



The Comcare Self-Insurance Option – Mark II

Prepared by **Mark Hurst and Andrew
McInerney**

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Abstract

There has been a moratorium on new Comcare self-insurance licensees since the Federal Labor government came into power in late 2007.

The Hanks review in 2013 recommended a number of changes to the licensing approach for new self-insurers, including a lifting of the moratorium and removal of the “competition test” of eligibility.

This paper provides an update of our 2007 paper “The Comcare Self-Insurance Option”, with a focus on the implications for State workers' compensation schemes if employers exit to Comcare and the cost differentials for employers from such a move.

1. Introduction

1.1 Background

The 2004 Productivity Commission report on national workers' compensation and Occupational Health and Safety (OH&S) frameworks concluded the multiplicity of workers' compensation and OH&S systems impose a significant compliance and cost burden on multi-state employers. The Commission recommended a hierarchy of options to establish an alternative national workers' compensation scheme to operate in parallel with the existing state and territory schemes.

Step 1 was to immediately encourage self-insurance applications from employers who meet the competition test to self-insure under the Safety, Rehabilitation and Compensation (SRC) Comcare scheme. The Commonwealth government supported this step but did not support further escalation. The Government passed legislation for Comcare self-insurers to be covered nationally by the Commonwealth OH&S legislation in March 2007. The Government also adopted legislation to exclude journey claims from the Comcare scheme and to tighten the definition of "contributing factor" which limited access to compensation. These changes made Comcare a more attractive option to employers.

In practice these changes provided an opportunity for a multi-state employer to:

- adopt the workers' compensation benefits and framework of the Comcare scheme for all employees nationally
- move to a single national OH&S framework instead of multiple State frameworks.

Self-insurance under Comcare is limited to employers who pass a "competition test" (Section 100 of the SRC Act), which requires the Minister for Employment and Workplace Relations to determine that the employer is competing with a current or former Commonwealth government entity.

Once declared an "eligible corporation" an applicant would then need to:

- meet financial and prudential requirements
- demonstrate the capacity to meet standards for claims management, benefits delivery and satisfy requirements with regard to injury prevention and rehabilitation
- demonstrate that granting a licence will not be contrary to the interests of employees.

While these licensing arrangements theoretically continue today, in practice there has been a moratorium on new Comcare self-insurers (or licensees) since December 2007 at the behest of the then Labor government.

Currently there are 30 companies who are self-insured under Comcare (including large national employers such as John Holland and National Australia Bank).

1.2 Purpose of this Paper

National employers may now want to consider whether a transfer from a State-based arrangement to Comcare would be advantageous. Prospective Comcare self-insurers need to evaluate the combined risks and benefits of funding workers' compensation benefits under Comcare and the upfront costs of exiting State workers' compensation schemes.

The purpose of this paper is to update our 2007 assessment of the Comcare self-insurance option against the alternatives of remaining under separate State jurisdictions as either an insured or self-insured employer. The update takes into account:

- proposed and actual changes to Comcare in recent years
- changes to benefits in other jurisdictions
- the Hanks review's recommendations to remove the moratorium on new self-insurers joining Comcare and to change the current competition test to a national employer test to determine eligibility.

We particularly focus on:

- differences in the OH&S and workers' compensation frameworks
- cost differentials
- implications for the State workers' compensation schemes if employers exit to Comcare.

1.3 Structure of this Paper

The remainder of this paper is set out as follows:

Section 2 – Recap – Findings from our 2007 Paper

Section 3 – Comcare scheme – Six Years On

Section 4 – State schemes – Benefits and Other Changes

Section 5 – Work Health and Safety

Section 6 – Workers' Compensation

Section 7 – Licensing and Regulation

Section 8 – Implications for State Schemes

Section 9 – Conclusion

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2. Recap – Findings From Our 2007 Paper

The key findings from our 2007 paper were:

- **OH&S framework** – moving to a single regime greatly reduces complexity and compliance costs.
- **OH&S enforcement** – Comcare has limited enforcement resources and has adopted an advisory approach to OH&S regulation. This approach may need to change if large numbers of (non-clerical) employers shift to Comcare.
- **Workers' compensation framework** – we would generally expect that a change from state-based benefits to Comcare benefits would increase direct workers' compensation costs for a national employer. The main reason is the higher rates of long term weekly benefits paid by Comcare. Irrespective of the direct claims cost differences there are significant operational and practical advantages for a national employer in operating in a single framework across Australia.
- **Self-insurance regulation** – for an employer which currently self-insures in multiple States, the practical advantages of Comcare arise from dealing with a single regulator and operating in the one compliance framework.
- **State scheme exit provisions** – the Victorian and South Australian state-based government schemes introduced specific exit provisions for employers moving from the State scheme to Comcare self-insurance. These fees can be significant and may deter employers from leaving the State-based schemes.
- **Implications for State schemes** – the States will continue to face increasing pressure from the Commonwealth and national employers to address the differences between the schemes. As long as there is no meaningful reform to improve consistency, increasing numbers of larger employers will leave the State schemes. In the short term the impact of these exits is likely to be small; we estimate that the movement of 10% of a State scheme to Comcare implies a premium increase in the order of 2.5%. Over the longer term this process will increasingly leave the State schemes with smaller and poorer risks, though under the current competition test the viability of the State schemes is not seriously threatened. Finally, if the Commonwealth is not satisfied with the rate of change there always remains the opportunity for the Commonwealth to increase pressure on State schemes by adopting further Productivity Commission recommendations or other similar initiatives. Of course the States could take the necessary steps to achieve a satisfactory level of consistency. This would require a degree of commitment and political will, not demonstrated to date.

3. Comcare Scheme – Six Years On

In the six years since our previous paper there have been several changes to Comcare which have the potential to directly impact the relative merits of self-insuring under the Comcare scheme.

3.1 2007: Moratorium on Comcare Self-Insurance Announced

In December 2007, the then Minister for Employment and Workplace Relations, Julia Gillard, announced a moratorium on new applications from non-Commonwealth employers wanting to self-insure under the Comcare scheme. This moratorium continues today.

3.2 2008: Comcare Scheme Review Announced

The moratorium was announced subject to a wide-ranging review of the Comcare scheme by the Federal Government in consultation with the various State and Territory governments, employer and employee groups.

The goals of the 2008 review were to:

1. determine whether the Comcare scheme provides workers with access to appropriate work place safety and compensation arrangements
2. address concerns about the OH&S coverage for workers
3. address inconsistencies across the States and Territories in workers' compensation and OH&S laws.

The Comcare review produced 19 recommendations from the Department of Education, Employment and Workplace Relations (DEEWR). The review also included a report by Taylor Fry Actuaries, analysis of 80 written submissions, and consultation with 20 key stakeholders including government, non-government, employer, union and legal bodies. Other relevant proposals for reform were also examined, including the Productivity Commission's 2004 National Workers' Compensation and OHS Frameworks Report.

3.3 2009: Changes to Comcare Scheme Announced

Following the 2008 review, in 2009 the Government announced a number of important changes to the Comcare scheme as follows:

- **A continuation of the moratorium** on new declarations of eligibility until 2011 when uniform OH&S laws (were due to) have been implemented in all jurisdictions.
- **Prescribed time limits for claim determinations.**
- **Reinstating compensation coverage for off-site recess breaks** to re-align the Comcare scheme with the majority of jurisdictions.

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- **Ongoing compensation for medical expenses** even if payment of other compensation is suspended.
- **OH&S enforcement to be strengthened.**

The Government only responded to a fraction of the 19 recommendations contained in DEEWR's report. Two key recommendations that the Government did not comment on related to eligibility to self-insurance and access to journey claims:

- Eligibility: Despite Taylor Fry recommending removal of the competition test, DEEWR recommended that the test be maintained with assessment of eligible corporations based on higher standards to ensure only large (> 500 employees), high performing, multi-state corporations are able to apply for a self-insurance licence. DEEWR also recommended that group licences be allowed.
- Journey claims: DEEWR recommended that claims arising from injuries sustained during travel to and from work and off-site recess breaks continue to be excluded. No announcement was made by the Government in relation to journey claims. However, contrary to DEEWR's recommendation the Government did announce that coverage of recess claims would be reinstated.

The changes set out above came on top of increases to dependent lump sum and weekly death benefits already announced.

3.4 2011: Safety, Rehabilitation and Compensation & Other Legislation Amendment Bill

The 2009 changes described above were introduced via *The Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011*, effective 7 December 2011.

3.5 2013: Hanks Review

The Hanks review of the *Safety Rehabilitation and Compensation Act 1988* (SRC Act), which governs the Comcare scheme, was released on 30 March 2013. The review includes over 100 recommendations for substantial changes to almost every area of the scheme: eligibility, benefits, claims administration, dispute resolution and even the structure of the Act itself. The review also includes recommendations from Allan Hawke AC relating to scheme performance, financials and governance.

Recommendations directly relating to self-insurance

The recommendations, which would impact current and potential Comcare self-insurers, are summarised below:

- Changes to licensing – new self insurers

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- Remove the moratorium on new self insurers
- Remove the need for ministerial declaration – licensing decisions would rest solely with the Safety Rehabilitation and Compensation Commission
- Replace the current competition test with a “national employer” requirement.
- Group licenses – amend the SRC Act to allow for the granting of group licences in order to reduce administrative costs for related corporations.
- License fees – review of the methodology used for setting fees, and the establishment of a consistent fee-setting methodology from year to year.

In response to the review, the previous Labor Government Minister for Employment and Workplace Relations, Bill Shorten, announced that the Government would prioritise 21 recommendations relating to early intervention and rehabilitation, anomalies in the Act and tightening up coverage of mental injury claims; these priorities did not include adopting the self-insurance related recommendations.

