Comcare can work with employers to improve the outcomes of this initiative.

### Recommendation 19

Comcare collaborate with premium payers to develop a shared understanding of the processes to be adopted and the outcomes to be achieved by the High Risk Claims Management initiative.

#### Management of Medical and Like Treatment Services

- 2.159 A Clinical Panel and clinical framework to support Comcare's CSOs in ensuring effective medical and like services delivery has recently been established.
- 2.160 The purpose of the Clinical Framework which outlines a set of guiding principles for the delivery of health services<sup>38</sup> is to:
- optimise participation at home, work and in the community, and to achieve the best possible health outcomes for injured people;
  - inform healthcare professionals of expectations for the management of injured people;
  - provide a set of guiding principles for the provision of healthcare services for injured people, healthcare professionals and decision makers;
  - ensure the provision of healthcare services that are goal oriented, evidence based and clinically justified; and
  - assist in the resolution of disputes.
- 2.161 The Clinical Framework is a set of principles only and does not aim to direct treating practitioners on the types of treatment appropriate in each case. All treatment offered must however be assessed against the principles outlined in the document in order to ensure alignment with best practice.
- 2.162 The Clinical Panel's role is to conduct clinical reviews of specific claims and provide clinical support to Comcare's CSOs. It is not a decision-making body, but provides advice and guidance in the decision-making process. Where necessary, it also provides professional support and advice to healthcare providers treating injured workers.
- 2.163 In performing its functions, a member of the Clinical Panel may contact an injured worker's treating health practitioner to discuss current and future treatment and seek agreement on the best treatment options for the injured worker. As much as possible, the Clinical Panel aims to come to an agreement with the treating health practitioner on the way forward.
- 2.164 In addition, the Health Services team reviews and, where necessary, updates Comcare's policy position on the provision of specific treatment types.<sup>39</sup> These policies aim to provide greater clarity to service providers on what Comcare will accept liability for, and the processes treating providers need to follow in seeking approval to provide treatment in individual cases. Development of these treatment policies and guidelines is a crucial aspect of Comcare's ability to reduce "cost leakage" due to inappropriate payment of treatments that are not in line with the principles outlined in the Clinical Framework.
- 2.165 The Clinical Framework and Clinical Panel will address these concerns.

<sup>38</sup> *Clinical Framework for the Delivery of Health Services*, joint VWA/TAC publication, revised June 2012

<sup>39</sup> In recent times, Comcare has reviewed and updated its treatment policy and guidelines for Physiotherapy and Psychology treatment both of which can be found on the Comcare website ([www.comcare.gov.au](http://www.comcare.gov.au)).

- 2.166 Signs are emerging that the work being done in this area is beginning to deliver positive results. While it is too early to assess the actuarial impact, Comcare has been using the Clinical Framework principles to drive more effective treatment outcomes. In the 12 months to 30 June 2012, Comcare has reviewed the treatment for 476 claims. Of these, the Clinical Panel used the Clinical Framework principles to achieve consensus on future treatment on 307 claims (or 87 per cent).
- 2.167 Introduction of the new physiotherapy and psychology policies which require approval of Treatment Plans where extended treatment is proposed has seen the submission of over 1500 plans by treating practitioners. The submission and approval of these plans enables all parties to have clarity about the treatment services to be provided and measured. This approach remedies the current situation where medical treatment can continue for long periods of time without a clear understanding of the benefits of such treatment.
- 2.168 Despite these successes, progress has been slow. Given Comcare has over 10,000 open premium claims, there is a need for quicker review. There is also a need to introduce more disciplines in the Clinical Panel to review other types of treatment.
- 2.169 The Hanks Review might also consider the medical treatment provisions of the SRC Act.

#### **Recommendation 20**

Comcare expand its Clinical Panel resources to enable more timely treatment reviews of all current and new claims.

The Hanks Review should consider reviewing the medical treatment provisions of the SRC Act to provide a stronger emphasis on the provision of evidence based treatment.

## **AUDIT**

- 2.170 As a CAC Act agency, Comcare is required under Section 32 of the CAC Act to establish and maintain an Audit Committee to comply with obligations under the Act and provide a forum for communication between the CEO, senior managers and external and internal auditors.
- 2.171 In July 2012, in accordance with Commonwealth Authorities and Companies Regulations, the CEO, in his capacity as Director of Comcare, enhanced the audit framework by establishing an independent Audit Committee made up of at least three and not more than five members who are independent of Comcare.<sup>40</sup> The Audit Committee plays an important role in the risk management processes for Comcare and is directly responsible and accountable to the CEO in the performance of its duties which include:
- Risk Management  
To review whether Comcare's management has in place a current and comprehensive risk management framework, and associated frameworks for the effective identification and management of Comcare's financial and business risks, including fraud management.
  - Control Framework  
To review whether Comcare's management has an effective control framework to manage all aspects of its business, including the management of policies and procedures, information and communication systems, contractor management and delegations.

<sup>40</sup> Prior to this, Comcare's Audit Committee was made up of one independent Chairperson, the Comcare Deputy CEO and two Comcare General Managers.

- External Accountability

To satisfy itself that Comcare has processes to ensure accuracy of financial information, to review financial statements and provide advice to the CEO and to ensure Comcare management has processes to review and implement recommendations from external reports, including Parliamentary Committee reports.

- Legislative Compliance

To determine whether Comcare management has considered legal and compliance risks as part of its risk assessment and management arrangements, including a review of the effectiveness of Comcare's system for monitoring compliance.

- Internal and External Audits

To oversee Comcare's overall audit program, including a review of internal audit coverage and annual work plan, and to review all internal and external audit reports and provide advice to the CEO on implications for Comcare and actions to be taken, where required.

2.172 Comcare has developed an Internal Audit Plan 2012-15 detailing the process to determine audits to be undertaken in each year following a risk assessment of Comcare's operational environment, key strategic risks and Business Plan, including the 10PP, and a review of audits conducted in the previous year. The Internal Audit Plan is reviewed annually.

2.173 The Audit Plan provides for the conduct of different types of audits:

- compliance audits – assessing Comcare's conformance with corporate, legal and policy obligations;
- performance audits – examining the effectiveness, efficiency and economy of Comcare's business operations;
- information and communication technology audits – reviewing the operation and management of Comcare's technology information infrastructure; and
- ad-hoc audits – audits conducted in response to emerging issues during the year.

2.174 Comcare has increased the number of internal audits it conducts in recognition of the need to increase oversight of its operations. Audits conducted since 2009-10 include:

- review of the Licensee Improvement Program;
- assessment of current strategies for ongoing improvements of the Initial Claims processing functions;
- assessment of the degree of compliance with policies and procedures for decision making on on-going claims;
- compliance with Comcare's claims management policies and procedures with regards to long term claims;
- review of claims processing of non-incapacity payments;
- review of the adequacy of procedures for the recovery of overpayments;
- assessment of the effectiveness of arrangements for the induction and support of new CSOs; and
- assessment of whether the benefits of PSE have been realised.

2.175 The issues identified in the Audit Plan for the 2012-13 financial year include:

- governance and strategic management of the 10PP;

- management of long term claims;
- processing incapacity payments directly to injured workers;
- ICT contract management;
- disaster recovery planning;
- business continuity planning; and
- approval of rehabilitation providers.

2.176 The Audit Committee is charged with reporting to the CEO of Comcare at least once a year, but as often as is necessary. The report should include:

- a summary of the Committee's work in the preceding year to discharge its obligations;
- a summary of Comcare's progress in addressing the findings in internal and external audit and Parliamentary Committee reports;
- an overall assessment of Comcare's risk, control and compliance framework, including details of any significant emerging risks or legislative changes affecting Comcare; and
- details of meetings, including the number of meetings held during the relevant period, and the number of meetings attended by each member of the Audit Committee.

2.177 The activities of the Audit Committee are reported in Comcare's Annual Reports.

#### **Recommendation 21**

As part of the enhanced regulatory framework for Comcare proposed in this Report, Audit Committee reports should be made available to the SRCC.

## **IMPROVEMENTS TO THE DELIVERY OF COMCARE'S RECOVERY AND SUPPORT SERVICES**

### **Key Performance Indicators**

- 2.178 Comcare has developed 56 headline and group key performance indicators (KPIs), 33 of which have been endorsed by and are reported to the SRCC for scheme monitoring purposes, covering all key aspects of the three pillars of Comcare's Strategy 2015. The remaining 23 KPIs are used internally by Comcare for operational purposes only.
- 2.179 In June 2011, the SRCC agreed to a set of nine scheme headline and group Determining Authority KPIs (DAKPIs) to monitor the performance of Comcare and licensees.
- 2.180 The nine DAKPIs are also used to monitor the individual performance of licensees as part of their licence requirements. The DAKPIs replaced the former SRCC indicators that were used to assess licensee performance. The SRCC, with Comcare's assistance, sets individual targets against the DAKPIs for each licensee.
- 2.181 The KPIs are developed to show:
- how well the Comcare scheme is going;
  - if the scheme is meeting its goals;
  - if the scheme stakeholders (as represented on the SRCC) are satisfied; and
  - if and where improvements are necessary.
- 2.182 The scheme headline and group KPIs are outlined in [Annex F](#).

- 2.183 A quarterly Scheme Performance Report on current performance against targets is provided by Comcare to the SRCC at each meeting for consideration.
- 2.184 While the DAKPIs used to monitor the performance of all determining authorities are the same, the yearly targets are different for Comcare and licensees for some KPIs. The targets take into consideration current performance of the determining authorities in order to set targets that are “a stretch” but achievable.
- 2.185 The business rules underpinning each DAKPI are the same for all determining authorities, ensuring a “level playing field” in terms of performance comparisons for each KPI.
- 2.186 It is noted, however, that not all KPIs apply to all determining authorities. For example, as the ACT Government is not covered by the Commonwealth WHS Act, DAKPIs that relate to the measurement of OHS performance (DAKPI 1) do not include the ACT Government.
- 2.187 The KPIs and basis of their measurement is the same for all determining authorities, but the implications for non-compliance can be quite different. While the performance assessment of individual self insurer licensees for their self insurer licence is directly impacted by their performance against the DAKPIs, the consequences for Comcare as a determining authority if it is unable to meet its targets appears to be limited to publication of its results. Accordingly, it would seem that there is a greater incentive for the licensees to meet their targets than for Comcare.
- 2.188 The KPI framework is very comprehensive and covers most aspects of scheme performance. Performance is currently measured at determining authority and overall Comcare scheme level. While performance outcomes are shared and discussed regularly at the SRCC and with the determining authorities, it is unclear how well these KPIs are currently being used to improve the performance of individual premium-paying agencies.
- 2.189 Comcare also regularly reports internally on its performance against the full set of KPIs.
- 2.190 During consultations with stakeholders, it was obvious that the licensees had a good knowledge and understanding of the KPI framework, especially the DAKPIs. However, premium payers did not generally appear to have a clear understanding of the KPI framework. Most of the agencies consulted with, including some of the very large ones, were either unaware of the KPIs, how they were developed, or how they were being used.
- 2.191 Premium payers expressed particular concern over the performance of the Comcare scheme, particularly in the context of the recent premium increases. This was attributed to the SRCC not having clear oversight of Comcare’s performance as a determining authority.
- 2.192 All premium payer employers have access to their claims data through an on-line portal called the Customer Information System (CIS), developed by Comcare. This provides all of the necessary details about claims cost trends, enabling employers to produce reports for internal use to track their performance. This database is updated daily.
- 2.193 CIS provides each premium payer with information on its own claims trends and on some broader claims trends. It does not, however, provide information on Comcare scheme trends based on the newly developed SRCC endorsed KPIs to enable premium payers to compare their performance with the rest of the Comcare scheme. In addition to providing data on their own performance trends, it is possible for CIS to be also used to keep premium payers updated on the performance of the overall Comcare scheme and a comparison between the performance of the premium payers and the licensees.
- 2.194 Additionally, by including information on Comcare’s performance, it is possible for CIS to be used as a tool for premium payers to scrutinise the performance of Comcare as the determining authority for the premium payer side of the scheme. This will provide greater

transparency and address some stakeholder concerns about the lack of scrutiny of Comcare's performance as the claims manager for the premium payer side of the scheme.

- 2.195 It is also possible for the KPIs to be used to assist premium payers improve their performance. Comcare has identified the premium payers that it believes are the ones contributing most to recent claims performance trends.

