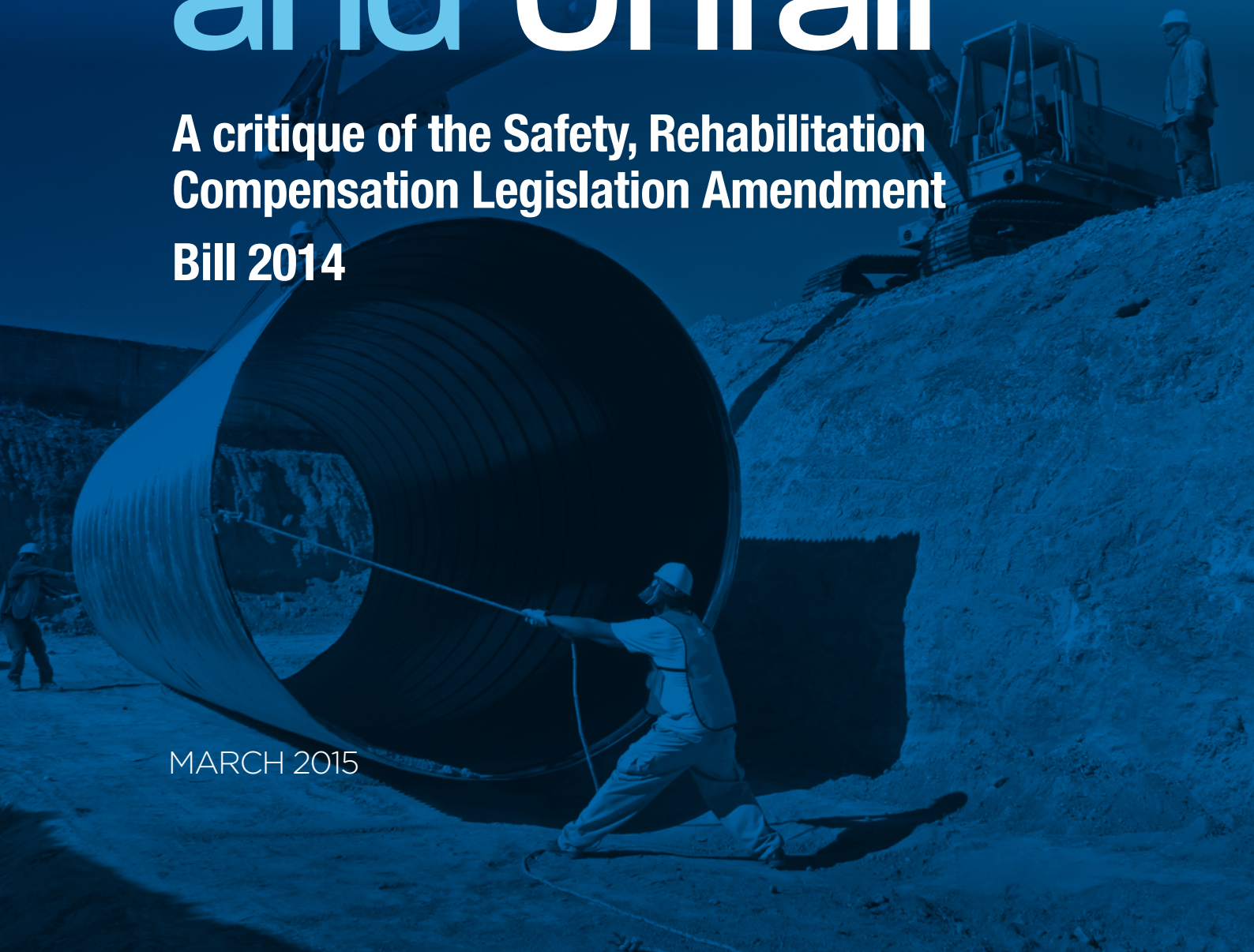
THE McKell Institute

Unsafe and Unfair

A critique of the Safety, Rehabilitation Compensation Legislation Amendment Bill 2014



MARCH 2015

Background

The authors of this paper have utilised a range of publicly available information and our own analysis in compiling this paper, along with information provided from various industry participants.

About the McKell Institute

The McKell Institute is an independent, not-for-profit, public policy institute dedicated to developing practical policy ideas and contributing to public debate. The McKell Institute takes its name from New South Wales' wartime Premier and Governor–General of Australia, William McKell.

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Dr Howe is regularly invited to present evidence to the Senate Legal and Constitutional Affairs Committee and to advise government departments and reviews on Australia's temporary migration programme. She is also the co-editor of the Work and Employment Column in the Australian Journal of Administrative Law and writes regularly for major media outlets.

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Foreword

Workplace injuries cost Australia an estimated $60.6 billion, or 4.8% of GDP every year.

On average, every 5 out of 100 workers each year are afflicted with an injury or illness obtained in the workplace.

According to Safe Work Australia 184 Australians lost their lives at work in 2014.

The need for an effective and efficient workers' compensation scheme is clear; however neither the current nor the proposed systems effectively address the concerns of all stakeholders.

This report analyses the proposed *Safety, Rehabilitation and Compensation Bill 2014* (Cth) (SRC Bill), and, for a number of key reasons, argues that the bill should be rejected.

The bill will clearly disadvantage working Australians, small business and taxpayers.

Workers will be disadvantaged as the SRC Bill provides less entitlements, has the least effective regulator and the lengthiest and most cumbersome dispute resolution process of all the current workers' compensation schemes in Australia.

The majority of businesses will also be disadvantaged under the SRC Bill as only multi-state employers can move to the new scheme. This means that the premium pool of the current state and territory schemes with be dramatically reduced as the larger businesses exit the scheme leading to an increase in premiums for the remaining small and medium-sized businesses and for those large organisations that only operate within one state.

Taxpayers also stand to lose from the new scheme as common law access will be limited, thereby shifting compensation claim costs from employers to taxpayers. Medicare, the NDIS and the welfare system all stand to absorb greater pressure due to lessor entitlements to injured workers.

Additionally, the premise that multi-state businesses stand to gain significantly from the introduction of the SRC Bill is precarious. The claim is based solely on anecdotal evidence provided by multi-state businesses themselves, and not from independent actuarial analysis.

Finally, under the proposed scheme, Comcare would potentially be responsible for 67 times its current workload capacity. Already Comcare conducts far fewer workplace interventions and visits, and its investigators issue far fewer improvement and prohibition notices than their State colleagues, however the proposed bill will see as many as 1959 businesses move to Comcare's self-insurance scheme. This will place much higher pressure on the national regulator, as well as placing the lives and wellbeing of many more workers at a higher risk.

Both the current system and the proposed SRC Bill have serious shortcomings. Australia requires a thorough and bipartisan investigation into a new nationally consistent workers' compensation framework that serves the interests of all stakeholders and Australians.

The McKell Institute supports a national scheme, but not that serves only a very small minority of Australian businesses. Instead, we support one that is fair to workers and small business. We accept that the current regulatory framework should be streamlined, but insist that it should be done through a more balanced and rigorous process.

The Hon John Watkins
CHAIR,
MCKELL INSTITUTE

Sam Crosby
EXECUTIVE DIRECTOR,
MCKELL INSTITUTE

Executive Summary

All Australian workers and their families expect the workplace to be a safe place and that workers can return home without injury or accident. Unfortunately, all too often, the opposite is true. Last year there were 184 fatalities and in the first 47 days of 2015, 20 workers have died due to an injury incurred at work.[1]

But the devastation wreaked by unsafe workplaces does not stop there. The Australian Bureau of Statistics' 'Work Related Injury Survey' shows that 50 out of every 1000 workers experience an injury or illness in the workplace each year.[2]

Workers' compensation schemes aim to mitigate the adverse consequences arising from workplace injury and death. These schemes are based around two fundamental tenets: that workers injured during the course of their employment should receive fair compensation and that those workers should be provided with rehabilitation services so as to enable them to return to work as soon as possible.

The attainment of these principles is in the interests of all stakeholders – workers, businesses and the community at large. With the annual cost of workplace injury estimated to be $60.6 billion dollars, representing 4.8% of annual GDP, the importance of efficient and effective workers' compensation schemes cannot be underestimated.[3]

This report examines the Federal Government's attempt to reform the workers' compensation landscape via the *Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014* (Cth) ('the SRC Bill'). This Bill seeks to significantly

expand the national workers' compensation scheme by permitting multi-state employers to obtain a self-insurance licence. This represents a radical departure from the status quo which sees the vast majority of Australian employers regulated through existing state and territory schemes.

For a number of key reasons the SRC Bill should be rejected. First and foremost, the Bill fails the basic test of 'benefit to stakeholders'.

Workers will be disadvantaged by the expansion of the national scheme given that it provides the least entitlements, has the least effective regulator, and the lengthiest dispute resolution process of all the workers' compensation jurisdictions in Australia.

The vast majority of businesses will be disadvantaged under the Bill as only multi-state employers can move to the national scheme, necessarily reducing the premium pool of the state and territory schemes. This will increase premiums for the small and medium sized businesses remaining in those schemes and in fact, threatens the ongoing viability of those schemes.

The Bill also fails to pass the public interest test. It shifts the cost of workers' compensation claims from employers to the public purse as common law access is limited, and greater onus will fall on the social security system and Medicare to address workers' costs arising from work-related injuries.

Not only does this report find that this Bill will be to the detriment of the vast majority of stakeholders, but that the evidential basis for its introduction is unsound. The only stakeholders alleged to benefit from the SRC Bill are multi-state businesses, but even there, this benefit has only been quantified through anecdotal evidence provided by these same businesses. It is concerning that no independent actuarial analysis has been conducted to support this contention.

It is the conclusion of this report that the SRC Bill represents a hasty, ad-hoc attempt to create a national workers' compensation system, and that the Bill should be rejected.

Recommendations and Key Findings

Key findings

1. There is no compelling evidence that the vast majority of Australian businesses would experience cost savings under the *Safety, Rehabilitation Compensation Legislation Amendment Bill 2014* (Cth).

2. Given the potential risks arising from self-insurance for workers and for the economy in the event of an employer's financial collapse, the Comcare scheme should not be expanded until it is more robustly regulated.

3. Regulatory measures recommended in the Taylor Fry report,[4] the Hanks report[5] and the Hawke report[6] should be adopted to ensure that self-insurers meet strict prudential and other requirements.