The new Liberal Government has been silent on the recommendations of the Hanks review, although whilst in Opposition Senator Eric Abetz, at Comcare's last Senate Estimates hearing, asked questions regarding the implications of lifting the moratorium including whether Comcare could operationally manage an increase in licensees. There are some who expect the moratorium to be lifted in the new year, consistent with the policy of the previous Liberal Government, although there is currently no formal Government policy suggesting any change to the current position.

National Employer Test

With respect to the national employer test the Hanks review states that there are many possible ways to define a national employer and that ultimately this was a question of government policy, although four possible examples were provided:

1. a corporation employing staff in more than one State or Territory
2. a corporation employing staff in each of the States and Territories
3. a corporation carrying on business in more than one State or Territory, regardless of the number of States and Territories in which its staff are employed, or
4. a corporation employing a certain percentage of its staff in at least two or more States or Territories.

We do not have any further details on what a national employer test might look like. Hence, for the purposes of this paper, in Section 8 we consider what the potential impact on State schemes might be of Comcare applying one of the above national employer tests to assess eligibility.

Recommendations relating to benefits

In addition to the recommendations directly relating to self-insurance, potential self-insurers would also be impacted by any changes to Comcare scheme benefits. While the terms of reference for the Hanks' review stated no reduction to benefits would be considered, Hanks recommended a raft of benefit changes including:

- Provisional liability for up to 12 weeks of incapacity payments and \$3,000 in medicals.
- Weekly benefits changes:
 - benefits reduce from 100% to 90% of Normal Weekly Earnings (NWE) during weeks 14-26 and then to 80% of NWE for weeks 27-45
 - benefits increase from 75% to 80% of NWE for durations in excess of 45 weeks
 - payment periods and maximum duration to continue to pension age
 - the inclusion of superannuation.
- Removal of 5% superannuation deduction for ex-employees.
- Medical benefits – specified rates, and services to be provided only by qualified or accredited practitioners.
- Impairment benefits
 - reductions for lower impairment levels and increases at higher impairment levels
 - multiple impairments arising from a single injury may be combined.
 - reduction in the threshold for a worsening of a permanent impairment injury from 10% to 5% whole person impairment (WPI).
- Tightening up coverage of mental injuries and manifestations of diseases such as heart attack and stroke.
- Coverage for journey claims for on-call workers.

Both the actuarial impact assessment included in Hanks' review and our own costings suggest these benefit changes would increase the cost of claims for a typical employer. Given the Comcare scheme has had three consecutive years of losses, with premium rates increasing by an average of 20% per annum over that time and the funding ratio falling from 104% in 2010 to 64% in 2013, we consider it unlikely that benefits would be increased in the current environment. We note that a significant contributing factor to the poor claims experience has been mental disease claims which may, or may not, be an issue for individual employers who would seek a self-insurance licence.

3.6 Conclusions

In the six years since our previous paper there have been a number of reviews and many recommendations, but few major changes to the Comcare scheme.

Given the previous Liberal Government's position on Comcare self-insurance, it might be reasonable to assume that the moratorium on new Comcare self-insurers will be lifted in the near future, although there is currently no formal Government policy suggesting any change. If this does occur it will be interesting to see whether there is a move from the current competition test to a national employer test in deciding whether an employer is eligible to apply for a Comcare self-insurance licence.

4. Benefit and Other Changes – State Schemes

Since our previous paper there have been a myriad of benefit and other changes to State and Territory workers' compensation schemes which would impact the merits of Comcare self-insurance relative to State insurance or self-insurance. In the section below we outline the key changes since 2007.

4.1 NSW

2012: Workers' Compensation Legislation Amendment Bill

On 21 June 2012 the *Workers' Compensation Legislation Bill 2012* passed through NSW parliament, introducing significant changes to NSW workers' compensation benefits in an effort to reduce the large scheme deficit.

Some of the key amendments include:

- Reducing weekly benefits via earlier "step down" of benefits to 95% of pre-injury average weekly earnings for the first 13 weeks of incapacity (rather than 26 weeks) and then 80% from weeks 14 to 130.
- Introduction of work capacity test to assess an injured worker's current work capacity. Benefit restrictions apply to injured workers assessed as having some level of work capacity but who are working less than 15 hours per week. Severely injured workers are not subject to work capacity tests.
- Introduction of a time cap on weekly income benefits of five years for all but the most seriously injured workers.
- Introduction of a cap on medical and related treatment expenses to a period of 12 months after the claim was first made or 12 months after the injured worker ceases to be eligible for weekly benefits. The cap on medical benefits does not apply to severely injured workers.
- Increases to the thresholds for permanent impairment lump sums.
- Journey claims have been removed unless there is a "real and substantial connection" between the employment and the accident.

Recent self-insurer valuations we have carried out indicate these reforms have had a significant impact on the outstanding claim liabilities of self-insurers, with reductions often greater than 15%. The majority of the reduction relates to the shorter duration of weekly and medical benefits and the removal of journey claims. The latest Scheme actuarial valuation report at 30 June 2013 shows a very significant improvement in the NSW scheme-wide claims experience with the funding ratio improving from 95% to 102% in the six months to 30 June.

4.2 Victoria

2009: Accident Compensation Amendment Act

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In 2009 the Victorian Government announced its formal response to the Hanks Review of the *Accident Compensation Act 1985*.

In March 2010 the Victorian Government passed the *Accident Compensation Amendment Act 2009* which included the following changes to benefits:

- Introducing a superannuation component equal to 9% of weekly benefits for long-term injured workers (more than 52 weeks).
- Increasing weekly benefits from 75% to 80% of pre-injury earnings for workers with weekly payment entitlements after 13 weeks.
- Increasing the statutory maximum for weekly payments.
- Increased lump sum benefits.
- Increased death benefits.

These changes increase benefits payable, the first two changes being the most significant.

4.3 Queensland

2008: Benefit changes

In January 2008, when the funding ratio of the Queensland scheme was well over 100%, increases in benefits were introduced, including:

- Maximum additional lump sum benefit increased by 20%.
- Additional lump sum payments available for work-related impairment of 30%, down from 50% work-related impairment.
- Removal of one and two year step-downs in benefit entitlements. Benefits also continue at original rate from the end of two years to the end of five years for work-related impairment > 15%. These changes have the effect of increasing the income replacement rate after 52 weeks to the greater of 75% normal weekly earnings or 70% Queensland ordinary time earnings.

2010: Benefit changes

Following ongoing publicity regarding potential future scheme deficits and common law claims escalating out of control, the Queensland Government introduced a number of changes effective 1 July 2010, including:

- For common law claims, increasing the onus of proof required of the injured worker to show that their employer was at fault.
- Capping pain and suffering at \$300,000 and economic loss payments at three times Queensland's ordinary time earnings.
- Increasing the employer excess from 65% to 100% of the Queensland ordinary time earnings, or one week's compensation.

2013: Scheme changes

The *Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2013* passed by Parliament in October 2013 included the following changes:

- A new degree of permanent impairment (DPI) measure for determining lump sum compensation.
- Common law restricted to those with injuries of more than 5% DPI.
- Return to work programs required for all common law claimants.
- A higher threshold for psychological claims, with employment now required to be "the major significant contributing factor" for benefits to be payable.
- Increased penalties for fraudulent claims.
- Employers now allowed to access claims history of job applicants.

These changes are expected to reduce the number of common law and psychological injury claims. Journey claims, which had been tipped to be removed, have been left untouched.

4.4 South Australia

2008: Scheme changes

- Death benefits increased by more than 70% to \$400,000.
- Maximum impairment lump sum benefits increased to \$400,000, based on medical assessment of whole person impairment.
- Income maintenance initially paid at 100%, with step-downs to 90% at 13 weeks and 80% at 26 weeks.
- Redemptions largely restricted to minor claims and workers close to retirement age.
- Self-insurance applicants no longer required to have at least 200 employees, however size will continue to influence the decision to grant or renew a self-insurance licence.

2009: Workers Rehabilitation and Compensation Act

The final tranche of changes to the *Workers Rehabilitation and Compensation Act* came into effect on 1 April 2009. The key changes to the Scheme include:

- Earlier step-downs for weekly benefits.
- Introduction of work capacity reviews to determine entitlement to ongoing income maintenance compensation beyond 130 weeks.
- Changes to non-economic loss payments intended to provide additional compensation to more seriously injured workers.

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- Changes to the dispute resolution framework (including the introduction of medical panels).
- A system of provisional liability to enable early commencement of rehabilitation.

Overall, these changes have not reduced scheme costs by the amount expected, with the average premium rate remaining as the highest of the States at 2.75% since 2010.

4.5 Western Australia

2011: Workers' Compensation and Injury Management Amendment Bill

The *Workers' Compensation and Injury Management Amendment Bill 2011* was introduced in March 2011, impacting claims incurred on or after 1 October 2011. The main changes introduced by the bill were:

- The abolition of age based limits on entitlements.
- Access to common law for injured workers of uninsured employers.
- Improvements to dispute resolution arrangements.
- Amendments to technical issues with the previous legislation.

Of these changes, only the abolition of age limits is expected to have a material impact on a self-insurer's claim liabilities.

4.6 Tasmania

2010: 2009 Amendments

The Tasmanian Government introduced changes to the State's workers' compensation scheme effective 1 July 2010. The main changes were:

- The weekly benefit step-down provisions were made more generous with benefits reducing to 90% of weekly earnings at 26 weeks instead of 85% of weekly earnings after 13 weeks. The maximum payment periods were also extended for more seriously impaired claimants.
- The maximum payment period for medical costs will be linked to the payment of weekly benefits (one year after cessation of weekly benefits).
- The threshold for accessing common law was reduced from a whole person impairment (WPI) of 30% to WPI of 20%.
- The maximum lump sum benefit and death benefits were also increased.

The package was expected to increase claims costs by the order of 15%.

4.7 Australian Capital Territory

The ACT remains the only jurisdiction in Australia with unrestricted access to common law. In 2010, proposed amendments to lump sum entitlements and

common law damages, outlined in *Exposure Draft Workers' Compensation Amendment Bill 2010*, were put forward but ultimately not passed into law. However, we understand that possible legislative amendments are still under consideration and consultation with stakeholders continues.