#### **Recommendation 22**

- 22(a): All the KPI results reported to the SRCC should be made available to premium payers through publication on CIS. This should include a comparison of performance of the premium payer side of the scheme and the licensees to enable premium payers to compare their individual performance with broader Comcare scheme trends.
- 22(b): Comcare should consider implementing a process to auto-generate key reports for selected premium payers and provide these reports to nominated staff in order to ensure senior management awareness of performance trends.
- 22(c): Reports should be developed to monitor and report on performance against the SRCC endorsed KPIs and targets at an individual premium payer level. The KPI results for each premium payer and licensee should be made available to them through the CIS, along with a comparison with the premium payer side of the scheme and licensees.
- 22(d): The individual KPI outcomes should be communicated with premium payers and Comcare should work with premium payers to develop and implement plans to improve performance on a case by case basis.

## **AN EFFECTIVE CLAIMS MANAGEMENT SYSTEM**

- 2.196 A risk management approach to identify and manage key claims management risks facing the Comcare scheme is essential.
- 2.197 Learnings can be taken from the governance arrangement for licensees who are all required to be assessed against the SRCC-approved claims management systems audit tool. This audit tool is used to assess the performance of the licensees as part of their self insurance arrangements. It provides the means to review a licensee's management of its workers' compensation claims and to identify areas of improvement.
- 2.198 The audit tool assesses licensees' claims management systems against five elements:
- commitment and corporate governance (six criteria);
  - planning (six criteria);
  - implementation (24 criteria);
  - measurement and evaluation (eight criteria); and
  - review and improvement (two criteria).
- 2.199 Although the audit tool was developed to monitor the performance of licensees, there is no doubt that Comcare as a determining authority would also benefit from applying this tool to assess the effectiveness of its overall claims management systems performance.
- 2.200 In 2011-12, Comcare was audited for the first time against the audit guidelines. It achieved conformance with the 90 per cent target with the claims management systems audit criteria. In comparison, licensees achieved 97 per cent conformance with the claims management systems audit criteria.

- 2.201 Another point of difference between Comcare and licensees is that licensees are subject to self audit (often conducted by an external firm) and also subject to audits by Comcare. Comcare chose to use internal resources for its first claims management systems audit, and may benefit from the additional scrutiny a subsequent audit conducted by an external firm, in particular a firm with experience in conducting similar audits with licensees, will bring.

### **Recommendation 23**

- 23(a): In order to improve claims management outcomes for the premium payer side of the scheme, SRCC should, as part of its improved regulatory framework for Comcare, develop and implement a detailed and structured program to regularly audit and improve the claims management systems tool and claims management systems.
- 23(b): Comcare implement a follow up claims management systems audit conducted by an external firm with experience in conducting similar audits with licensees.

## **ONGOING CLAIMS MANAGEMENT**

- 2.202 Effective management of ongoing claims is difficult to measure at present. While indicators exist to measure most aspects of the scheme, an understanding of how long it takes Comcare to respond to ongoing claims issues such as managing incoming correspondence, receipt of new medical certificates and other information that contributes to the claims management process cannot be obtained by scrutinising current performance indicators.
- 2.203 Pre-existing medical conditions and other secondary conditions require greater attention under the scheme. While the SRC Act defines an injury to include an aggravation of a pre-existing condition, the real challenge is determining whether there is enough evidence to accept liability for an aggravation of a pre-existing medical condition and when entitlement under the SRC Act should stop as a result of the cessation of an aggravation.
- 2.204 During consultation, premium payer stakeholders expressed concern that Comcare continued to pay for aggravations of pre-existing medical conditions without consideration of medical information available, suggesting that any work-related aggravation had ceased. Comcare on the other hand has suggested that it is often difficult to separate an aggravation from an ongoing pre-existing medical condition in order to cease entitlements.
- 2.205 Similar concerns were expressed by stakeholders about the acceptance of secondary conditions as a result of a work-related injury. An example is where a worker who suffers a physical injury subsequently claims to have suffered a functional overlay/secondary psychiatric condition as a result of that injury. Some stakeholders suggested that Comcare was accepting such secondary conditions on an open-ended basis and that they were not subject to the same level of assessment as the primary condition.

**Recommendation 24**

Comcare commission an independent performance audit of its ongoing claims management, focussing on:

- aggravations of pre-existing conditions; and
- secondary medical conditions and the like.

This audit should contain an examination of better practice in this area.

Comcare should develop KPIs that monitor performance in the ongoing management of claims.

**INCAPACITY PAYMENTS**

2.206 Incapacity payments are the single biggest driver of the scheme's claims payments. As such, it is vital they are calculated correctly to minimise errors and/or overpayments.

2.207 The SRC Act incapacity provisions are regarded as difficult to interpret and apply and stakeholders, especially the licensees, find it difficult applying the current provisions to their specific circumstances. Premium payers also expressed concern about Comcare managing the processing of incapacity payments effectively.

2.208 Management of the incapacity provisions is an ongoing challenge to the scheme. Given its complexity and difficulties in application, it is the subject of numerous complaints and disputes and leads to overpayments to injured employees. While these can be partly attributed to the nature of the legislation, they are also partly due to the need for Comcare to improve its overall management systems for the processing of incapacity claims.

2.209 The Hanks Review will consider the SRC Act incapacity provisions, but it is important that Comcare has robust management systems to ensure incapacity calculations are being made in line with legislative provisions to avoid incorrect payments being made.

**Recommendation 25**

Comcare commission an independent performance audit of its calculation of incapacity payments, in particular:

- initial calculations;
- calculations made under s20, 21, 21A; and
- supporting processes such as Section 8 determinations and notifications under s114B.

This audit should also contain an examination of better practice in this area.

## Chapter 3 – Comcare’s Governance

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This Chapter reviews Comcare’s governance structure and current status as a CAC Act body. An analysis is made of the respective attributes of CAC Act and FMA Act bodies and opportunities for improving Comcare’s governance structure are identified.

### GOVERNANCE ARRANGEMENTS

#### BACKGROUND OF CAC ACT AND FMA ACT BODIES

- 3.1 Australian Government agencies generally operate under either the CAC Act or FMA Act, depending on the nature and requirements of the entity. These Acts provide the framework used to regulate the financial management of Commonwealth agencies.
- 3.2 When establishing a new agency the Government, through the Department of Finance and Deregulation, seeks to ensure an agency’s structure and governance is designed to help implement the Government’s policy and achieve the body’s goals in an accountable and transparent manner. The absence of such accountability and transparency can potentially undermine the activities of the agency and the effectiveness of its policy.<sup>41</sup>
- 3.3 *Governance Arrangements for Australian Government Bodies* clearly articulate the key distinguishing features of CAC Act and FMA Act bodies to be taken into consideration when establishing a new entity. These features include executive management and structure, sources of funding and the basis of staff employment. Importantly, both the FMA Act and CAC Act can accommodate bodies with high degrees of independence.<sup>42</sup>

#### Executive Management and Structure

- 3.4 The executive management and structure for an agency under the FMA Act is provided through that Act and the *Public Service Act 1999*.<sup>43</sup> A board-like structure for an FMA Act agency, while possible, is not necessary and should only have an advisory function to assist the Chief Executive, or be used where collective statutory decision-making requires a commission for an FMA Act body. Notably, regulatory bodies do not usually require a governing board and should therefore be under the FMA Act and it is the Government’s preference for such bodies to fall under the FMA Act.<sup>44</sup>
- 3.5 A CAC Act body is a body corporate, typically with a commercial or entrepreneurial nature, premised on having a governing board. This allows an entity to leverage the benefits of a mix of different experiences and skills and exercise collective decision making.<sup>45</sup>
- 3.6 A governing board’s powers should include the full power to act in the interests of the relevant body which includes the ability to appoint and remove the body’s Chief Executive Officer (CEO). In addition to sharing and potentially mitigating risk, the benefits of a board for a CAC Act body also comes from the different skills, views and experiences each member brings.<sup>46</sup> Under the CAC Act, the onus to properly govern the body is on its Directors, in line

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<sup>41</sup> DOFA, *Governance Arrangements for Australian Government Bodies*, August 2005.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid, page 19, 39.

<sup>44</sup> Ibid, page 35.

<sup>45</sup> DOFA,, *Is Less More? Towards Better Commonwealth Performance*, March 2012, page 31.

<sup>46</sup> DOFA *Governance Arrangements for Australian Government Bodies*, August 2005, page 35.

with Directors' duties. The extent government has control over a CAC Act body is dependent on the body's establishing legislation.<sup>47</sup>

### **Funding Sources**

- 3.7 An FMA Act agency is financially part of the Commonwealth which retains public money that can only be spent under the authority of an appropriation from the Australian Parliament. The FMA Act typically applies to bodies primarily budget-funded, regulators and bodies that raise public money under a Commonwealth law. Importantly, the FMA Act focuses on the responsibilities and obligations of a Chief Executive and the manner in which they manage resources which includes, e.g., public money and public properties. Such Commonwealth resources should be managed in a way that is efficient, effective and ethical.<sup>48</sup>
- 3.8 In contrast, a CAC Act body is legally and financially separate from the Commonwealth and the Government does not typically provide a substantial proportion of the body's funding through appropriations.<sup>49</sup> Under the CAC Act, Directors and officers of a CAC body are to utilise their powers and undertake their duties in the best interest of the body.<sup>50</sup>

### **Employment of Staff**

- 3.9 A body under the FMA Act typically employs staff under the Public Service Act. Employees of a CAC Act body are generally engaged outside the Public Service Act unless there are good reasons to the contrary. While Comcare is administered under the CAC Act, all staff with the exception of the CEO are employed under the Public Service Act.

### **Recent Developments**

- 3.10 As part of the Government's Commonwealth Financial Accountability Review (CFAR) process, the Minister for Finance, the Hon Penny Wong MP, in November 2012 released a Position Paper on the Government's focus on identifying changes to the financial framework of the public sector that can boost government productivity, efficiency and performance.<sup>51</sup> A key legislative proposal in this Position Paper is that a single Act that sets out the fundamental elements of the financial framework should replace the current model that distinguishes between FMA and CAC Act bodies.
- 3.11 The Government is seeking submissions on the issues raised in the Position Paper prior to finalising its position. The recommendations made in this Report are not at odds with the Position Paper and could be seen as a first step in a transition process.

## **COMCARE AS A CAC ACT BODY**

- 3.12 Comcare is subject to the CAC Act as specified by the SRC Act. However, it is really a hybrid entity as elements of its existing structure and functional features are typical of an FMA Act body (such as claims management processing for other government bodies) while others are more akin to a CAC Act body (such as the long term insurance function).
- 3.13 The SRC Act states that Comcare is constituted by a CEO, appointed by the Governor General. Unlike the vast majority of other agencies subject to the CAC Act, which have a multi-member board at their apex, Comcare is governed by a sole Director. The SRC Act also states that for the purposes of the CAC Act, the Director of Comcare is its CEO, and exempts

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<sup>47</sup> DOFA, *Governance Arrangements for Australian Government Bodies*, August 2005, page x.

<sup>48</sup> *Ibid*, page 19.

<sup>49</sup> *Ibid*, page 7.

<sup>50</sup> *Ibid*, page 18.

<sup>51</sup> <http://www.cfar.finance.gov.au/files/2012/11/cfar-position-paper.pdf>

the CEO from Sections 27F to 27L of the CAC Act which concerns, among other things, the Director's duty to disclose material of a personal interest when conflict arises.

