Australian Council of Trade Unions Submission To the Safety, Rehabilitation & Compensation Act 1988, Review

27 August 2012

Submission 1

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D No. 48/2012

Safety, Rehabilitation and Compensation Act 1988 **(SRC Act)**
Terms of Reference

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

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

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

The review will inquire and report on:

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

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

Executive Summary

The Australian Government has an important role to lead our nation in ensuring that workers compensation systems are fair and just for both workers and employers. A race to emulate the States restrictions on compensation and reduced benefits in the name of national consistency is unacceptable.

The Comcare regime can be improved to better serve injured workers and their families.

The Safety, Rehabilitation and Compensation Act 1988 (SRC Act) and Comcare system could be improved by:

- The insertion of Objects into the Act;
- Amending the Safety, Rehabilitation and Compensation Regulations 2002 to require enhanced consultation on self-insurance license extension;
- Clearer criteria for self-insurance licences eligibility;
- The removal of age restrictions in accessing or remaining on benefits;
- The indexation of maximum common law payment;
- The reinstatement of the First Edition Comcare Guide to the Assessment of Degree of Permanent Impairment;
- The complete overhaul of dispute resolution procedures;
- The reinstatement of journey claim compensation; and,
- The removal of exclusions based on injuries, diseases, reasonable management action etc.

Additionally we submit that:

- Research needs to be undertaken to provide an injury profile for the entire Australian economy upon which an appropriate workers' rehabilitation, return to work and compensation package can be developed. We call on the Federal Government to commission this research as a matter of urgency; and,
- The Federal Government must establish an inquiry as a matter of urgency to examine the extent of cost shifting by workers' compensation schemes onto injured workers and government services, including the public health system and social security.

Introduction

On 24 July 2012 the Minister for Workplace Relations the Hon Bill Shorten MP announced the review of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). Minister Shorten further announced that the review will be undertaken by Mr Peter Hanks QC and Dr Allan Hawke AC and would consider three key aspects:

- updating the legislation and the operation of the scheme, including any legislative anomalies and updates that need to be addressed
- the performance of the Comcare scheme and ways to improve its operation
- the financial and governance framework of the Comcare scheme.

Minister Shorten also released Terms of Reference for the Review at this time.

The Australian Council of Trade Unions (ACTU) is the peak body representing 46 unions and almost 2 million working Australians.

The ACTU welcomes this Review of the *Safety, Rehabilitation and Compensation Act 1988.*

The ACTU believes that working life should be enjoyable. Work should give people the satisfaction of using their skills to the fullest measure, and making a contribution to their workplace, their community and the common good. It should provide fulfilling social interactions, freedom, dignity, economic security and equal opportunity.

Australian law must ensure there are healthy and safe workplaces and rehabilitation and compensation systems that mandate that no worker is disadvantaged if they are injured at work.

Workers compensation schemes around the country are under attack. The NSW Government recently slashed hard won entitlements of injured workers and their families and covert reviews of schemes are currently underway in Victoria and Queensland.

The Australian Government has an important role to lead our nation in ensuring that workers compensation systems are fair and just for both workers and employers. A race to emulate the States restrictions on compensation and reduced benefits in the name of national consistency is unacceptable.

We submit that the Comcare regime can be improved to better serve injured workers and their families.

We propose a number of progressive legislative amendments that should be made to the SRC Act.

The ACTU has a comprehensive policy on Occupational Health Safety Rehabilitation and Compensation. The Rehabilitation and Compensation section of this policy is found at Appendix 1 to this submission.

Our full policy is available at: http://www.actucongress.org.au/site/policies

The ACTU, our State Branches (local Trades and Labour Councils) and our affiliate unions regularly make submissions to Governments on inquiries, reviews and studies on workers compensation systems. In 2010, to assist us in the formulation of our submissions, the ACTU asked the Melbourne School of Population Health at the University of Melbourne to review the Australian workers compensation schemes (with a limited review of international schemes) and comment on 'best practice' in a number of core areas. The University of Melbourne Report was delivered in August 2011.

The Report concludes that *'. . . despite a growing body of academic and other published literature relating to Australian workers' compensation schemes and outcomes of these schemes for incapacitated workers, there is remarkably little research evaluating the merits of alternative scheme arrangements. In the absence of rigorous empirical evaluations—in Australia or internationally—there is likely to be scant evidence of best practice . . . debates are likely to be dominated by discussions about the logic of alternative scheme designs, anecdotal evidence, and experiential and impressionistic reports from jurisdictions about 'what has worked and what hasn't'. A crucial point of difference in these debates will be that, in assessing the merits of particular design choices, different stakeholders will place different weight on the importance of key aspects of scheme performance, such as efficiency, equity, cost, rates of return-to-work, sustainability, and coherence.'*

The Executive Summary of this report is attached at Appendix 2 to this submission.

The ACTU has an in-principle opposition to self-insurance. We cannot support the concept that a group of employers can be allowed to opt out of contributing to the premium pool of workers compensation systems at either an individual state or national level.

If self-insurance is to be a feature of a scheme it should only be available in very limited circumstances and must involve a high level of ongoing oversight and monitoring by scheme regulators. Self-insurance in this scenario should be viewed as a privilege not a right.

Employers wishing to become or remain self-insurers must earn that privilege by bringing to workers compensation systems a superior performance in all areas of injury prevention, claims management and occupational health and safety standards. Self-insurers should be role models for other employers in terms of workplace safety, claims management and occupational rehabilitation by virtue of their special status. Further self-insurers should be required to share with scheme contributing employers those systems and programs that allow them to achieve a superior performance.

It is the Policy position of the ACTU that workers must not be adversely affected by any employer moving between jurisdictions in relation to their OHS and workers' compensation entitlements. Any proposed move between jurisdictions will only occur following genuine consultation and agreement with workers and their representatives and a process of public review, including public tribunal hearings.

Work Injuries and Workers Compensation in Australia

The Australian Bureau of Statistics (ABS) *Work-related Injuries Survey* details that in the twelve months to June 2010, 638,400 workers nationally experienced a 'work-related injury or illness of some kind'[1] (including injuries sustained travelling to and from work). That's 5.3% of the 12 million people aged 15 years and over who had worked at some time during that period.

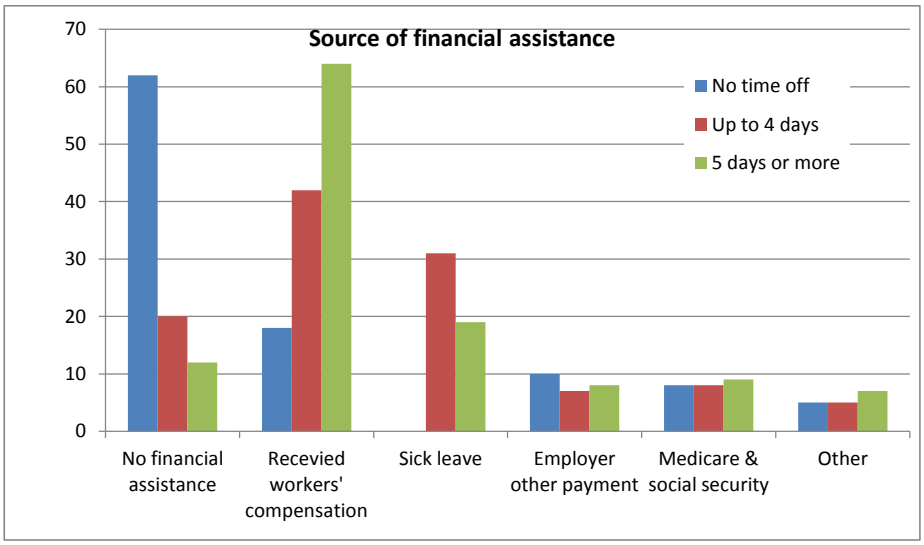
In 2009-10, 92% of workers were employees and therefore eligible to claim workers compensation benefits.

Excluding non-employees and journey injuries (which is not compensable in all jurisdictions), 567, 500 employers were injured in 2009-10 – but only 38% received workers compensation[2].

151,600 workers injured in 2009-10 needed 5 or more days off work due to their injury. 41,000 of these injured workers (27%) did not apply for workers compensation. 5,200 considered their injury to be minor or too much effort to claim, 17, 000, more than 1 in 10, did not know they were covered or eligible for workers compensation and 6,100 considered claiming workers compensation would have a negative impact on their employment[3].

Overall in 2009-10, 70,000 injured workers did not apply for workers compensation because they considered themselves to be not covered/ineligible or they thought it would have a negative impact on their employment[4].

[1] ABS, *Work-related Injuries Australia*, Cat. No. 6324.0
[2] *Work-related injuries in Australia: Who did and didn't receive workers' compensation in 2009-10*, Safe Work Australia
[3] Ibid
[4] Op cit



Obviously the 62% of workers injured during 2009-10 who didn't receive workers compensation may have required some other type of financial assistance following an injury. As detailed in the above chart the ABS found 12% of those with injuries that required 5 or more days off work did not receive any financial assistance and 18% used sick leave entitlements[5].

Conversely, Safe Work Australia (SWA) has reported that in 2009-10, Australia's workers compensation authorities (including Seacare) accepted 127,620 serious injury claims. Serious injury claims include all fatalities, all permanent incapacity claims and temporary incapacity claims for which one week or more weeks of compensation is recorded[6].

SWA reported in March 2012 that in 2009–10, 337 people died in Australia from a work-related traumatic injury. Of these, 216 were injured at work; 79 while travelling to or from work and 42 as a bystander to someone else's work activity[7].

SWA have further estimated that there are between 2,300 and 7,000 deaths annually due to workplace exposure in Australia[8].

[5] Ibid
[6] *Comparative Performance Monitoring Report 13th Edition,* Safe Work Australia.
[7] Safe Work Australia (March 2012), Work-Related Traumatic Injury Fatalities, Australia 2009-10. Because there is no single national data collection system that identifies all work-related injury fatalities, the exact number of people who die in any year as a result of work-related injuries in Australia is difficult to establish. To achieve the best estimate, Safe Work Australia examines a number of datasets that contain information on work-related fatalities; the National Data Set for Compensation-based Statistics (NDS), the Notified Fatalities Collection (NFC) and the National Coroners Information System (NCIS).
[8] Ibid

SWA reported in January 2012 that the cost of work-related injury and disease to workers, their employers and the community for the 2008–09 financial year data was estimated to be $60.6billion, representing 4.8% of GDP for the same period.