4.8 Conclusions

Since 2007 there have been benefit changes in almost every State and Territory, the most significant being the Workers' Compensation Legislation Amendment Act changes introduced in NSW in 2012 which we estimate reduce claims cost by an average of around 15%, which is reasonably consistent with the Scheme actuary's estimates.

For the other States we have assumed that for a 'typical' employer the changes will broadly offset each other with reduced common law costs in Queensland, lower benefits in South Australia and increased benefits in Victoria and Tasmania.

Precise employer impacts will depend on their mix of business by state, as well as the specific nature of their claim profile (eg. whether they experience journey claims or not).

5. Work Health and Safety

5.1 Work Health and Safety Legislation

In September 2006 the *OHS and SRC Legislation Amendment Act 2006* was passed, bringing all employees of Comcare self-insurers under a single OH&S framework irrespective of their state of employment.

Since that time the Labor Government worked to achieve consistent Work Health and Safety (WHS) laws across all jurisdictions, asking the Commonwealth and each State and Territory to develop their own WHS Act, regulations and codes of practice, based on model WHS laws.

The majority of State jurisdictions have now approved their model WHS regulations, with Comcare, NSW, Queensland, the ACT and NT commencing their new WHS regulations on 1 January 2012, and Tasmania and South Australia commencing theirs on 1 January 2013. Victoria has not adopted the model WHS law, saying that it would be too costly to businesses. Western Australia has also not adopted the model WHS laws, but has said that they will review their OHS Act.

For the Commonwealth, the *Work Health and Safety Act 2011* (WHS Act) was introduced in 2011, replacing the *Occupational Health and Safety Act 1991* (OHS Act). The main changes between the two Acts were:

- the expansion of the definition of 'worker' to include contractors and volunteers
- making the Crown criminally liable for offences under the WHS laws (a new development for the Commonwealth)
- no longer defining duties by the nature of the employment relationship
- introduction of a graduated approach to enforcement.

Although the OHS Act provided automatic coverage for WHS purposes for all Comcare self-insurance licensees from March 2007, the Labor Government did not include a similar provision in the WHS Act as it intended to return WHS responsibility for licensees to the states and territories once all jurisdictions had enacted the model WHS laws. This has not happened as Victoria and Western Australia are yet to adopt the model WHS laws. Without an amendment to the WHS Act, any new entrants to the Comcare scheme will not be covered under the Commonwealth WHS Act.

Despite the WHS laws in each State and Territory being based on model WHS laws (other than Victoria and Western Australia), it is likely that there will be differences in both the detail and the application of these laws. This may mean that Comcare self-insurers lose the advantage of truly uniform WHS laws and hence the reduced compliance costs and administrative efficiency which that brings. However, the differences between the WHS laws of each State and Territory are expected to be less than those prior to the introduction of model WHS laws.

5.2 Commonwealth WHS

In terms of Comcare's work health and safety (WHS) performance, we understand that the statistics presented in the next section do not capture the full extent of Comcare's prevention efforts and regulatory focus.

There is a significant difference in the types of employers and workers the Commonwealth jurisdiction covers in comparison to that of other regulators. An estimated 400,000 full-time equivalent (FTE) employees were covered by the Commonwealth *Work Health and Safety Act 2011* (WHS Act) as at 30 June 2013, with coverage including federal workers who are deployed internationally and in remote locations. These 400,000 workers are in a range of industries including government services, transport and logistics, financial and banking services, construction, telecommunications, defence and postal services. As a result, prevention activity will often include visits to multiple sites and locales across the country.

Comcare has increased its preventative focus in recent years, including several programs and headline campaigns largely targeting improvements in return to work, prevention systems and asbestos remediation.

As for other jurisdictions Comcare need to balance a number of considerations, including:

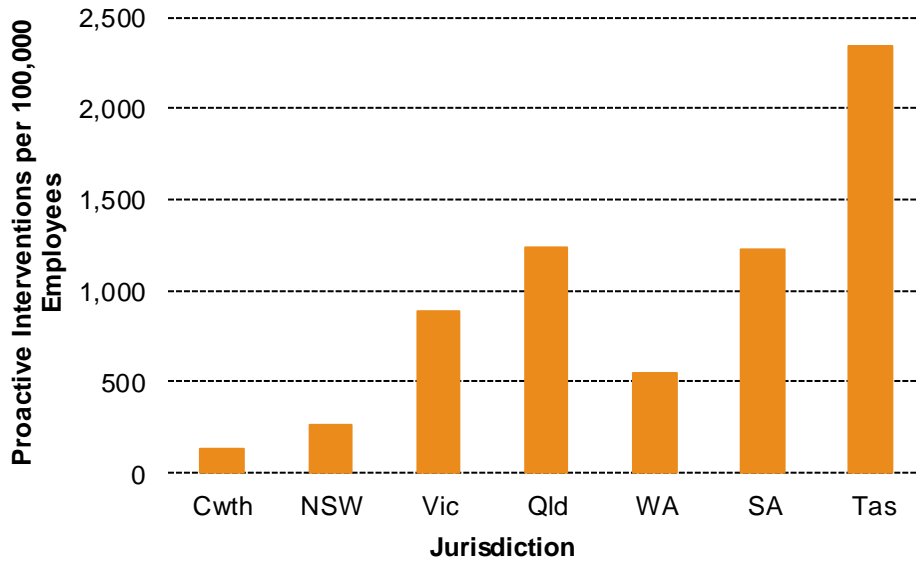
- the need to assess and respond to safety events as they arise
- the community's expectation that businesses and undertakings will be monitored and held accountable if they fail to comply with WHS laws
- the need to support workplace parties and stakeholder bodies, by working together through collaboration and the sharing of information to build capability and achieve compliance with WHS laws
- the need to work with industry, workplace parties and stakeholders to promote innovation and continuous improvement in health and safety standards.

5.3 Enforcement of WHS

Figure 5.1 shows substantial differences in the rate of proactive WHS inspections (i.e. inspections unrelated to workplace incidents) between the Commonwealth and State jurisdictions, as well as among the States themselves.

As proactive interventions often represent advisory visits, we interpret differences between jurisdictions as an indication of the relative emphasis on prevention rather than enforcement. However, as noted above there are specific reasons why Comcare's proactive interventions may be lower than other jurisdictions including the Commonwealth having a much higher proportion of white collar workers which are likely to require less intervention. Despite the Commonwealth's low proactive intervention frequency relative to other jurisdictions, the actual number of proactive interventions has increased significantly from 195 in 2009/10 to 557 in 2011/12, which may suggest a shift towards prevention.

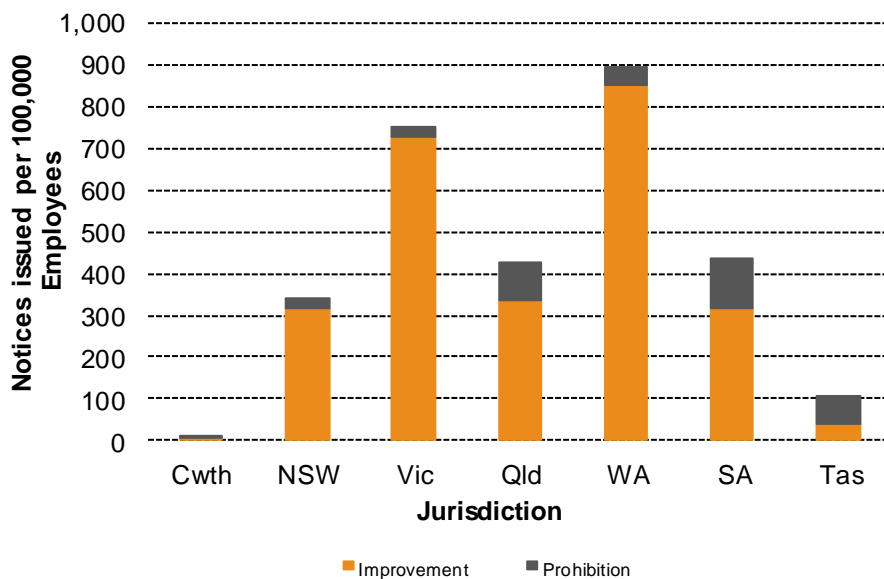
Figure 5.1 - Proactive Interventions per 100,000 Employees



Source: Comparative Performance Monitoring Report – Fifteenth Edition (Oct-13)

Figure 5.2 highlights differences between the jurisdictions in the rate at which enforcement notices are issued. The Commonwealth again has a level of activity substantially below that evidenced in the States. Comparing Figure 5.1 and Figure 5.2, there are also signs of an inverse relationship between relative rates of proactive interventions and enforcement notices among the States, so that the greater the level of proactive interventions, the lower the level of notices which are required to be issued.

Figure 5.2 - Notices Issued per 100,000 Employees

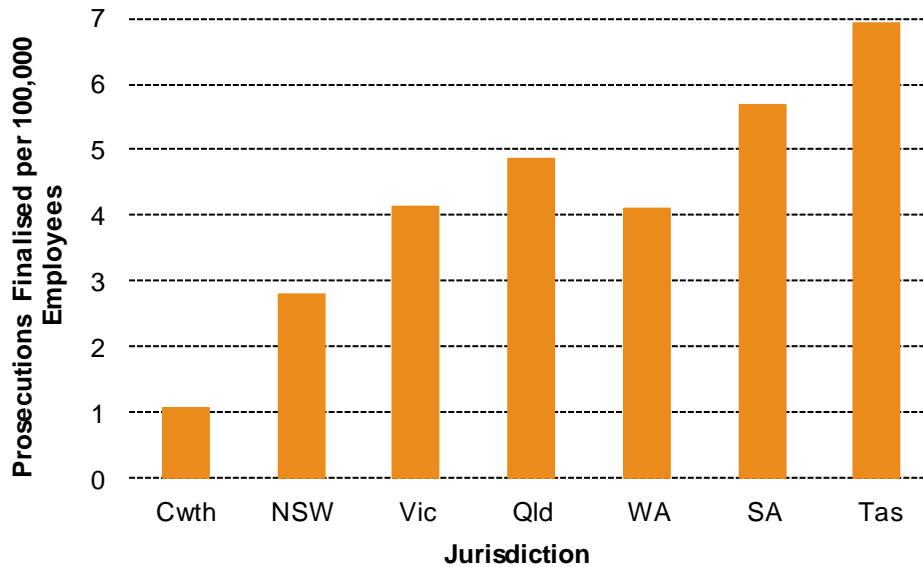


Source: Comparative Performance Monitoring Report – Fifteenth Edition (Oct-13)

The most severe enforcement action available to WHS regulators is prosecution. Figure 5.3 summarises the average rate of prosecutions finalised over 2010-11 and

2011-12. As illustrated, Tasmania finalises legal proceedings at a substantially higher rate than the other State jurisdictions.

