



Submission No. 32 (c)

Comcare

AUSTRALIA'S *safest* WORKPLACES

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Ms Cheryl Scarlett
Secretary
Standing Committee on Employment and
Workplace Relations
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Ms Scarlett

Thank you for your letter of 26 March 2003, in which you invited comments on a submission to the House of Representatives' Inquiry into Aspects of Workers' Compensation Schemes by the Superannuated Commonwealth Officers' Association Inc (SCOA).

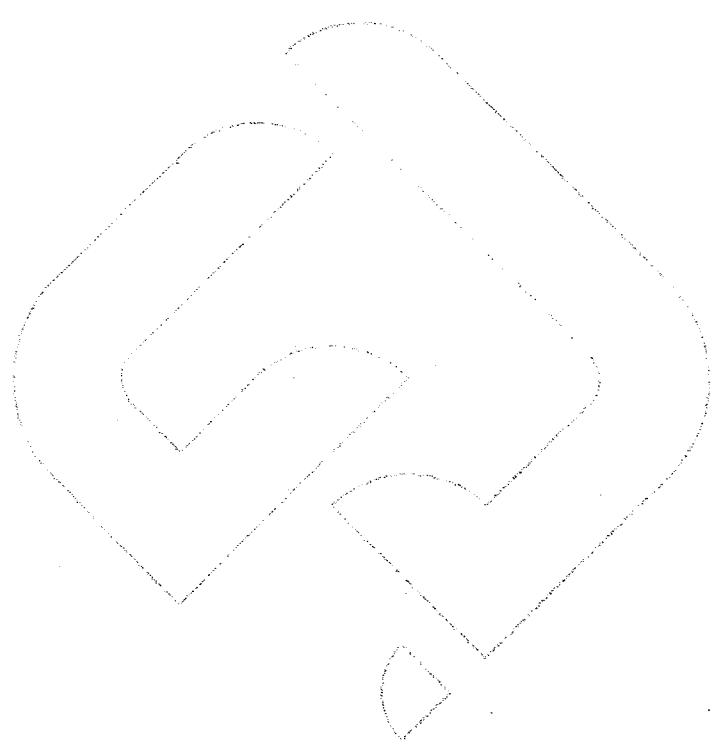
The attached paper addresses the various issues raised in SCOA's submission.

Yours sincerely


BARRY LEAHY

12 May 2003

(Enc.)



COMCARE'S RESPONSE TO SCOA'S SUBMISSION TO HOUSE OF REPRESENTATIVES STANDING COMMITTEE INQUIRY INTO ASPECTS OF AUSTRALIAN WORKERS' COMPENSATION SCHEMES

1. In its submission to the Inquiry, the ACT Branch of SCOA included comments in the following areas:
 - operational efficiency issues at the Commonwealth level;
 - appropriate application of relevant legislation and impact on employer obligations and client rights;
 - desirability of regular compliance auditing of compensation administration by ANAO; and
 - the specific issue of the maintenance of workers' compensation, superannuation and related rights for fire fighters previously transferred to the ACT from NSW.
2. Comcare's comments are provided below under each of the above headings.

Operational efficiency issues

Correct levels of compensation

3. Comcare must rely upon information made available to it by Commonwealth agencies. If this information is inaccurate then under and over-payments of benefits to employees will occur. However, training is being provided to agency staff by Comcare experts as part of an overall personnel training program run by the Department of Employment and Workplace Relations. Individual support is also offered outside this program.
4. Ex-employees, with a continuing entitlement to incapacity payments, now have their Normal Weekly Earnings (NWE) figures updated with reference to the ABS Wage Cost Index on 1 July every year. The first update, which was introduced via an amendment to the legislation, occurred on 1 July 2002.
5. Considerable effort was made to ensure that information relating to those employees who were affected by the index was up to date before the index was applied. However, as a result of changes to the APS, the industrial relations environment and privatisation of some former Government agencies, some employees have been left with no comparable 'class of employees' by which NWE increases could be maintained.

6. Comcare recently wrote to all agencies, requesting copies of certified agreements to enable a full cross check to be done in relation to those employees who have had no updates for some years. A match to the relevant ex-employees is made and outstanding updates applied, where possible. Where this is not possible, Comcare is following up with agencies on an individual basis. This is a time consuming activity and will take many months to complete. At the same time, individual claimants are encouraged to provide relevant information to support his process.
7. As regards the clarity of communication with claimants, Comcare has a range of letters which are sent out automatically to advise claimants of the amount which has been determined as incapacity payments. These letters are quite brief and do not supply the detail on how the amount is calculated.
8. In the last edition of *Comcare News* (i.e. a periodic newsletter sent to all ex-employees), an information sheet was included to explain in simple terms the calculations used for incapacity for all those covered by the transitional provisions of the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act). This information sheet has been available on our web-site for the last 6 months. Claims managers sometimes also include the information sheet in correspondence. A booklet covering the entitlements of employees covered by the transitional provisions of the SRC Act is currently in development and is expected to be available later this financial year. Comcare is well aware of the need for quality communication with all its clients and regularly reviews ways to improve its communication strategy.
9. At the time of the introduction of the index, affected employees received a letter advising them of the change a number of months in advance, the first edition of *Comcare News* addressed the change, and an automatically generated letter advised them when the index had been applied.
10. As regards administrative records relating to some pre-1988 cases having been lost "in the mists of time", Comcare will follow up any request for missing documentation to the best of its ability. However, our record keeping systems are well developed and both paper and IT based and established bearing in mind the relevant privacy requirements.