The total cost of work-related injury and disease are spread across employers, workers and the community. SWA estimates that:

- employers bear 5% of the total cost – this includes loss of productivity from absent workers, recruitment and retraining costs and fines and penalties from breaches of work health and safety regulations,
- injured workers bear 74% of the costs – costs include loss of current and future income and non-compensated medical expenses, and
- the community bears 21% of the total cost – this includes social welfare payments, medical and health scheme costs and loss of potential output and revenue.[9]

Further, in 2010 a VicHealth and Melbourne University study found that job-related depression costs the Australian economy $730 million every year. This includes lost productivity due to absenteeism and presenteeism and government-subsidised medical care, including counselling and antidepressants.[10]

It is obvious from the data presented above that our workers compensation schemes do not cover every worker injured in Australian workplaces. It is also obvious that it is workers themselves that pay the vast majority of monetary costs for their workplace injury/illness.

The Australian Government has an important role to lead our nation in ensuring that workers compensation systems are fair and just for both workers and employers.

Updating the legislation and the operation of the scheme, including any legislative anomalies and updates that need to be addressed is a key aspect that this Review is charged with inquiring into. This presents an opportunity for this Review to recommend progressive amendment to the Comcare regime

[9] *The Cost of Work-related Injury and Illness for Australian Employers, Workers and the Community: 2008-09, Safe Work Australia, Canberra, January 2012*
[10] La Montagne AD, Sanderson K, & Cocker F (2010) Estimating the economic benefits of eliminating job strain as a risk factor for depression. Victorian Heath Promotion Foundation (VicHealth), Carlton, Australia.

A race to emulate the States restrictions on compensation and reduced benefits in the name of national consistency is unacceptable.

In line with the ACTU policy position we submit that:

- Self-insurance should only be available to employers who have an exemplary record in health and safety and a demonstrated commitment to workers' rights.
- Self-insurance licenses must be automatically revoked in cases where there is a workplace death or serious injury.
- The administration of workers' compensation by self-insurers must be conducted by arrangements that separate the insurer from the employer, in the same manner as the relationship between a private insurer and the employer as a client, to fully protect employee privacy.
- Workers must have access to an independent body which can review an employer's self-insurance status. Further, employers seeking to become, or to remain, self-insurers must be able to demonstrate that the majority of their employees genuinely favour this option.
- The Federal Government must to return Comcare to its original function as the scheme applying to Federal public servants and to return all private sector participants to the applicable State or Territory run scheme(s).
- Research needs to be undertaken to provide an injury profile for the entire Australian economy upon which an appropriate workers' rehabilitation, return to work and compensation package can be developed. We call on the Federal Government to commission this research as a matter of urgency.
- The Federal Government must establish an inquiry as a matter of urgency to examine the extent of cost shifting by workers' compensation schemes onto injured workers and government services, including the public health system and social security.

Further we fully support the position of the Federal Government articulated at meetings of the Workplace Relations Ministers Council where the *'Federal Minister for Workplace relations briefed Ministers on the Commonwealth's intent, following the implementation of uniform OHS laws, to support OHS coverage of Comcare self-insured licensees being transferred to state and territory jurisdiction.'*[11]

Legislative Priorities

The ACTU has a firm view that legislative amendment is needed in a number of areas of the SRC Act.

Objects of the Act

The SRC Act does not contain a formal objects clause. Despite this, section 108D of the SRC Act empowers the Safety Rehabilitation and Compensation Commission (SRCC) to make self-insurance licenses subject to *"any conditions it considers are necessary to achieve the objects of [the] Act in its application to the licensee".*[12] Section 108D goes on to set out a non-exhaustive list of conditions that it may impose on licensees under Part VIII of the SRC Act.

The reference in s108D to the objects of the SRC Act clearly creates a legislative anomaly. There is obvious merit in amending the legislation to include an objects clause. In addition to general matters of statutory interpretation, the inclusion of a clear objects clause would assist the SRCC in making or considering conditions which is may impose under Division 2 of Part VIII of the SRC Act.

In the absence of a formal objects clause, the SRC Act (and s108D) needs to be interpreted having regard to the purpose, history and context of the SRC Act.[13] The relevant history and context shows that the SRC Act is not merely concerned with facilitating a workers' compensation scheme, but is concerned more broadly with safety and the prevention of workplace accidents. For example, the legislated functions of Comcare include, *inter alia*, conducting and promoting research into the rehabilitation of employees and the incidence

[11] See WRMC Communique 11Jjune 2009, http://www.deewr.gov.au/WorkplaceRelations/WRMC/Pages/Communiques.aspx
[12] s108D(1)
[13] *Acts Interpretation Act 1901* (Cth) s 15AB; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355.

and prevention of injury to employees,[14] and promotion of the adoption in Australia (and elsewhere) of effective strategies and procedures for the rehabilitation of injured workers.[15]

The legislative framework further contemplates that the SRCC take into account safety-related issues, including a level of consultation between a licence holder, employees and their unions. For example, the SRC Regulations require that potential self-insurers, at the application stage, must provide evidence of 'preventative measures' in place including copies of relevant policies and documentation of risk management strategies.[16] Applicants for self-insurance licences must also provide evidence that they have consulted employees about their intention to apply for a licence.[17]

A key part of any prudent company's risk management strategy is consultation with its employees and their unions. Indeed, it is widely accepted that consultation between employers, workers' and their unions is crucial to preventing workplace accidents and creating safe working environments.[18] As was noted in a report prepared by the consulting actuary firm Taylor Fry, which was engaged the Department of Education, Employment and Workplace Relations during the 2008 Comcare Review to review and undertake consultations in relation to self-insurance arrangements under Comcare, there is a '*growing body of evidence which demonstrates the positive indicators of OHS performance (such as injury rates and hazard exposures) in workplaces where structures of workers representatives are in place (union presence, joint safety committees or worker / union safety representatives)'.*[19] It follows that the Commission ought to be able to impose conditions on licences to ensure that there are appropriate, ongoing structures in place to best ensure workers' safety.

The SRCC must take a broad view of an applicant's safety and consultative practices in deciding whether or not it is appropriate to grant self-insurance licenses, and in determining whether to impose conditions on licences pursuant to s108D. The objects of the Act ought to reflect this approach.

[14] s69(d)
[15] s69(1)(da)
[16] See *Safety, Rehabilitation and Compensation Regulations 2002* (Cth), r11, Sch 3, Pt 5
[17] Ibid, Sch 3 Pt 2. We note that this obligation goes no further than a general requirements to provide 'evidence'. Submissions in relation to ensuring appropriate and meaningful consultation are discussed elsewhere in this submission.
[18] E.g. see Industry Commission, *Work, Health and Safety* (1995) at xxv. For this reason, in 1995 the Industries Commission (the predecessor to the current Productivity Commission) recommended that governments 'integrate their occupational health and safety and workers' compensation policy making' (at Recommendation 49)
[19] Department of Education, Employment and Workpalce Relations, iReview of self-insurance arrangements under the Comcare *scheme, 15 May 2008*at 73

With these considerations in mind, the ACTU submits that an objects clause is inserted into the SRC Act as follows:

Objects of SRC Act

The main object of this Act is to provide for a balanced safety, rehabilitation and compensation scheme that achieves a reasonable balance between the interests of employers and the interests of workers by:

(a) providing for the consultative, efficient and effective administration of the scheme through the establishment of Comcare and the Safety, Rehabilitation and Compensation Commission;

(b) providing fair and appropriate compensation to workers and their dependants for workplace injuries;

(c) providing for the prompt and effective management of workplace injuries in a manner that provides for the effective rehabilitation of injured workers and which promotes and assists the return to work of injured workers as soon as possible;

(d) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to injured worker rehabilitation and compensation;

(e) encouraging unions and employer organisations to take a constructive role in promoting improvements in worker rehabilitation and compensation and work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment and the reduction of the incidence of workplace accidents;

(f) promoting the provision of advice, information, education and training in relation to worker rehabilitation and compensation;

(g) securing compliance with this Act through effective and appropriate compliance and enforcement measures;

(h) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act;

(i) providing a framework for continuous improvement and progressively higher standards worker rehabilitation and compensation; and,

(j) providing a fair, just, economical, informal and quick mechanism for resolving disputes relating to the treatment and management of, and compensation in relation to workplace injuries.

In seeking to give effect to items c), d), e) and particularly f) above we consider it necessary to insert into the legislation provisions which allow workplace representatives to take time off work without loss of pay to attend training courses/conferences relating to workers compensation and / orinjured worker rehabilitation which are approved or conducted by the regulator.

Consultation Requirements - Inconsistency between powers to grant and extend licenses

Part VIII of the SRC Act allows the SRCC to grant licences to enable Commonwealth authorities and certain corporations to accept liability for, and / or to manage, claims arising out of workplaces injuries.

In granting a licence, the Commission must be satisfied that that the grant of a licence will not be contrary to the interests of employees who will be covered by the scheme. Section 102 of the SRC Act imposes requirements on eligible applicants in relation to certain information which must be provided to the Commission upon application for a self-insurance licence. Pursuant to s102(1)(c), the Regulations prescribed certain information which must be provided to the Commission which includes, *inter alia,* evidence of the applicant 'consulting employees about the applicant's intention to apply for a licence'.[20]

The ACTU has submitted in previous enquiries into the Comcare scheme that the experience of unions is that members have not been involved in meaningful discuss or consultation regarding their employers intending to move into the Comcare system (or intention to apply for a license extension), and that the requirement often manifests itself as the mere exchange of information which disallows employees the right to meaningfully contribute to the decision-making process.[21] Without a clear and enforceable definition of what

[20] Schedule 3, Part 2
[21] E.g. see [85] – [90] of the ACTU's Submission to the 2008 Comcare Review, dated 29/02/08

constitutes consultation, or how it should take place, the regulation requirement is vulnerable to abuse.

Appropriate and adequate consultation remains of serious concern to the ACTU, its affiliates and their members. Consultation must give workers a reasonably ample and sufficient opportunity to express their views, it must require an employer to give notice of the subject of consultation before any final decision is made or course of action is embarked upon, and it must give a meaningful opportunity for workers to affect and contribute to any decision made.