4. Self-insurance is a privilege not a right. Only employers with a strong financial position and a superior approach to all aspects of work health and safety should be eligible for self-insurance.

5. The SRC Bill is a retrograde step that adopts a lowest common denominator approach to workers' compensation. Instead of adopting the best aspects of the state and territory workers' compensation schemes, the Bill deregulates the national scheme and places increased pressure on the vast majority of businesses and reduces workers' entitlements and rights in the event of a death or injury.

This report recommends that

1. The SRC Bill be rejected.

2. The Federal Government instead pursue a bipartisan and balanced approach to developing a nationally consistent framework for workers' compensation.

3. An independent actuarial analysis be undertaken to identify the potential financial impact from the development of a national workers' compensation system.

4. The independent actuarial review should consider the impact upon businesses that remain operating in a state or territory jurisdiction and the impact upon multi-state businesses that are eligible to move into the national workers' compensation scheme.

5. There should be an audit of the best practices in the state and federal workers compensation and occupational health and safety system as a means of determining national best practice benchmarks for use in a national system.

6. That national scheme's regulator, Comcare, should be operating on par with, or better than, the state and territory regulators before an expansion of the national workers' compensation scheme be considered.

7. The Comcare inspectorate should be more effectively resourced with improved recruitment and training of its personnel.

8. The Comcare inspectorate should be restructured so as to better address the needs of the regions and high-risk industries.

9. Statutory timelines should be introduced

into the national workers' compensation scheme and the dispute resolution process, currently highly labyrinth, requires immediate simplification. The Comcare scheme should introduce provisional liability and employers should bear costs for the resolution of disputes prior to external review.

It is outside the scope of this project to comprehensively recommend how a national workers' compensation system should be designed. However the following points are made in relation to the development of a national workers' compensation system.

1. **Although the Taylor Fry report, the Hanks report and the Hawke report advocate the expansion of the national scheme, all three reports qualify this with a need to significantly increase regulation of self-insurers and to improve the performance of the scheme regulator, Comcare. It is highly imprudent for the SRC Bill to expand the national scheme without addressing these qualifications.**

   The SRC Bill does not mandate that only employers who can demonstrate a superior approach in all areas of injury prevention, claims management and occupational health and safety standards are eligible for self-insurance. Instead, the SRC Bill only requires that an employer be operating in more than one state. The Taylor Fry report identifies a need for 'stringent rules to ensure that potential self-insurers have best practice OHS arrangements, a sound financial base and the ability to manage the self-insurance process.'[7]

   When compared with its state and territory counterparts, the national scheme regulator does not operate as efficiently or effectively. Comcare has conducted far fewer workplace interventions and proactive and reactive workplace visits. Its investigators have issued far fewer improvement and prohibition notices and the agency is less experienced in launching legal proceedings.

   There is significant potential for self-insurance to be abused by unscrupulous employers. These employers may seek to use self-insurance as a way of avoiding paying premiums but may not be genuinely oriented to assisting injured workers to return to work. Due to resourcing and structural constraints, Comcare is not adequately equipped to monitor performance or hold self-insurers to account on a national scale if the self-insurer does not meet injury management and return to work obligations. Because of this, an expansion of the Comcare scheme should not occur at the present time.

2. **Expanding the Comcare scheme is likely to drive up premiums for businesses that remain in the state and territory workers' compensation schemes.**

   All state and territory governments opposed the SRC Bill's model for expanding the national workers' compensation scheme. These governments are concerned, quite rightly, that an expansion in the national scheme will reduce the premium pool in the state and territory jurisdictions.

   Although the Federal Government maintains that only a small number of businesses will move to the Comcare scheme and thus the Bill's impact will be low on the viability of the state and territory schemes, this projection seems fairly dubious given that the presence of a less effective scheme regulator, lower premiums and less red tape ensuing from a single national scheme is likely to attract the vast majority of multi-state employers that are eligible to move across to the Comcare scheme.

   Put simply, a cost/benefit analysis is likely to attract multi-state employers on these grounds alone. This leaves behind a significant number of small and medium businesses (and some large businesses that operate within the confines of a single state) that are likely to incur higher premiums as a result.

The Productivity Commission acknowledged that the expansion of the Comcare scheme, in the manner envisaged by the SRC Bill, was likely to produce serious adverse consequences for the other schemes. Its final report stated:

> "The opening up of a national scheme to all corporate employers would have potentially significant impacts on the existing State and Territory scheme…Some of the smaller schemes may ultimately become more unviable on a stand-alone basis if a significant number of employers switch to the national scheme."[8]

3. The SRC Bill's projected cost savings for multi-state businesses and for the economy as a whole are predicated on an unsound evidential basis.

The primary arguments for the Bill are reliant on the submissions of multi-state businesses, the very interest group lobbying the hardest for the expansion of the Comcare scheme. It is clear that independent actuarial analysis needs to be done as to the cost savings likely to be incurred by multi-state businesses and the impact that an expansion of the Comcare scheme will have on businesses remaining the state and territory jurisdictions. Without this analysis, the case for moving to expand the Comcare scheme is highly suspect.

In fact, we submit that the Bill is likely to increase the pressures on the national economy as the financial burden for workplace injuries and deaths shifts from employers in the national scheme, to the social security system and Medicare.

Introduction

The costs arising from workplace injury are a significant impost on the Australian economy. The total economic cost of work-related injuries and illness is estimated to be $60.6 billion dollars, representing 4.8% of annual GDP.[9]

Workers' compensation schemes operate to reduce this cost by intervening early in the life cycle of injury and seeking to maximise the opportunity for a worker to return to employment.

The importance of workers' compensation schemes is often overlooked as workers' compensation is only accessed by a relatively small number of injured workers each year. Nonetheless, the magnitude of workers' compensation in terms of financial impact and protection for injured workers renders it an issue of high significance. All Australian employers are required to obtain workers' compensation insurance and this is administered through governments and private insurers. Over and above the issue of financial management, there is the tremendous dislocation and physical and mental consequences associated with workplace death and/or accident. There is also a strong expectation within the Australian community that workers have a fundamental right to be safe at work, and to be compensated fairly in the event of a workplace death or injury. Thus, although workers' compensation rarely features as a matter of high political importance, it is nevertheless of critical policy concern.

In Australia, originating in 1974 at the initiative of the Whitlam Labor Government, there have been various attempts to develop greater consistency between state, territory and Commonwealth workers' compensation systems so as to reduce compliance costs and inequities between systems. The most recent legislative effort to move towards a national workers' compensation system is the *Safety, Rehabilitation Compensation Legislation Amendment Bill 2014* (Cth) ('The SRC Bill'). The primary aim of the SRC Bill is to expand access to self-insurance within the federal system by enticing previous state insured employers into the existing federal system.

Whilst, in principle, the objective of working towards a nationally consistent regulatory framework for workers' compensation is desirable, this report argues that there needs to be practical effective harmonisation within a realistic timeframe. The SRC Bill does not achieve this, and will instead create a regulatory vacuum within the Comcare scheme as it places too low a burden for self-insurance.[10]

The SRC Bill represents a hasty and ad hoc response to the demands of a small group of large and influential corporations for a national workers' compensation scheme. It does not effectively balance the competing interests of all the participants involved in the various state and federal systems. It reduces the rights and entitlements of workers and is likely to increase premiums for small and medium sized businesses that remain in the state and territory systems.

Although a number of reviews have recommended the development of a national workers' compensation scheme,[11] this report argues that the SRC Bill is not an appropriate vehicle for achieving this legitimate policy goal.

If a move to a national workers' compensation scheme is to occur, a more considered and consensual approach needs to be taken by the federal government. If the national workers' compensation scheme is to be expanded to permit self-insurance for a greater number of employers, the blueprint for this process is for an employer applying for a self-insurance license to demonstrate a strong financial base and superior performance in all areas of injury prevention, claims management

and work health and safety standards. Self-insurance needs to be rigorously regulated to ensure that an employer demonstrates an ongoing commitment and investment in this area.

The national regulator, Comcare, also needs to be operating at best practice levels and must be effectively resourced in order to cope with the expansion of its role. The impact on state systems should also be carefully considered given that an expansion of the Comcare system will necessarily reduce the premium pool of the state systems and may therefore increase the premiums of small and medium sized businesses.

The Bill represents a missed opportunity to improve the Comcare scheme. It broadens access to the scheme but fails to ensure that Comcare will be able to cope with this expansion or to require that Comcare develop a more effective approach to managing workers' compensation. In effect, **the enticement for employers to leave the state-based systems is the promise of lower premiums which inevitably come at the expense of workers' entitlements.** In short, the Bill creates a regulatory vacuum that puts both workers and employers at risk.

The Origins of Workers' Compensation Schemes in Australia

Australia's federal system of government has meant that the development of workers' compensation schemes has traditionally been the purview of state and territory governments. These schemes have established systems and procedures for monitoring work health and safety standards, managing insurance claims and where possible, returning rehabilitated employees to the workplace.

The Commonwealth Government's workers' compensation scheme has a less lengthy pedigree. A national scheme was established under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) to provide workers' compensation and rehabilitation coverage for Commonwealth and ACT Government employees. In 1992, this Act was amended to enable certain categories of non-Commonwealth corporations to self-insure under the Comcare scheme, with the consequence that their workers ' compensation arrangements were no longer subject to state or territory law.

The first non-Commonwealth corporation to seek a self-insurance licence was Optus[12] and there are currently 29 corporations with self-insurance licences within the Comcare scheme.[13] To be declared eligible for self-insurance a corporation must either be a 'former Commonwealth authority' or pass a 'competition test' which requires that they be conducting business in competition with a Commonwealth authority, or with a corporation that was previously a Commonwealth authority. The rationale for the introduction of self-insurance arrangements for non-Commonwealth corporations was to provide competitive neutrality for those corporations competing in the marketplace with Commonwealth-owned, or formerly owned, businesses to ensure that the Commonwealth did not have an unfair advantage.