Figure 5.3 - Legal Proceedings Finalised per 100,000 Employees



Source: Comparative Performance Monitoring Report – Fifteenth Edition (Oct-13)

All States have a conviction rate of 80% or more (relative to legal proceedings) except for Tasmania, which has a relatively low conviction rate of around 66%. The Commonwealth (100%), NSW (98%) and South Australia (92%) have the highest rates of conviction.

5.3 Conclusions

Our conclusions in relation to WHS are:

- The Commonwealth's approach to enforcement is clearly very different from that applied in the States, with low levels of proactive interventions, enforcement notices issued and legal proceedings. We do note, however, that there is a significant difference in the types of employers and workers the Commonwealth jurisdiction covers in comparison to that of other regulators.
- Despite the low rate of interventions we note that the number of inspectors per 100,000 employees is broadly the same as in NSW, Victoria and Queensland and that the absolute levels of proactive intervention has increased three-fold in recent years.
- Previously, a major advantage of self-insuring under Comcare was that all employees were brought under a single OH&S framework irrespective of their State of employment. However, the current position in the absence of any legislative change is that new licensees under the SRC Act would stay with the States and Territories for the purposes of work, health and safety.

6. Workers' Compensation Framework

6.1 Introduction

With the recent change in Government and the recommended removal of the moratorium on new self-insurers joining Comcare, some national employers may be considering whether the transfer from a State scheme to Comcare would be advantageous. We suggest that, as a first step, prospective self-insurers evaluate the relative costs of funding workers' compensation benefits under Comcare and the upfront costs of exiting State workers' compensation schemes.

6.2 Consistent set of benefits across all States

There are significant advantages to an employer being able to operate with a single set of benefits across all Australian operations. Self-insuring in the Comcare environment (as opposed to self-insuring in each jurisdiction) will enable:

- a uniform set of benefits and rules across all employees – ensuring equality between staff
- simpler systems and processes, e.g. a single claims management system and simpler links to HR and payroll systems
- the capacity to standardise and perhaps centralise and streamline claims management functions.

6.3 Comparison of benefits between jurisdictions

Benefits payable to workers' compensation claimants differ between each of the State jurisdictions and Comcare. A table summarising the main entitlements is set out in Appendix A.

The key differences between Comcare and State benefits are:

- weekly benefits under Comcare are more generous than offered by the individual State schemes:
 - the 100% replacement rate continues for the first 45 weeks, which is longer than all other schemes (26 weeks is the next longest). NSW weekly benefits now step down from 95% of pre-injury average weekly earnings to 80% at 13 weeks (previously 26 weeks)
 - the replacement rate of 75% after 45 weeks is the same as Queensland, higher than the ACT which is 65%, but lower than the 80% or 85% rates in the other states
 - entitlement to weekly benefits continues for long-term total incapacity claims, without the limits which apply in some states (e.g. Queensland, WA and Tasmania). NSW now caps weekly benefits at 5 years for all but the most seriously injured workers

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- Comcare does not have the restrictive work capacity tests for partial incapacity claims which apply in some states (e.g. Victoria, Queensland, South Australia and now NSW)
- redemptions under Comcare are allowed only under very restricted circumstances (as for all other States except South Australia where they have been generally limited to workers close to retirement age)
- impairment and non-economic loss lump sums under Comcare are similar to or lower than the States
- there is limited access to common law under Comcare; most State schemes have either no or limited access to common law, with Queensland and the ACT being the main exceptions
- journey claims are not compensated under the SRC Act; similar to all States except Queensland (with some restrictions), NT and ACT
- stress claims are compensated in Comcare as in all states, although restricted in most states.

The Comcare scheme is very much a pension style compensation scheme with claimants remaining on weekly benefits until they are fit to resume work or they reach retirement age.

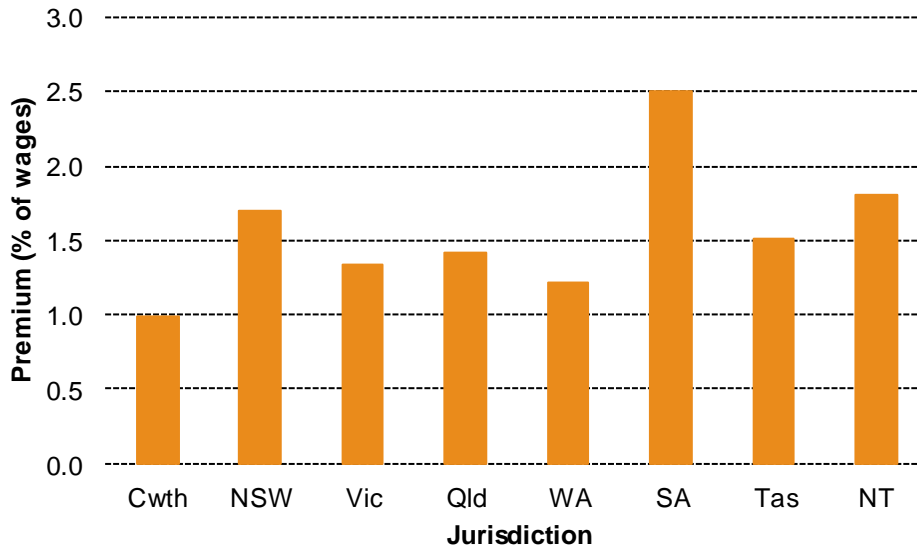
6.4 Comparison of claims costs between jurisdictions

It is difficult to derive a comparable measure of the relative costs of the State and Commonwealth schemes due to the different characteristics of the schemes in terms of scope, coverage, benefit structures and industry mix. In this section we use publicly available information and various internal studies in order to reach a broad understanding of the relative claim costs between schemes.

Publicly available information

An initial comparison is the Workplace Relations Ministers' Comparative Performance Monitoring (CPM) reports. The CPM reports include comparisons of "standardised" average earned premium rates. The comparison from the latest report (CPM-15, October 2013) is included below in Figure 6.1.

Figure 6.1 - Standardised Average Premium Rates by Jurisdiction 2011/12



Source: Comparative Performance Monitoring Report: Fifteenth Edition (Oct-13)

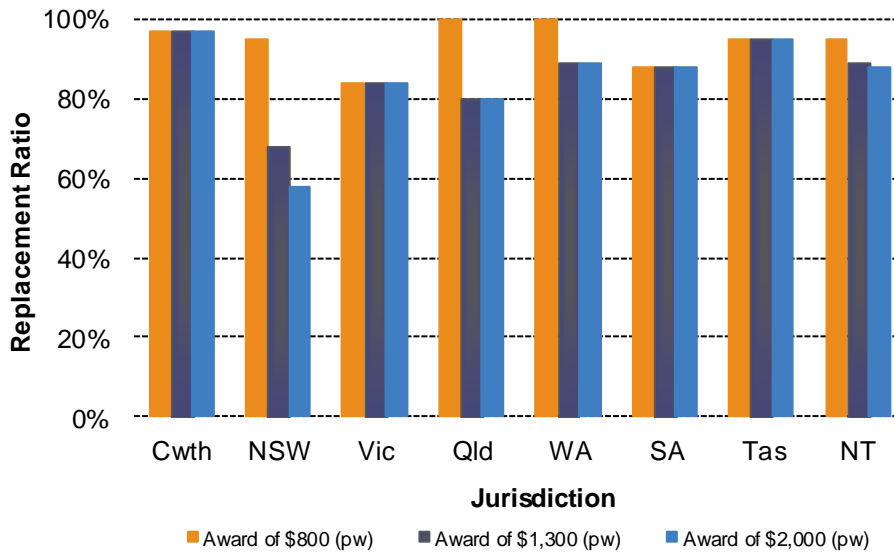
The standardisation in CPM-15 however does not standardise for industry mix. As Comcare predominantly covers Commonwealth public servants (including self-insurers from transport, construction and other non-traditional public service industries) and the State and Territory jurisdictions cover a broad range of industries, we do not expect that this a meaningful like-with-like comparison.

Therefore, even though the average Comcare premium rate is the lowest across Australia it does not mean the scheme is the least costly. We also note that Comcare's average charged premium rate has been increased by 25% in 2012/13 and a further 18% in 2013/14 to reflect deteriorating claims experience, reducing the difference between its rate and the other jurisdictions.

To overcome this issue we looked at a comparison of benefit entitlements under the workers' compensation regimes across Australia, which are also included in the CPM reports. These comparisons are for selected examples only but are illustrative of the levels of entitlement under each scheme.

We focused on the entitlement to weekly benefits as they are the biggest single payment type. The schemes provide differing levels of weekly benefit entitlements relative to the workers' pre-injury earnings. The ratio of benefit to pre-injury earnings (or replacement ratio) is shown for selected examples in Figure 6.2.