Additionally, it is a weakness of the current legislative scheme that there is no clear requirement in the Regulations or elsewhere which extends the right for workers to be consulted to situations where licence-holders seek to renew existing licences or to extend licences to cover employees of related bodies corporate or where workers are otherwise moved from a state jurisdiction into the Comcare scheme.

Workers should be fully informed and engaged in meaningful consultation, in ways appropriate for the workforce, about their employers' intention to apply for, seek an extension to, or significantly vary a Comcare self-insurance licence.

One measure of ensuring that effective consultation occurs is to ensure that no Comcare self-insurance licence will be granted, extended or significantly varied unless a majority of workers agree. Such a requirement would ensure that those most affected are afforded genuine input into the decision-making process.

Accordingly, the ACTU submits that:

- Schedule 3 of the *Safety, Rehabilitation and Compensation Regulations 2002* be extended to apply to all renewals of existing licences, extensions of licences, or significant variations to a licence.
- Part 2 of Schedule 3 of the *Rehabilitation and Compensation Regulations 2002* be amended to ensure genuine consultation occurs by replacing the provision and with the following:

  Part 2 Consultation

1. *Evidence of consulting employees about the applicant's intention to apply for a licence, to extend a licence, or to significantly vary a licence or the number or scope of employees covered by a licence.*

   Evidence must include evidence that satisfies the Commission that the following consultative steps have occurred:

   (a) Written notices have been provided to employees who may be affected by the proposed application and their representatives, if any, prior to the application being made. The notices must include any relevant information about the proposed application including the nature of the application, the expected effects of the changes on employees and any other matters likely to affect the employees. (The employer is not required to disclose confidential or commercially sensitive information to the relevant employees); and

   (b) Discussions have been held with the employees affected and their representatives, if any, after written notice has been provided to employees and prior to the application being made. The discussions must include the effects the application are likely to have on employees and measures to avert or mitigate any adverse effects of the application; and

   (c) The applicant or licensee has given prompt and genuine consideration to matters raised by the employees and/or their representatives in relation to the application.

- A Comcare self-insurance licence must only be granted, extended or significantly varied if a majority of affected workers agree after the consultation requirements set out in Part 2 of Schedule 3 are met.

Eligibility for self-insurance licences

The ACTU remains opposed in-principle to self-insurance schemes which allows large groups of employers to opt out of contributing to the premium pool of workers' compensation systems either at an individual, state or national level[22]. Self-insurance should only be available in very limited circumstances (if at all), must involve a high level of ongoing

[22] See ACTU Submission into 1998 Comcare Review, 29.02.08, at [8] – [10]

oversight and monitoring by scheme regulators, and should only be available to employers who have displayed exemplary performance in all areas of injury prevention, claims management and occupational health and safety standards. Self-insurance under the Comcare scheme should be viewed as a privilege, not a right.

Accordingly, the Commission ought to treat any licence applications made under Part VIII cautiously and critically.

The SRC Act currently provides that the Minister may declare a corporation to be eligible to obtain a licence under Pt VIII of the Act if it *"is carrying on business in competition with a Commonwealth Authority or with another corporation that was previously a Commonwealth authority".*[23]

We contend that for a number of self-insurance licenses granted since 2004 the actual business competition with a Government agency (or former agency) is at best tenuous.

We submit that the 'competition test' under s.100 of the SRC Act should be more clearly defined to narrow the scope of eligibility to apply for a self-insurance license to only those businesses that genuinely compete with Government or former Government agencies.

What's more the applicant should be required to detail which parts of their business compete with Government or former Government agencies, and in declaring an application eligible the Minister should be required to identify which parts of Government or former Government agencies the applicant is in competition with.

We submit that a self-insurance license should only apply to those parts of a self-insurers business that compete with the activities of Government or former Government agencies.

If the purpose of s.100 is to facilitate access to Comcare for private sector companies in competition with Government or former Government agencies[24] it follows that access (and continued access) to the scheme should only be contemplated while such competition exists.

We submit that on application for a license extension/renewal, self-insurers must identify which parts of Government or former Government agencies the applicant remains to be in

[23] s100(1)(c)
[24] Safety, Rehabilitation and Compensation Commission, Submission to the Comcare Scheme Review, February 2008, at 118

competition with and the SRCC must consider this when accessing the merits of the application. If no competition exists then an extension or renewal of a license is prohibited.

Removal of age restrictions in accessing or remaining on workers' compensation benefits

Section 23 of the SRC Act makes it clear that compensation is not payable to an employee who has reached 65. An employee who has reached 63 however, who suffers an injury, is entitled to compensation for a maximum period of 104 weeks (whether consecutive or not) during which the employee is incapacitated.

Injured workers aged 65 years or older should be able to access weekly income payments on the same terms as all other injured workers.

Common Law - Removal of cap set in 1988 at $110k

Under s.45 of the SRC Act, an employee may elect to sue her or his employer for non-economic loss if the employee was injured as a result of the negligence of the employer or another employee. This entitlement is effectivlely capped.

The maximum compensation payable under s.45 was determined in 1988 at $110,000 and has not been increased. Since 1988 the real value of the capped amount under s.45 has diminished significantly. The affect of failing to index the maximum amount has been to *de facto* abolish employees' common law rights.

If maximum amount under s.45 had been indexed to the consumer price index, the present value of the maximum amount would be approximately $221,503.49[25]

All that would be required to give effect to this would be to amend s.45(4) to reflect the above amount and insert a reference in the indexing provision (s.13(1)) such that the 'relevant amount' also means the amount specified in s.45(4).

Comcare Guide to the Assessment of Degree of Permanent Impairment

The ACTU and affiliate unions have criticised the Comcare Guide to the Assessment of the Degree of Permanent Impairment 2nd Edition since its adoption in 2006. We made a substantive submission on the flaws in the 2nd Edition Guide in our submission to the Comcare Review in February 2008. We submitted that the 2nd Edition Guide severely curtails compensation payments and usurps the Parliament's intention to provide comprehensive benefits to injured employees. Evidence provided by Comcare at that time

[25] The figure of $ 221,503.49 was obtained from the Reserve Bank of Australia's online inflation calculator: http://www.rba.gov.au/calculator/.

detailed a68% reduction in accepted permanent impairment claims in the 2 years following the introduction of the 2nd Edition Guide (2006/08) compared with the 2 years immediately prior to the introduction of the 2nd Edition Guide (2004/06). This reduction in accepted claims resulted in a reduction of more than $6million in payments to injured workers'. We made submissions to Comcare's review of the Guides in 2009 which are attached at Appendix 3. We do not consider that amendments to the Guides which took efffect in 2011 satisify our concerns.

It has been out long standing position that the Minister should take steps to revoke the 2nd Edition Guide and re-implement the 1st Edition Guide under s.28 of the SRC Act. If the Minister approves a further Guide, it should be on the proviso that if compensation would have been payable under the 1st Edition Guide, it should also be payable under any further version of the Guide.

We note that only Western Australia and the ACT have lesser maximum permanent impairment benefits than Comcare. [26] We also note that the maximum amount available under the Victorian scheme $527,610 [27] ,the highest maximum permanent impairment benefits of all Australian jurisdictions. This amount is $302,749 or 235% greater than the maximum Comcare benefit.

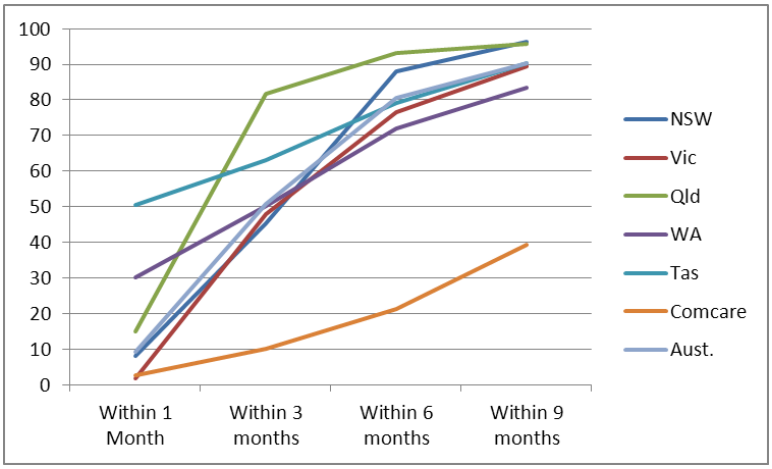
Dispute resolution - time frames by which disputes should be determined

The ACTU recently submitted to Comcare that the time limit for determining new injury and disease claims (excluding psychological injuries) should be 15 days. The time limit for determining psychological injuries should be 50 days and reconsiderations should be 30 days. The time starts when a determining authority receives a claim per s.54 of the SRC Act.

The ACTU notes that injured workers have little or no control over claims for compensation once they have been lodged for determination and therefore have little ability to influence the process. In achieving fairness between injured workers and the Comcare scheme, the ACTU has calls for the adoption of deemed acceptance or provisional liability model as provided for in NSW. Evidence supports the position that timely access to medical treatment results in improved return to work outcomes for injured workers.

[26] *Comparison of workers' compensation arrangements in Australia and New Zealand, 2011-12*, Safe Work Australia
[27] Ibid

The following chart details the cumulative percentage of disputes on workers compensation claims in a number of jurisdictions resolved within specific time periods.



Source: Safe Work Australia, Comparative Performance Monitoring Report, 13th Edition, October 2011

Injured workers require fast, accessible and low cost dispute resolution processes. The current Comcare system via the Administrative Appeals Tribunal does not provide these services to workers. We submit that the Comcare disputes processes should be replaced with a system that allows the speedy resolution of issues as currently takes place in other Australian jurisdictions.

With regard to Dispute Resolution the University of Melbourne Report concluded that: '*What constitutes 'best practice' in the resolution of disputes is rather subjective question, with limited qualitative or quantitative research to date to provide the basis for benchmarks. The academic literature does not point to any one scheme as having 'best practice'. . . . a well funded, accessible, timely and transparent ADR process is seen as an important function for the resolution of disputes in workers' compensation. Specifics on what this looks like and how it should operate are elusive, however, and there may not be a 'one-size-fits all' approach in achieving best practice across schemes.'*

Journey claims

For almost 20 years coverage for injuries occurring during journeys to and from work and during recess breaks was an integral part of the Comcare scheme available to all workers covered by that system.