- 3.14 Positioning the CEO of Comcare as the Director under the CAC Act effectively creates a dual role for that individual. The first is that of Comcare CEO which has certain responsibilities and requirements to satisfy under the SRC Act. Unlike other CAC Act bodies with a multi-member board who share the responsibility of satisfying Director's duties stipulated under the CAC Act, Comcare's CEO as the sole Director carries the full responsibility and risk alone.
- 3.15 Increased personal risk for CEOs and senior management is a feature of bodies under the CAC Act where they are commercial or entrepreneurial in nature. Carriage of this risk by the CEO of Comcare is questionable, given that it is a body with a mostly public purpose.<sup>52</sup>
- 3.16 Comcare is not a commercial or entrepreneurial entity and the bulk of its funding is obtained from the Commonwealth Government which is public money. This raises the question of whether it is appropriate for the CEO of Comcare to be subject to such personal risk stemming from their position as sole Director for the purposes of the CAC Act.
- 3.17 The SRC Act does not establish a board for Comcare, however it does establish the multi-member SRCC, the composition of which is discussed in Chapter One of this report, and all of whom must be appointed by the Governor General. The SRC Act stipulates that for the purposes of the CAC Act, the Commissioners of the SRCC are not Directors of Comcare (Section 89E(2A)). Notably, Section 89E(1) was amended by the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011* to remove the CEO of Comcare from the SRCC membership. Prior to that, the CEO was also a Commissioner for the SRCC. This amendment was recommended by the Comcare CEO to enhance the governance arrangements of the SRCC and Comcare. The SRC Act states that the CEO is not a Commissioner, however the SRCC can delegate any of its functions and powers to the CEO, excluding those under the *Work Health and Safety Act 2011* (Section 89R(1) and (2)).
- 3.18 The specific role and purpose of the SRCC with respect to workers' compensation is not clearly articulated in the SRC Act, but it does identify a range of functions which include the power to prepare and issue general policy guidelines to the CEO of Comcare in relation to the SRC Act's operation. Section 73A of the SRC Act provides that Comcare must comply with these guidelines. In complying with the guidelines, the CEO must also take into account his obligations as sole Director of Comcare under the CAC Act.
- 3.19 If guidelines prepared by the SRCC and complied with by Comcare have unintended consequences this could potentially result in the CEO being liable and sued for a failure in their role as Director. Such liability rests only with the CEO, and none can be attributed to the SRCC. The SRCC does not share the burden or risk inherent in the position of Director held by Comcare's CEO for the purposes of the CAC Act. There is therefore scope to enhance the transparency around the relationship between Comcare's CEO and the role of the SRCC as reflected in the SRC Act to help minimise the risks faced by the CEO as well as improve the transparency of Comcare's governance.

## **ESTABLISHMENT OF A COMCARE BOARD**

- 3.20 Given the anomaly Comcare presents as a CAC Act body without a board at its apex, it is appropriate to explore whether a board should be created to resolve this. Two types of boards can be considered - governing boards and advisory boards.

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<sup>52</sup> DOFA, *Is Less More? Towards Better Commonwealth Performance*, March 2012, page 30.

- 3.21 Generally, in the private sector, a governing board has the responsibility for the running and performance of a company. The company's members, such as shareholders, confer powers on the Directors that constitute the board.<sup>53</sup> The Board should, in such cases, generally have the power to appoint and dismiss the CEO.
- 3.22 Mr John Uhrig's 2003 governance review of statutory authorities acknowledged that a governing board requires the full power to act to ensure they are effective. This is often the case with commercial operations.<sup>54</sup> Any limitation in a governing board's power to act hinders its ability to provide governance and exercise its entrepreneurial freedom.<sup>55</sup>
- 3.23 In the context of the Commonwealth Government, the power and functions of a governing board are stipulated in the legislation relevant to the statutory authority in question.<sup>56</sup> Notably, the governance structure provided with a governing board does not sit well with an agency under the FMA Act given the executive management and structure is provided through that Act. Uhrig states governing boards should be utilised in statutory authorities only where they can be given the full power to act.<sup>57</sup>
- 3.24 Under the SRC Act, the Minister for Employment and Workplace Relations possesses the power to direct Comcare and the SRCC in relation to their performance and functions under the SRC Act (Section 73(1) and Section 89D(1) respectively). Retention of these provisions will ensure that the Government maintains the power of a Ministerial Directive. The Government typically retains, and is expected to retain, control of policy and approval of strategy of regulatory bodies.<sup>58</sup>
- 3.25 As the functions of Comcare are not entrepreneurial, a governing board would not seem necessary and I have not seen any compelling evidence that Comcare needs a governing board. Existing guidelines for governance arrangement of Australian Government bodies envisage "regulatory bodies do not usually require a governing board." This guidance continues by adding that such bodies "should therefore be under the FMA Act."<sup>59</sup>
- 3.26 Alternatively, an advisory board comprises a selection of stakeholders who provide advice and expertise to a company's CEO without having direct involvement in the governance and running of the entity. Such a board can provide a useful consultative body to help inform the work of the CEO.<sup>60</sup> Unlike a governing board, an advisory board can complement the work of an FMA Act agency as it provides an avenue to access expertise and skills that may be specialised and particularly relevant to the function of the body. The creation of an advisory board could provide support to the CEO of Comcare to help moderate risks faced due to the dual role this person holds as CEO under the SRC Act and Director under the CAC Act. Ultimately all risk would continue to rest with the CEO under Comcare's current structure as a CAC Act body as an advisory board would not have governing responsibilities.
- 3.27 As currently written, the SRC Act does not give the SRCC the power of oversight and regulation over Comcare and its functions. It does, however, have a range of functions

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<sup>53</sup> DOFA, *Governance Arrangements for Australian Government Bodies*, August 2005, page 35.

<sup>54</sup> Uhrig, J. *Review of the Corporate Governance of Statutory Authorities and Office Holders*, 27 June 2003, page 34-35.

<sup>55</sup> DOFA, *Governance Arrangements for Australian Government Bodies*, August 2005, page 35.

<sup>56</sup> *Ibid.*

<sup>57</sup> Uhrig, J. *Review of the Corporate Governance of Statutory Authorities and Office Holders*, 27 June 2003, page 12.

<sup>58</sup> DOFA, *Governance Arrangements for Australian Government Bodies*, August 2005, page 40.

<sup>59</sup> *Ibid*, page 38.

<sup>60</sup> *Ibid*, page 38.

specified under the SRC Act including the power to prepare and issue general policy guidelines to the CEO of Comcare and the principal officer of a licensee in relation to the operation of the SRC Act. This particular function is akin to the work of an advisory board, but it should be noted that the SRCC is not established under the SRC Act to perform the functions of a governance board for Comcare. There is scope for the SRCC to fulfil the role of an advisory board through amendment to the SRC Act notwithstanding the SRCC's role in other regulatory functions of the Comcare scheme described in Chapter Two.

### Converting Comcare to an FMA Act Agency

- 3.28 It is noteworthy and perhaps contentious in the context of Comcare being a CAC Act body that despite being established as such:
- most of its funding is allocated by the Commonwealth (by way of premiums and regulatory contributions from Australian Government agencies);
  - it also receives funding from the Commonwealth Government in the form of:
    - special appropriations; and
    - departmental funding;
  - it does not operate commercially and competitively with the objective of making a profit;
  - it does not have an entrepreneurial focus;
  - it does not have a governing board;
  - its staff are employed under the Public Service Act; and
  - the Government retains control of a significant proportion of Comcare's notional assets (the funds notionally located in the CRF).
- 3.29 These features are not typical of a body established under the CAC Act.<sup>61</sup>
- 3.30 While Comcare's performance does not seem to be unduly affected or hampered by the fact that it is a CAC Act agency, some of Comcare's administrative practices do seem to be inconsistent with typical CAC Act characteristics. Indeed, the very basis of Comcare having been established under the CAC Act is unclear given the significant number of its key characteristics that are inconsistent with that Act. In practice, this has resulted in a lack of clarity around Comcare's structure and governance, together with the CEO being subject to a level of personal risk which is problematic given Comcare's non-commercial and non-entrepreneurial nature. These issues would be addressed through converting Comcare to an FMA Act agency.
- 3.31 The Government's CFAR discussion paper states "*experience suggests that financial structure has the potential to affect perceived autonomy... There is the perception that the FMA Act gives less operational autonomy than the CAC Act...*"<sup>62</sup>
- 3.32 In this context, were Comcare to become an FMA Act agency, there would be nothing to prevent Comcare from continuing to perform its key regulatory and service delivery functions. It may actually enable Comcare to enhance its focus on its primary business as opposed to its sources of funding and generating income through investments. The FMA Act

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<sup>61</sup> Ibid, page 24.

<sup>62</sup> DOFA, *Is Less More? Towards Better Commonwealth Performance*, March 2012, page 30.

does not need to result in a reduction of the operational autonomy that Comcare currently possesses as a CAC Act body because an entity's autonomy is determined by its establishing legislation - in Comcare's case, the SRC Act. Autonomy is not determined by whether an entity is an FMA or CAC Act body.<sup>63</sup> For example, other FMA Act agencies with operational autonomy include the Australian Federal Police, the Australian National Audit Office and the Australian Security Intelligence Organisation.<sup>64</sup>

- 3.33 Given the flexibility that exists under the FMA Act, it would be possible, for example, for Comcare to continue to operate its own bank account as it currently does as a CAC Act body and there is also scope for it to be a body corporate as an FMA Act agency if required.<sup>65</sup>
- 3.34 Reclassification of Comcare under the FMA Act would enhance governance and reporting and help to resolve current concerns around Comcare's prudential management, discussed below. It is arguable whether it would provide greater transparency to the Commonwealth Government on Comcare's financial management. On the other hand, it might also remove the risk Comcare's CEO currently faces under the present governance arrangements.<sup>66</sup>
- 3.35 Given Comcare's power to collect premiums and regulatory fees from Commonwealth Government agencies under the SRC Act, reclassification to an FMA Act agency would also be consistent with the Governance Arrangement for Australian Government Bodies which states: "*A body that is expected to raise public money under a law of the Commonwealth – either by levy, licence fee, cost recovery or any coercive power – should preferably be established as an FMA Act agency. One key reason is that the FMA Act provides a rigorous framework for the collection, management and expenditure of public money generally.*"<sup>67</sup>
- 3.36 Additionally, it would be possible for Comcare, if it became an FMA Act body, to be created as a legal identity separate from the Commonwealth by establishing it as a body corporate. The creation of a separate corporate identity would enable Comcare to have the power to sue and be sued in its own corporate name if required.<sup>68</sup>
- 3.37 Some useful examples of the governance structures of like bodies, Comcover and the Civil Aviation Safety Authority (CASA), are provided in [Annex G](#) and [Annex H](#).
- 3.38 Converting Comcare to an FMA Act agency would also resolve the incongruity that exists between Comcare and the Seafarers Safety, Rehabilitation and Compensation Authority. Comcare is responsible for the management of the Seafarers Authority which operates under the FMA Act.
- 3.39 An important issue to consider is whether by converting Comcare to an FMA Act body, any future operating loss attributable to actuarial modelling would impact on the Government's budget bottom line. Advice received from the Department of Finance and Deregulation is that where an agency (such as Comcare) that is part of the General Government Sector (GGS) experiences an operating loss due to actuarial modelling (as opposed to experiencing a *genuine* operating loss) there is no impact on the Government's Fiscal Balance or on the Underlying Cash Balance. This is regardless of whether the agency falls under the FMA Act or the CAC Act.

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<sup>63</sup> Ibid, page 30.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid, page 12, 22.

<sup>66</sup> Ibid, page 32.

<sup>67</sup> Ibid, page 21.

<sup>68</sup> Ibid, page 21.

**Recommendation 26**

- Comcare be converted to an FMA Act agency to resolve the complexities and inconsistencies around Comcare as a CAC Act body, while allowing Comcare to retain as little or as much independence to conduct its business as the Government deems appropriate.
- As part of converting Comcare to an FMA Act agency, consideration be given to establishing an advisory board, made up of industry experts, for the purposes of advising and supporting the Chief Executive.