Figure 6.2 - Average Replacement Ratio for a Worker Incapacitated for 52 Weeks



Source: Comparative Performance Monitoring Report: Fifteenth Edition (Oct-13)

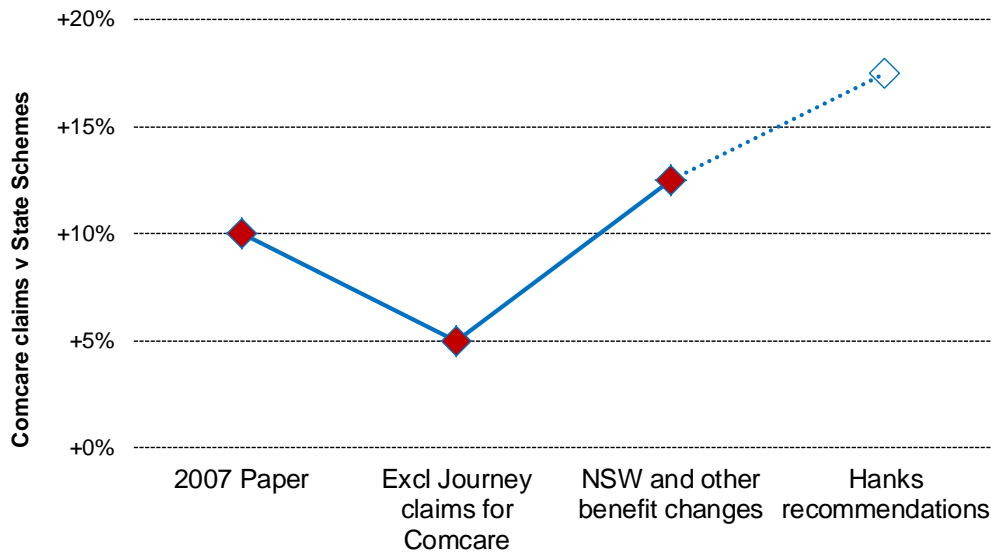
These examples suggest that the level of entitlement to weekly benefit under Comcare is among the highest for low income earners and is significantly higher than the major states of NSW, Victoria and Queensland for middle and high income earners.

Internal studies

We have undertaken analysis of the relative claims cost between Comcare and State-based workers' compensation for several clients of our firm. At the time of our previous paper in 2007 we estimated claims costs under Comcare to be, on average, around 10% higher than a weighted average cost of the State and Territory schemes.

The figure below shows, for a notional employer, how we might expect the cost differences between Comcare and the State schemes to have moved since 2007.

Figure 6.3 - Comcare claims cost v State schemes for a notional employer



The chart shows that:

- In our 2007 paper we estimated Comcare claims cost to be on average 10% higher than the aggregated claims cost of State schemes – this estimate was prior to the removal of journey claims effective March 2007. Our assessment was consistent with a Q-COMP commissioned study which showed that Comcare benefits were higher than the major States, largely because of more generous weekly benefits.
- After the removal of journey claims (and the restriction of stress claims) the cost differential between Comcare and the States reduces to an indicative level of +5%. This is highly dependent on the type of industry the employer operates in and their mix of employees by State.
- Since 2007 there have been benefit changes in almost all States and Territories, the most significant being the changes introduced in NSW in 2012 which removed journey claims, restricted lump sums and limited the duration claimants can be on weekly benefits. We estimate that the impact of these changes is to reduce claims cost by an average of around 15%, which is reasonably consistent with the Scheme actuary's estimates. For the other states we have assumed that the changes will broadly offset each other (i.e. reduced common law costs in Queensland, lower benefits in South Australia, increased benefits in Victoria and Tasmania). For an employer with operations in NSW, these changes will increase the cost of Comcare claims relative to the State-based cost of workers' compensation.

For illustrative purposes we have assumed around half the workforce for our notional employer is based in NSW, hence we estimate that Comcare, in terms of claims cost, is now 10%-15% more expensive than being with the State schemes.

- As mentioned in Section 3 we expect that the Comcare benefit changes recommended in the Hanks review would increase the cost of claims for a

The Comcare Self-Insurance Option – Mark II

typical employer. If these changes are adopted we have assumed that Comcare claims cost will increase by a further 5%-10%.

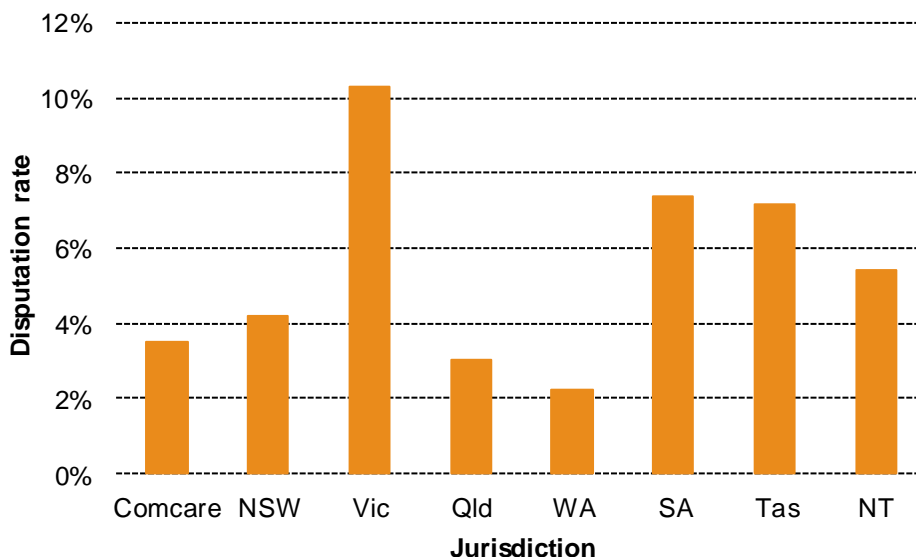
Note that these results are indicative only and will vary significantly from company to company, and may vary greatly from this average result depending on a range of factors, including balance of business between the jurisdictions, industry, injury mix and the extent of any special conditions in awards and agreements (e.g. agreements to pay top-up benefits). In addition, these claims cost comparisons include no allowance for the impact of indirect effects on claims costs such as the dispute resolution system and the WHS framework.

6.5 Dispute resolution

Each jurisdiction has established its own dispute resolution processes for resolving disputes within their workers' compensation system. In many cases these are bodies created solely for that purpose. Disputes in the Comcare scheme are heard by the Administrative Appeals Tribunal (AAT) which is responsible for hearing disputes related to a wide range of administrative decisions by Commonwealth government agencies.

Dispute rates in the Comcare scheme are lower than most States and lower than the average for all State jurisdictions combined, as illustrated in Figure 6.4 below. This is an improvement relative to 2007 when their dispute rates were around 9%.

Figure 6.4 - Disputations Rate by Jurisdiction 2011/12



Source: Comparative Performance Monitoring Report: Fifteenth Edition (Oct-13)

While the dispute rate for Comcare is lower than the Australian average, Figure 6.5 shows that the proportion of disputes resolved within nine months of lodgement for Comcare is the lowest of the Australian jurisdictions. This conclusion is unchanged from our previous paper where Comcare also clearly had the slowest resolution rate.

Figure 6.5 - Proportion of Disputes Resolved within 9 Months by Jurisdiction



Source: Comparative Performance Monitoring Report: Fifteenth Edition (Oct-13)

It appears that Comcare has the least efficient dispute resolution system. The AAT is responsible for deciding on any Comcare workers' compensation disputes that are not resolved by internal review. This appears to result in a comparatively lengthy and expensive process for workers' compensation matters. Delays in the resolution of disputes generally lead to higher levels of friction costs and can undermine rehabilitation and return to work initiatives. This may have negative outcomes for the scheme and inflate scheme costs.

6.6 Tail provisions and exit fees

When an employer moves to Comcare self-insurance, claims incurred under the State schemes ("tail claims") remain within the regulatory control of each scheme. Each jurisdiction has a different approach to managing employers exiting their scheme to move to Comcare self-insurance. The approach may also vary depending on whether the employer is self-insured or insured in that State.

Previously two states, Victoria and South Australia, had introduced a specific capacity to charge an exit fee on employers moving from State insurance to Comcare self-insurance. These fees can, depending on the circumstances, be sizeable (potentially in excess of a year's premium).

There are sound policy reasons why such a fee may be appropriate. For example, there is currently a significant deficit in South Australia and employers leaving the scheme without such a fee would not be funding their "share" of the deficit, and would therefore increase the burden on those remaining in the scheme.

While South Australia has since changed its method of calculating transfer payments, including the removal of exit fees, the existence of and uncertainty around exit fees act as a barrier to moving to Comcare self-insurance.

6.7 Conclusions

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Our conclusions in relation to workers' compensation are:

- The Comcare scheme has higher weekly benefit entitlements than the State schemes. It is very much a pension style compensation scheme with claimants remaining on weekly benefits until they are fit to resume work or they reach retirement age.
- We estimate claims costs under Comcare to be, on average, around 10%-15% higher than a weighted average cost of the State and Territory schemes. This is a higher difference than documented in our previous paper mainly because of the reduction in benefits in NSW in 2012. It should be noted that this result will vary significantly from company to company depending on individual circumstances.
- We expect that if Hanks' recommended changes to Comcare benefits are adopted, the differential between Comcare and State and Territory claims cost will increase further.
- Comcare appears to have the least efficient dispute resolution system. Delays in the resolution of disputes generally lead to higher levels of friction costs and can undermine rehabilitation and return to work initiatives. This may have negative outcomes for the scheme and inflate scheme costs.

7 Licensing and Regulation

7.1 Licensing arrangements

Current arrangements

Currently, to be licensed as a self-insurer under Comcare an employer must first be able to demonstrate that it meets the eligibility criteria, that is, it must either be a current or former Commonwealth Authority or a competitor of a current or former Commonwealth Authority.

If declared eligible an applicant must:

- meet financial and prudential requirements
- demonstrate the capacity to meet standards for claims management, benefit delivery, injury prevention and rehabilitation
- demonstrate that granting a licence will not be contrary to the interests of employees.