The Comcare scheme is a 'no-fault' jurisdiction and journeys to and from work are necessary for workers to give effect to their employment relationship with their employer.

It is ACTU Congress Policy that workers compensation systems have comprehensive coverage of the work relationship, including on journeys to and from work.

Exclusions - based on injuries, diseases, reasonable management action etc.

Section 5A (inserted into the SRC Act by the Howard Government) added a barrier for employees to link a medical condition to her or his employment. A disease, injury or aggravation suffered as a result of 'reasonable administrative action taken in a reasonable manner' in respect of employment is not compensable and is taken to include the following:

(a) a reasonable appraisal of the employee's performance;
(b) a reasonable counselling action (whether formal or informal) taken in respect of the employee's employment;
(c) a reasonable suspension action in respect of the employee's employment;
(d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee's employment;
(e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c) or (d);
(f) anything reasonable done in connection with the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment.

If an employee claims for stress and makes any reference in the claim form or a statement regarding the actions of a supervisor or management, s.5A allows Comcare or a self-insurer to apply an open interpretation of what constitutes administrative action (including informal counselling).

In the majority of cases, apart from the employee's statement, the only non-medical evidence sought and obtained by Comcare or a self-insurer is from the employer.

SRC Act Section 5B (Disease)

The Howard Government amended the disease provisions of the SRC Act by introducing a new s.5B making it harder for employees to link a disease to her or his employment. Under the SRC Act, a disease includes a psychological condition and any underlying condition, such as a degenerative spinal disc.

In determining whether a disease was contributed to by employment in a significant degree, the issues that a decision-maker must now consider include:

(a) the duration of the employment;
(b) the nature of, and particular tasks involved in, the employment;
(c) any predisposition of the employee to the ailment or aggravation;
(d) any activities of the employee not related to the employment;
(e) any other matters affecting the employee's health.

The above requirements mean that someone with a past history of mental illness would be less likely to receive compensation because s.5B demands that the decision-maker take into account an employee's past mental health.

If work is a material causative or aggravating factor, then for so long as the employee is psychologically affected by employment, she or he should be entitled to compensation under the Comcare Scheme.

Similarly, for physical injuries, if an employee 'slips a disc' whilst lifting or twisting at work, why should the duration of employment or predisposition to the ailment or aggravation have any bearing on whether the injury arose out of, or in the course of, employment?

The Minister should take steps to repeal s.5A and s.5B of the SRC Act and replace it with a new definition, based on the earlier definition, which is closer to what the original legislators clearly intended.

The performance of the Comcare scheme

Claim Lodgement

Delays in claims reporting can lead to increased claims costs and delays in treatment for workers and, ultimately, delays in return to work.[28] Barriers to effective claims management once identified must be eliminated.

Injured workers have identified Comcare as the most complicated system to submit a claim.

Table 7: Ease of putting in a claim

Q2a. Would you describe the process of putting in a claim as?

	AUS (2,880) %	NSW (600) %	VIC (600) %	QLD (600) %	SA (401) %	TAS (354) %	NT (120) %	COM (121) %	SEA (84) %	NZ (601) %
Very simple	17	18	14↓	21	14	21	19	3↓	19	23↑
Simple	56	59	57	53	55	54	52	51	56	57
Total simple	**74**	**77**	**71**	**74**	**69**	**75**	**71**	**55↓**	**75**	**80↑**
Complicated	11	8↓	16↑	10	15	9	11	30↑	18	11
Very complicated	4	3	5	4	4	4	7	9↑	-	3
Total complicated	**16**	**12↓**	**21↑**	**14**	**19**	**12**	**18**	**39↑**	**18**	**15**
Can't say	11	11	8	12	12	13	11	7	7	6↓

Base: All respondents
Note: ↑ (or ↓) indicates that the estimate shown is significantly higher (or lower) than the national average.

Source: Australia & New Zealand Return to Work Monitor 2010/11, Heads of Workers" Compensation Authorities, June 2011

These figures have altered little over the past decade and are almost an exact replica of results detailed in the 2003/04 Return to Work Monitor.[29]

Comcare in consultation with unions should investigate and implement processes to allow the claims lodgement process to be more accommodating and accessible. Previously unions had advocated the *'Development of uniform WorkCover claim and premium forms with common and more efficient lodgement processes.'*[30]

[28] Accident Compensation Act Review Final Report, August 2008
[29] Australia & New Zealand Return to Work Monitor 2003/04, Heads of Workers" Compensation Authorities, May 2005
[30] Australian Council Of Trade Unions Submission to the Comcare Review, February 2008

Return to Work

The Comcare scheme performs well in return to work measures when considered against the performance of the States and Territories.[31] The differential though is not as distinct as in previous years and has since 2007/08 been closing. We question how much of this good performance is by design and how much is by accident.

It is generally accepted that large employers have better return to work rates than smaller employers:

'In 2006, the VWA [Victorian WorkCover Authority] introduced a new survey to assess sustainable return to work outcomes and give the VWA an internal benchmarking tool.

For 2008, the VWA survey indicated that the sustainable return to work rate was 78.3%, up from the 75.8% reported for 2007 and from the 75.5% reported for 2006. The rate was higher among self-insurers at 84.1%, which had also improved from 82.9% in the previous year.

Overall, government employers had a return to work rate of 82.5%, large employers15 had a rate of 79.9% and small employers16 had a rate of 75.5%, all improved from 2007. The differentates may reflect the fact that larger employers (including government employers) generally have greater capacity and resources for providing suitable employment for injured workers.'[32] (Our underlining)

Of the employing businesses Australia wide in June 2011, 739,312 (89.5%) employed less than 20 employees. This comprised 508,674 businesses with 1-4 employees and 230,638 businesses with 5-19 employees. There were also 81,006 businesses with 20-199 employees and 6,071 (<1%) businesses with 200 or more employees.[33]

Only 1% of employees in the Comcare scheme work for an employer that employs less than 100 FTE employees.

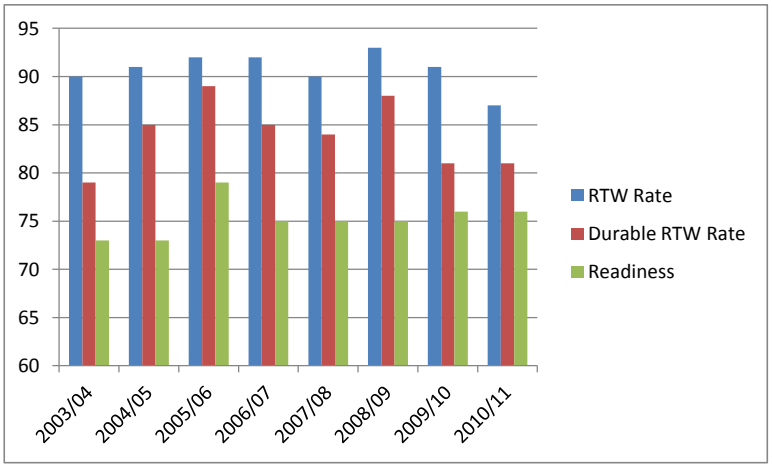
[31] Op cit RTW Monitor 2010/11
[32] Op cit Accident Compensation Act review
[33] ABS, Cat No. 8165.0 - Counts of Australian Businesses, including Entries and Exits , Jun 2007 to Jun 2011

Table 4.3 SRC Act employers by size as at 30 June 2011

Employer size		Premium payers		Licensed self-insurers		Scheme	
		Number	% of total	Number	% of total	Number	% of total
Small (less than 100 FTE employees)	Employers	72	37	0	0	72	32
	FTE employees	2000	1	0	0	2000	1
Medium (100 to 499 FTE employees)	Employers	60	31	4	14	64	29
	FTE employees	16 000	7	1000	1	17 000	4
Large (500 or more FTE employees)	Employers	62	32	25	86	87	39
	FTE employees	197 000	92	167 000	99	364 000	95
All employers	Employers	194	100	29	100	223	100
	FTE employees	215 000	100	168 000	100	383 000	100

Source: Compendium of OHS and Workers' Compensation Statistics, December 2011, SRCC

The chart below, again using the information provided in the RTW Monitor, details RTW performance of the Comcare scheme since 2003/04. Both the headline measures of the RTW Rate and the Durable RTW Rate have deteriorated since the changes made to the scheme by the Howard Government took effect in April 2007.



While a speedy return to work is the optimum goal following work injury related absences, return to any work or indeed the work that injured is illogical.

58% of Comcare injured workers surveyed for the 2010-11 RTW Monitor reported having had a pervious workers' compensation claim and 44% had had time away from work due to these claims. Return to work should only ever be a safe return to work.

The return to work performance of Comcare could be improved.

We believe that the return to work rate the Comcare scheme could be enhanced with the establishment of a Return to Work Inspectorate. The RWT Inspectorate should be adequately staffed and should promote and ensure compliance by employers with their return to work obligations and the obligation to provide injured workers with suitable safe employment.

Just like the Victorian RTW Inspectorate the Comcare RTW Inspectorate should also provide *'advice and information to assist employers to meet their obligations and by enforcing the law.'*[34] This would ensure best practice is shared across the jurisdiction.