Further legislative changes in 2006 enabled private corporations which were licensed to self-insure under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) also to be covered by the *Occupational Health and Safety Act 1991* (Cth), rather than state and territory occupational health and safety legislation.[14] This arrangement, initiated by the Howard Coalition Government 'allowed the most financially viable employers to migrate out of the state schemes, without reference to the state schemes, or to the interests of their employees.'[15]

The Rudd Labor Government imposed a moratorium in December 2007 preventing further non-Commonwealth corporations from self-insuring under Comcare. The purpose of the moratorium was 'to enable the Government to examine whether the Comcare scheme provides workers with access to appropriate workplace safety and compensation arrangements.'[16]

The moratorium was lifted by the Abbott Coalition Government on 2 December 2013 on the grounds that it would 'help remove unnecessary barriers for the benefit of workers and businesses while achieving a more flexible and productive workplace relations system.'[17]

In March 2014 the Abbott Coalition Government introduced into federal parliament the SRC Bill. It has been a highly controversial piece of legislation and contains a number of significant reform measures. It is to its content and these controversies that we now turn.

The Safety, Rehabilitation Compensation Legislation Amendment Bill 2014 (Cth)

Although its provisions are varied, the primary task of the SRC Bill is to enable large corporations operating in more than one state to move into the Comcare scheme.[18] The SRC Bill replaces 'the competition test' with 'the national employer test' stipulating that to be eligible for self-insurance, a corporation must have employees in more than one state or territory.[19]

The SRC Bill also enables corporations which are related bodies corporate within the meaning of the *Corporations Act 2001* (Cth) to obtain a 'group licence' to self-insure under the Comcare scheme[20] and removes the requirement that corporations applying for self-insurance must first obtain a ministerial declaration.[21]

The SRC Bill also extends the coverage of the *Work Health and Safety Act 2011* (Cth) to all corporations that obtain a licence to self-insure under Comcare, thereby excluding the operation of state or territory work health and safety laws.[22] Cumulatively, these measures seek to ensure that licence-holders operate within an integrated regulatory environment in relation to compensation, rehabilitation and prevention of work related injury.

The SRC Bill has clearly been designed with the needs of large, multi-state employers in mind. The Bill's Explanatory Memorandum suggests that 'these changes will assist in reducing unnecessary and ineffective red tape for business by broadening the range of corporations that can seek to enter the Comcare scheme and allowing multi-state employers to reduce their compliance costs for maintaining workers' compensation coverage.'[23]

However, the positive impact of the SRC Bill is not intended to be limited to large, multi-state employers but to flow on to the national economy as a whole. In the second reading speech introducing the SRC Bill into parliament, Minister for Education and Training Christopher Pyne stated, 'It is anticipated that the reduction in red tape and significant savings that could be realised for business could be spent on creating jobs and reinvesting in the economy.'[24]

The remainder of this report seeks to examine the Government's contentions in relation to the SRC Bill, in particular, the alleged benefits in terms of business efficiency, job creation and economic prosperity.

This report also considers what the unintended consequences of the Bill are for workers, businesses and the economy as a whole. Evidence will be presented to reveal that for each of these stakeholders the impact of the SRC Bill is overwhelmingly negative.

Thus, while there is a superficial attraction to the SRC Bill as it creates an integrated regulatory environment for multi-state employers, there are many aspects of the Bill, which, beyond that superficial observation, make it clear that this is a deeply retrograde step.

Section One: Issues Arising from the SRC Bill

In this first section, this report examines two key issues arising from the SRC Bill. The first is to do with the proposed expansion of the Comcare scheme to widen the number of employers eligible for self-insurance.[25] The second issue is whether the scheme regulator, Comcare, can cope with this expansion of the national workers' compensation scheme.

The data for this part of the report is taken from a combination of regulator data and a number of independent reviews commissioned by previous Governments into the Comcare scheme. As will be shown in this section, self-insurance is not an appropriate workers' compensation model for the vast majority of employers. This is because self-insurance is a privilege, not a right. **Only large employers possessing significant financial resources and, most importantly, which can demonstrate a best practice approach to all aspects of work health and safety should be eligible for self-insurance.**

Moreover, the national scheme's regulator, Comcare, is not as efficient or effective as regulators in the state and territory jurisdictions. Comcare does not have a best practice approach in terms of enforcement policy, nor the requisite operational capacity to ensure self-insurers provide safe workplaces with exemplary return to work practices.

Further, the SRC Bill does not reform Comcare's operational capacity and performance to address its current inadequacies or the increased pressure upon its resources which will result from the entry of more self-insurers into the national scheme.

We now turn to a more thorough examination of these two key issues arising from the SRC Bill.

SELF-INSURANCE

Background

The SRC Bill widens the pool of employers eligible for self-insurance. It enables an employer with employees in more than one state to apply for a self-insurance licence, which exempts them from paying premiums in those states where it is currently registered and allows an employer to be responsible for managing its own workers' compensation claims. Self-insurers are still required to pay a levy that is a fair contribution towards the overheads of administering the Comcare scheme and they have to reapply to self-insure after a period of time.

Whilst the states and territories have enabled certain employers to self-insure for a number of years, the expansion of Comcare's self-insurance scheme via the SRC Bill enables a multi-state employer to be subject to one single self-insurance regulator for its entire staff. Large, multi-state employers argue that this will reduce the extra compliance costs that unnecessarily result from their operating across a number of jurisdictions.

The chief attraction of self-insurance for an employer is that they can self-manage the claims management and rehabilitation of their injured workers and take responsibility for meeting all of their claim liabilities. This means that if an employer has a best practice

approach to managing work health and safety, there are likely to be fewer claims and that a self-insurer will not be paying higher premiums merely because of the poor work health and safety practices of other employers in the scheme.

Under the present system, employers that meet 'the competition test' can seek a ministerial declaration of their eligibility for self-insurance. Once this declaration is made, an employer can apply to the Safety, Rehabilitation and Compensation Commission ('SRCC') for a self-insurance licence. Comcare carries out the evaluation of licence applications on behalf of the SRCC.[26] **To date, Comcare has never rejected a self-insurance licence application.**

Self-insurers are required to comply with the SRC Act and the Commonwealth WHS Act relating to occupational health and safety matters. Self-insurers are subject to audits, OHS investigations and other evaluations and must meet financial, prudential and performance reporting requirements as part of their licence conditions. The performance standards of a licence require self-insurers to develop and implement effective management systems for prevention, rehabilitation and claims management, and to work towards the attainment of outcome-based performance goals. The SRCC receives reports on licensee performance against a number of key performance indicators and associated performance targets. The indicators cover prevention, rehabilitation, claims management and scheme administration. Self-insurers must also meet various prudential requirements which include obtaining a yearly actuarial assessment of current and projected workers' compensation liabilities and a bank guarantee to cover 95% of their outstanding liabilities.[27]

The SRCC uses its 'Licensee Improvement Program' to evaluate licensees, which is predicated upon a three-tier model according to the level of risk associated with the self-insurer. Each self-insurer is given a tier ranking for each of its prevention, rehabilitation and claims management functions. First tier self-insurers have the highest premiums and are audited by Comcare each year, whereas third tier self-insurers have the lowest premiums and are only audited in the last year of their licence.[28]

Having briefly explained how self-insurance presently works, there are a number of key concerns with the proposed expansion of Comcare's self-insurance scheme under the SRC Bill.

Problems arising from the self-insurance provisions in the SRC Bill

The first and most concerning aspect of the SRC Bill is the absence of a robust regulatory framework for managing self-insurers. Although the Government has suggested that the SRC Bill merely implements the recommendations of previous reviews,[29] in fact the SRC Bill represents the selective cherry picking of recommendations arising from previous reviews.[30]

With regards to self-insurance, the Taylor Fry report, the Hawke report and the Hanks report each stipulate that an expansion of the self-insurance system needs to be accompanied by increased regulation of self-insurers and a substantial increase in Comcare's regulatory capacity. The SRC Bill makes no attempt to achieve this.

For example, the Taylor Fry report states:

> It is unclear whether, even accounting for recent increases in staff, Comcare has the resources to carry out the types of proactive enforcement regimes adopted by state jurisdictions, especially in geographically demanding regions like Western Australia. This matter requires careful review before any expansion in Comcare coverage is considered. Unless effective resourcing (including deployment) moves in tandem with coverage, a regulatory vacuum is inevitable.[31]

It is estimated that there will be 1959 businesses that are eligible to apply for self-insurance if 'the national test' replaces 'the competition test'.[32] Given that Comcare only currently regulates 29 self-insurers, this potentially represents a massive expansion of the national scheme of 67 times its present capacity.[33] This is both alarming and potentially dangerous given the Taylor Fry report's clear declaration that Comcare would be unable to cope with this. This would strain Comcare's capacity to effectively evaluate licence applications and monitor the ongoing performance of self-insurers.

Similarly, the Hawke report suggests that the SRCC establish a 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 self-insurers.[34] The Hanks report recommends that a new paragraph be inserted in s 89B giving the SRCC regulatory oversight over determining Comcare's claims management functions and authority to develop and implement a regulatory and performance monitoring framework for that purpose.[35]

Unfortunately, **the SRC Bill adopts the deregulatory proposals of the Taylor Fry report, the Hanks report and the Hawke report without committing to their recommendations requiring that an expansion of the self-insurance scheme be accompanied by an increase in regulation.**

This is a highly dangerous approach given the potential for an influx of new inexperienced self-insurers into the Comcare scheme. There is a likelihood that this approach will delay access to medical and rehabilitation payments and delay payments to injured employees. This will result in financial hardship and a shift of the cost of workplace injuries to the injured workers, their families and to the public health and welfare system. The potential that self-insurers may collapse under the financial strain of claims management also needs to be addressed.[36]

A related issue concerns the SRC Bill's proposal to introduce group licences. The SRC Bill enables corporations which are related bodies corporate within the meaning of the *Corporations Act 2001* (Cth) to obtain a 'group licence' to self-insure under Comcare. This reform has been previously recommended by both the Taylor Fry report[37] and the Hawke report[38] as minimising the regulatory burden upon employers by reducing administrative costs for scheme participation.

Nonetheless, both reviews suggested that the introduction of group licences be appropriately regulated so that eligible corporations meet prudential and other requirements. The provision in the SRC Bill introducing group licences does not address this. Instead, **the bill would create a regulatory environment under which there is significant potential for the group licence provision to be open to abuse by unscrupulous employers** attracted by the lower premiums in the Comcare scheme and the presence of a less effective scheme regulator.