A company cannot currently apply for a group licence under Comcare, so each company in the group must apply separately for a licence. However, there is no minimum size requirement, so this would not appear an onerous restriction and employment can be transferred to a single entity if preferred. By comparison, in Queensland there is a minimum requirement of 2,000 employees and in NSW, a minimum requirement of 500 employees. These requirements limit the potential pool of self insurers.

Aside from the eligibility criteria the Comcare self-insurance licensing process is similar to most jurisdictions.

Hanks' recommendations

With respect to licensing of Comcare self-insurers, the Hanks' review included two key recommendations to:

1. replace the competition test with a national employer test
2. allow group licences.

These recommendations, if adopted, could have significant ramifications as we expect many more employers to be eligible to apply for a Comcare self-insurance licence, along with removal of the administrative burden for groups requiring multiple licences.

7.2 Compliance costs

There are obvious attractions to only dealing with a single regulator as opposed to up to eight different regulators, especially as each regulator has its own set of licensing criteria, reporting arrangements and standards. These advantages include:

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- a single licensing process
- one actuarial valuation instead of (up to) eight
- single reporting requirement and licence review process.

All jurisdictions require self-insurers to provide a bank guarantee or security deposit to secure the claims liability. For Comcare, a bank guarantee of approximately 1.5 to 2.0 times the liability is typically required (i.e. the projected liability in 2 years at the 95th percentile plus one reinsurance retention – minimum \$2.5 million), which is comparable to other States bank guarantees which are 1.5 times the liability (except SA which is 2.0). However, the costs of bank guarantees are generally low relative to other costs and therefore are unlikely to be a significant factor in the decision to move to Comcare.

Comcare now accepts insurance bonds as well as bank guarantees. In most instances bank guarantees reduce the borrowing capacity of an organisation by the amount of the bank guarantee. An insurance bond is an alternative type of security that generally doesn't impact the borrowing capacity of an organisation, where the self insurer pays a premium to an APRA-regulated insurer with the insurer acting as guarantor for the outstanding claim liabilities if the self insurer fails.

Each jurisdiction charges self-insurers a levy to fund the administrative costs of the scheme. The calculation method varies by jurisdiction. It is difficult to make direct comparisons between Comcare levies and those for the States, but for a notional average employer Comcare levies appear to be lower. However, the actual outcome will vary significantly by employer depending on its industry and size.

The cost of managing claims is another expense. Some savings in claims management expenses may be possible through potential centralisation of the claims management function.

The regulatory and compliance burden is likely to be a significant motivation for employers in assessing whether to move to Comcare self-insurance. The cost of complying with up to eight separate regulatory requirements is a significant burden. Overall, Comcare compliance costs are expected to be significantly less than those for the sum of the States.

8 Implication for State Schemes

8.1 Current arrangements

For now the moratorium on new self-insured employers remains in place, although this is a matter of Ministerial policy rather than a legislative restriction. With the recent change in Federal Government, we expect that it is more likely that the moratorium will be lifted than it has been during the six years since the moratorium was introduced.

It is still the case though that any new self-insurance licensees would need to meet the conditions of the 'competition test'.

If the competition test restrictions are kept in place we expect there would not be any material change from the conclusions of our previous report, namely:

- That under the competition test there would be less than 10% of the employed workforce that could potentially be eligible to join Comcare
 - Some of which would already be self-insured under the State schemes
- Unless there are very significant cross-subsidies in the premium system from large to small employers, then the impacts on premium rates for employers remaining in the State schemes would be negligible (say 1-2% increases).

8.2 Proposed arrangements

The Hanks review proposed that:

- The moratorium on new self-insurance licences be lifted:
 - This would increase the number of Comcare self insurers
- Provisions be made to allow for employer "group" self-insurance licenses:
 - This would further increase the number of employees covered, even if no additional licences were offered
- Removing the competition test and replacing it with a national employer test:
 - This would increase the number of employers eligible to apply for self-insurance licenses.

While it is a matter of government policy to determine what constitutes a "national employer", Hanks recommended that it be defined in simple and direct terms so that corporations and Comcare alike are able to quickly and unequivocally determine whether a corporation is a national employer.

Hanks gave four examples of how such a test could be constructed, which are summarised below. We have attempted to quantify the proportion of the workforce which could potentially be covered under each test, although we

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caution that these estimates should be treated as indicative only given the lack of directly relevant information we could source to estimate them.

[NB: we have assumed that government employers would not change from existing arrangements, and that once employers are sufficiently large there would be limited difficulty in establishing a single interstate office, if so desired.]

Table 8.1 – Example Definitions of a ‘National Employer’

Definition	Implications	Potential Workforce Coverage
A corporation employing staff in more than one State or Territory	This is a relatively broad test eg. an employer could have a small interstate office to meet the national employer requirements. Some employers with relatively few employees could be classed as national employers.	Perhaps 35-45% of the workforce
A corporation employing staff in each of the States and Territories	A narrower test, which would require complete national coverage; potentially some existing licences would not meet this test. Likely to mean only very large employers would meet the test.	Perhaps 10-15% of the workforce
A corporation carrying on business in more than one State or Territory, regardless of the number of States and or Territories in which its staff are employed	Again, a broader test which would be more easily met.	Similar to option 1
A corporation employing a certain percentage of its staff in at least two or more States or Territories	Middle ground between options 1 and 2.	Depends on approach taken - between options 1 and 2

While precise numbers are not available, it appears that a national employer test based on employing staff or doing business in more than one state could have very broad theoretical coverage. The breadth of this coverage could be reduced by adding additional criteria to the test, such as minimum employee numbers or demonstrated ability to manage workers' compensation claims. At the other end of the spectrum, a more restrictive entry test could mean only around 10% of employees are potentially eligible for a move to Comcare.

What does this mean for each of the State schemes?

It depends somewhat which scheme you are, but overall it is possible that premium volumes could be reduced, perhaps materially, although there are no real risks to scheme viability or premium rates for remaining State insured employers. The following sections explain these impacts in more detail.

Potential Impacts on Scheme Size

The impacts of increased access to Comcare self-insurance require consideration of a number of factors, including:

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- The current level of self-insurance in the scheme – as schemes with high levels of self-insurance will already have many of the potential Comcare self-insurers outside the scheme.
- Scheme costs/premium rates – all else being equal, in states with lower premium rates it will be less financially attractive to move to Comcare. Conversely, in higher premium rate states there could be additional financial benefit from a move to Comcare.
- The likelihood of individual employers wanting to self-insure (whether in Comcare or in a State based scheme) – over many years we have seen that a large share of employers will not seek to move to self-insurance, even when the option is available to them.

Table 8.2 summarises the current levels of self-insurance (and specialised insurance in NSW) for each State. As this shows, SA and NSW already have relatively high levels of self-insurance, with the remaining States at or below 10% of the workforce covered by self-insurance.

Table 8.2 – Self Insurance Arrangements by State

State	Government Sector	# Self Insured Licences ¹	% Non-Govt Employees in Self Ins ⁴
NSW ²	Outside scheme	67	23%
Vic	Insured	37	6%
Qld	Insured	25	10%
SA ³	Self insured	67	23%
WA	Outside scheme	27	9%
Tas	Outside scheme	11	5%

¹ As at 30 September 2011

² 60 employers and 7 specialist insurers

³ SA based on wages (employee no's not available)

⁴ Source: Safe Work Australia Comparative Performance Monitoring Report, 13th Ed.

This suggests that under the broadest national employer test, schemes such as Victoria and Queensland could theoretically face significant (25%+) reductions in covered employees, although as noted above there are other considerations that employers will have before making such decisions.

Potential Premium Rate Impacts on Remaining State Scheme Employers

There are three main arguments put forward that large scale moves to self-insurance would unduly impact on remaining (mainly smaller) State covered employers, namely:

- The reduction in size will mean fixed costs are shared across a smaller premium payer group, thus requiring higher premium rates for those who remain.

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- Large employers may/do provide a cross-subsidy to smaller employers that would be removed if they went to self-insurance, thus requiring higher premium rates for those who remain.
- (where relevant) If the scheme is less than fully funded, then allowing large employers to exit to self-insurance means they avoid paying their fair share of future contributions to reduce the deficit.

Overall, unless there are significant levels of cross-subsidy from large to small employers and/or there is a significant unfunded liability, the impacts of these factors is unlikely to make such a difference that premiums become unaffordable for remaining employers.

Scenario 1 – Wholesale movement to self-insurance (no cross-subsidy)

For the sake of demonstration we have assumed a very broad national employer test would allow 25% of the workforce to move into Comcare self-insurance, thus reducing the State insurer premium pool by 25%.

We have also assumed that:

- Scheme expenses are 20% of overall premiums, of which 10% are fixed with the remainder being scalable with the size of the scheme.
- There are no cross-subsidies in the premium rates, such that all employers pay their fair rate.
- An average premium rate of 1.5% applies throughout (although the findings do not depend on this).

As Table 8.3 shows, even with 25% of the scheme moving to self-insurance there would only be a 3.3% increase in premium rates for those who remain to cover the cost of fixed scheme expenses.

**Table 8.3 – Example Premium Rate Impact from 25% Movement to Self-Insurance
(if no cross-subsidies)**

	Premium Calculations			Contribution to:				True Premium Rate	
	Wages	Premium Rate	Charged	Claims cost	Fixed expenses	Variable expenses	Cross-subsidy		Total
Before	\$	% wages	\$	\$	\$	\$	\$	\$	% wages
Remaining employers	50,000	1.50%	750	600	75	75	-	750	1.50%
Large employers	16,667	1.50%	250	200	25	25	-	250	1.50%
Total	66,667	1.50%	1,000	800	100	100	-	1,000	1.50%
After									
Remaining employers			775	600	100	75	-	775	1.55%
<i>Increase above current</i>									<i>+3.3%</i>

And while a 25% reduction in premium volume would be noticed (!), we expect this would not be enough to impact on long term scheme viability.