Compensation to Injured Workers

In 2009-10 Comcare covered 3.6% of Australian workers eligible to receive workers compensation. This places Comcare 6th in size of worker coverage for Australia's 10 main workers compensation systems.[35]

Summary of key jurisdictional data, 2009–10

Jurisdiction	Serious claims	% of claims	Employees	% of employees	Hours ('000)	% of hours
New South Wales	43 950	34.5	3 089 100	30.5	5 201 294 000	30.9
Victoria	23 990	18.8	2 535 200	25.1	4 142 433 000	24.6
Queensland	29 380	23.0	1 892 100	18.7	3 115 369 000	18.5
Western Australia	12 330	9.7	1 070 500	10.6	1 821 529 000	10.8
South Australia	8 850	6.9	710 400	7.0	1 134 274 000	6.7
Tasmania	3 160	2.5	205 300	2.0	318 203 000	1.9
NT	1 340	1.1	112 900	1.1	198 732 000	1.2
ACT	1 710	1.3	130 600	1.3	231 734 000	1.2
Comcare	2 720	2.1	364 400	3.6	652 131 000	3.9
Seacare	190	0.1	4 500	0.0	20 240 000	0.1
Australian Total	**127 620**	**100**	**10 115 100**	**100.0**	**16 810 366 000**	**100**

Source: Safe Work Australia, Comparative Performance Monitoring Report, 13th Edition, October 2011

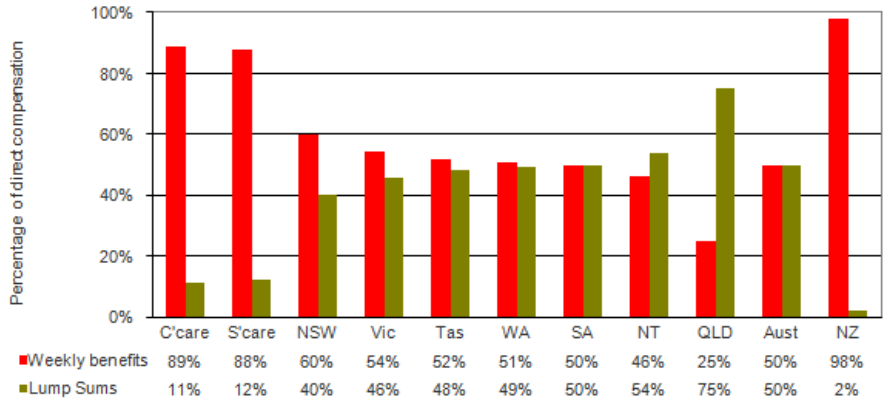
[34] http://www.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/worksafe/home/returning+to+work/rtw-information-for-employers/return-to-work-inspectors

[35] During 2009-10 Comcare rated 7th for % of claims in Australia.

Comcare however is significantly different to every other workers compensation scheme, save for Seacare, in the manner in which compensation is dispersed to injured workers.

$89 out of every $100 paid to injured workers in the Comcare scheme was paid as a weekly benefit. The Australian average is $50 out of each $100 paid.

Direct compensation payments by type and jurisdiction, 2009–10



Source: Safe Work Australia, Comparative Performance Monitoring Report, 13th Edition, October 2011

At 30 June 2011, there were approximately 383,000 FTE employees covered by the SRC Act – 215,000 from premium payers and 168,000 from self-insurers.[36]

Table 4.1 Australian and ACT Government premium payers by industry as at 30 June 2011

Industry	Number of employers	Total FTE employees	% of total FTE employees
Public administration and safety	120	158 000	74%
Public administration	*114*	*128 000*	*60%*
*Defence**	*2*	*22 000*	*10%*
Public order, safety and regulatory services	*4*	*8000*	*4%*
Professional, scientific and technical services	25	14 000	7%
Education and training	5	11 000	5%
Financial and insurance services	11	8000	4%
Health care and social assistance	9	9000	4%
Information media and telecommunications	4	6000	3%
Transport, postal and warehousing	4	6000	3%
All other industries	16	3000	2%
All industries	194	215 000	100%

[36] Compendium of OHS and Workers' Compensation Statistics, December 2011, SRCC

Table 4.2 Licensed self-insurers by industry as at 30 June 2011

Industry	Number of employers	Total FTE employees	% of total FTE employees
Financial and insurance services	7	56 000	34%
Transport, postal and warehousing	10	51 000	30%
Information media and telecommunications	3	39 000	24%
Construction	3	8000	5%
Manufacturing	2	5000	3%
All other industries	4	8000	5%
All industries	29	168 000	100%

Source: Compendium of OHS and Workers' Compensation Statistics, December 2011, SRCC

Adding these totals together and comparing the percentage of Full Time Equivalent Employees (FTE) with the Australian annual average in 2011 of FTE per industry reveals the distinct Comcare worker profile.

	Industry	Australia (% FTE)[37]	SRC Act (% FTE)
1	Electricity, gas, water and waste services	1	0
2	Rental, hiring and real estate services	2	0
3	Information media and telecommunications	2	12
4	Arts and recreation services	2	0
5	Mining	2	0
6	Agriculture, forestry and fishing	3	0
7	Administrative and support services	4	0
8	Wholesale trade	4	0
9	Financial and insurance services	4	17
10	Other services	4	0
11	Transport, postal and warehousing	5	15
12	Public administration and safety	6	41
13	Accommodation and food services	7	0
14	Education and training	8	3
15	Professional, scientific and technical services	8	4
16	Manufacturing	9	1
17	Construction	9	2
18	Retail trade	11	0
19	Health care and social assistance	12	2

[37] Labour Force, Australia, Detailed, Quarterly (cat. no. 6291.0.55.003).

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While it may be expected that workers classified as working within the Public administration and safety or the Financial and insurance services industry classifications may incur injuries of the type that warrant weekly payments only, we note that these classifications make up only 68% of FTE covered by the SRC Act.

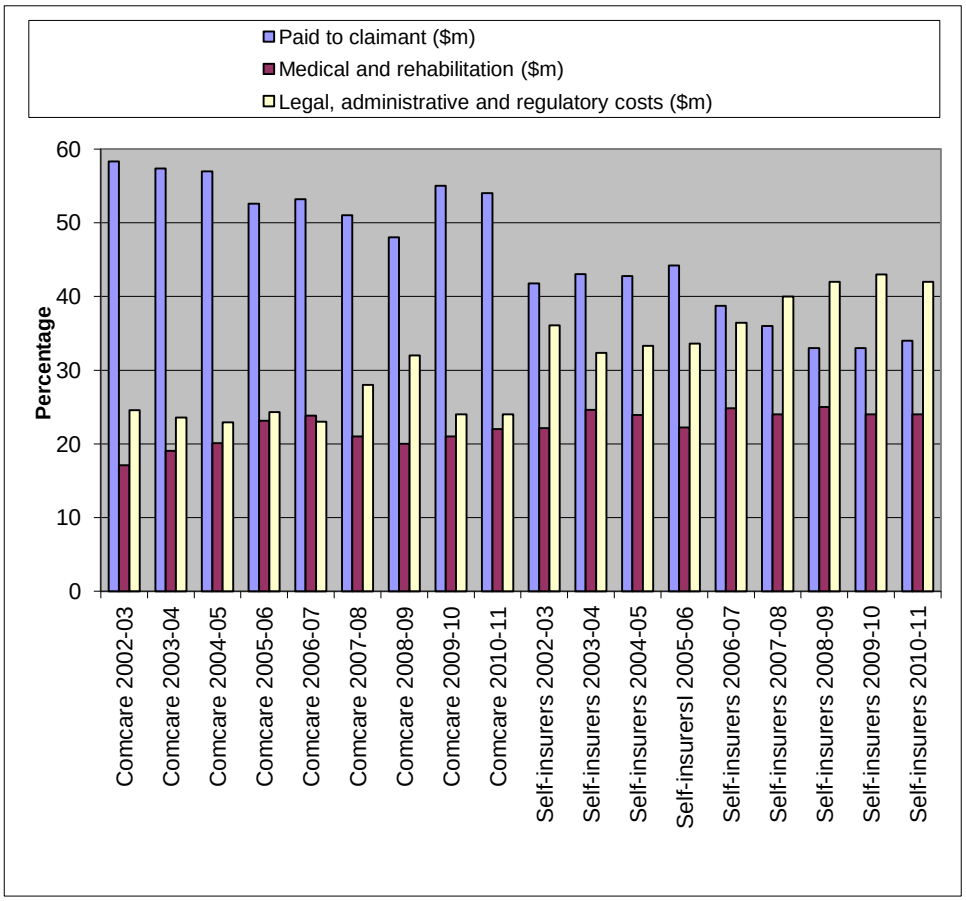
We would expect that the remaining 32% of FTE covered by the SRC Act would fit an injury profile closer to the Australian average but the direct compensation figures cited above indicated that this is not the case.

It is detailed in the 2010-11 SRCC Annual Report that in 2009-10 premium paying agencies accepted 3,216 claims and self-insurers accepted 5,673 claims. We note that in 2009-10, $158million was paid to claimants of premium paying agencies, while $44.7million was paid to claimants of self-insurers.

	2009–10			2010–11			
	Premium paying agencies	Licensees	Scheme	Premium paying agencies	Licensees	Scheme	Scheme % change 2009–10 to 2010–11
Full-time equivalent (FTE) employees	210 933	162 725	373 658	213 007	167 227	380 234	2%
Claims received	3954	6613	10 567	3898	6505	10 403	–2%
Claims accepted	3216	5673	8889	3389	5531	8920	0%
Claims accepted per 1000 FTE employees	15.2	34.9	23.8	15.9	33.1	23.5	–1%
Reconsiderations decided	1251	980	2231	991	995	1986	–11%
AAT appeals received	498	491	989	395	508	903	–9%
Paid to claimants ($m)	158.0	44.7	202.8	163.7	50.4	214.2	6%
Medical and rehabilitation ($m)	61.8	32.3	94.1	67.0	35.0	102.1	8%
Legal, administrative and regulatory costs ($m)	68.2	57.8	126.0	72.1	61.4	133.6	6%
Total ($m)	288.0	134.8	422.8	302.9	146.9	449.8	6%

Source: SRCC Annual Report 2010-11, Page 30

Using the above figures and including the figures report by the SRCC since 2003-04, we have determined the proportions paid to claimants, on medical and rehabilitation services and on legal and administrative costs for both premium payers and self-insurers.:



Since 2007-08 (which coincides with the final self-insurance influx), self-insurers have expended more on legal, administrative and regulatory costs than they have on payments directly to injured workers.

In our submission to the Comcare review in 2008 we made the comment that, *'On the face of it, it appears that self-insurers are more willing to challenge injured workers claims for compensation and are more willing to force workers to utilise the costly process of the AAT to resolve disputes'*.[38]

We consider is perverse that a scheme established to compensate injured workers could proportionally spend more on legal and administration costs than is spent compensating workers.

[38] Australian Council Of Trade Unions Submission to the Comcare Review, February 2008

The financial framework of the Comcare scheme

Self-Insurer Insolvency & Employee Protections

Since the last comprehensive review of the Comcare scheme undertaken in February 2008, the Australian Economy, in contrast to Europe and the United States, performed strongly during the initial global financial crisis and again through the European sovereign debt crises. While overseas demand for Australian mineral resources has underpinned much of this growth, non-mining related industries continue to face constant pressure as a consequence of the strong Australian dollar resulting weak demand in key international markets.