# Chapter 4 - Financial Framework

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## COMCARE'S FUNDING SOURCES

- 4.1 Comcare has recently reported a considerable operating loss for the premium scheme, which has led it to increase, significantly, the premiums payable by the premium payers. This increase is, in part, to place Comcare in a better financial position to meet its projected outstanding claims liabilities in coming years.
- 4.2 This Chapter addresses Comcare's premium framework, including how premiums are determined and distributed across premium payers and when they are notified and required to pay the forward year premiums. Premium payers report that the timing of Comcare's premiums conflicts with finalisation of the Australian Government Budget, presenting a budgeting challenge for them. Similar timing issues are experienced by the licensees in relation to the regulatory fees paid to Comcare.
- 4.3 As Comcare is not subject to supervision in the same way as insurance companies operating in the private sector, prudential management is also explored in this Chapter.
- 4.4 On commencement of the SRC Act in 1988, the premiums and regulatory contributions from premium payers were held in the Consolidation Revenue Fund (CRF) and available to Comcare to meet the expenses of the scheme. In 2002, Comcare began to receive premiums and regulatory contributions directly. This provided Comcare with the opportunity to invest the collected funds to increase its funding pool. Under Section 90C of the SRC Act, the balance of the pre-2002 premiums paid into the CRF and notional interest thereon, are supposed to remain available for Comcare to meet its liabilities.
- 4.5 In practice, Comcare's primary source of revenue comes from premium payers since 1 July 2002 and interest earned through investment of those contributions. The combination of these two sources of funding is referred to as Comcare-Retained Funds (CCRF).
- 4.6 Comcare also receives:
- Commonwealth special appropriations to meet the costs associated with the payment and management of pre-1989 claims (commonly referred to as pre-premium claims). Section 90B stipulates that Comcare can receive the necessary funding to discharge liabilities incurred on claims before commencement of the SRC Act;
  - special appropriations where there are insufficient Comcare-retained funds to meet the claims liabilities up to a maximum amount specified by the SRC Act. Section 90C of the SRC Act stipulates that Comcare must meet the cost of its liabilities, damages and operational expenses through Comcare-retained funds. Where Comcare has insufficient funds to do so, this section of the SRC Act enables the Commonwealth to provide the required funds to make the payment up to a maximum specified amount. When claims liabilities exceed the maximum limit, Comcare experiences a shortfall in funding and then must report an operating loss for the financial year as was the case for 2011-12, the first time this has occurred under the existing funding model;<sup>69</sup>
  - regulatory contributions from premium payers and licensees under the scheme are specified by Sections 97D and 104A of the SRC Act. These contributions reflect the

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<sup>69</sup> PricewaterhouseCoopers, *Comcare Review of Financial Management Framework Final Report*, 23 August 2012, page 27.

estimated cost incurred by the SRCC and Comcare in carrying out their respective functions under the SRC Act, the *Occupational Health and Safety Act 1991*, the *Work Health and Safety Act 2011* and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011* relevant to the agency or self-insured licensee;

- an annual appropriation to meet the costs associated with running the agency, which includes activities concerning asbestos-related claims management and administration of the Seafarers Safety, Rehabilitation and Compensation Authority; and
- a special appropriation for the management of asbestos-related claims under the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005*.

## PRUDENTIAL MANAGEMENT

4.7 The concept of a prudential management framework in the public sector is taken to refer to the legislation, policy and guidelines that assist to:

- implement and maintain good financial management practices;
- achieve a consistent standard of accountability and financial reporting;
- implement appropriate risk management practices; and
- maintain appropriate governance frameworks.<sup>70</sup>

4.8 The detailed and robust arrangements currently in place for the SRCC and Comcare to prudentially manage licensees are not presently extended to the premium payers.

4.9 The SRC Act provides for some elements of the prudential management of Comcare's compensation liabilities. For example, it requires premiums to be fully funded (Section 97A) and allows the SRCC to issue guidelines for setting premiums (Section 97E), but it does not set out a comprehensive prudential framework. Nor is a framework provided by other pieces of Government legislation or policy that could easily lend itself to the prudential management of Comcare's compensation liabilities. Consequently, Comcare is drafting its own prudential management policy.<sup>71</sup>

4.10 To help inform this policy, Comcare is looking at selected prudential frameworks currently in place in different jurisdictions, including the framework established by the Australian Prudential Regulation Authority (APRA) and that developed in Victoria for the three public sector insurance agencies (WorkSafe Victoria, the Transport and Accident Commission and the Victorian Managed Insurance Authority). APRA is the prudential regulator of the private Australian financial services industry. It also oversees general insurance, reinsurance and life insurance agencies. As Comcare is an Australian Government agency whose compensation liabilities are funded by Government (Commonwealth appropriations and premium payers), it is not supervised by APRA.<sup>72</sup>

4.11 Despite the absence of a formal prudential policy to guide Comcare's work, it nevertheless engages in prudent practices to help minimise risk to its business. For example, as part of determining its liability reserve, Comcare uses an external actuarial valuation of its liabilities

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<sup>70</sup> Department of Treasury and Finance, *Prudential insurance standards for Victorian Government insurance agencies*, September 2010.

<sup>71</sup> *Discussion Paper: Prudential Management Policy for Comcare's Compensation Liabilities*.

<sup>72</sup> *Ibid.*

as an important part of its accountability and risk management. This contrasts with standard APRA practice which allows insurers' valuations to be conducted by internal actuaries.<sup>73</sup>

### Capital and Comcare's Funding Ratio

4.12 APRA views capital as "the cornerstone of an insurer's financial strength." Capital provides an insurer with the ability to withstand unanticipated losses from its activities and the opportunity to address problems while being able to continue operations. As a result, APRA requires insurers to maintain adequate capital reserves in excess of its Minimum Capital Requirements at all times.<sup>74</sup>

4.13 Given its funding sources, Comcare does not have a Minimum Capital Requirement, nor has the Commonwealth provided Comcare with any capital. Additionally, the SRC Act does not specifically deal with whether Comcare should hold capital against the risk of "insolvency" of the premium payer side of the scheme, nor does it require Comcare to achieve a return on capital or pay the Commonwealth a dividend.<sup>75</sup>

4.14 In place of capital requirements, as part of its prudential management, Comcare uses a funding ratio which applies only to the premium payer side of the scheme. The funding ratio is defined as  $A \div L$  where:

A = the value of the assets available to meet premium payer business liabilities, being the total of Comcare-retained funds relating to Premium business and the full amount in the CRF; and

L = the value of Comcare's claims liabilities for premium payer business, i.e. inclusive of claims management expenses, net of third party recoveries and including a margin which provides for an intended 75 per cent probability of sufficiency.<sup>76</sup>

4.15 The funding ratio approach is common for workers' compensations schemes in Australia. For example, this approach is also taken by NSW WorkCover, Queensland WorkCover, South Australia WorkCover and Victoria WorkSafe.

4.16 Comcare's funding ratio was 65 per cent at 30 June 2012, meaning its assets cover 65 per cent of its total estimated outstanding liabilities. When Comcare's funding ratio is falling short and liabilities are outstripping assets, the only course of action available to it under the current legislative framework is to increase premiums to readjust the ratios.<sup>77</sup>

4.17 There is no requirement or provision in the SRC Act that stipulates how and over what time period Comcare should address its funding ratio shortfall to return to a level of 100 per cent. Comcare is currently aiming to achieve a funding ratio better than 100 per cent within five to ten years from 2011-12, an objective this Review concurs with. A funding ratio of 100 per cent would provide coverage of estimated liabilities, without the provision of a buffer. A funding ratio over 100 per cent would provide a buffer or reserve for Comcare. This would be equivalent to the buffer created under APRA's requirement that an insurer have in excess of its Minimum Capital Requirements.<sup>78</sup>

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<sup>73</sup> Ibid.

<sup>74</sup> APRA *Prudential Practice Guide GPG 110 Capital Adequacy: Capital Management*, July 2008.

<sup>75</sup> *Discussion Paper: Prudential Management Policy for Comcare's Compensation Liabilities*.

<sup>76</sup> Comcare *Minute Framework for Setting 2012-13 Premiums*.

<sup>77</sup> PricewaterhouseCoopers, *Comcare Review of Financial Management Framework Final Report*, 23 August 2012, page 17.

<sup>78</sup> *Discussion Paper: Prudential Management Policy for Comcare's Compensation Liabilities*.

- 4.18 In comparison to Comcare’s actual funding ratio, workers’ compensation schemes across other jurisdictions vary from 65 per cent in South Australia WorkCover to 108 per cent in Victoria WorkSafe and 112 per cent in Queensland WorkCover.<sup>79</sup> It is not uncommon, however, for any of these schemes to experience some level of volatility in their funding ratios from year to year. This is due to a number of reasons, some of which are outside their control (such as the returns from investments), and others which are (such as claim cost payment trends). Sometimes the response by governments to the deterioration in the funding ratio is to seek legislative change reducing the level of benefits available to injured workers (as is currently the case in New South Wales).
- 4.19 For Comcare’s financial reporting, the figure calculated for its assets reflects the level of funds in the CRF that become recognised where there are insufficient Comcare-retained funds to meet claims liability. The sum recognised in the CRF in these instances essentially matches the claims liability that cannot be met through the Comcare-retained funds, up to a maximum amount specified in Section 90C(3) of the SRC Act. This concept of asset will only recognise the full asset value of the CRF associated with the scheme where the claims liabilities exhaust the Comcare-retained funds and reaches the maximum payment value specified by the SRC Act. The 2011-12 financial year saw Comcare realise the full value of the asset in the CRF as claims liabilities exhausted Comcare-retained funds as well as reaching the maximum amount payable from the CRF.<sup>80</sup> As a result, Comcare reported an operating loss in the order of \$426 million for 2011-12.
- 4.20 Figure 4.1 shows Comcare’s liabilities for 2010-11 and 2011-12 against its funding sources for those financial years. Comcare’s 2010-11 liabilities utilised all of the Comcare-retained funds and recognised the bulk, but not all, of the available funds in the CRF. In 2011-12 on the other hand, total outstanding liabilities outstripped Comcare’s retained funds and the full value of the available funds in the CRF, thus resulting in a funding shortfall/deficit.
- 4.21 By only recognising the amount in the CRF in accordance with the SRC Act provisions, Comcare’s financial statements cannot consistently provide an accurate representation of its actual financial performance. This issue is recognised by Comcare and it has also been acknowledged by PricewaterhouseCoopers in its 2012 report into Comcare’s financial management framework.<sup>81</sup>
- 4.22 Interestingly, as part of Comcare’s strategic planning and prudential management, which helps inform their strategic planning, Comcare recognises the full sum that sits in the CRF as its asset. This provides Comcare with a more accurate account of its liabilities and assets.

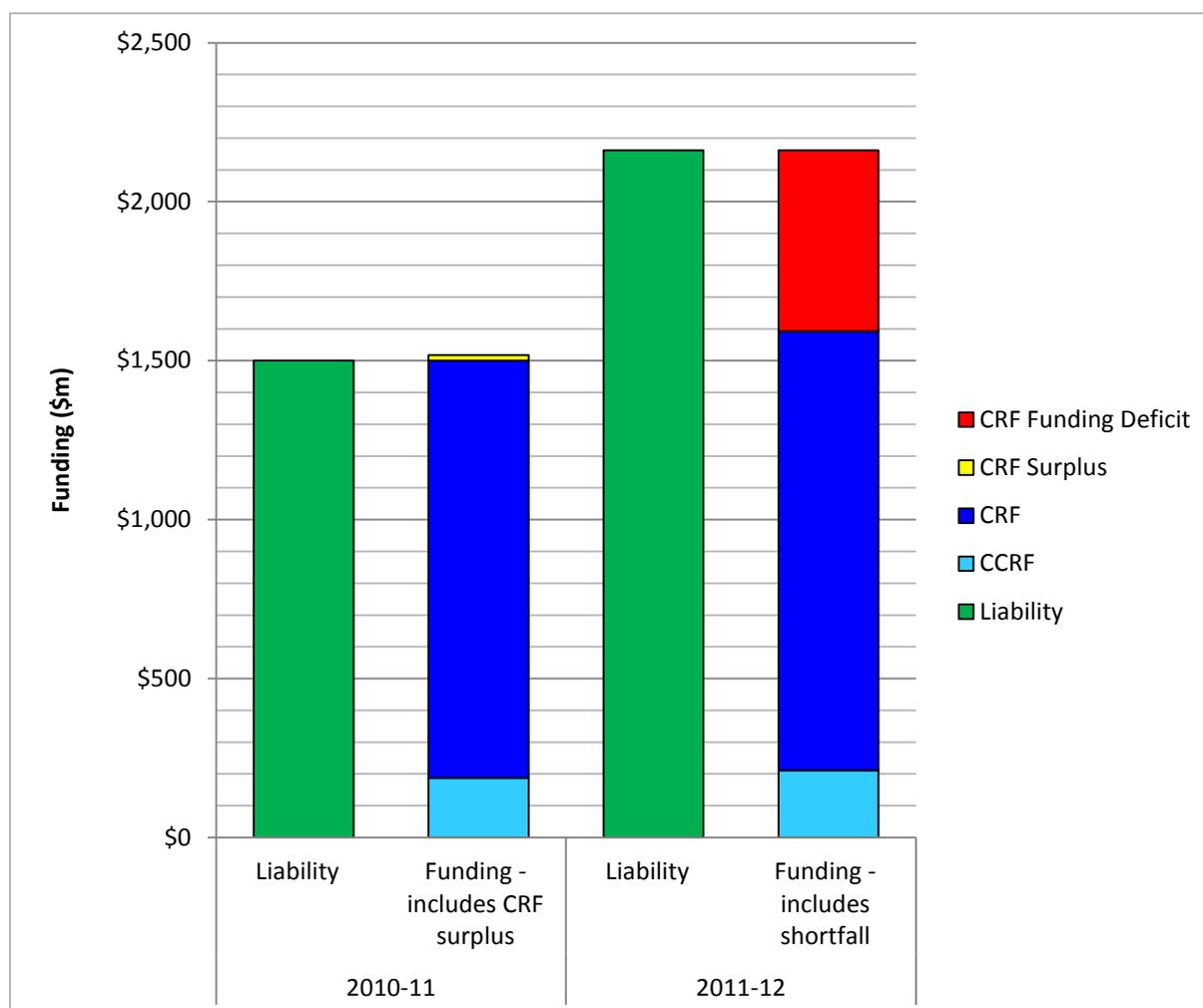
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<sup>79</sup> Ibid.