Scenario 2 – Wholesale move to self-insurance and removal of cross-subsidy

Further to the first scenario, it is relevant to consider the impact on premium rates for those who remain if there is a cross-subsidy in the current premium rates which is removed (i.e. those who leave to go to Comcare self-insurance had been charged more than their fair share of the scheme's costs).

Given how schemes tend to guard their premium factor/rate setting processes it is difficult to tell how much cross-subsidy there is in current premium systems. The use of experience rating across schemes undoubtedly reduces the potential for such cross-subsidies, although from the experience we have seen from a number of (mainly large) self-insurers it appears there are still segments where reasonable cross-subsidies may still exist over a prolonged period.

For the sake of illustration we have assumed there is a 15% cross-subsidy in the premium system from larger to smaller employers that would disappear with the movement of the larger employers to self-insurance. We consider it improbable that there could be anything more than a 15% cross-subsidy across a group as large as 25% of the premium paying employers, and so would consider this to be quite an extreme scenario.

As Table 8.4 shows, even under this relatively extreme scenario there would only be a 7.8% increase in premium rates required for those who remain in the State scheme.

Table 8.4 – Example Premium Rate Impact from 25% Movement to Self-Insurance (and removal of 15% cross-subsidies)

	Premium Calculations			Contribution to:				Total	True Premium Rate
	Wages	Premium Rate	Charged	Claims cost	Fixed expenses	Variable expenses	Cross-subsidy		
Before	\$	% wages	\$	\$	\$	\$	\$	\$	% wages
Remaining employers	50,000	1.50%	750	630	79	79	-38	750	1.58%
Large employers	16,667	1.50%	250	170	21	21	38	250	1.28%
Total	66,667	1.50%	1,000	800	100	100	-	1,000	1.50%
After									
Remaining employers			809	630	100	79	-	809	1.62%
<i>Increase above current</i>									<i>+7.8%</i>

8.3 Conclusions

It is not clear how a new national employer test would operate or how much of the workforce would potentially be covered under such a change. If a broad national employer test is adopted then it is possible that a relatively large proportion of some existing State schemes could be allowed to transfer to Comcare self-insurance if they so desired. Over time, this process would increasingly leave the State schemes with smaller and poorer risks.

Regardless, it is unlikely that this would present any material risk to the ongoing viability of the State based schemes, nor to the affordability of premium rates for (generally smaller) employers who remain.

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Over the longer term such a change is likely to 'encourage' the state based schemes to ensure their breakeven premium rate does not diverge too much above that of Comcare, or else there may be a clear financial advantage for employers to shift to the Comcare scheme. An alternative view on this is that if Comcare were to change its benefit structure such that it became a particularly low cost regime, then it is likely that State schemes would need to follow suit in order to maintain their relative financial affordability.

9 Conclusion

9.1 Employer's point of view

Weighing up the decision

If the moratorium is removed, is moving to Comcare self-insurance a sensible move?

Firstly, an employer has to be declared eligible. Under the current arrangements that requires passing a competition test whereby an employer is deemed to compete with a current, or former, Commonwealth Authority. Under the recommendations set out in the 2013 Hanks' review an eligible corporation would need to pass a national employer test, which we expect will be an easier test to meet.

After being declared eligible an applicant must meet a range of requirements including financial and prudential requirements and standards for the management of claims, rehabilitation and WHS.

If the employer can pass those hurdles then the key factors to consider are:

- Work Health and Safety –
 - Comcare appear to have low rates of WHS enforcement relative to other States although the absolute levels of proactive intervention has increased three-fold in recent years.
 - Without an amendment to the WHS Act, any new entrants to the Comcare scheme will not have coverage for WHS purposes which may mean that Comcare self-insurers lose the advantage of truly uniform WHS laws and hence the reduced compliance costs and administrative efficiency which that brings
- Benefits to employees ✓
 - Benefits more generous than the States and Territories
 - Consistent benefits across all States, and therefore equitable outcomes for all employees
- Cost of claims ✗
 - Claim costs under Comcare are likely to be higher, by around 10%-15% or more depending on the employer's type of claims and mix of employees across States
 - Recent legislative amendments are likely to reduce claim costs in some states, particularly NSW
 - If Hanks' proposed Comcare benefit changes are introduced, we estimate the cost of claims to increase further

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- Exit fees imposed by some schemes from time to time may be significant and need to be considered.
- Expenses ✓
 - Claims management expenses may change due to different claims experience under Comcare
 - Centralisation of claims management may be possible
 - Clear scope for savings in compliance costs from having single costs for bank guarantees, annual levies, licence fees, actuarial and audit costs.
- Simplicity ✓
 - One regulator instead of many (with respect to workers' compensation and rehabilitation)
 - Simpler systems and processes
 - Single dispute resolution service.

The risks and benefits of moving to Comcare self-insurance will vary depending on the circumstances of individual employers. The decision on whether to move to Comcare self-insurance will be dependent on assessing the above considerations and the motivation for wanting to transfer to Comcare.

We expect that Comcare self-insurance will still be an attractive option to some employers who want to significantly reduce compliance costs and want the administrative efficiency of being able to manage all employees under a single workers' compensation framework. However, Comcare self-insurance does not appear to be as attractive an option as six years ago as new entrants to the scheme will not have coverage for WHS purposes and because of the benefit changes in NSW reducing costs in that state.

Where to from here?

In preparation for the potential lifting of the moratorium an employer may want to consider:

1. A high level review of eligibility under a range of potential criteria – for example, the current criteria (i.e. with no change to the “competition test” and financial / prudential requirements) or the proposed criteria set out in the Hanks review (i.e. removal of the competition test with perhaps tougher financial scrutiny and a requirement that there must be some sort of national presence)
2. Performing a high level comparison of current workers' compensation costs (i.e. claims and expenses associated with being insured or self-insured with State schemes) with estimated costs under Comcare
3. Reviewing whether they meet the Commission's current standards for WHS, claims management, benefit delivery, prevention and rehabilitation.

9.2 Scheme's point of view

It is not clear how a new national employer test would operate or how much of the workforce would potentially be covered under such a change. If a broad national employer test is adopted then it is possible that a relatively large proportion of some existing State schemes could be eligible to transfer to Comcare self-insurance. Over time, this process would increasingly leave the State schemes with smaller and poorer risks.

Regardless, it is unlikely that this would present any material risk to the ongoing viability of the State based schemes, nor to the affordability of premium rates for (generally smaller) employers who remain.

Over the longer term such a change is likely to 'encourage' the state based schemes to ensure their breakeven premium rate does not diverge too much above that of Comcare, or else there may be a clear financial advantage for employers to shift to the Comcare scheme. An alternative view on this is that if Comcare were to change its benefit structure such that it became a particularly low cost regime, then it is likely that State schemes would need to follow suit in order to maintain their relative financial affordability.

9.3 Final word

Private sector employers who move to Comcare self-insurance could benefit from consistent workers' compensation benefits for all employees and significantly reduced compliance costs particularly if they operate in a large number of jurisdictions.

It is possible that a change to eligibility requirements via a national employer test may upset unions and State governments who have expressed concerns of a fall in safety standards as there is a perception that Comcare has a lower level of WHS enforcement. However, we note that in practice without an amendment to the WHS Act any new entrants to the Comcare scheme will not be covered under the Commonwealth WHS Act.

Some State governments may also argue that a substantial exit of State-insured employers to Comcare will detrimentally impact the financial viability of their schemes.



A Detailed Comparison of Workers' Compensation Benefits

Figures as at July 2013.

The Comcare Self-Insurance Option – Mark II

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	COMCARE
JOURNEY	No	No	Yes	No	No	No	Yes	Yes	No
Details	Some exceptions	No – journeys to and from work Yes – work related travel with some restrictions, breaks on and offsite	Some restrictions to and from work	No – journeys to and from work Yes – work related travel, breaks onsite, breaks offsite with restrictions	No - journeys to and from work, breaks offsite Yes – work related travel, onsite breaks only if break is authorised	No – journeys to and from work, breaks offsite (some exceptions) Yes – work related travel, breaks onsite	Some restrictions to and from work	YES – work related travel NB: No information for breaks on and offsite	No – journeys to and from work Yes – work related travel, breaks on and offsite
MEDICAL, HOSPITAL AND OTHER COSTS	No limits	No limits	No limits	Limited	No limits	Limited	No limits	Limits	No limits
Details		Compensation ceases 52 weeks after entitlement to weekly payments cease. If compensation is only payable for medical and like services, compensation ceases 52 weeks after entitlement commenced unless certain circumstances apply		Limited to 30% of prescribed amount (\$59,510). Additional \$50,000 can be granted if justified by social and financial circumstances. If worker meets an exceptional medical circumstances test and has WPI >= 15%, an additional \$250,000 may be awarded.		If worker is entitled to weekly payments, compensation ceases 52 weeks after entitlement to weekly payments cease. Otherwise compensation ceases 52 weeks after the date of claim		Costs as agreed with insurer, or \$662.61 indexed	

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	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	COMCARE
PERMANENT IMPAIRMENT PAYMENTS	Yes	Yes	Yes						
Benefit type	Lump sum compensation for permanent impairment Additional pain and suffering compensation for emergency and mine workers	Combined	Standard, with provisions for additional, gratuitous care and latent onset	Lump sum	Non-economic loss	Combined	Combined	Single or multiple impairments	Economic and non-economic
Max amount (current)	\$220,000 (plus 5% for back impairment) Pain and suffering lump sum maximum \$50,000	\$543,920 indexed for CPI	Standard \$287,605 Additional \$287,605 Gratuitous care \$325,800 Latent onset \$603,985 All indexed for QOTE	\$198,365 indexed for WA ordinary hourly rates of pay	\$454,789 indexed	\$305,759 indexed to 415 times 'basic salary'	\$292,989 indexed to 208 times full time weekly ordinary earnings for NT	Single \$132,522 Multiple \$198,783 indexed for CPI	Economic \$168,600 Non-economic \$63,227 Indexed for CPI
Additional benefits conditional to meeting a prescribed degree of impairment (e.g. access to common law)	Work Injury Damages if WPI ≥15%, other conditions apply Commutation if WPI ≥ 15%, other conditions apply	See common law section below	Maximum \$287,605 additional lump sum compensation if WPI ≥ 30%. Additional lump sum up to	Common Law access if WPI ≥ 15% (limited damages) and WPI ≥ 25% (unlimited damages). Further benefits	n/a	Common Law access if WPI ≥ 20%	n/a	n/a	n/a