Outside of the resources sector, the on-going effects of the global financial crisis are still being felt. The Australian Securities and Investment Commission (ASIC) have reported the highest levels of insolvencies since statistical records were introduced in 1999. In February 2012, over 1,123 businesses were placed into administration, 40% of which were court ordered liquidations. Of concern, 97% of corporate administrations returned only 11 cents in every dollar of debt[39]. Recent events such as cuts in interest rates by the Reserve Bank of Australia and the AU$55 Billion downturn in the ASX since August 2011, would indicate that that international financial woes are far from over.

In light of the above, the ACTU has concerns that the potential for *a large self-insurer to collapse is more than a theoretical possibility*[40]. While all state, territory and Commonwealth workers' compensation jurisdictions require self-insurers to have bank guarantees in place, state and territory workers compensation statutes also provide for nominal insurance for both premium payers and self-insurers in the event of a shortfall between the guarantee and any liabilities arising on insolvency.

Outside of bank guarantees mandated for under the SRC Act, it is questionable whether existing nominal insurance structures under the SRC Act address the issue of a self-insurer becoming insolvent.

Guthrie and Aurbach note that s.90C of the SRC Act, provides that Comcare will manage a fund out which all liabilities under the SRC Act for Commonwealth Authorities will be paid

[39] Australian Corporate Law – Reform or Evolution, Michael Adams {2012} ALRS 1, ALTA Law Series.
[40] Workers' Compensation Self Insurers in Australia: Insolvency & Worker Protection, Robert Guthrie & Robert Aurbach, Insurance Law Journal 24, (2010 21/1)

by Comcare and in the event of a shortfall, the Commonwealth shall pay to Comcare such an amount as is necessary to meet any outstanding liabilities.

While this provision deals with the potential insolvency of a Commonwealth Authority, Guthrie and Aurbach question whether s.90C provides any form of indemnity for a self-insurer becoming insolvent.

Sections 108A(c) & (d) of the Act operate to shift liability from Comcare to the licensee and provides that the licensee is liable to pay compensation or other amounts under the Act in respect of claims for injury, loss, damage or death. Significantly, subsection (d) provides that *Comcare is not liable to pay compensation or other amounts under the act in respect of that injury, loss damage or death.*

It would appear that these sections operate to shift liability from Comcare such that the safety net provided by s. 90C does not apply to self-insured entities. It would follow then that in the event of self-insurer becoming insolvent a worker would have to rely on existing bank guarantees and re-insurance in order to recover. While bank guarantees may be sufficient to cover outstanding liabilities including employee entitlements, there may be significant delays by administrators in providing access to these entitlements[41].

The Commonwealth may therefore be the only workers' compensation jurisdiction that does not employ dual protections provided by bank guarantees in addition to nominal funds as provided for in all other workers' compensation jurisdictions[42].

An overview of protections afforded to workers in the event of a self-insurer becoming insolvent is provided at Appendix 4.

The ACTU submits that the SRC Act requires amendment insert express legislative provisions which guarantee and protect the entitlements of workers in the event of their employer defaulting on their obligations, comparable to every other state and territory workers' compensation scheme in Australia.

[41] *Ibid*
[42] *Ibid*

Comcare Scheme – Governance Arrangements

The Work Health and Safety Act 2011 (WHS Act) confers a range of operational functions on Comcare including enforcement and compliance, the collection of data and the promotion of WHS education and training. Additionally, Comcare are also required to foster a co-operative, consultative relationship between work health and safety duty holders and social partners. Day-to-day regulatory functions are the responsibility of Comcare. However, the SRCC have an important role in oversighting the activities of Comcare.[43]

Consistent with the composition of the SRCC, and Australia's obligations pursuant to ILO Convention 155 , the ACTU suggests effective scrutiny of Comcare's activities can only occur where all stakeholder views are taken into account. At best, functions conferred upon the SRCC by the WHS Act, provide for third part party oversight via the Minister in an advisory capacity only. The ACTU is of the view that this arrangement presents a major obstacle to effective scrutiny of the activities 'day-to-day' activities.

The ACTU recognises the role and function of the SRCC and sees no merit in any future changes to its existing structure, composition or role.

The ACTU recommends the establishment of tripartite consultative body to directly oversee Comcare's regulatory functions.

Setting premiums and regulatory contributions

Comcare OHS Regulatory Capability

The SRC Act at s.97E details that the Commission may prepare and issue to the CEO of Comcare written guidelines in relation to the determination by Comcare of premiums and regulatory contributions to be paid by Commonwealth authorities.

Comcare has an OHS Inspector/worker ratio in line with international guidelines, however Comcare does not have an even spread of employees across the nation:

[43] S.89B SRC Act 1988

Table 6: Count of location as at 30 June 2011 (ongoing and non-ongoing employees)

	Non-ongoing	Ongoing	Total
ACT	45	437	482
NSW	1	32	33
QLD	0	13	13
SA	2	8	10
VIC	23	98	121
WA	1	10	11
Total	72	598	670

Source: Comcare Annual Report 2010-11

We submit that the SRCC should have greater regard to the OHS regulatory capacity of Comcare when considering appropriate regulatory contributions.

Appendix 1

ACTU Congress2012 Policy

Secure Jobs. Better Future.

Rehabilitation and Compensation

Introduction

1. With extremely high levels of work-related injury, disease and death a shameful reality in Australia, Congress reaffirms its position that the rights of injured workers are of fundamental significance.

2. Congress notes extensive research, which documents that workers in insecure employment are less likely to know their compensation rights, less likely to exercise them and more likely to face negative consequences if they do.

3. Congress recognises that effective rehabilitation and return to work programs, as well as the provision of economic security through workers' compensation arrangements, are critically important to injured workers, their families and the wider community.

4. Accordingly, Congress reaffirms its position that after sustaining a physical or psychological work-related injury, all workers are entitled to comprehensive and quality rehabilitation services and to return to suitable and decent employment. Further, injured workers are entitled to compensation that restores them to the position they enjoyed prior to their injury.

5. Congress reaffirms its position that improvements and consistent arrangements are needed for all injured workers in terms of rehabilitation, return to work programs and compensation. While the long standing Congress aim of establishing a national scheme to deliver these outcomes remains valid, Congress acknowledges that this is not the only way to achieve this objective. As such, Congress affirms that achieving national consistency and world's best practice in these areas is of paramount importance.

6. Congress calls upon employers and governments to work with unions to provide rehabilitation services that achieve maximum recovery and prepare injured workers, wherever possible, to return to their previous position. In cases where this is not possible, then workers must be redeployed to the most suitable position in respect of their aptitude and capacity.

7. Congress calls upon governments to work cooperatively to ensure that existing rehabilitation services are properly accredited, coordinated and expanded so that they are accessible to all injured workers.

8. Congress recognises that in many cases the rehabilitation of injured workers does not facilitate their return to suitable and meaningful employment. As such, effective rehabilitation services must also deliver genuine retraining programs to meet this objective.

9. Congress believes that for rehabilitation services to be effective they must:

   a) Be implemented properly and without regard to the insurers' cost assessments;

   b) Ensure that employers health and safety management systems enable the immediate reporting of injuries;

   c) Return workers to their full capacity in their workplace, community, family and life;

   d) Return workers to safe, meaningful and durable employment as early as possible;

   e) Actively involve unions and their members in consultation and decision making;

   f) Have the commitment of the employer to the above aims; and

   g) Be independent of the employer or insurance company.

10. Congress supports the development by unions and employers of rehabilitation policies and programs that are based on the following principles:

   a) Voluntary participation by the injured worker;

   b) Respect for the worker's privacy;

   c) No loss of income while participating in the program;

   d) Eliminating or controlling the hazard that caused the injury;

   e) Consistency with the medical advice of the worker's own doctor;

   f) Employer cooperation in the provision of suitable duties, modified work stations and retraining or redeployment opportunities;

   g) Access to the advice and assistance of multi-disciplinary professional teams;

   h) The injured worker's right to choose their rehabilitation provider;

   i) That rehabilitation be provided to the injured worker at the closest possible location to their home or workplace;

   j) The development of appropriate and effective individual return to work plans;

k) An individual assessment of the injured worker and their workplace;

l) The adaptation of the workplace to suit the injured worker's capacity;

m) The development of an appropriate timetable for returning the injured worker to their previous position, or the most suitable alternative, that is consistent with the level of their capacity;

n) The involvement of union representatives and injured workers in decisions concerning alternative duties, rehabilitation programs and retraining; and

o) The commitment by all parties to provide an environment in the workplace that is supportive of the injured worker with adequate training of employees, supervisors and management in the rehabilitation policies and procedures adopted.

11. The employer must ensure that participation in a rehabilitation program or the rehabilitation program itself will not prejudice an injured person. Furthermore, an injured employee must not be dismissed or have their employment damaged because of a work-related injury or any resulting temporary impairment

12. In the event of dismissal of the injured employee or damage to their employment the applicable tribunal will be empowered to review and remedy the situation.

13. Regulatory authorities must enforce workers' rights to rehabilitation and to return to work.

14. All workers must be provided with a comprehensive statement detailing their entitlements regarding rehabilitation and return to work.