<sup>80</sup> PricewaterhouseCoopers, *Comcare Review of Financial Management Framework Final Report*, 23 August 2012, page 17.

<sup>81</sup> Ibid, page 26.

**Figure 4.1: Comcare’s Liabilities and Funding for 2010-11 and 2011-12**



Source: Comcare 2012

### Probability of Sufficiency

4.23 The probability of sufficiency is the extent to which an insurer can cover a specified amount of a claims liability. As part of its prudential management and strategic planning, Comcare uses a 75 per cent probability of sufficiency. In its financial statements, however, Comcare reports on a central estimate of 50 per cent probability of sufficiency for its claim liabilities, i.e., being able to meet the estimated cost of 50 per cent of a claim liability. This level of probability is based on Australian Accounting Standards relevant at the time of reporting.

4.24 This level is significantly lower than comparable insurers. APRA requires insurers to retain the value of net assets at the level of 75 per cent probability of sufficiency, in addition to its requirements around minimum levels of capital.<sup>82</sup>

<sup>82</sup> Discussion Paper: Prudential Management Policy for Comcare’s Compensation Liabilities.

- 4.25 Reporting a 75 per cent probability of sufficiency for Comcare’s liability reserving basis in its financial reports would contribute to its prudential management as it would more fully recognise the inherent uncertainty in placing a value on long-tail workers’ compensation liabilities which would, in time, increase Comcare’s funding reserve. It would also be consistent with the standard for valuation of insurance liabilities for insurers authorised in the *Insurance Act 1973* and as prescribed in APRA’s prudential standard GPS310; and the practice of most other Australasian government insurers and compensation authorities.<sup>83</sup>

#### **In the Event of a Catastrophe**

- 4.26 Unlike private sector insurers and licensees under the Comcare scheme, Comcare does not have, nor is it required to have, reinsurance for its scheme. Consequently, there is a risk to Comcare’s viability in the event of a single catastrophic event such as war or acts of terrorism in Australia and/or overseas, an incident at a major hazard facility or a natural catastrophe. There is the expectation that Comcare-retained funds and access to the CRF would be adequate to meet short-term requirements, but it is not clear how longer term cash-flow demands would be met.<sup>84</sup>
- 4.27 Section 90C of the SRC Act places certain limitations on Comcare’s ability to access additional funding from the CRF when faced with a liability deficit as it places a cap on the level of funding the Commonwealth can provide when claims liabilities outstrip the Comcare-retained funds. This means that the only real avenue open to it, when faced with a deficit, is to increase premiums in order to build up reserves to meet its future liabilities.
- 4.28 PricewaterhouseCoopers states “... it is critical to Comcare’s ongoing Risk Management to establish whether it is, or is not, financially supported by the Commonwealth beyond those funds established by Section 90C(3) of the SRC Act.”<sup>85</sup> Greater certainty and clarity is needed about the Commonwealth’s role in providing supplementary funding to Comcare when its liabilities exceed its assets, particularly in the case of a catastrophic event, as it may be necessary for Comcare to obtain reinsurance to cover any future shortfall to resolve this potential risk.<sup>86</sup>

#### **Recommendation 27**

- The Commonwealth Government’s role in providing supplementary funding to Comcare when its liabilities exceed its assets should be clearly established;
- Comcare should work with DEEWR to finalise the prudential management strategy;
- Consideration should be given to amending the SRC Act to enable Comcare to recognise the full value of the premium fund assets in the CRF in its financial statements;
- Comcare should report a 75 per cent probability of sufficiency for its liability reserving basis in its financial reports; and
- The SRC Act should be amended to make it clear to what extent the Government is able to provide supplementary funding to the Comcare premium-funded scheme (over and above the provisions in Section 90C(3)) in the event of a catastrophe.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> PricewaterhouseCoopers, *Comcare Review of Financial Management Framework Final Report*, 23 August 2012, page 17.

<sup>86</sup> *Discussion Paper: Prudential Management Policy for Comcare’s Compensation Liabilities*.

## THE SRCC AND COMCARE'S MANAGEMENT OF FINANCIAL RISK ASSOCIATED WITH LICENSEES

- 4.29 The financial and prudential conditions of a licence are designed to ensure that the SRCC is aware of the financial suitability of an organisation to hold a licence and the ability of the organisation to pay its workers' compensation liabilities.
- 4.30 All licensees are subject to the SRCC's Conditions of Licence which includes a range of prudential conditions that require a licensee to obtain, on a yearly basis:
- an actuarial assessment of current and projected outstanding workers' compensation liabilities;
  - a guarantee based on the 95th percentile of outstanding workers' compensation liabilities, subject to a minimum of \$2.5 million;
  - a reinsurance policy with a reinsurance retention amount as approved by the SRCC; and
  - certification by the principal officer of the licensee that the actuarial assessment has been made in accordance with the licence conditions, provision has been made in the accounts for meeting the estimated liabilities and the licensee has the capacity to meet any single claim up to the reinsurance retention amount.<sup>87</sup>
- 4.31 The guarantee is a key aspect of the prudential management of licensees, giving the SRCC access, on demand, to a specified amount of money which can be used to meet the licensee's obligations. This can occur whether or not the licensee is solvent or there are claims against the licensee by other creditors. The signatories to the guarantee are the SRCC, Comcare and the financial institution which provides the guarantee. The licensee is not a signatory and so would not be a party to any decision to 'call-in' the guarantee.<sup>88</sup>
- 4.32 To manage and reduce the potential risk associated with licensees further, the SRCC requires that some licensees have in place cross or parent guarantees. These cross or parent guarantees place an obligation on a parent and/or sibling company to guarantee the debt of a licensee, providing an additional level of security above that offered by guarantees.<sup>89</sup>
- 4.33 Reinsurance is also required of every licensee to minimise its compensation liability for any single event. The licensee's reinsurance level is determined by the SRCC based on an actuary's recommendations in the licensee's regular liability report to the SRCC.<sup>90</sup>
- 4.34 Under the financial conditions of a licence, licensees are subject to continual financial monitoring and may be subject to an annual risk based desktop review process using the licensee's audited financial statements. The financial monitoring and desktop review are conducted by independent financial experts.

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<sup>87</sup> SRCC – Prudential and financial conditions of licence, Australian Government, 17 September 2012, [http://www.srcc.gov.au/self\\_insurance/licence\\_conditions\\_and\\_performance\\_standards\\_outcomes/prudential\\_and\\_financial\\_conditions\\_of\\_a\\_licence](http://www.srcc.gov.au/self_insurance/licence_conditions_and_performance_standards_outcomes/prudential_and_financial_conditions_of_a_licence)

<sup>88</sup> Comcare's submission to the Review of the Comcare Scheme, Australian Government, 22 February 2008.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

- 4.35 The sufficiency of self-insurer prudential and financial arrangements was considered as part of the 2009 report on the *Review of Self-Insurance Arrangements Under the Comcare Scheme*. Some stakeholders had expressed concerns that prudential arrangements were not strong enough and could expose the Comcare scheme to additional liability should a licensee fail. The report concluded that in considering self insurance arrangements under the Comcare scheme, “it found no evidence that the arrangements posed a risk to premium payers or the Commonwealth”. It also concluded that ‘the scheme’s prudential and financial requirements of licensees, including reinsurance, the provision of bank or other guarantees and independent reviews of actuarial liabilities, were sufficient to minimise the risk”.<sup>91</sup>

## THE PREMIUM FRAMEWORK

### LEGISLATIVE PROVISIONS AND SRCC GUIDELINES

- 4.36 Division 4A of the SRC Act provides the legislative framework under which premiums are managed. Under Section 97 of the SRC Act, Comcare has the power to determine the workers’ compensation premium and regulatory contribution to be paid by each premium payer and authority for each financial year.
- 4.37 There are two main components of the premium amount:
- the prescribed amount is the premium liability as determined in accordance with the formula set out in Section 97A(3) of the SRC Act. This is the core component of the premium and is determined by Comcare taking into account a premium payer’s trend in claims performance for claims lodged in the financial year in question; and
  - the bonus or penalty amount is determined following reassessment of a premium payer’s previous year’s premium rate based on the development of their claims for injuries suffered in that year and the two previous years. If a premium payer’s rate is revised down (mainly because of good claims performance compared to the original estimate), this is referred to as a bonus. If the rate is revised up, this is called a penalty.
- 4.38 The bonus and penalty system is designed to provide a fairer assessment of a premium payer’s actual claim performance. Because estimates of the lifetime cost of a claim become more reliable over time, this process provides an opportunity to reflect the actual claims management performance of each premium payer. A premium payer is likely to receive a bonus if it is able to manage its claims and achieve better return to work outcomes than was originally anticipated when the premium was initially set. Alternatively, they will receive a penalty if its actual claims cost performance is worse than was initially estimated.
- 4.39 The SRCC has the power under Section 97E to issue guidelines for Comcare’s determination of premiums and regulatory contributions. The SRCC issued Premium Guidelines in the 2002-03 financial year and is currently reviewing them. The Guidelines require Comcare to comply with the following:
- the workers’ compensation scheme under the SRC Act is to be fully funded on a year-by-year basis;

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<sup>91</sup> DEEWR *Report of the Review of Self-Insurance Arrangements Under the Comcare Scheme*, January 2009, page 10.

- premium rates should respond to claim performance while avoiding excessive fluctuations on a year-by-year basis;
- significant long-term cross-subsidisation between entities and Commonwealth authorities should be avoided;
- methodology for calculation of premiums in one year should be used to calculate penalty and bonus amounts in the following year (regardless of whether the methodology has been varied in the interim);
- impact of claim performance and other variable costs on premiums must be transparent and explained to agencies;
- indicative rates for premiums should be advised to agencies in time for consideration in the context of agencies' budgets for the following financial year;
- adjustments due to correction of data should only be made if identified before finalisation of the charge to which they relate;
- calculation of premiums, bonuses and penalties should be based upon the most recent estimates of claims from the responsibility period;
- significant changes to premiums methodology will be explained to agencies;
- Comcare will seek to avoid inequitable 'rate shock', as far as practicable, in the movement of premium rates for a customer between consecutive years; and
- Comcare will report to the SRCC each year on the performance of the system for determining and collecting premiums and seek the SRCC's endorsement of changes to the premiums model.

## THE PREMIUM PROCESS

- 4.40 Comcare is required to make a determination of the premium amount to be paid by each premium payer in respect of each financial year.
- 4.41 Under Section 97F of the SRC Act, premium payers are obliged to provide Comcare with wage and salary details payable for the next financial year by 30 April each year. They are also obliged to provide Comcare with any other relevant detail that Comcare requires in order to calculate premiums by the same date.
- 4.42 In determining the premiums for each financial year, Comcare takes the following steps:
- determine the central estimate premium pool for premium business;
  - determine the final premium pool, including any margin above or below the central estimate; and
  - determine premiums for individual Australian Government agency premium payers.<sup>92</sup>

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<sup>92</sup> This step only applies to the Commonwealth Agencies. Comcare invoices the ACT Government a single premium which the ACT Government devolves internally to its various Agencies.