By way of comparison, comparable state group licensees possess more stringent requirements and some require a certain minimum number of employees. For example in NSW only wholly owned subsidiary companies are to be included in the group licence and in order to be eligible for self-insurance there must be a minimum of 500 employees in NSW.[39] This ensures that small employers, who do not have the regulatory and financial capacity for self-insurance, cannot obtain a group licence merely because they allege a relationship to a large corporation.

KEY FINDINGS

It is not necessary that self-insurance arrangements under the Comcare scheme be abolished but rather that a more balanced and rigorous regulatory approach be adopted. 'The competition test' is a historical anachronism with no clear defensible policy basis. It draws an arbitrary line in the sand in terms of which businesses are eligible for self-insurance and does not address the key issue of performance, efficiency and health and safety outcomes. Self-insurance is to some extent a misnomer because the employer in fact is not insured and must have sufficient resources to pay all claims. This is why the state jurisdictions put in place imposing financial constraints on licence holders. It should be noted that the collapse of a self-insurer will in most cases put the general or uninsured funds of the state or federal schemes at risk.

Self-insurance is a privilege not a right. This is because only employers who can demonstrate a superior approach in all areas of injury prevention, claims management and occupational health and safety standards should be eligible for self-insurance. The Taylor report identifies a need for 'stringent rules to ensure that potential self-insurers have best practice OHS arrangements, a sound financial base and the ability to manage the self-insurance process.'[40]

Whilst 'the competition test' should be reconsidered, its replacement with 'the national employer test' is a retrograde step that does not incorporate the necessary safeguards to ensure that workers, businesses and the national economy are sufficiently protected.

The introduction of group licences, whilst a worthwhile step for reducing the regulatory burden on large, multi-state employers, needs to be accompanied by regulation to ensure employers do not exploit group licences as a means of evading stricter workers' compensation schemes at the state and territory level.

RECOMMENDATIONS

We now identify a number of key concrete proposals for how self-insurance under the Comcare scheme could be reformed to achieve a better balance between efficiency gains for employers and protection of health and safety rights for employees.

1. 'The competition test' should be replaced by a strong 'national employer test'. This test should stipulate a minimum number of employees in each state so that it is a proper test of an employer's multi-state operations. Only genuinely large, multi-state corporations should be eligible for self-insurance. It should also stipulate compliance with best practice in claims management and occupational health and safety.

2. Self-insurers should be required to share with scheme contributing employers those systems and programs that allow them to achieve a superior performance. This recognises that the abolition of workplace injuries and deaths is in everyone's interests and allows for the accumulation of communal knowledge and experience of best practice management.

3. Employee/worker interests should be taken into account in the registration of an employer as a self-insurer. As the primary beneficiaries under any workers' compensation system and therefore of a self-insurance scheme, workers should be able to access an independent body that can review an employer's self-insurance status.

4. Employers seeking to become or to remain self-insurers must be able to demonstrate that the majority of their employees generally favour this option. The Taylor Fry report identifies a strong business case for involving workers in these types of decisions because 'a growing body of evidence demonstrates the positive benefits of worker participation in OHS …in workplaces where structures of worker representation are in. This evidence comes from many countries, including those where participatory mechanisms are not mandated by legislation.'[41]

5. The approval process for self-insurance licences should be tightened so that only employers with a best practice approach in all areas of injury prevention, claims management and occupational health and safety standards should be eligible.

6. Self-insurers should be required to demonstrate that their employees are not worse off because of an employer's move to a self-insurance scheme when compared with their previous regulatory arrangements.

7. Comcare should have clear criteria for rejecting licence applications and the process should include giving notice to those workers affected by the issuing of a license and a period allowed for those affected to make submissions to Comcare.

8. The SRCC's regulatory role should be strengthened to ensure its effective monitoring of licence-holders ongoing performance.

9. The introduction of group licences should mandate that all employers within the group possess a minimum number of employees and meet certain prudential requirements.

Comcare's Performance

Comcare's performance is critical to the effectiveness of the national workers' compensation scheme. Comcare's role is multi-faceted. It involves the evaluation of self-insurance licence applications, monitoring and enforcing work health and safety standards, claims management standards and return to work practices for both self-insurers and premium payers.

The SRC Bill seeks to significantly expand the national workers' compensation scheme, which will necessarily increase the pressures on Comcare as the scheme regulator. **A key concern is that Comcare is already operating below the performance level of regulators in the state and territory jurisdictions and an expansion of Comcare's role will worsen this.** An expansion in the national scheme should only be considered when Comcare is operating more effectively than its state and territory counterparts and when a clear commitment has been made to substantially increase its resources.

In this section we examine evidence and data revealing a number of areas where Comcare's operational capacity and performance needs to be improved. The material relied upon in this section is taken from a combination of regulator data and annual reports from the scheme regulators in the national system and each of the states and territories.

As will be shown below, compared to every other state and territory jurisdiction and Australia as a whole, Comcare has conducted far fewer workplace interventions and proactive and reactive workplace visits. Its investigators have issued far fewer improvement and prohibition notices and the agency has launched far fewer legal proceedings. This divergence in inspection and enforcement activity is not accounted by jurisdiction size since it applies to small state and territory jurisdictions.

Ease of submitting a claim

It is harder for an injured employee to submit a workers' compensation claim within the Comcare scheme when compared with the process in many of the states and territories. A best practice approach is one that encourages immediate injury reporting as the evidence shows that this leads to improved outcomes for employers and employees, leading to an earlier return to work by the injured employee.[42] For example, the length of the standard claim form used in the Comcare scheme is twenty pages (with nine pages the sole purview of the employee). By way of comparison, in New South Wales, an employee needs to complete only four pages of the claim form.

Another barrier to immediate injury reporting may be the way in which a claim form is required to be lodged. The SRC Act requires a "written claim" to be given to Comcare (in the case of employees of premium paying agencies) or to the licensee (in the case of self-insurers). In contrast, several of the state and territory jurisdictions have amended their processes to enable lodgment of claims electronically, or by facsimile or telephone.[43]

The assumption behind the myriad of claim forms with Comcare is that the employee who is claiming is a public servant and has access to a range of material to complete the forms and it is inherent also in this process that the claimant has a reasonable level of literacy. If a broader range of employers is allowed to enter the scheme as self insurers, Comcare will need to adapt its claims process to allow for a much simpler claims process as is the case in most other jurisdictions.

The inspectorate's role and size

A common criticism of the SRC Bill is that the scheme regulator only has 53 inspectors and there has been no concomitant commitment by the current government to expand the Comcare inspectorate in order to deal with the expected increase in their workload.[44] Comcare has responded to this concern by stating that it does have the operational capacity to cope with an increased workload because it will hire more inspectors if such a need arises.[45]

Whilst it is true that Comcare only presently has a small number of inspectors, it is also true that Comcare's number of inspectors compared to state and territory inspectors per 10,000 employees is similar to that of NSW and Victoria but is lower than the ratio for the smaller jurisdictions. Thus, it is hard to sustain an argument that Comcare has a significantly lower level of inspectors as although this is true numerically, in terms of the proportion of workers within the scheme, Comcare's ratio of inspectors to number of workers covered by the scheme is comparable to that of the two largest states. Nonetheless, **if more employers are involved in the Comcare scheme as envisaged under the SRC Bill, then the scheme will have significant geographical reach and more inspectors will be needed.**

In a number of other important respects the Comcare inspectorate operates at a diminished capacity when compared with inspectorates in other jurisdictions. This was identified in the Taylor Fry report, which involved a comprehensive examination of the self-insurance scheme commissioned by the Federal Government in 2008. The report recommended the rectification of each of these issues before an expansion of Comcare's role can take place in order to prevent a regulatory vacuum.

Firstly, **the expertise, background and experience of Comcare inspectors are below par.** The Taylor Fry report notes the preponderance of ex-police amongst Comcare inspectors rather than those with industry expertise and recommends that Comcare should broaden its recruitment practices.[46]

This report also recognised that Comcare's training of inspectors tended to be narrower than the specialised, in-house training occurring within the state and territory regulators.[47] For example, Western Australia and Victoria offer specialist courses of around three to six months duration, including periods of supervised workplace interaction where skills can be tested and honed.

Secondly, **Comcare inspectors are organised in the capital cities and have less capacity to monitor geographically disparate areas.**

An example provided in the Taylor Fry report provides a useful illustration of this challenge for Comcare's inspectorate:

> When a rockfall occurred at the Beaconsfield gold mine at around 9.23pm on 25 April 2006, state mine inspectors based in Hobart were able to reach the mine within four hours to take control of the site, overview rescue efforts, and commence their investigation. Had the mine been under Comcare's jurisdiction, investigators based in Melbourne would not have been able to reach the mine before the first commercial flight into Hobart, followed by a forty minute drive to Launceston (at least 10-11 hours after the incident). In relation to the timing of that incident it should be noted that much long haul trucking activity occurs late at night so it is quite possible that Comcare investigators could be called to a serious incident late at night. Further, large manufacturing operations (and related construction) can be found in locations remote from capital cities such as Traralgon, Karratha and Gladstone and this is why state agencies have located regional offices to service them.[48]

Another weakness related to the organisational structure of the Comcare inspectorate, is that **Comcare inspectors are not organised in industry teams and regional teams like in the other jurisdictions.** This concern was identified in the Taylor Fry report which stated, 'this is especially the case with construction sites and transport company depots/warehouses, a number of which will be located outside capital cities and even in quite remote locations in vast states like Queensland and Western Australia. Although Comcare has emphasised the mobility of its investigators, the present structure and deployment of its investigators does not allow the sort of ready response that might be required to a serious incident.'[49]

Thirdly, **Comcare inspectors tend to be less rigorous in their investigation procedures.** As concluded in the Taylor Fry report, whose authors accompanied both Comcare inspectors and those from the states and territories on a significant number of workplace visits, 'Comcare investigators do not conduct the kinds of more wide ranging informal inspections that state OHS inspectors seem to conduct.'[50] The report's authors also noted that state and territory inspectors generally displayed 'significant skills in identifying priority OHS issues and dealing with difficult situations. Such skills were less evident in most of our visits with Comcare investigators.'[51]

Fourthly, **Comcare does not presently staff experts to provide specialist advice pertaining to high-risk industries or regarding certain hazards.** By way of comparison, regulators in Victoria and Western Australia maintain separate teams to deal with high hazard workplaces (such as major chemical manufacturing and storage facilities). Those special hazards teams normally include technical experts able to offer specialised advice within that team or other teams when required.