Workers' Compensation

15. Congress believes that nationally consistent workers' compensation standards must:

a) Be available to all members of the workforce regardless of the retirement age (including the self-employed) and provide compensation for all injuries that arise out of, or in the course of work, including:

- Travel and recreation breaks;
- All diseases caused by, exacerbated or accelerated by employment; and
- Be available upon the death of a worker to their dependants.

b) Be primarily an income replacement scheme that provides 100% of lost earnings. This must take into account any progression or promotion that would have been available to the worker had they not been injured. Unions oppose schemes that: do not recognise overtime and penalty rates; have a financial ceiling or a maximum period of payment; are inequitable and/or inadequate.

c) Be based not only on physical or psychological impairment, but also on an assessment of the potential of the injured worker to be re-employed. Factors such as the age, abilities, place of residency, language and literacy skills, and the experience of the worker must be considered in relation to the injury sustained.

d) Provide for the total cost of all medical, rehabilitation and other expenses including special aids, childcare, domestic assistance, motor-vehicle and house alterations incurred by the worker.

e) Provide lump-sum compensation for any permanent disability sustained including pain and suffering associated with the disability.

f) Ensure that unfettered common law rights for workers to sue their employer for negligence are enshrined in legislation in addition to other forms of statutory compensation.

g) Achieve the physical, social and psychological rehabilitation of injured workers, as well as attempting to equip them to return to their pre-injury employment. Where this cannot be achieved, the aim must be to provide genuine retraining to achieve meaningful and productive alternative employment.

h) Ensure that the employer provides suitable employment for injured workers, and in the absence of this, that the injured worker maintains full and ongoing benefits.

i) Ensure that the delivery of benefits is speedy, efficient and fair. Delayed payment and treatment will result in physical, psychological and financial hardship to injured workers.

j) Congress also notes the provision elsewhere in the Chemicals section of health and safety policy calling for recognition of occupational cancer by workers' compensation systems and the adoption of ILO Convention 121.

k) Provide for the establishment of Dust Disease Tribunals (based on the current NSW model) in all jurisdictions to administer the delivery of benefits to workers suffering dust diseases.

l) Ensure that the administration and funding of workers' compensation (except for the administration of dust disease benefits) is carried out by a single public body, which is controlled by a board or council comprising of equal numbers of government, union and employer representatives.

m) Provide an independent appeals tribunal that has the power to arbitrate on disputed claims. This tribunal should be cost neutral to the appellant.

n) Ensure the receipt of workers' compensation by a worker does not preclude them from accessing any social security benefit, to which a person in receipt of another type of income support, such as benefits from an insurance policy, would be entitled to receive. Further, a worker's superannuation or redundancy payment should not impact on the timing, or the amount of their compensation payment.

o) Ensure that every worker has access to a doctor of their choice and that if their doctor recommends medical treatment the worker can choose the medical provider.

p) Ensure that disputes over workers' compensation claims are dealt with expeditiously and with minimum impact on injured workers. Dispute settlement processes must be quick, accessible and low cost for workers.

Self-Insurance

16. Congress opposes self-insurance for employers as it generally limits access to benefits, compromises privacy, undermines the premium pool and discourages workers from exercising their rights. However, Congress recognises that self-insurance currently exists in all jurisdictions. Therefore, Congress believes that self-insurance should only be available to employers who have an exemplary record in health and safety and a demonstrated commitment to workers' rights. Further, self-insurance licenses must be automatically revoked in cases where there is a workplace death or serious injury.

17. Congress believes that the administration of workers' compensation by self-insurers must be conducted by arrangements that separate the insurer from the employer, in the same manner as the relationship between a private insurer and the employer as a client, to fully protect employee privacy.

18. Congress calls for workers to have access to an independent body which can review an employer's self-insurance status. Further, employers seeking to become, or to remain, self-insurers must be able to demonstrate that the majority of their employees genuinely favour this option.

Achieving National Consistency and World's Best Practice in Rehabilitation and Workers' Compensation

19. Congress reaffirms its position that the ACTU and unions must work towards the achievement of nationally consistent standards in rehabilitation and workers' compensation, which constitute a best practice scheme to be delivered by each jurisdiction.

20. The ACTU will:

- In consultation with TLCs and affiliates continue the development of best practice elements of a rehabilitation and compensation system to be used as the benchmark for national and state based negotiations and campaigning.

- Work with TLCs and affiliates to coordinate lobbying and activity at the State and other jurisdictional level to keep and raise standards in each jurisdiction.

- Coordinate a campaign at the national level in partnership with TLC's and affiliates in each jurisdiction to promote and win fairer workers' compensation laws and policy. The campaign will be properly resourced, with budgetary provision made for its effective implementation.

21. Congress calls on the Federal Government to return Comcare to its original function as the scheme applying to Federal public servants and to return all private sector participants to the applicable State or Territory run scheme(s).

22. The ACTU and unions commit to supporting injured workers and to ensure that education about rehabilitation, return to work arrangements and compensation issues, are included in training for delegates, health and safety representatives and union members.

23. Congress calls for improvements to be made in the form of:

    a) Comprehensive coverage of the work relationship, including on journeys to and from work;

    b) A return to a basis of 'no-fault' compensation for all workplace injury and diseases;

    c) Abolition of the illegitimate use of 'whole of body assessments', which act to reduce compensation and limit access to statutory lump-sum payments and common law remedies via legislated minimum thresholds;

    d) Introduction of genuine rehabilitation options, including full technical or tertiary retraining;

    e) Removal of time limits and step downs on weekly payments that effectively shift the injured worker onto social security benefits;

    f) Maximising the resources in a scheme by removing profit incentives to third parties, thus ensuring that benefits are distributed to workers; and

    g) Fast and effective conciliation and arbitration of any workers' compensation matter in dispute by an independent tribunal.

24. To properly achieve this aim, research needs to be undertaken to provide an injury profile for the entire Australian economy upon which an appropriate workers' rehabilitation, return to work and compensation package can be developed. Congress calls on the Federal Government to commission this research as a matter of urgency.

25. Congress calls on the Federal Government to establish an inquiry as a matter of urgency to examine the extent of cost shifting by workers' compensation schemes onto injured workers and government services, including the public health system and social security.

Appendix 2

Rehabilitation and Compensation for Injured Workers:

A Review of the Australian Schemes

August 2011

Executive Summary

The regulatory regimes that currently govern workers' compensation schemes in Australia are complex and vary in form and function. The mosaic that currently covers the eleven principle schemes–eight at the State/Territory level and three at the Commonwealth level–and includes different rules, depending on whether employees receive coverage through the scheme itself or through self-insured employers.

Where an employee works, who they work for, where they are when an injury occurs and the type of injury all affect the employee's ability to access workers' compensation benefits, and the level and type of benefits for which they may be eligible (including both financial benefits and medical and rehabilitation services).

The regulatory burden associated with this patchwork set of arrangements, as well as its inefficiency and potential to produce inequity, has long been recognised by governments, independent bodies and commentators. Discussion of the need to harmonise the structure and regulation of Australian workers' compensation schemes is not new. However, the national harmonisation of occupational health and safety laws has brought new attention to this issue; it is widely anticipated that Safe Work Australia will turn its attention to the harmonisation of workers' compensation regimes in the near future.

The aim of this Report is to provide an independent review of and commentary on several of the core elements of workers' compensation schemes in Australia, focusing on particular aspects of the regulatory structure in which they sit. We also searched for and reviewed available scientific evidence relevant to understanding 'best practice' in relation to these elements. The Report was written to assist the Australian Council of Trade Unions in formulating its policy positions ahead of harmonisation moves.

Importantly, the Report does not make comment or draw conclusions regarding the merits of harmonisation, nor does it attempt to estimate the financial costs of opting for particular approaches to benefits and entitlements.

A consistent finding through most Sections of the Report is that, despite a growing body of academic and other published literature relating to Australian workers' compensation schemes and outcomes of these schemes for incapacitated workers, there is remarkably little research evaluating the merits of alternative scheme arrangements. In the absence of rigorous empirical evaluations—in Australia or internationally—there is likely to be scant evidence of best practice to guide the harmonisation process. Rather, harmonisation debates are likely to be dominated by discussions about the logic of alternative scheme designs, anecdotal evidence, and experiential and impressionistic reports from jurisdictions about 'what has worked and what hasn't'. A crucial point of difference in these debates will be that, in assessing the merits of particular design choices, different stakeholders will place different weight on the importance of key aspects of scheme performance, such as efficiency, equity, cost, rates of return-to-work, sustainability, and coherence.

The Report identifies certain scheme features—including provision of medical treatment, financial compensation for injury and/or death, rehabilitation services and alternative dispute resolution pathways—as being present in all schemes. On the other hand, substantial inter-scheme variation is shown in the levels of benefits available and mechanisms for delivering available benefits. Substantial differences are also evident in areas such as coverage for injuries sustained while travelling to/from work, access to benefits through the common law, and provision of compulsory superannuation contributions for 'long-term' injured/incapacitated workers. The Report concludes that these forms of variability are intrinsically undesirable because they have the potential to create gaps in coverage for some workers or produce disparate outcomes for incapacitated workers, depending on where in Australia workplace injuries occur.

Research examining workers' experiences in workers' compensation schemes, particularly their perceptions and levels of satisfaction, is very limited in scope. Most of the published literature to date has focused on mapping objective measures, such as workers' physical and financial outcomes, not subjective measures. What research there is in this area suggests that claimants in compensation processes want to be fully informed about the process; that claimants prize transparency and clear, open and ongoing communication; and that good communication has considerable potential to alleviate pressures felt by claimants moving through the claims and recovery process. There is also some evidence that active participation by claimants in the

management of their injury and return-to-work are valued by claimants, and may result in better physical and mental outcomes for claimants.

Delivering benefits to impaired or incapacitated workers and facilitating their return to the workplace are the core functions of any workers' compensation system. As this Report shows, there are marked disparities levels of access to benefits across the nine principal schemes. Inter-scheme variation was evident with respect to:

- access to medical treatment and rehabilitation services
- return-to-work obligations
- incapacity payments, and
- access to common law damages and lump sum payments (including family members access following workplace fatalities).

The statutes that underpin the principal schemes are the source of the majority of these disparities, although judicial interpretations of the relevant provisions have also played a role. The result is that two workers who sustain identical injuries but are covered by different schemes may have access to quite different levels of benefits.

Identifying what constitutes 'best practice' in relation to each of these scheme components, however, remains a challenge. The debates will often be characterised by the fact difference voices will place different weight on various aspects of scheme performance.

The Report also examines the range of dispute resolution mechanisms used by the leading Australian schemes. The goals were to identify which of these are best placed to achieve to the 'fairest and most effective outcome[s] for workers'. While each scheme has mandated dispute resolution processes as a core component of their claims process, there is enormous variation in relation to the types of procedures in place and the way in which they are integrated into the schemes. Even where performance data was available (e.g. proportions of claims with disputes, average time to resolution of disputes) the underlying differences between the schemes means that inter-scheme comparisons using such data are fraught. In other words, they are unreliable indicator of 'best practice'. The limited academic analysis on what constitutes best practice' when coupled with the limited qualitative and quantitative basis for establishing benchmarks, means that concept of 'best practice' is elusive and is likely to turn on subjective preferences. The Report notes, however, a series of highly valued outcomes that most balanced studies of workers' compensation regimes consider as

standard hallmarks of a well-functioning scheme; they include independence, timeliness, transparency and adequate financing of the dispute resolution processes and pathways.