- 4.43 The central estimate premium pool is the estimate of the amount required to fully fund the estimated cost of claims arising from injuries and diseases sustained in the premium year, including related claims management costs. Comcare engages the services of an external actuary, currently Taylor Fry Pty Ltd, for this valuation which is done in line with the Actuaries' Institute Professional Standards and Australian Accounting Standards.
- 4.44 The final premium pool is determined by Comcare's CEO taking into account the SRC Guidelines and obligations under the CAC Act, including to exercise care and due diligence, the business judgement rule and good faith.
- 4.45 Comcare sets two premium pools – one for the Australian Government agency premium payers and one for the ACT Government. The external actuary provides two separate actuarial valuation reports; the methodology and approach taken for both assessments being identical, with assumptions differing to reflect differences in claims experience.
- 4.46 The Australian Government agency premium pool is apportioned among the Commonwealth agencies. The premium for each agency responds to trends in their claims performance as well as trends across the whole system. This is aimed at providing a direct financial incentive to agencies to reduce their workers' compensation costs through effective occupational health and safety, rehabilitation and return to work measures.
- 4.47 The methodology for calculating the premiums for each premium payer agency is through an apportionment of the total premium pool based on each agency's share of total claims costs. This is measured by using:
- the number of accepted claims; and
  - the estimated cost of these claims (actual costs paid to date plus estimated future costs).
- 4.48 The apportionment takes into account the credibility of each premium payer's claims experience. In this way, the bigger a premium payer's claim volume, the faster the premium responds to that premium payer's own experience.
- 4.49 Comcare issues an annual publication to assist premium payers with an understanding of the premium process and what they can do to influence their premium rates.<sup>93</sup> Further guidance is provided on Comcare's website on how to go about devolving (or splitting) the premium across cost centres within the respective premium payer's organisation.<sup>94</sup>
- 4.50 Once it has calculated the premiums, Comcare is obliged under Section 97G of the SRC Act to provide each premium payer with a notice of its determination regarding the premium payable. There are no specific timeframes stipulated in the SRC Act for this to happen and Comcare aims to notify premium payers of the premiums commencing the following financial year by 1 July each year.
- 4.51 Premium payers are obliged to pay their premiums within 30 days of receiving the notice. Interest is payable on any outstanding amounts after that date.
- 4.52 A premium payer who disputes their premium notice can apply to Comcare for a review and, if not satisfied with the response of the review, apply to the SRCC for a further review. The premium still has to be paid in the required timeframe even if this request has been lodged.

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<sup>93</sup> See, for example, *Comcare Premiums, Your Guide to 2012-13*, Comcare publication, PUB26, June 2012.

<sup>94</sup> [http://www.comcare.gov.au/\\_\\_data/assets/pdf\\_file/0003/95340/Guide\\_to\\_premium\\_devolution\\_-\\_splitting\\_a\\_premium\\_within\\_an\\_agency.pdf](http://www.comcare.gov.au/__data/assets/pdf_file/0003/95340/Guide_to_premium_devolution_-_splitting_a_premium_within_an_agency.pdf)

- 4.53 If a premium payer successfully disputes their premiums and the final premium payable is less than originally indicated, Comcare is required under Section 97L to refund the difference between the amount originally paid and the reduced amount. The SRC Act does not prescribe a time limit for a request for a review to be concluded, but interest is payable on the amount refundable for every day of the overpayment period. It is therefore in Comcare's interest to finalise any request for review as quickly as possible in order to minimise the amount of any interest payable.
- 4.54 There are no provisions in the SRC Act requiring Comcare to retain separate funds for the ACT Government premium. All premium revenue since 1 July 2002 has therefore been credited to the Comcare Retained Fund and all claim payments for both Australian Government agencies and the ACT Government claims are drawn from the same retained funds. As a result, there is limited visibility of how premiums from different government sources are spent, meaning premiums from one government could be subsidising the other, contrary to the Premium Guidelines. Premiums paid before 1 July 2002 by all premium payers, including the ACT Government, remain in CRF, available for future appropriation in line with the provisions of Section 90C of the SRC Act.
- 4.55 In October 2010, PricewaterhouseCoopers recommended that Comcare consider the extent to which the ACT Government and Australian Government Agencies should fully support their own costs (including past shortfalls) or whether these should continue to be borne as a single group (as is currently the case). Comcare continues to treat costs and shortfalls as a single group, reporting a single funding ratio and applying a common margin to both premium pools. The current deficiency in net assets and the calculation of the funding ratio represent the overall position of the premium payer side of the scheme as a whole (Australian Government and ACT Government combined).
- 4.56 Applying a single funding ratio to both funds may mean that there is an element of cross-subsidisation. If the actual experiences of both funds differ from the margins applied, then this would result in one scheme cross-subsidising the other. Cross-subsidisation is, however, limited as both schemes are valued separately before being combined for the purpose of determining a single funding ratio and the margins to be applied.
- 4.57 Having separate funds would enable the true performance of each fund to be properly assessed. This approach would introduce an element of increased volatility to both schemes, especially for the smaller scheme, which is the ACT Government's. Any changes in valuation could significantly affect the funding ratios and margins to be applied thereby impacting on the premiums charged year to year.

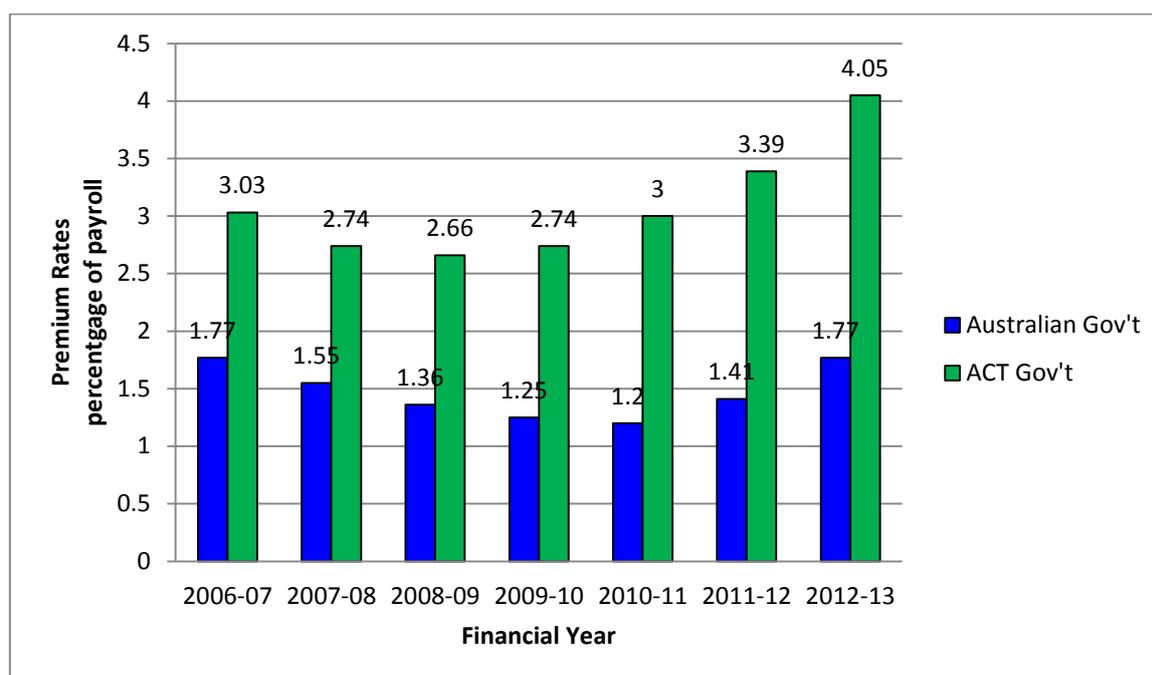
#### **Recommendation 28**

Comcare should establish two separate funds (one for the Commonwealth and one for the ACT) in the interests of transparency and to enhance the incentives and price signals.

## RECENT PREMIUM INCREASES

4.58 As a result of the scheme's outstanding liability valuations, and after a number of years of premium reductions, Comcare increased the total premium pool for the Australian Government and ACT Government in 2011-12 and again in 2012-13. There has been an increase of \$385M in 2012-13. Figure 4.2 shows the recent history of average premium rates for Australian Government and ACT Government premium payers.

Figure 4.2: Premium rates



Source: Comcare 2012

- 4.59 The recent significant premium increases are due to the upward pressure on claims costs.
- 4.60 The Taylor Fry central estimate of the 2012-13 Australian Government premium pool was \$268.3m, or \$1,368 per Full Time Equivalent (FTE) employee. This represents an increase of 33 per cent per FTE from the corresponding estimate for the 2011-12 premium pool of \$201.7m, or \$1,027 per FTE in the 30 June 2011 valuation.
- 4.61 The Taylor Fry central estimate of the 2012-13 ACT Government premium pool was \$62.0m, or \$3,067 per FTE, representing an increase of 25 per cent per FTE from the corresponding estimate for the 2011-12 premium pool of \$48.5m, or \$2,455 per FTE.
- 4.62 Taylor Fry attribute the premium increases to the following main factors:
- approximately ten per cent increase due to two years' general inflation;
  - approximately 15 per cent increase due to reductions in market interest rates used to discount future payments to present value; and
  - approximately 30 per cent (Commonwealth) and 20 per cent (ACT Government) increase in the average cost of claims (after wage inflation), due to a range of factors including an increasing proportion of more complex claims, longer claim durations and increases in projected claims continuance rates for long term incapacity and medical costs.

- 4.63 During consultations with premium payer stakeholders, concerns were raised about the current premium process. These are summarised below:

#### **The Premium Cycle**

- 4.64 Stakeholders raised concerns that the premium cycle did not fit with the normal Australian Government budgeting cycle. For example, stakeholders are required to provide their salaries and wages details for the next financial year by 30 April each year, but most would not have a firm idea at that stage what their funding/staffing levels are going to be for the next year. Comcare advises that in practice stakeholders can sometimes take until May when they are aware of their final budget position before providing these figures.
- 4.65 Similarly, premiums payable for the next financial year are provided to premium payers in late June, by which time it is too late to make an appropriate allocation in their budget

#### **Transparency of the Premium Calculation Process**

- 4.66 Most premium payer stakeholders described the premium calculation process and formula as obscure, expressing frustration that despite numerous meetings with Comcare, it remained difficult to understand exactly how the premiums are calculated. These stakeholders felt that a better understanding of how premiums are calculated would assist in better targeting their activities with a view to reducing their premiums.
- 4.67 In a similar vein, premium payer stakeholders were concerned that despite their best efforts and some good return to work outcomes, this was not being recognised in the premiums and they are still experiencing premium increases.
- 4.68 Premium payer stakeholders also wanted a process implemented that can indicate their likely next year premium throughout the year to assist them in more proactively managing this financial risk to their respective organisations.

#### **Impact of Comcare's Claims Determination Processes**

- 4.69 Some premium payer stakeholders felt that recent premium increases have been largely due to Comcare's processes which have led it to accept more claims than previously'. While there have been increases in claims acceptance rates, these do not bear a direct proportional relationship to the more significant increase in Comcare's liabilities, and any individual premium payer's premium assessment. This issue is discussed in Chapter Two.

#### **Increase in the Number of Mental Disease Claims**

- 4.70 Most stakeholders consulted acknowledged the steady increase in the number, duration, and associated costs of mental disease claims and the impact this was having on the outstanding claims liabilities. Many were of the view that the 'reasonable administrative action' test in the legislation was not working as effectively as was originally intended and that mental disease claims were generally much more difficult to manage and achieve a return to work. This issue is also discussed in more detail in Chapter Two.

#### **Returning to Fully Funded Status**

- 4.71 While most stakeholders acknowledged that the Comcare scheme needs to be fully funded, they questioned the speed at which this is being attempted. They queried whether this was one of the main reasons behind the significant increase in the 2012-13 premiums.

#### **Recommendation 29**

Comcare conduct an information campaign to ensure premium paying agencies have a better understanding of the Premium Framework, especially the inputs into and the methodology used to calculate premiums and the distribution of premiums across agencies.

### **Recommendation 30**

In order to assist stakeholders with their budgeting processes, Comcare should develop an estimating tool for use by premium paying stakeholders throughout the financial year to help them understand their likely premium requirements for the upcoming financial year and also consider bringing forward the timing of the premium determination.

### **Recommendation 31**

Comcare to review its current methodology for determining the yearly licensing fees for licensees and engage in a communication campaign to better educate self-insured licensees on the methodology used.

### **Recommendation 32**

Comcare to introduce the practice of notifying self-insured licensees no later than 31 January of the current financial year of the licensing fees to be paid to enable the organisation to budget appropriately for their workers' compensation expenses.