For its part, the Comcare inspectorate does not possess specialist resources in-house and only has a reference list of experts it can call upon. According to the Taylor Fry report, this approach 'has disadvantages in terms of timing, cost and policy/practice coherence where there is a routine and ongoing demand for such expertise. If Comcare were to expand its coverage, such requirements could be expected to grow.'[52]

The argument that a diminished Comcare inspectorate and enforcement capacity is acceptable because the Comcare scheme only includes large employers with more sophisticated approaches to systematic work health and safety management does not withstand close scrutiny. This is because even within the state and territory jurisdictions, over half the employees work for businesses with more than 100 employees, and as the Taylor Fry report concludes, 'It was not our observed experience that state OHS inspectors were unlikely to find grounds for issuing notices in the workplaces of large employers, including those with elaborate OHS management systems. In some we observed the 'elaborate' system had failed to identify and address serious hazards…large companies with mature to systematic OHS management are not immune to serious and even catastrophic failings.'[53]

Furthermore, as the SRC Bill does not require a minimum number of employees in each state in order for an employer to be eligible for self-insurance, it is quite possible that some of these multi-state businesses will have worksites which are potentially very small or geographically remote, with an immature approach to work health and safety management.

Level of enforcement activity

There are clear concerns about Comcare's approach to enforcement, which tends to favour workshops and presentations to employers, rather than employer-initiated workplace visits and reactive workplace visits. The Taylor Fry report back in 2008 identified this difference as a key drawback of Comcare's regulatory approach, stating:

> Overall the workplace visit regime undertaken by Comcare differs from that of other OHS agencies in Australia, or those within a number of other countries with which we are familiar (such as the UK, Sweden or Norway). State and territory regimes have moved away from a reactive approach because it is viewed as not securing the best outcomes and ineffective in terms of its use of available resources. Nor is it consistent with what we would understand to be generally accepted 'best practice' with regard to

> OHS enforcement. This inconsistency needs to be addressed if genuinely a more uniform system of OHS regulation is to be established in Australia. There are other limitations with compliant-based enforcement. These include that the inspectorate may be unaware of an issue at a workplace where earlier intervention might prevent the situation escalating into an incident.54

Despite the Taylor Fry report identifying Comcare's approach to enforcement as a key weakness in its ability to be an effective regulator, recent statistics suggest that in the intervening five year period, Comcare is still well behind the state and territory jurisdictions in this regard.

Unlike the state and territory regulators which tend to combine in relatively equal measure a mixture of reactive and proactive interventions, **a far greater proportion of Comcare's enforcement activity is predicated on delivering workshops and presentations which are a far less effective method in securing compliance with WHS laws.** For example, 21% of Comcare's total enforcement activity is dedicated to delivering workshops and presentations whereas this figure is 0.4%, 4.7% and 1.1% for NSW, Queensland and WA respectively.

The Taylor Fry report recognises the limitations of both the 'advise and persuade' approach and the deterrence approach and suggests a responsive enforcement model using an interactive and graduated enforcement response like that used in most of the states and territories.[55]

Number of workplace visits (proactive) in 2012-2013[56]

NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS GOV (COMCARE)
10162	21040	27785	5243	10329	3224	935	195	3091

Number of workplace visits (reactive) in 2012-2013[57]

NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS GOV (COMCARE)
12782	19782	1754	4571	7428	3230	2889	1574	536

Number of workshops/presentations/seminars/forums in 2012-2013[58]

NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS GOV (COMCARE)
223	n/a	1886	334	442	257	94	168	1776

Other reactive interventions 2012-2013[59]

NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS GOV (COMCARE)
28777	n/a	9111	19365	10726	0	357	0	3098

Another area of weakness in Comcare's enforcement capacity is that Comcare has historically initiated low rates of prosecutions. This is concerning because the Comcare scheme is a no-fault scheme which is not able to expose safety failure through common law or other examination processes. The available evidence indicates the use of prosecutions is on par with the NT and ACT as the three least prosecutorial jurisdictions.[60]

Number of legal proceedings finalised in 2012-2013[61]

NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS GOV (COMCARE)
80	91	98	28	26	8	1	3	2

Furthermore Comcare inspectors issue far fewer improvement notices and prohibition notices than inspectors in the state and territory jurisdictions. Even though the number of workers covered by the Comcare scheme is double that of those in the NT and ACT schemes, the number of notices issued is significantly less.

The final table below shows the number of notices awarded as a percentage of the number of employees covered by the scheme. This clearly demonstrates that inspectors in the Comcare scheme issue nowhere near as many improvement and prohibition notices as inspectors in the state and territory schemes.

Number of improvement notices issued in 2012-2013[62]

NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS GOV (COMCARE)
6118	16137	5494	11967	1951	105	138	544	19

Number of prohibition notices issued in 2012-2013[63]

NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS GOV (COMCARE)
551	476	1360	553	832	122	109	177	18

Number of notices awarded as a % of number of employees in the scheme in 2012-2013[64]

NSW	VIC	QLD	WA	SA	TAS	NT	ACT	AUS GOV (COMCARE)
0.2%	0.63%	0.3%	1.1%	0.4%	0.1%	0.2%	0.5%	0.01%

Monitoring work health and safety across a range of industries

A common assertion against the expansion of the Comcare scheme as envisaged by the SRC Bill is that Comcare is ill equipped to deal with a range of industries as it was primarily designed for white-collar workers in the public service. This has been rebutted by Comcare who identifies the range of industries it has experience with and is supported by the conclusion of the Taylor Fry report's authors that 'any reasonable analysis shows that the Commonwealth jurisdiction has always covered the entire spectrum of employment types and OHS risks.'[65]

Whilst it may be true that Comcare has overseen a wide range of industries and activities, at issue is the extent of this coverage and Comcare's specialist expertise in these areas when compared to the scheme regulators in the states and territories. As has already been identified in the section on the Comcare's inspectorate, the other jurisdictions invest more in training their inspectors in monitoring high-risk industries and are structured to better identify breaches and enforce standards in these industries.

It seems apparent that the states and territories have greater sophistication and specialised practices around high-risk industries and occupations. **Furthermore, some of the large mining states such as WA and QLD have developed their own specialist regulator to deal with the particular issues arising from the mining, petroleum, gas and explosive industries. If employers in these industries move to the Comcare scheme, they will no longer be accountable to these specialist regulators,** and Comcare does not possess sufficient knowledge or expertise in these areas.

Another issue is that an increasing initiative at the state and territory level is to drill down the relevant legislative requirements and articulate standards specific to the industry by producing industry-specific codes of practice. This development of industry specific codes provides a single, comprehensive reference point for employers and other stakeholders. The Taylor Fry report identifies that **'Comcare does not appear to have developed industry-specific codes to cover self-insurers in hazardous industries such as construction and road transport.'**[66]

Timelines for processing claims

The Comcare scheme is the only jurisdiction that administers its compensation scheme without mandated time frames for decision-making about liability and benefit payment.

Timeframes for claim decision[67]

NSW	Provisional liability within 7 days after notification of injury and the decision on ongoing liability within 21 days.
VIC	28 days for weekly payments if received by insurer within 10 days or 39 days in other circumstances
QLD	Claims must be determined within 20 business days
WA	Insurers have up to14 days.
SA	10 Business daysdays in other circumstances
TAS	84 days
NT	10 working days after receipt by employer if no decision has been made
ACT	28 days
AUS GOV (COMCARE)	No legislated timeframes for claim decisions. However, determining authorities are required to make determinations accurately and quickly.

The SRC Act only stipulates that claims should be processed in a 'reasonable period of time.' The Comcare scheme could be greatly improved if the Act was amended to provide prescribed timeframes for the assessment and disputation of a claim, including penalties where those timeframes are unmet. This was recommended by the Hanks report which said that if statutory timeframes were not met, the claim could be deemed to be rejected.[68]

The advantages of mandating timeframes are clear: it results in speedier dispute resolution and an earlier return to work for an injured employee. This is because early intervention is crucial in reducing the lifecycle of an injury.

This benefits both the employer and employee, and also the scheme as a whole. Thus, a clear weakness in the Comcare scheme, which is not addressed at all by the SRC Bill, is the absence of statutorily mandated timelines for the processing of claims. This point should not be understated, because those claims which are contested are invariably a proxy for the hardest and most expensive claims. Delays in resolving those claims lead to delays in recovery and additional expenses for all parties.

Dispute resolution

The Comcare scheme is by far the least efficient for resolving disputes. This is an immediate problem that needs to be rectified before an expansion of the Comcare scheme can be considered.

In addition to waiting long periods for insurers/employers to make decisions, injured workers under Comcare wait significantly longer for dispute resolution than injured workers in any other scheme. For example **in 2011-12, 51.6% of injured workers with disputed claims under Comcare did not have their claims resolved within 9 months. This is compared with 4.9% in NSW, 12.3% in Victoria and 4.7% in QLD.**[69] The dispute resolution system of Comcare is not equipped for the expanded workload that would result from more self-insurers.

If the dispute resolution process within Comcare is exhausted, the next step for a worker is to go to the Administrative Appeals Tribunal ('the AAT'). The AAT provides merit reviews of administrative decisions and determines whether the outcome of the claim was the 'correct or preferable' decision. Despite the intention that the AAT jurisdiction be efficient, informal, quick and fair, its burgeoning operation has meant that its processes are increasingly complex and lengthy.

The Hanks report recommended 'that the AAT be encouraged to explore practical ways to achieve a further, and marked, reduction in the time taken to resolve compensation applications.'[70]

The Hanks report also recommended that an employee's costs be borne by the insurer at the reconsideration stage so as to encourage the resolution of disputes prior to reaching the AAT and to mitigate against the tendency of employers and insurers to delay proceedings reaching the AAT and further drawing out the dispute resolution process.[71]

Thus, it is clear that a primary drawback of the Comcare scheme is its inability to resolve disputes in a timely manner. Instead, **Comcare's design encourages employers to stonewall and draw disputes out rather than resolve them.** This exacerbates the inherent weaknesses of employees in resolving workers' compensation disputes as most workers are unfamiliar with the scheme, whereas employers and insurers tend to develop expertise regarding the schemes practices and procedures over time.