The Comcare Self-Insurance Option – Mark II

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	COMCARE
			\$325,800 if WRI ≥ 15%, other conditions apply	dependent on other conditions					
Weekly benefits still payable	Yes	Yes	No	No	Yes	Yes, except where payment of impairment benefit is a component of weekly benefit	Yes	Yes	Yes
COMMON LAW ACCESS	Yes	Yes (limited)	Yes	Yes (limited)	No	Yes (limited)	No	Yes	Yes (limited)
Details	Access if WPI ≥ 15% Known as Work Injury Damages “WID”	Access if WPI ≥ 30% (mental and physical) Pain and suffering access if damages ≥ \$53,600 Economic loss access if damages ≥ \$55,480 and WPI ≥ 40%	If WRI < 20%, worker must accept lump sum payment or seek damages Irrevocable election of common law	Access if WPI ≥ 15% (with exclusions) Unlimited common law available if WPI > 25%, otherwise limits apply	n/a	Access if WPI ≥ 20%	n/a	Unlimited	Access if permanent impairment claim is successful Irrevocable election of common law
INCOME REPLACEMENT									
Starting level of weekly benefits	Total incapacity: 100% AWE (award) or 80% AWE (excluding	No current work capacity: lesser of 95% of pre-injury average weekly	Under industrial agreement: greater of 85% of worker’s NWE or amount	100% of AWE plus bonuses, overtime and allowances	100% of AWE, maximum \$2,604.40 per week	100% of NWE (including overtime)	100% of NWE (including overtime)	Totally incapacitated: 100% AWE	100% NWE (including overtime)

The Comcare Self-Insurance Option – Mark II

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	COMCARE
	overtime), maximum \$1,839 per week	earnings less deductible amount, or \$2000	payable under agreement Not under industrial agreement: greater	Maximum \$2,351.80 per week	If partially incapacitated, actual earnings deducted from income maintenance	Minimum weekly payment lesser of 70% of \$515.74 or 100% of weekly payment		Partially incapacitated: Difference between AWE and average amount being paid or could earn in suitable employment	No maximum
	Partial incapacity: total incapacity rate	Current work capacity: lesser of 95% of pre-injury average weekly	of 85% of NWE or 80% of QOTE						
	Partial incapacity (all other circumstances): difference between amount worker would have been earning and amount currently earning, maximum \$1,839 per week	earnings less deductible less current earnings, or \$2000 less current earnings	Under contract: greater of 85% of NWE or amount payable under worker's contract of service						
	Seriously injured: 95% AWE								
Step down	Total and partial incapacity: 26 weeks Seriously injured: 13 weeks	13 weeks	26 weeks	13 weeks	13 weeks	26 weeks	26 weeks	26 weeks	45 weeks
Step down weekly benefits	Total incapacity: lesser of 90% AWE or statutory rate	No current work capacity: lesser of 80% of pre-injury	If WRI > 15%: greater of 75% of NWE or 70% of	With industrial award: 100% of AWE (excluding	90% of AWE > 26 weeks: 80%	≤ 78 weeks: 90% of NWE (95% if employer doesn't	Greater of: - 75% of NWE (max \$2,012.90)	Total incapacity: 100% pre- incapacity earnings	If not working: greater of 75% of NWE and \$425.72

The Comcare Self-Insurance Option – Mark II

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	COMCARE
	\$432.50, plus spouse and dependant children payment	average weekly earnings less deductible, or \$2000	QOTE If WRI ≤ 15%: single pension rate	bonuses, overtime, allowances), max \$2,351.80 Without industrial award: 85% of AWE, max \$2,351.80	of AWE	provide suitable duties) >78 weeks: 80% of weekly payment (85% if employer doesn't provide suitable duties)	- lesser of 90% of NWE or \$704.30 + \$176.30 for spouse + \$88.04 per dependant child	if less than pre-incapacity floor of worker, or a lesser percentage depending on the pre-incapacity floor of worker Partial incapacity: 100% pre-incapacity earnings if less than statutory floor, or a lesser percentage depending on statutory floor and working hours	If working: dependent on percentage normal weekly hours worked If retired: combined (workers' compensation and superannuation) benefit payable is 70% of former normal weekly earnings
	Partial incapacity: greater of current weekly wage or amount that would be payable for total incapacity, benefits cease after 52 weeks Partial incapacity (all other circumstances): lesser of statutory rate or 90% of AWE benefits may end after 104 weeks depending on circumstances Seriously injured: Minimum \$736.72	Current work capacity: lesser of 80% of pre-injury average weekly earnings less deductible less 80% current earnings, or max \$2000 less 80% current earnings >52 weeks: payments continue at reduced pre-injury average weekly earnings							
Aggregate limit	n/a	n/a	\$287,605	n/a	n/a	n/a	n/a	n/a	n/a

The Comcare Self-Insurance Option – Mark II

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	COMCARE
Long term weekly benefit test	104 weeks	Weekly payments until retirement age	n/a	n/a	130 weeks	Dependent on WPI	<p>< 104 weeks if worker has earning capacity and suitable employment is available</p> <p>>104 weeks if worker has earning capacity</p>	n/a	n/a



Injury Schemes Seminar*

Balancing Outcomes

10-12 November 2013
Sheraton Mirage Gold Coast

* Formerly the Accident Compensation Seminar



B List of Comcare Licensees

Licensee	Former/Trading name	FTE 2012/13*	Commencement date of licence	Current licence expiry date
Asciano Services Pty Ltd	Pacific National (ACT) Limited	2,882	01/07/2001	30/06/2017
Australian air Express Pty Ltd		573	01/07/1999	30/06/2017
Australian Postal Corporation		27,126	30/06/1992	30/06/2014
Avanteos Pty Ltd		255	31/03/2008	30/06/2014
BIS Industries Ltd		1,847	01/10/2008	30/06/2015
Border Express Pty Ltd		680	01/01/2008	30/06/2014
Chubb Security Services Ltd		765	01/07/2007	30/06/2017
Colonial First State Property Management Pty Ltd		719	31/03/2008	30/06/2014
Colonial Services Pty Ltd		2,739	31/03/2008	30/06/2014
Commonwealth Bank of Australia Ltd		22,286	31/03/2008	30/06/2014
Commonwealth Insurance Ltd		308	31/03/2008	30/06/2014
Commonwealth Securities Ltd		5,365	31/03/2008	30/06/2014

The Comcare Self-Insurance Option – Mark II

Licensee	Former/Trading name	FTE 2012/13*	Commencement date of licence	Current licence expiry date
CSL Ltd		1,864	03/06/1994	30/06/2015
Fleetmaster Services Pty Ltd		240	01/04/2009	30/06/2015
John Holland Group Pty Ltd		3,365	01/01/2007	30/06/2016
John Holland Pty Ltd		2,249	01/01/2007	30/06/2016
John Holland Rail Pty Ltd		456	01/01/2007	30/06/2016
K&S Freighters Pty Ltd		2,178	01/07/2006	30/06/2016
Linfox Australia Pty Ltd		5,037	03/04/2006	30/06/2015
Linfox Armaguard Pty Ltd		2,200	03/04/2006	30/06/2015
National Australia Bank Ltd		22,943	13/04/2007	30/06/2016
National Wealth Management Services Ltd	MLC	2,818	13/04/2007	30/06/2016
Optus Administration Pty Ltd		7,885	01/07/2005	30/06/2015
Reserve Bank of Australia		882	01/05/1996	30/06/2015
StarTrack Retail Pty Ltd	AaE Retail	434	01/07/2011	30/06/2017
Telstra Corporation Ltd		29,289	30/06/1992	30/06/2014

The Comcare Self-Insurance Option – Mark II

Licensee	Former/Trading name	FTE 2012/13*	Commencement date of licence	Current licence expiry date
Thales Australia	ADI Ltd	3,067	07/02/1996	30/06/2013
TNT Australia Pty Ltd		3,984	01/07/2008	30/06/2014
Transpacific Industries Pty Ltd		5,053	01/07/2008	30/06/2014
Visionstream Pty Ltd		1,664	01/07/1999	30/06/2015
TOTAL		161,153		

*FTE figures from Comcare 2012/13 annual report

Hence Comcare self-insurers currently operate in the following industries:

- a) Banking
- b) Chemical manufacture
- c) Communications
- d) Construction
- e) Defence
- f) Security
- g) Transport
- h) Waste management

C Pros and Cons of Comcare Self-insurance

Comcare provides an opportunity for employers with employees in several States to provide a single, consistent set of compensation benefits to all its employees and to operate in a single compliance framework with one set of expenses.

Pros

- Single set of benefits.
- Uniform set of benefits and rules across all employees.
- Equality across staff.
- Simpler systems and processes.
- Potential to standardise and perhaps centralise claims management.
- Single dispute resolution service.
- Avoid administration and compliance costs of operating under up to eight sets of workers compensation regulations.

Cons

- Workers' compensation benefits may be more costly.
- Employers need to consider exit levies and other expenses that may be payable.
- Only single licences available (not group) so each legal entity requires a licence – may require restructure to have one employing entity. 2013 review has recommended group licences.
- Requires management effort to move from State schemes to Comcare.
- Potential backlash from employee associations and/or unions.