## **THE FINANCIAL VIABILITY OF THE PREMIUM FUNDED SCHEME**

- 4.72 The premium payer side of the scheme is currently operating in deficit with a funding ratio of 65 per cent. The net outstanding claims liability estimate as at 30 June 2011 was \$1,499.6m and was at that time projected to increase to \$1,538.3m at 30 June 2012. The mid-year valuation conducted by Taylor Fry in February 2012, however, estimated this liability to be higher than originally forecast.
- 4.73 Taylor Fry attributed this increase to the following main factors:
- a recalibration of claim continuance rates at longer durations since injury, i.e. increases in the proportions of claims that are projected to continue receiving compensation payments for incapacity and/or medical expenses at durations greater than ten to 12 years after injury;
  - large decreases in the market risk free rates of return used to discount the liability estimates to present values;
  - the number of injured workers in receipt of incapacity and/or medical payments was higher than forecast;
  - an increase in the number of mental disease claims receiving incapacity payments; and
  - an increase in claims administration expenses.
- 4.74 A peer review of the Taylor Fry mid-year estimates by an external consulting actuary, Finity Consulting Pty Ltd, confirmed the reasonableness of these estimates. It noted that its review of the liabilities indicate that: "*... the increases in liability have, for the most part, not been in response to experience that has emerged in the past six to 12 months. While there appears to have been some deterioration in the past six to 12 months, the increases put through by Taylor Fry for this review have moved assumptions to be broadly in line with experience over the last three to five years... In our view, the assumptions by Taylor Fry are consistent with the experience of Commonwealth and ACT schemes observed over the past five years ...*"<sup>95</sup>

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<sup>95</sup> Finity Consulting Pty Ltd report to Comcare April 2012.

- 4.75 Following the mid-year valuation, Comcare advised the Australian National Audit Office (ANAO) that an operating loss would be reported for 2011-12 because the increase in premium scheme claim liabilities exceeded the remaining unrecognised balance receivable from the CRF under Section 90C of the SRC Act. The Minister for Finance and Deregulation approved an operating loss.
- 4.76 Taylor Fry's final valuation of the net outstanding liabilities of the premium funded scheme as at 30 June 2012 was \$2,134.2m, \$595.9m more than was originally estimated 12 months earlier and a more than 30 per cent increase in outstanding liabilities. The main factors contributing to this increase were the same as those identified in the mid-year valuation.
- 4.77 The actuarial reports by Taylor Fry and Finity were provided to the ANAO for the audit of Comcare's financial statements. The ANAO engaged Ernst and Young to provide actuarial support to the audit. ANAO's closing report concluded that the valuation results were within a reasonable range.
- 4.78 Even though Comcare's funding framework is heavily based on the assumption that its source of premiums will be available on an ongoing basis, its financial sustainability is also affected by the appreciation of its notional assets in the CRF.
- 4.79 A challenge faced by Comcare in meeting its liabilities is that it does not have full autonomy over the investment of its assets. The SRC Act specifies that notional interest is applied to the CRF balance for pre-2002 claims. Section 3 of the SRC Act specifies that the notional interest rate is determined by the Minister responsible for the CAC Act which is the Minister for Finance and Deregulation. The rate is currently subject to short-term, six-month overnight indexed swaps. For Comcare-retained funds on the other hand, Comcare's Investment Policy stipulates that cash and term deposits are used. The earning rate of these short-term investments is typically lower than long-term investment options. Comcare's current investment policy also allows for investment in "at call" accounts, term deposits with APRA-regulated banks and Commonwealth, State and Territory securities.
- 4.80 As a result, Comcare's investments are not keeping pace with the ever increasing cost of its claims liabilities. Due to the discrepancy between the interest of the notional CRF balance not keeping pace with the increasing claims liability, this is creating a shortfall in the funds generated through investment as Comcare must first utilise its original funds or assets to pay existing claims. This is placing additional financial strain on the scheme.<sup>96</sup>

### **Recommendation 33**

Comcare should seek to have the Minister for Finance and Deregulation reconsider the current notional interest rates applied to the CRF in an effort improve their ability to keep pace with the increasing costs of claims liabilities.

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<sup>96</sup> *Discussion Paper: Prudential Management Policy for Comcare's Compensation Liabilities.*

# Annexes

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## ANNEX A - SAFETY, REHABILITATION AND COMPENSATION ACT 1988 (SRC ACT) REVIEW - TERMS OF REFERENCE

The Australian Government aims to build a stronger, fairer Australia through improved productivity, national security, increased social inclusion and building community resilience.

The impact of workplace harm on workers and their families is significant. For this reason, the Government is committed to ensuring that the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) provides fair and appropriate workers' compensation arrangements for all workers covered by that legislation.

The Government believes that the Comcare scheme should be exemplary in its scheme-design as well as in its service delivery. To ensure the federal workers' compensation arrangements reflect contemporary social models and best practice, the review will take into account arrangements within Australian and overseas accident compensation schemes. Issues such as the national disability reforms and reducing red tape will also be considered.

The review will inquire and report on:

1. Any legislative anomalies and updates that need to be addressed, including:
  - 1.1 identifying and resolving anomalies in the legislation and in the operation of the scheme;
  - 1.2 the framework to achieve the objectives of providing an equitable and cost-effective compensation system, with a particular emphasis on the improved rehabilitation of injured workers;
  - 1.3 ensuring fair and equitable financial, medical and rehabilitation support for injured workers and their families;
  - 1.4 a framework to resolve disputes quickly, fairly and at a low cost; and
  - 1.5 ensuring the application of workers' compensation legislation does not disadvantage workers over the age of 65 and there is no gap between the workers' compensation age limit and the foreshadowed increase to the age pension eligibility age to 67 by 2023.
2. The performance of the Comcare scheme and ways to improve its operation, including:
  - 2.1 an examination of the different outcomes achieved by private and public sector employers concerning the recovery and return to work of injured workers; and
  - 2.2 improved delivery of recovery and support services by Comcare.
3. The financial framework of the Comcare scheme, including:
  - 3.1 the financial sustainability of the scheme;
  - 3.2 a premium framework that improves and rewards scheme performance;
  - 3.3 the governance arrangements for Comcare; and
  - 3.4 ensuring that the financial framework is consistent with contemporary prudential management practice.

The review will be finalised by 1 February 2013. It is the Government's intention that the review will not consider any reduction in existing benefits afforded to workers covered by the Comcare scheme.

## ANNEX B - LIST OF CONSULTATIONS

Organisation	Date of consultation
Comcare	25 July, 22 August, 23 October, 24 October, 26 October, and 16 November 2012
Mr Peter Henneken (SRCC Chair)	26 July 2012
ACT Government	26 July 2012
National Australia Bank (NAB)	13 August 2012
Australian Rehabilitation Providers Association	13 August 2012
Department of Foreign Affairs and Trade	13 August 2012
WorkCover Western Australia	13 August 2012
QBE Insurance	16 August 2012
Department of Finance and Deregulation	16 August 2012
Department of Defence	16 August 2012
Customs	16 August 2012
Australian Taxation Office (ATO)	16 August 2012
Department of Human Services (DHS)	16 August 2012
Australian Federal Police	20 August 2012
Australian Government Actuary	20 August 2012
John Holland	20 August 2012
Department of Immigration and Citizenship	20 August 2012
Telstra	20 August 2012
ACTU	20 August 2012
Taylor Fry Consulting Actuaries	21 August 2012
Commonwealth Bank	21 August 2012
Mr Steve Somogyi (SRCC Member)	21 August 2012
Military Rehabilitation and Compensation Commission (MRCC)	17 September 2012

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<b>Organisation</b>	<b>Date of consultation</b>
Safety Rehabilitation and Compensation Commission (SRCC)	15 October 2012
Andrea Shaw (SRCC Member)	24 October
Ian Campbell (Department of Veteran's Affairs, MRCC Member)	6 November

## ANNEX C - SRCC'S ACCOUNTABILITY RESPONSIBILITIES UNDER THE SRC ACT AND WHS ACT

<b>SRC Act Major function</b>	<b>SRC Act Legislation reference</b>	<b>How the SRCC exercises function</b>	<b>How Comcare assists exercise of function</b>
Ensure Equity of Outcomes under SRC Act	SRC89B(a)	Performance of all determining authorities against SRCC Indicators considered annually	Comcare reports on performance of all determining authorities including itself.
Providing advice to Minister	SRC89B(b)	Quarterly report to Minister	Comcare drafts advice based on SRCC's views.  Comcare provides research and analysis about the operations of the Act to the SRCC
Providing guidance/direction to jurisdiction	SRC73A SRC97E(1) SRC97E(2) SRC97H	SRCC issues guidance, advice and directions to jurisdiction	Comcare assists in preparation of guidelines, advice and directions
Licensing Self-insurance licences	SRC102(2) SRC103(1) SRC103(2) SRC104(1) SRC104A SRC105(1) SRC105(2) SRC106(1) SRC107 SRC108(2) SRC108(B)(2) SRC108D	Licence applications assessed against requirements in Act and decision made based on evidence considered  Fees, scope and conditions set on individual basis and reflected in licence conditions	Comcare conducts licence application assessment on behalf of SRCC and advises on merits of licence application and compliance with legislative provisions.  Comcare advises on fees, scope and conditions of licence.
Other: Administrative	SRC89R SRC89S	SRCC authorises Annual Report and publication of statistical information  SRCC conducts annual review of delegated functions	Comcare prepares reports for SRCC's consideration.  Comcare represents SRCC on regulatory bodies.
Other: Review fees and charges	SRC97K	Reviews conducted if required	Comcare provides advice on merits of objections.

<b>WHS Act Major function</b>	<b>WHS Act Legislation reference</b>	<b>How the SRCC exercises function</b>	<b>How Comcare assists exercise of function</b>
(a) to advise the Minister on the administration of this Act	WHS Act Schedule 2, Part 2, 2(a)	Quarterly report to Minister	Comcare drafts advice based on SRCC's views.  Comcare provides research and analysis about the operations of the Act to the SRCC.
(b) to advise and make recommendations to the Minister on the most effective means of giving effect to the objects of this Act	WHS Act Schedule 2, Part 2, 2(b)	Oversight of Comcare's regulatory functions	Comcare drafts advice based on SRCC's views.  Comcare provides research and analysis about the operations of the Act to the SRCC.
(c) to enquire into and make recommendations to the Minister on any matter relating to work health and safety referred to the SRCC by the Minister	WHS Act Schedule 2, Part 2, 2(c)	Respond to any WHS matters referred by the Minister	Comcare drafts advice based on SRCC's views.  Comcare provides advice to SRCC.
(d) to provide a forum for consultation between Comcare and persons conducting businesses or undertakings, workers and the bodies that represent them.	WHS Act Schedule 2, Part 2, 2(d)	Acts as a consultative body for Comcare in its role as regulator	Comcare seeks SRCC's views

## ANNEX D - LIST OF CURRENT LICENSEES

There are currently 30 licensees under the SRC Act:

Licensee	Former/Trading name	Commencement date of licence	Current licence expiry date
Asciano Services Pty Ltd	Pacific National (ACT) Limited	01/07/2001	30/06/2013
Australian air Express Pty Ltd		01/07/1999	30/06/2013
Australian Air Express Retail Pty Ltd		01/07/2011	30/06/2013
Australian Postal Corporation		30/06/1992	30/06/2014
Avanteos Pty Ltd		31/03/2008	30/06/2014
BIS Industries Ltd		01/10/2008	30/06/2015
Border Express Pty Ltd		01/01/2008	30/06/2014
Chubb Security Services Ltd		01/07/2007	30/06/2013
Colonial First State Property Management Pty Ltd		31/03/2008	30/06/2014
Colonial Services Pty Ltd		31/03/2008	30/06/2014
Commonwealth Bank of Australia Ltd		31/03/2008	30/06/2014
Commonwealth Insurance Ltd		31/03/2008	30/06/2014
Commonwealth Securities Ltd		31/03/2008	30/06/2014
CSL Ltd		03/06/1994	30/06/2015
Fleetmaster Services Pty Ltd		01/04/2009	30/06/2015
John Holland Group Pty Ltd		01/01/2007	30/06/2016
John Holland Pty Ltd		01/01/2007	30/06/2016
John Holland Rail Pty Ltd		01/01/2007	30/06/2016
K&S Freighters Pty Ltd		01/07/2006	30/06/2016
Linfox Australia Pty Ltd		03/04/2006	30/06/2015
Linfox Armaguard Pty Ltd		03/04/2006	30/06/2015

National Australia Bank Ltd		13/04/2007	30/06/2016
National Wealth Management Services Ltd	MLC	13/04/2007	30/06/2016
Optus Administration Pty Ltd		01/07/2005	30/06/2015
Reserve Bank of Australia		01/05/1996	30/06/2015
Telstra Corporation Ltd		30/06/1992	30/06/2014
Thales Australia	ADI Ltd	07/02/1996	30/06/2013
TNT Australia Pty Ltd		01/07/2008	30/06/2014
Transpacific Industries Pty Ltd		01/07/2008	30/06/2014
Visionstream Pty Ltd		01/07/1999	30/06/2015