This observation has been identified by Australia's leading scholars in the workers' compensation area: 'the Comcare dispute process has been notoriously labyrinthine. A fundamental change in the processes is needed to address delays in dispute resolution at commonwealth level. This would involve revamping the scheme to include emphasis on mediation and conciliation and the use of litigation as a last resort.'[72]

KEY FINDINGS

When compared with its state and territory counterparts, **Comcare does not operate as efficiently or effectively. Comcare has conducted far fewer workplace interventions, proactive and reactive workplace visits; its investigators have issued far fewer improvement and prohibition notices; and the agency has launched far fewer legal proceedings.**

The risks that self-insurance can be open to abuse by unscrupulous employers needs to be accounted for. These employers may seek to use self-insurance as a way of avoiding paying premiums but may not be genuinely oriented to assisting injured workers to return to work.

Due to resourcing and structural constraints, Comcare is not adequately equipped to monitor performance or hold self-insurers to account on a national scale if the self-insurer does not meet injury management and return to work obligations. Because of this, an expansion of the Comcare scheme should not occur at the present time.

RECOMMENDATIONS

Before an expansion of the Comcare scheme can be considered, Comcare's inspectorate needs to be performing at a level on par with, or better than, the state inspectorates. In light of this objective, we make the following recommendations:

1. Clear provision should be made for a concomitant commitment to expand the Comcare inspectorate in order to deal with the expected increase in their workload.
2. There needs to be better training and recruitment of Comcare's inspectors.
3. Comcare needs to develop in-house specialist inspectors for high-risk industries and occupations.
4. Comcare needs to restructure its inspectorate so that it includes regional teams and teams with industry expertise.
5. Comcare needs to demonstrate a greater preparedness to use its prosecutorial function and powers to issue improvement and prohibition notices.
6. Comcare needs to develop industry codes. In developing these codes, Comcare should draw upon knowledge and expertise at the state level for managing regulatory challenges arising from high-risk industries and occupations.
7. Comcare's dispute resolution process needs to be reformed as an immediate priority to ensure the speedier and fairer resolution of claims.
8. Employers should bear costs for dispute resolution prior to the dispute reaching the AAT.
9. Provision should be made for provisional liability as in a number of state jurisdictions.
10. Like in all of the other state and territory jurisdictions, the Comcare scheme should include statutory timelines for dispute resolution.

Section Two:
The Impact of the SRC Bill on Stakeholders

Workers

The primary purpose of any workers' compensation scheme is to prevent work related illness and injury from occurring in the first place. The secondary purpose is to provide adequate benefits to assist and compensate those workers who are unfortunately injured or ill as a result of their work. For a number of reasons, **the SRC Bill will significantly reduce workplace health and safety standards and the benefits workers receive in the event of an injury or death.**

First and foremost, the mooted expansion of the Comcare scheme coupled with the operational and resourcing deficiencies of the scheme regulator, means that workers covered by the Comcare scheme will be worse off. **Their claims will be processed less efficaciously, the inspectorate charged with protecting them will be weaker and less skilled, and the dispute resolution process will be far lengthier and more cumbersome.**

This has serious ramifications for whether an injured employee will be able to return to work. Self-insurance will be open to abuse by employers who do not wish to assist injured workers to return to work because Comcare is not adequately equipped to monitor performance or hold self-insurers to account on a national scale if the self-insurer does not meet return to work obligations. In a number of critical ways, the Comcare scheme operates less efficiently and effectively than regulators in the states and territories, which results in poorer protection for workers under the Comcare scheme.

Secondly, the SRC Bill provides workers with no choice as to which workers' compensation scheme will cover them. The Bill further embeds managerial prerogative by providing employers with a unilateral entitlement to move to the national scheme if they operate in more than one state.

This failure to consult workers and include them in the decision-making process contradicts international best practice in designing workers' compensation schemes.

The Taylor Fry report suggests there is a strong business case for involving workers in these types of decisions:

> As workers bear the brunt of failure to manage OHS, and because they are likely to have firs hand knowledge of hazards, and ways of abating them, there are ethical and practical reasons to ensure that workers are engaged in participatory mechanisms. A growing body of evidence demonstrates the positive benefits of worker participation in OHS, including a relationship between objective indicators of worker participation (such as injury rates or hazard exposure) in workplaces where structures of worker representation are in

place (union presence, joint safety committees or worker/union safety representatives). This evidence comes from many countries, including those where participatory mechanisms are not mandated by legislation.[73]

Thirdly, the SRC Bill effectively excludes the possibility of a common law claim, which means that workers will lose access to common law protection and compensation in all jurisdictions other than the Northern Territory and South Australia. Other than in these two jurisdictions and the Comcare scheme, most other workers' compensation schemes in Australia are hybrid schemes that include both 'no-fault' statutory entitlements and common law compensation for injuries.

Access to common law damages is a fundamental element of any workers' compensation system. Awards at common law can more closely reflect community standards and expectations with regards to proven employer negligence. Awards at common law also provide scope for those more seriously injured as a result of the negligence of their employer to exit the workers' compensation system with dignity while maintaining financial surety. The processes of the common law serve the occupational, health and safety objectives of the scheme because they examine the causes of injury and expose negligent and harmful practices. The common law holds to account employers whose negligent actions or failures have caused or contributed to a workplace injury.

CASE STUDY 1:

THE IMPACT OF THE SRC BILL ON WORKERS' COMMON LAW RIGHTS

If a worker is injured as a result of her employer's negligence and cannot return to work because of a continuing 15% whole person impairment, this worker will be significantly worse off under the Comcare scheme.

Assuming the worker was earning an annual wage of $125,000 prior to the injury and she initially receives 80% of her wages for 10 months until the injury stabilises, under the Comcare scheme, she cannot claim any common law damages even though the injury was indisputably the employer's fault.

Although it is difficult to categorically assert what this worker would receive at common law in the state and territory schemes, case law suggests that the following would occur.

In Queensland, the common law would be likely to award a payout in the region of $300,000 for future economic loss.

In Victoria, the worker would be likely to produce a $500,000 payment for pain and suffering and loss of earnings.

Within the NSW scheme, the worker would be able to claim common law damages potentially worth $390,000 to $780,000 assuming she has a 40-50% loss of potential future earnings.

In the ACT, the worker can pursue a common law damages claim and would be likely to receive an award of between $350,000 to $650,000. This range is based on around $100,000 for general damages and maybe $150,000 to $200,000 for past and future wage loss where it takes two or three years to retrain her to a job at equal pay.

Fourthly, the SRC Bill will necessarily produce an inequitable and inconsistent approach to workers' compensation in Australia. It will mean that **workers in the same state will be eligible for substantially different levels of compensation even though they incurred precisely the same injury, simply by virtue of whether or not their employer is in the Comcare scheme or a state or territory scheme.** This is both arbitrary and capricious.

Not dissimilarly, marked variations can be expected in premiums faced by employers with identical risk profiles, operating in the same jurisdiction, depending on which scheme is covering an employer. **This will also allow employers, but not workers, to cherry-pick the scheme that they prefer. It is to be expected that employers will make this decision according to their financial interests. Thus, the SRC Bill subordinates the protection of injured workers to the financial interests of employers,** thereby encouraging an animation towards low-cost, low-entitlement workers' compensation schemes in Australia.

Finally in terms of entitlements to workers the SRC Act does not currently allow for redemptions or commutations of weekly payments. As there is no common law access under the Act, workers are effectively trapped into long term claims. Amending common law access or allowing payment of lump sums to finalise claims would be consistent with other jurisdictions. Notably in the case of a self-insurer Comcare does not have a role in rehabilitation as this is left to the employer. Where the self-insured employer cannot retain a worker then Comcare should have a role in assisting that claimant.

This report also notes that Comcare has particularly harsh stress-related claim provisions as a result of the case of *Hart v Comcare* [2005] FCR 29 where the Federal Court held that if a single significant contributing to an injury or disease was a "reasonable administrative action" then the claim would no longer be considered sustainable. This rule is harsh and means that workers whose stress arises predominantly from work factors may not be able to claim by reason of a single administrative stressor.

Another concern for claimants is that in terms of the calculation of wages, Comcare is the only system which requires wages be calculated to include superannuation payments so as to reduce the amount paid by the employer – this is unfair and in effect means that the claimant is underwriting to some extent their own claim. Similarly the calculation of wages under Comcare is extremely complex and probably more so than any other jurisdiction.

The impairment tables adopted under the SCR Act and by reason of the decision in *Canute v Comcare* [2006] HCA 47 are almost incomprehensible and at times inconsistent (as in the case of Tables 9.7 and 9.14). These matters are concrete example of where a claimant is worse off under Comcare than other schemes.

Small and medium sized businesses

Although the SRC Bill broadens the range of corporations that can apply to Comcare for a self-insurance licence, it distinctly disadvantages employers who only operate in one state as they are automatically barred from entering the Comcare scheme. This is true of most small and medium businesses, which by virtue of their small size, are unlikely to meet 'the national employer test.' It is also true of two thirds of large employers who only have operations in one state. Thus, a significant number of employers will be unable to elect to move to the Comcare scheme.

On the one hand, it is possible to argue that because only 1959 employers are eligible to move to the Comcare scheme, it is likely that the number of employers exiting the state and territory schemes will be fairly minimal. Indeed, this sentiment is expressed a number of times in the SRC Bill's explanatory memorandum,[74] which quotes the conclusion in the Taylor Fry report that:

> All the available evidence suggests that the actual impacts on state and territory workers' compensation schemes of corporations exiting those schemes to join Comcare have been insignificant. The likelihood of future impacts being significant is low.[75]

However, the accuracy of this conclusion is subject to the exact design and nature of the reforms expanding the Comcare scheme as the Taylor Fry report's authors did not have a specific model to examine at the time. Thus, given that the SRC Bill allows more employers to move across and such a move will result in lower premiums, lesser protection of workplace health and safety and a national regulator with a weaker enforcement capacity than its state and territory counterparts, it is likely that most, if not all of the 1959 employers will elect to move to the Comcare scheme based on a fairly straightforward cost/benefit analysis. **Given that Comcare only currently regulates 29 self-insurers, this potentially represents a massive expansion of the national scheme of 67 times its present capacity.**[76]

Under this scenario, there will be a significant number of employers who will make the decision to leave the state and territory schemes in favour of the Comcare scheme. In fact, the SRC Bill's authors suggest that such a shift is likely and intended given the substantial red tape savings that employers moving across to the Comcare scheme will incur.