The nine principle schemes in Australia allow for self-insurance arrangements. Again, however, there are wide differences in the way each jurisdiction has approached regulation in this area. The Report documents differences in the eligibility requirements for an applicant employer, the ongoing oversight role of the regulator, the financial and prudential and OH&S requirements imposed on the applicants, and the requirements for applicant employers to consult with employees. A review of the literature reveals virtually no rigorous empirical comparisons of the performance of self-insuring and non self-insuring employers, and no investigations of the merits of self-insurance arrangements more generally. Nonetheless, the Report concludes that a 'commonsense view' of best practice dictates that self-insurance carve-outs in any scheme demand adequate safeguards, including monitoring and compliance checks.

The Report highlights the heterogeneous nature of the current workers' compensation landscape. The diversity in approaches, in terms of statutory requirements and practical operation, are considerable. While much variations is generally undesirable, it is valuable for present purposes because it aids in the search for an optimal set of arrangements. This current inter-scheme variability shows policy makers a range of options exist and provides a sense of how well each is working.

Appendix 3

ACTU

POLICY REVIEW OF COMCARE'S PERMANENT IMPAIRMENT GUIDE

SUBMISSION OF AUSTRALIAN COUNCIL OF TRADE UNIONS - 24 APRIL 2009

Introduction

The ACTU is committed to ensuring the availability of equitable compensation to injured workers who have sustained impairments as a result of employment. The requirement for an equitable and adequate impairment payment scheme is critical particularly due to the changing injury profile of Comcare as a result of the growth of national self insurance.

The compensation payable for impairment is currently mediated by the combined effect of assessment methods for the determination of a level of impairment, the exclusionary thresholds and the rates of compensation which specific impairments attract.

Any review of the Comcare Permanent Impairment Guide must encompass not only assessment methods but the combined effect of all factors in the determination of the amount payable as compensation.

Any assessment of the adequacy of the Comcare guide and the resultant rates of compensation must involve a comparison of the amounts payable nationally for impairments. This assessment must not only have regard to the various maximal levels of compensation payable in each jurisdiction but to the general distribution of the level of impairment payments.

The ACTU considers that the only accurate basis upon which a comparison can be determined is to create a schedule of the most common impairments sustained by workers and to determine the comparative levels of compensation payable for those specific impairments in each Australian jurisdiction. This would require the development of the schedule of perhaps 20-30 most common pathologies giving rise to impairment. This in turn would enable comparative assessments to be undertaken using the first and second editions of the Comcare guide and the various additions of the AMA guides.

When a schedule of common impairments has been developed it would enable study of individual impairment assessment based on multiple assessments from a single medical examination to be developed.

The development of an adequate Comcare guide for the assessment impairment would also require a careful analysis of the effect of the movement of Comcare from the first edition to the second edition of its Guide. Whilst some data is available in respect of the total amount paid for impairment prior to and after the change, more detailed data is necessary to examine the effect of the change. The data would require disaggregation into injury years and specific injury types. An analysis based on a schedule of most common impairment types would also be necessary.

We raise the following issues with regard to the Comcare permanent impairment regime:

1. Thresholds in Act

We note that to establish an employers liability for an injury or impairment resulting from that injury, a worker must satisfy Comcare or a licensee of the existence of a permanent impairment and that this condition was work related. A minimum threshold of 10% whole person impairment for the most common conditions is an unnecessary further burden on a worker who has already established their injury and impairment is a result of their work. The imposition of a threshold on top of Guides, which are specifically designed to exclude any rating for minor injuries, results in the denial of an impairment payment for significant impairments.

Permanent impairment benefits should apply for all permanent impairment that has occurred as a result of a worker's employment.

2. Quantum

We note that only Western Australia and the ACT have lesser maximum permanent impairment benefits than Comcare[44]. We also note that the Accident Compensation Act Review Final Report, on the Victorian system, recommends to the Victorian Government that the maximum permanent impairment benefit available under that scheme is increased to $484,830[45]. If this recommendation is adopted by the Victorian government, the Victorian scheme will have the highest maximum permanent impairment benefits of all Australian jurisdictions and will have a maximum benefit $275,035 or 230% greater than the maximum Comcare benefit.

3. Range of Rating in Guides

In a number of key areas, such as spinal injuries, the current 2nd Edition Guide fails to provide an assessment of 10% forcing an assessor to determine whether the injured worker meets 8% or 13% (lower back), or 8% or 18% (upper back and neck), with nothing in between. The current 2nd Edition Guide also regularly sets unachievable impairment levels and sets criteria that are virtually impossible for an injured person to meet.

4. Basis for Guides

We note the considerable national and international criticism of the AMA Guides for the evaluation of permanent impairment. We note on Page 5 of the 5th Edition of the AMA Guides the following: *'Most impairment percentages in this fifth edition have been retained from the fourth edition because there are limited scientific data to support specific changes. It is recognized that there are limited data to support some of the previous impairment percentages as well. However, these ratings are currently accepted and should not be changed arbitrarily. In this edition, some percentages have been changed for greater scientific accuracy or to achieve consistency throughout the book.'*

While the AMA Guides attract significant criticism, they constitute an acceptable basis for the development of satisfactory impairment assessment methods in Australian compensation jurisdictions. The AMA Guides are not a static document, hence the recently released 6th Edition and subsequent errata. Similarly where the AMA guides fail to adequately assess impairments it has been possible to modify or supplement those guides to ensure an equitable result (see the Victorian modification of the fourth edition AMA guides for the assessment of infectious diseases and industrial asthma).

Any guides adopted by Comcare should be the subject of constant stakeholder review and the adoption of Comcare Guides should be accompanied by the establishment of a Comcare

[44] Policy Review of Comcare's Permanent Impairment Guide, Page 8

[45] Accident Compensation Act Review Final Report, August 2008, Table 7.4, Page 257

tripartite working group to discuss, consider and recommend changes to the Guides to take account of the latest medical knowledge or the Australian context.

5. Common Law

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 regard 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 while maintaining financial surety.

The maximum amount of award available under common law should equal the combined maximum amount available under s24 and s27 of the Act.

6. Interaction with Common Law

While actions under common law can take considerable time to progress through the Court system, this should not deny injured workers' access to compensation for their permanent injury or incapacity, or for any non-economic loss. Workers' should be able to pursue a common law action while con-currently seeking permanent impairment compensation. If successful in their common law case the permanent impairment amount should then be deducted from the common law award.

7. Assessor Training/Accreditation

We note that the AMA guides readily acknowledge that not every type of injury or incapacity is covered by the AMA Guides. Page 2 of the 5th Edition Guides details that: *' . . . the 5th Edition includes most of the common conditions, excluding unusual cases that require individual consideration.'*

For consistency of decisions and so that over time a local body of knowledge can be gained on Guide interpretation and deficiency issues from a medical profession position, permanent impairment assessments should only be made by Doctors trained and accredited by Comcare to carry out such assessments. Further Comcare should provide, at low cost, training in the interpretation and use of the guides to workers' compensation and personal injury lawyers.

8. Dispute Settlement

We note that disputes regarding permanent impairment ratings are dealt with via the AAT and subsequently the Court system. There is no role for medical professionals in dispute settlement of matters that invariably involve purely medical questions. There should be an ability for dispute adjudicators to seek the views of medical experts.

Further Comcare disputes take an exorbitant amount of time to resolve. In 2006-07 only 29% of Comcare disputes were resolved within 6 months, compared to the Australian average of 74.4% of disputes resolved within 6 months. The Comcare disputes resolution process needs to be changed so that it is simple, accessible and low-cost for our members.

9. Stakeholder Reference Group

A Stakeholder Reference Group comprising equal numbers of the social partners should oversee the work of the Comcare Permanent Impairment Project. The SRG should review the issues raised in the current round of consultations. The Director of the Project should liaise with the SRG regarding the development of the Options Paper. The SRG should review the development of the final report of the project at each stage of its development and the SRG should be fully involved in the development of the Recommendations of the Final Report.

While permanent impairment guides are complex and use specific medical and legal concepts, the SRG members should be allowed to seek the involvement of their medical and legal advisors the deliberations of the SRG.

The SRG should continue on following the completion of the Project as submitted in 4. Above

Appendix 4

Jurisdiction	Bank Guarantee	Nominal Insurance
Commonwealth **(Safety Rehabilitation & Compensation Act 1988)**	Yes, bank g/tee to 95th percentile subject to minimum bank g/tee $2.5million	Yes, s.90(C) SRC Act 1988 - For **premium payers only** . Comcare will manage a fund out of which all liabilities will be paid. In the event of a shortfall, the Cth shall pay to comcare an as is necessary to meet outstanding liabilities
Victoria **(The Accident Compensation Act 1985)**	Yes, bank guarantee to 150% of potential liabilities	s.55 Workers Compensation Act provides for an indemnity scheme where employer becomes is uninsured or has been wound up.
Australian Capital Territory **(Workers' Compensation Act 1951)**	Yes, bank guarantee to $750k, or the equivalent of 130% of outstanding claims together with a policy of policy of reinsurance at a prescribed level	ss 166—179 default insurance fund assumes liabilities of employers who become uninsured or become insolvent
New South Wales **(Workers' Compensation Act 1987)**	Yes, s.213 requires proposed self insurer to pay either by way of security or bank g/tee equivalent to tariff premium and prudential margin of 50%	In the event of a self-insurer becoming insolvent a worker can claim against nominal insurer per s.140 per Worker Compensation Act 1987
Queensland **(Workers' Compensation and Rehabilitation Act 2003)**	Yes, s. 85 unconditional bank g/tee or cash deposit of 150% of estimated claims	s.99 Worker's Compensation & Rehabilitation Act 2003 provides that Workcover replaces the self-insurer for any proceedings and assumes obligations of self insurer
Northern Territory **(Workers' Compensation Act 2008)**	Yes, to 150% of self-insurer liabilities	s.167 provides that the scheme will assume the liabilities of any employer who fails to make payments of compensation due to default, death or insolvency.
Western Australia **(Workers' Compensation and Injury Management Act 1981)**	Yes, 1 million bond and payment of a percentage of notional premium at a min of $40K.	In first instance claims are made against securities provided. If employer cannot pay within 30 days a worker can then claim against the General Account of Workcover WA
South Australia **(Workers' Compensation Act 1986)**	Yes, bank g/tee equal to the amount of outstanding liabilities by multiplier of 1.75	s.50(2) provides that the scheme becomes the insurer of last resort. The scheme assumes liabilities of any self insurer which becomes insolvent