## ANNEX E - PREMIUM SECTOR KPI SCORECARD

Performance to 30 June 2012

	Accountability	Target 2011–12	Latest performance			Reporting period
			Result	Status	*Trend	
<b>Back at work</b>						
B1	Durable RTW rate	GM RSG	88%	78%	✗	 2011–12
B2	Timeliness – determination of new claims (DAKPI 7) COMCARE ONLY	GM RSG	66%	83%	✓	 2011–12
B3	Audit results – rehabilitation management systems (DAKPI 6)	All Executive	n/a	n/a	n/a	n/a 2011–12
B4	Audit results – claims management systems (DAKPI 9) COMCARE ONLY	GM RSG	90%	90%	✓	n/a 2011–12
B5	Timeliness – resolution of asbestos claims	GM RSG	65%	69%	✓	 2011–12
B1.1	Stable RTW rate	GM RSG	To be considered further in 2012			
B1.2	Claims continuance rate – 13 weeks (DAKPI 5)	GM RSG	46%	52%	✗	 2011–12
B1.3	Claims continuance rate – 26 weeks	GM RSG	27%	32%	✗	 2011–12
B1.4	Timeliness – claim lodgement by employer	Chief Actuary	57%	49%	✗	 2011–12
B2.1	Timeliness – processing of non-incapacity payments COMCARE ONLY	COO	80%	81%	✓	 2011–12
B2.2	Timeliness – decisions on requests for reconsideration (DAKPI 8) COMCARE ONLY	GM RSG	68%	34%	✗	**  2011–12
B2.3	Timeliness – decisions on appeals COMCARE ONLY	General Counsel	52%	54%	✓	 2011–12
B2.4	Disputation rate – reconsiderations COMCARE ONLY	GM RSG	7.4	7.1	✓	 2011–12
B2.5	Disputation rate – appeals COMCARE ONLY	GM RSG	34.0	35.5	✗	 2011–12

B2.6	Affirmation rate – reconsiderations COMCARE ONLY	GM RSG	75%	68%	✘	👎	2011–12
B2.7	Affirmation rate – appeals COMCARE ONLY	GM RSG	57%	51%	✘	👍	2011–12
B4.1	Employer Performance Index – support and recovery for injured workers	All Executive	76%	71%	✘	n/a	2011–12
B4.2	Comcare Service Index – injury and claims management services	GM RSG	73%	64%	✘	n/a	2011–12
B4.3	Actuarial release – injury and claims management	GM RSG	\$0M	\$-404.3M	✘	n/a	2011–12
B5.1	Percentage of value of asbestos claim settlements recovered from 3rd parties	GM RSG	5%	10%	✔	👎	2011–12
B5.2	Actuarial release – asbestos claims management	GM RSG	\$0M	\$36.9M	✔	n/a	2011–12

\* Trend is based on a comparison with the previous financial year's result. 👍 - Improving 👎 - Deteriorating 🔄 - Unchanged

\*\* B2.2 Performance during 2011–12 is not directly comparable to 2010–11 performance due to a change in measurement basis from 1 Jan 2011 (i.e. now recording from date of receipt rather than date of commencement of reconsideration).

## ANNEX F - COMCARE SCHEME AND HEADLINE KPIS

Headline/Group level KPI		Aligned to Strategic Priority *	Reported to SRCC	Reported in PBS **
Healthy at work, safe at work				
H1	Number of fatalities	2	Yes^	
H1.1	Number of notified worker fatalities	2	Yes	
H1.2	Number of compensated injury fatalities	2	Yes	1.1
H2	Incidence of serious claims	2	Yes^	1.1
H2.1	Incidence of claims	2	Yes^	
H2.2	Lost time due to work-related injury/disease	2	Yes	
H3	Success of prosecutions and civil actions	3		1.1
H3.1	Serious incident investigation conversion rate	3		
H3.2	Percentage of intervention work that is proactive	2		
H3.3	Timeliness – completion of inspection investigations	3		
H3.4	Timeliness – completion of serious incident investigations	3		
H4	Audit results – WHS management systems	1 & 2	Yes^	
H4.1	Responsiveness of employers in actioning audit findings	2	Yes	
H4.2	WHS incident notifications per 100 serious claims	2	Yes	
H4.3	Employer Performance Index – work health and safety in the workplace	2	Yes	
H4.4	Comcare Service Index – support and regulation for work health and safety	1, 2 & 9	Yes	1.1

Headline/Group level KPI		Aligned to Strategic Priority *	Reported to SRCC	Reported in PBS **
H4.5	Actuarial release – claims incidence	2 & 12		
H5	Perceived ability of employers to transition to new WHS laws	4		
Back at work				
B1	Durable RTW rate	5 & 6	Yes	1.1
B1.1	Stable RTW rate	5 & 6	Yes	
B1.2	Claims continuance rate – 13 weeks	5 & 6	Yes^	
B1.3	Claims continuance rate – 26 weeks	5 & 6	Yes	
B1.4	Timeliness – claim lodgement by employer	5 & 6	Yes	
B2	Timeliness – determination of new claims	5 & 7	Yes^	
B2.1	Timeliness – processing of non-incapacity payments	5 & 9		
B2.2	Timeliness – decisions on requests for reconsideration	5 & 7	Yes^	
B2.3	Timeliness – decisions on appeals	5 & 7	Yes	
B2.4	Disputation rate – reconsiderations	5 & 7	Yes	
B2.5	Disputation rate – appeals	5 & 7	Yes	
B2.6	Affirmation rate – reconsiderations	7	Yes	
B2.7	Affirmation rate – appeals	7	Yes	
B3	Audit results – rehabilitation management systems	6	Yes^	
B4	Audit results – claims management systems	5 & 7	Yes^	
B4.1	Employer Performance Index – support and recovery for injured workers	6	Yes	

Headline/Group level KPI		Aligned to Strategic Priority *	Reported to SRCC	Reported in PBS **
B4.2	Comcare Service Index – injury and claims management services	5, 6 & 9	Yes	1.2
B4.3	Actuarial release – injury and claims management	5, 6, 7 & 12		
B5	Timeliness – resolution of asbestos claims	8		1.3
B5.1	Percentage of the value of asbestos claim settlements recovered from third parties	8		1.3
B5.2	Actuarial release – asbestos claims management	8 & 12		
Scheme at work				
S1	Funding ratio	12		1.2
S1.1	Average premium rate	12		1.2
S2	Actuarial release – claims incidence and management	2, 5, 6, 7 & 12		
S3	Scheme Reputation Index (public trust and confidence in Comcare scheme)	11, 12		
S3.1	Percentage of licensees compliant with licence conditions	2, 5, 6, 12	Yes	1.2
S3.2	Audit Committee’s assessment of Comcare’s administrative procedures and practices	12		
S3.3	Premium scheme operating costs as a percentage of premium claim payments	7		
S3.4	WHS regulatory charges per FTE employee	12	Yes	
S4	Employer Performance Index	1, 2, 4, 5 & 6	Yes	
S5	Comcare Service Index	1 to 6 & 9	Yes	
S6	Employee Engagement	9		

Headline/Group level KPI		Aligned to Strategic Priority *	Reported to SRCC	Reported in PBS **
S6.1	Delivery against 2015 Strategic Plan	9		
S6.2	SRCC's satisfaction with the quality of support provided by Comcare	9, 10 & 12	Yes	
S6.3	Seacare Authority's satisfaction with the quality of support provided by Comcare	9 & 12		
S6.4	Legal costs as a percentage of total scheme costs	12		
S6.5	Quality of core data	10	Yes	
S6.6	Availability of Comcare's ICT systems	10		

\* Comcare's 2015 Strategic Priorities

\*\* Comcare's 2011–12 PBS outcome statements

^ Determining Authority KPI (DAKPI)

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## ANNEX G - COMCOVER – AN INSURANCE SCHEME WITHIN AN FMA ACT AGENCY

1. Comcover is the insurance fund for the Australian Government, providing insurance and promoting best practice risk management to Australian departments and agencies. Comcover sits within and is administered by the Insurance and Risk Management Branch in the Department of Finance and Deregulation, an FMA Act agency. As it is part of an FMA agency, its administrative structure and processes provide a useful insight into a possible form Comcare could take or at least draw on if it is converted to an FMA Act body.
2. Like Comcare, Comcover collects premiums from participating members to provide training, education, risk management evaluation services and to meet the costs of insurance claims.<sup>97</sup> Comcover's primary source of revenue is obtained through the collection of premiums from government agencies. It is required to service all of its claims through the collection of premiums. These funds sit in a special account which attracts interest, but does not require active investment by Comcover.
3. Comcover, like Comcare, uses actuarial modelling to determine premiums for the upcoming year. Premium calculations are released in the January before the financial year in which they will take effect.
4. In the event of a catastrophic event such as a massive flood or cyclone, where Comcover's pool of premiums is insufficient to cover costs, Comcover, as an FMA Act body, is able to seek additional funding from the Commonwealth as part of the Budget process. This is not currently available to Comcare as it is a CAC Act body. As noted in paragraph 4.26, at present Comcare does not have a safety net such as reinsurance or the ability to directly approach the Commonwealth Government to seek any additional funding if there is a catastrophic event for which it is unable to meet the costs.
5. As a Branch within the Department of Finance and Deregulation, at the head of Comcover is the First Assistant Secretary (FAS). Comcover also has an Advisory Council, which was established in 1988 and is comprised of a Chairman, who is also the FAS, and members appointed by the Minister responsible for Comcover, the Special Minister of State. Comcover's Advisory Council typically includes at least two fund members and two industry representatives. The role of the Advisory Council is to provide high level, strategic advice to Comcover and independent advice to the Special Minister of State.<sup>98</sup>

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<sup>97</sup> <http://www.finance.gov.au/about-the-department/asset-management-and-parliamentary-services.html>

<sup>98</sup> <http://www.finance.gov.au/comcover/comcover-advisory-council.html>

## ANNEX H - CIVIL AVIATION SAFETY AUTHORITY – A CAC ACT BODY

1. The Civil Aviation Safety Authority (CASA) was established on 6 July 1995 as an independent statutory authority by an amendment to the Civil Aviation Act 1988. Under Section 9 of the Civil Aviation Act, CASA's primary function is to regulate the safety of civil air operations in Australia and the operation of Australian aircraft overseas.
2. As a statutory authority, CASA is a CAC Act body.

### **CASA Board**

3. The CASA Board is established under Part VII of the *Civil Aviation Act 1988*. The Board consists of the Director of Aviation Safety (the Director) and up to four members including the Chair and the Deputy Chair.
4. Board members are appointed on a part-time basis by the Minister for a term of three years, subject to possible reappointment. In appointing the Board members, the Minister must ensure that there is an appropriate balance of professional expertise, but need not ensure that particular sectors of the aviation industry are represented.
5. The functions of the Board under the Act are to:
  - decide CASA's objectives, strategies and policies;
  - ensure that CASA performs its functions in a proper, efficient and effective manner; and
  - ensure that CASA complies with specified Ministerial Directions.
  - After consulting with the Minister, the Board appoints the Director for a period of five years, subject to possible reappointment.

### **Director of Aviation Safety**

6. The Director holds a full time executive position and is subject to the directions of, or policies determined by, the Board. The Director is responsible for the day-to-day management of CASA, and anything done by the Director in the name of, or on behalf of CASA, is taken to have been done by CASA.
7. Subject to the strict limitations of the Board's functions, the Director is solely responsible and directly accountable to the Board which has no role in regulatory decision-making.
8. The Civil Aviation Act also empowers the Director to engage staff, who are employed under the Act.

### **Division of Responsibility between the Board and the Director**

9. Certain matters are reserved by the Civil Aviation Act and the CAC Act to be dealt with by the Board. In addition, under Section 73(1) of the Civil Aviation Act, the Board could decide that certain other specified matters must be dealt with by the Board rather than by the Director acting alone.
10. The statutorily reserved matters are:
  - accepting the Director's resignation and terminating the Director's appointment;

- preparation of the Corporate Plan;
- preparation and delivery to the Minister of the Annual Report;
- preparation of Budget estimates;
- convening Board meetings; and
- determination of how the Board should regularise proceedings at its meetings.