This possibility that significant numbers of employers would be attracted to an expanded Comcare scheme was explicitly recognised by the Productivity Commission which concluded:

> The opening up of a national scheme to all corporate employers would have potentially significant impacts on the existing State and Territory scheme…Some of the smaller schemes may ultimately become more unviable on a stand-alone basis if a significant number of employers switch to the national scheme.[77]

In fact, when the Productivity Commission proposed in 2004 that the Comcare scheme be expanded to incorporate multi-state employers, some business associations expressed clear reservations concerning the need for a national scheme.[78]

CASE STUDY 2:

EMPLOYER LOOPHOLES AND THE SRC BILL

The 'national employer test' is not an effective test of whether an employer is genuinely multi-state in its operation, which is why this report proposes that there be a minimum number of employees required in each state. The way the test currently operates under the SRC Bill is that an unscrupulous employer wishing to evade the more onerous requirements and higher premiums of a state and territory scheme could do so by simply setting up a one-person office in another state. There are many reasons why an employer might seek to migrate to the Comcare scheme if the SRC Bill is passed:

1. Comcare offers lower premiums than the state and territory schemes.
2. Comcare has less strict requirements than the state and territory schemes in allowing employers to access a self-insurance licence. To date, Comcare has never rejected a self-insurance licence application.
3. Comcare is a less effective regulator and therefore provides less rigorous scrutiny of workplace safety.
4. The Comcare scheme allows employers and insurers to delay in resolving claims as it is the only system without statutory timelines and its dispute resolution system is notoriously ineffective, complex and slow.
5. Comcare effectively prevents workers who are injured as a result of employer negligence from suing at common law.
6. Comcare inspectors issue far fewer improvement notices and prohibition notices than inspectors in the state and territory jurisdictions and are significantly less likely to instigate prosecutions.
7. Some employers will be able to evade the scrutiny of specialist regulators designed to address particular issues arising from high-risk industries as Comcare is a generalist regulator. For example, in large mining states such as Western Australia and Queensland, the mining, petroleum and gas and explosive industries have their own specialist regulator.

The concern that **the SRC Bill will produce a reduced premium pool for the state and territory schemes was identified by each of the state and territory governments in their submissions to the Senate inquiry on the SRC Bill.** For example, the then Queensland Newman Coalition government was concerned that 'small businesses may not be in a position to absorb premium fluctuations from a reduced premium pool' and projected that the SRC Bill would result in a reduction in the state's premium income of over $250 million (18 per cent of $1.4 billion premium pool).[79]

This means that because there are fewer businesses within the state and territory schemes to pay premiums, the premium pool as a whole will be reduced for each of the state and territory schemes. This reduced premium pool in the non-Comcare workers' compensation schemes will result in increased premiums for remaining businesses in those schemes and put pressure to reduce workers' entitlements.

The SRC Bill may also force some small businesses to close down because they will be unable to cope with increased premiums. As stated by the Queensland government in its submission:

> The Amendment Bill will have potential impacts on business well beyond companies eligible for national self-insurance. In Queensland there are an estimated 138,000 private sector non-agricultural small businesses (employing fewer than 20 workers), many of these small businesses may not be in a position to absorb premium fluctuations from a reduced premium pool.[80]

In sum, **small and medium businesses that will be forced to remain in the state systems are likely to experience higher premiums because of a reduced premium pool. Many large businesses will also be subject to this if they operate within the confines of a single state.** The business case for the SRC Bill is clearly on shaky ground when the vast majority of Australian businesses will be disadvantaged by its passing.

Multi-state businesses

The clearest beneficiaries of the SRC Bill are multi-state businesses. The SRC Bill was conceived with their interests in mind and the Government anticipates that its passing will lead to significant cost savings for businesses that choose to move to the Comcare scheme. The SRC Bill's Explanatory Memorandum relies on data from the Productivity Commission report to quantify a projection of these cost savings.[81] The Productivity Commission relied on submissions from some multi-state employers to identify costs associated with having to report in multiple jurisdictions and the savings which would ensue from being able to operate under the one national system. The Explanatory Memorandum refers to the Insurance Australia Group's estimate of an annual cost saving of $1.7 million, Optus's estimate of $2 million and Skilled Engineering's estimate of $2.5 million.[82] Using these submissions to the Productivity Commission review, the Explanatory Memorandum forecasts that a multi-state business moving to the Comcare scheme will incur annual savings of $400,000 for each state or territory that it operates in.[83]

Whilst seemingly attractive, the evidential basis for these projected cost-savings for multi-state businesses is questionable. In a comprehensive review of the Productivity Commission report, a number of leading scholars in this area wrote a damning review of its methodology and findings. Guthrie et al argue:

> That the Productivity Commission was prepared to entertain the demise of several State and Territory workers' compensation systems in pursuit of its agenda for change was not unexpected, given that it regarded compliance costs for multi-state firms as the central issue facing workers' compensation policy in Australia. Nevertheless,

> its case for change remained less than persuasive. Not only were compliance costs for multi-State employers firms not estimated with any semblance of precision, it was by no means clear that the benefits to these firms from a new national scheme would be substantial, let alone outweigh the costs that would be born by the overwhelming majority of firms that would remain in the State and Territory schemes. For a change in public policy of this magnitude, a thorough examination of the nature and extent of the costs and benefits involved is an essential prerequisite. This, the Productivity Commission failed to provide.'[84]

It is concerning that the primary arguments for the SRC Bill are reliant on a dubious evidential basis predicated on the submissions of multi-state businesses, the very interest group lobbying the hardest for the expansion of the Comcare scheme. It is clear that independent actuarial analysis needs to be done as to the cost savings likely to be incurred by multi-state businesses and the impact that an expansion of the Comcare scheme will have on businesses remaining the state and territory jurisdictions. Without this analysis, the case for moving to expand the Comcare scheme is highly suspect.

Another adverse consequence for multi-state businesses is that the SRC Bill will provide them with lesser support, advice and monitoring of their work health and safety systems. The Comcare scheme does not operate as effectively as its state and territory counterparts and Comcare cannot offer the same level of assistance, scrutiny and support that is offered by scheme regulators in these other jurisdictions.

The national economy

The passage of the SRC Bill will jeopardise the national interest through greater pressure on the welfare system, Medicare and the national disability insurance scheme. Because the Comcare scheme provides lesser support to injured workers, although businesses will incur lower premiums, **the costs of rehabilitating these workers will shift to the public purse and result in the financial burden being transferred to the social security system and Medicare.** Furthermore, the effective abolition of a worker's common law rights under the Comcare scheme means that the negligent employer is not obliged to compensate the worker, meaning that in effect, employers would be subsidised for work-related injury costs by the public.

This 'cost shifting' from the employer to the public purse was identified by the Industry Commission, which argued that it can undermine the motivation for employers to adopt a best practice approach to work health and safety by facilitating early intervention and rehabilitation of injured workers.[85] Similar concerns to those raised by the Industry Commission also featured in the findings of the National Commission of Audit, which reported on the issue to the Howard Government in 1996,[86] and more recently the Productivity Commission in its 2004 inquiry.[87]

Although this is remarkably absent from the SRC Bill, which seeks to reduce the regulatory burden on employers at the expense of the national interest, **all three Commissions acknowledged the need for policy responses to tackle cost shifting.** For example, the Industry Commission report called for a more adequate compensation package for injured workers which would result in employers, rather than the social security system, bearing more of the brunt for the costs arising from workplace injuries.[88]

Conclusion

Working towards a nationally consistent framework for workers' compensation is a desirable policy goal. It is an objective that most stakeholders agree with. What is in contention is how to achieve it. The SRC Bill represents an evidentially unsound and dangerous route to achieving a national workers' compensation scheme.

This report has shown how the SRC Bill disadvantages each of the key stakeholders in the workers' compensation arena, namely workers and the vast majority of Australian businesses. In fact, the only stakeholder alleged to benefit from the SRC Bill are multi-state businesses, but even there, this benefit has only been quantified through anecdotal evidence provided by these businesses as no independent actuarial analysis has been conducted.

It is clear then, that the SRC Bill is a hasty, ad-hoc attempt to create a national workers' compensation system and should be rejected.

Creating a national workers' compensation system should not be based on a lowest common denominator approach. There are concrete examples of where workers will be worse off, for example in the calculation and payment of wages. Importantly there is evidence that where compensation schemes reduce benefits to workers, claimants seek other systems, notably industrial systems, for recourse.

When this happens employers pay these costs directly, for example:

1. The removal of journey cover in most jurisdictions resulted in industrial claims for employers to pay for specific journey cover for workers under other insurance.
2. The introduction of stress claim exclusions arguably resulted in increases in sick leave where stress claims could not be made.
3. Where compensation systems ceased payments at aged 65 (now most systems have removed this barrier), logs of claims sought payment of workers compensation style benefits direct from employers.
4. **Slow dispute resolution results in extended sick leave, poor return to work and added costs to employer for replacement costs of employees.**
5. Poor safety interventions result in industrial action under WHS provisions.

The point to be made is that if the interests of workers are neglected there is likely to be a leakage of claims into other areas.

The best practices from the state and territory systems should be used to design a national scheme which appropriately compensates injured workers and efficiently manages their return to the workplace.

The objective of a nationally consistent framework for workers' compensation should not be about a race to the bottom, but instead an opportunity to produce a best practice system that is the envy of other countries.

This report has identified a number of key recommendations that the federal government should adopt before legislating to move towards a national workers' compensation scheme.

In particular, the scheme regulator Comcare needs to be operating at a far superior level than it currently does and the provisions with regards to self-insurance need to be more robustly regulated.

Consideration also needs to be given to the impact of a national scheme on state and territory workers' compensation schemes and how this will affect the premium pool.

Proper and independent actuarial analysis needs to be commissioned to explore the financial impact of a national workers' compensation scheme on all stakeholders and the national economy.

The policy framework around workers' compensation is too important to be rushed or hijacked by a particular interest group. Yet both of these criticisms can be levied at the SRC Bill. Instead, a bipartisan and balanced approach to designing a nationally consistent workers' compensation framework should be adopted. This is in the interests of all stakeholders and Australia as a whole.

Footnotes

* The author is indebted to Professor Robert Guthrie for his feedback on an earlier draft of this report. All errors and omissions are the author's own.

1. Safe Work Australia (2014) Work-related fatalities (Accessed 20 February 2014) http://www.safeworkaustralia.gov.au/sites/swa/statistics/work-related-fatalities/pages/worker-fatalities.
2. Safe Work Australia (2014) 'Key Work Health and Safety Statistics,' 1.
3. Safe Work Australia (2012) *The Cost of Work-Related Injury and Illness for Australian Employers, Workers and the Community: 2008-2009*, Canberra.
4. Taylor Fry Consulting Actuaries (2008) *Review of self-insurance arrangements under the Comcare scheme: report to Department of Education, Employment and Workplace Relations*, 84 (Hereafter referred to as 'the Taylor Fry report').
5. P Hanks QC, *Safety, Rehabilitation and Compensation Act review report*, Commonwealth of Australia, 2013 (Hereafter referred to as 'the Hanks report').
6. A Hawke, *Safety, Rehabilitation and Compensation Act Review: Report of the Comcare Scheme's Performance, Governance and Financial Framework*, Commonwealth of Australia, 2013 (Hereafter referred to as 'the Hawke report').
7. Taylor Fry report, 84.
8. Productivity Commission (2004) *National Workers' Compensation and OHS Frameworks*, Inquiry Report 27, AGPS, Canberra, 135 (Hereafter referred to as 'the Productivity Commission report').
9. Safe Work Australia (2012) *The Cost of Work-Related Injury and Illness for Australian Employers, Workers and the Community: 2008-2009*, Canberra.
10. The Comcare scheme refers to the workers' compensation scheme that operates at the Commonwealth level.
11. Since 2004 the Comcare scheme has been the subject of a number of reviews. The first review was by the Productivity Commission in 2004 entitled 'National Workers' Compensation and Occupational Health and Safety Frameworks'. The second review was by consulting actuaries, Taylor Fry who provided a report to the Commonwealth Department of Education, Employment and Workplace Relations in 2009, entitled 'Report of the review of self-insurance arrangements under the Comcare scheme'. The third review was conducted by Dr Allan Hawke in 2012 who provided a report entitled 'Safety, Rehabilitation and Compensation Act review: report of the Comcare's scheme performance, governance and financial framework'. The fourth review was conducted by Peter Hanks QC in 2013 who provided a report entitled 'Safety, Rehabilitation and Compensation Act review report'.
12. R Guthrie, K Purse and F Meredith 'Workers' Compensation and self-insurance in Australia - National priority or trojan horse?' (2006) 17(3) *Insurance Law Journal 256-267*.
13. Paula Pyburne (2014) 'Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014' Parliamentary Library Digest, 6; see also Comcare (2014) Submission to the inquiry by The Senate, Education and Employment Legislation Committee, Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, 1.
14. *OHS and SRC Legislation Amendment Act 2006* (Cth).
15. Robert Guthrie, Frances Meredith and Kevin Purse "Dust and Sweat' in Australian Workers' Compensation Systems: Policy Challenges for the Gillard Labor Government (2010) 5(1) *Public Policy* 40, 43.
16. J Gillard (Minister for Employment and Workplace Relations), 'Government announces moratorium on new companies joining Comcare', media release, 11 December 2007.
17. E Abetz (Minister for Employment), *Private corporations to access Comcare scheme*, media release, 2 December 2013.
18. This report focuses on the viability of this proposal to expand the Comcare scheme. Other provisions in the Bill which seek to remove access to workers' compensation where an employee is at fault, or for injuries during recess breaks are not considered in this report.
19. Safety, Compensation and Rehabilitation Legislation Amendment Bill 2014 (Cth) sections 100 and 100A.
20. Safety, Compensation and Rehabilitation Legislation Amendment Bill 2014 (Cth) sections 107(B)(1)-(4).
21. Safety, Compensation and Rehabilitation Legislation Amendment Bill 2014 (Cth) item 9 of Schedule 1.
22. Items 17-22 of Schedule 1 of the Safety, Compensation and Rehabilitation Legislation Amendment Bill 2014 (Cth) amend section 12 of the *Work Health and Safety Act 2011* (Cth) so that non-Commonwealth licensees will be subject to the provisions of this Act.
23. Explanatory memorandum, Safety, Compensation and Rehabilitation Legislation Amendment Bill 2014 (Cth) i.
24. Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (Cth), 2nd reading, House of Representatives, Hansard, 19 March 2014, p 2381 per Mr Pyne.
25. 'The Comcare scheme' is used in this report to refer to the national system of workers' compensation with Comcare as the scheme regulator.
26. http://www.srcc.gov.au/self_insurance/becoming_a_licensee/guidelines
27. Hawke report, 19.
28. Hawke report, 33.
29. For example, in response to questioning about the Bill in the House of Representations, MP Mr Hunt stated, 'We have laid out before the House the sources of advice – the Productivity Commission, the reviews commissioned by the Gillard government and the department. We will simply have to disagree as to whether the Productivity Commission, the reviewers including Allan Hawke, and the department are credible and authoritative sources of advice. We stand by all three of those sources. It is

up to the opposition to reject them.' Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (Cth), 2nd reading, House of Representatives, Hansard, 26 November 2014, Mr Hunt, p 13255.

30. See the four reviews referenced in footnote 7.
31. Taylor Fry report, 5.
32. Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (Cth), Explanatory Memorandum, xxxvii.
33. [Comcare stated that there were 29 self-insurers with current licences as at 30 May 2014: Comcare (2014) Submission to the inquiry by The Senate, Education and Employment Legislation Committee, Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, 1.
34. Hawke report, 27-28.
35. Hanks report, recommendation 4.2.
36. R Guthrie and R Aurbach 'Workers' compensation self insurers in Australia: insolvency and worker protection' (2010) 21 *Insurance Law Journal* 24-41.
37. Australian Government, Department of Education, Employment and Workplace Relations, *Report of the Review of Self-insurance arrangements under the Comcare Scheme*, January 2009, p 7.
38. Hawke report, 3.
39. Workcover NSW, Licensing Policy of the Workcover Authority for Self-Insurers and Group Self-Insurers Licensed under Section 211 of the Workers Compensation Act, 1987 http://www.workcover.nsw.gov.au/__data/assets/pdf_file/0005/18176/licensing_policy_workcover_self_group_insurers_4281.pdf (Accessed 15/2/2014).
40. Taylor Fry report, 84.
41. Taylor Fry report, 73.
42. Hanks report, 159
43. Hanks Review, 159.
44. Comcare (2014) Submission to the inquiry by The Senate, Education and Employment Legislation Committee, Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, 5.
45. Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (Cth), Explanatory Memorandum, 1iii.
46. Taylor Fry report, 33.
47. Taylor Fry report, 34
48. Taylor Fry report, 31.
49. Taylor Fry report, 31.
50. Taylor Fry report, 29.
51. Taylor Fry report, 34.
52. Taylor Fry report, 30.
53. Taylor Fry report, 41-42
54. Taylor Fry report, 38.
55. Taylor Fry report, 43.
56. Safe Work Australia, Comparative Performance Monitoring Report, 16th edition, 2014, 16 (Hereafter referred to as the 'Comparative Performance Monitoring Report').
57. Comparative Performance Monitoring Report, 16
58. Comparative Performance Monitoring Report, 16
59. Comparative Performance Monitoring Report, 16
60. Taylor Fry report, 41.
61. Comparative Performance Monitoring Report, 18
62. Comparative Performance Monitoring Report, 17
63. Ibid.
64. Ibid. The number of employees in each scheme can be found in Appendix 2, p 53 of the Comparative Monitoring Report.
65. Taylor Fry report, 12.
66. Taylor Fry report, 22.
67. Safe Work Australia (2014) Comparison of workers' compensation arrangements in Australia and New Zealand, table 2.7.
68. Hanks Report recommendation 9.3.
69. Slater and Gordon (2014) Submission to the inquiry by The Senate, Education and Employment Legislation Committee, Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, 8.
70. Hanks report, recommendation 9.8.
71. Hanks report, 167, recommendation 9.5
72. Robert Guthrie, Frances Meredith and Kevin Purse "Dust and Sweat' in Australian Workers' Compensation Systems: Policy Challenges for the Gillard Labor Government (2010) 5(1) Public Policy 40, 50.
73. Taylor Fry report, 73.
74. Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (Cth), Explanatory Memorandum, x1iii, x1ix.
75. Taylor Fry report, 81.
76. Comcare stated that there were 29 self-insurers with current licences as at 30 May 2014: Comcare (2014) Submission to the inquiry by The Senate, Education and Employment Legislation Committee, Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, 1.
77. Productivity Commission report, 135.
78. ACCI, *Productivity Commission Inquiry into Workers' Compensation and Occupational Health & Safety: ACCI Interim Response to Interim Recommendations*, Canberra 2003, 13, and AIG, *Productivity Commission Inquiry – National Framework for Workers' Compensation and Occupational Health and Safety,* Sydney, 2004, 6.
79. Queensland Government (2014) Submission to the inquiry by The Senate, Education and Employment Legislation Committee, Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, 4.
80. Queensland Government (2014) Submission to the inquiry by The Senate, Education and Employment Legislation Committee, Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, 2.
81. Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (Cth), Explanatory Memorandum, xxxvii.
82. Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (Cth), Explanatory Memorandum, xxxvii.
83. Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (Cth), Explanatory Memorandum, xl.
84. Kevin Purse, Robert Guthrie and Frances Meredith, 'Faulty Frameworks: The Productivity Commission and Workers' Compensation (2004) 17 *Australian Journal of Labour Law* 306, 310.
85. Industry Commission, *Workers' Compensation in Australia*, AGPS, Canberra, 1994, xxxi-xxxii (Hereafter referred to as 'the Industry Commission report').
86. National Commission of Audit, *Report to the Commonwealth Government*, AGPS, Canberra, 1996, 79-80.
87. Productivity Commission report, 267-72.
88. Industry Commission report, 172-3.

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