Tax issues and interest forgone

11. As a matter of course, Comcare endeavours to provide accurate advice in relation to taxation matters as they relate to workers' compensation payments. However, it is acknowledged that taxation issues can be

complex and it is always Comcare's aim to avoid any underpayment or overpayment situations.

12. On the question of the possible payment of interest to claimants affected by underpayments, it should be emphasised that Comcare is bound by the legislation. Currently, statutory provision exists for interest to be paid only in connection with the late payment of a permanent impairment entitlement. The question as to whether the SRC Act should be amended to provide for interest to be paid in respect of the late payment of incapacity benefits is a matter for government.

Application of relevant legislation

13. SCOA suggests there have been difficulties over questions as to which workers' compensation legislation should be applied. However, Comcare's view is that there has not been any systemic difficulty in Comcare or other determining authorities under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) applying the correct Commonwealth workers' compensation legislation. That is not to say that some SCOA members may have questioned the actual calculation of certain benefits they received under the SRC Act. The SRC Act governs the payment of all workers' compensation claims for Commonwealth employees. This coverage includes claimants who were injured prior to the commencement of the SRC Act provisions on 1 December 1988.

Injuries suffered on or after 1 December 1988

14. The benefit provisions of the SRC Act commenced on 1 December 1988 and on the same date the *Compensation (Commonwealth Government Employees) Act 1971* (the 1971 Act) was repealed. The SRC Act provided a number of increased benefits for injured employees, and all employees injured on or after 1 December 1988 have their claims assessed under the provisions of the SRC Act. However, the SRC Act also needed to make provision for the continued payment of benefits to those employees who had been injured prior to 1 December 1988.

Transitional Provisions under SRC Act

15. The SRC Act contains transitional provisions that provide for:
 - the SRC Act to apply to an injury, loss or damage suffered by an employee, whether before or after 1 December 1988;
 - a person to be entitled to compensation under the SRC Act in respect of an injury, loss or damage suffered before 1 December 1988 if compensation was, or would have been, payable to the person in respect of that injury, loss or damage under the 1971 Act (and earlier Acts); and

- injuries suffered before 1 December 1988 to be assessed under the 1971 Act (or other earlier legislation).
16. This means that an employee who was injured prior to 1 December 1988 has his or her entitlement determined under the provisions of the earlier legislation (usually 1971 Act), up until 1 December 1988 (when the provisions of the SRC Act take effect). The SRC Act also contains some special transitional provisions covering ex-employees who were in receipt of weekly benefits prior to the commencement of the SRC Act. There is no confusion over the application of the SRC Act to employees who were injured before or after its commencement, although there may be some disagreement on the benefit to be applied in individual cases. These are, of course, issues Comcare will happily review on a case by case basis.

Former Northern Territory Employees and Administrative Appeals Tribunal (AAT) decision in Andrade and Department of Health and Community Services (NT) 19 ALD 99

17. SCOA refer to the case of a former Northern Territory police officer and the AAT decision in *Andrade* as evidence of difficulties in establishing "the appropriate legislative provision". Prior to the NT gaining self-government, Territory employees were Commonwealth employees and came under the 1971 Act for workers' compensation purposes. Accordingly, any Territory employee injured prior to self-government had their claim determined under the 1971 Act. In accordance with the transitional provisions of the SRC Act any ongoing entitlement to benefits are now determined under the SRC Act.
18. When the NT initially gained self-government it did not have any workers' compensation legislation in place to cover its own employees. Accordingly, the Commonwealth government agreed to amend the 1971 Act to allow coverage of NT government employees to continue, but with the NT government being responsible for payment of the costs of any injuries. The 1971 Act was amended by the insertion of sections 7A and 7B. Section 7A provided that, on or after 1 July 1978, a NT government employee was essentially deemed to be a Commonwealth employee. Section 7B provided that, notwithstanding that employees were deemed to be Commonwealth employees, the NT government was liable to pay the costs determined under the Act for those employees.
19. This situation continued until 1 January 1987 when sections 7A and 7B were repealed, and from that date NT government employees were covered by the NT *Work Health Act 1986*. The AAT decision in *Andrade* was made in relation to a NT government employee who was injured after self-government, yet prior to the repeal of sections 7A and 7B.

20. When the SRC Act was passed in 1988 particular reference to the special status of the NT government employees covered by section 7A was not made. At the time the SRC Act was passed it was thought the transitional provisions of the 1988 Act were sufficiently broad to cover all employees who had an entitlement under the 1971 Act, and the SRC Act provisions would apply to those employees where relevant.
21. In *Andrade* the AAT had to decide whether it had jurisdiction to hear an application, which had been lodged prior to 1 December 1988. After consideration of the matter, including the application of the *Acts Interpretation Act 1901*, the AAT held it did have jurisdiction to hear the application. But it also commented that as the NT government was not deemed to be the Commonwealth in relation to its employees under the SRC Act, that Act could not apply to NT government employees.
22. Following the handing down of the AAT's decision in *Andrade*, in 1991 the SRC Act's transitional provisions were amended to clarify that any person who had an entitlement under the 1971 Act prior to its repeal, continued to have an entitlement to compensation under the SRC Act. This was given effect by the *Industrial Relations Legislation Amendment Act 1991*, which amended the SRC Act by inserting a new subsection 124(1A).
23. The 1991 amendment provided that a person is entitled to compensation under the SRC Act in respect of an injury, loss or damage suffered before the commencing day [1 December 1988] if compensation was, or would have been, payable to the person in respect of that injury, loss or damage under the 1912 Act, the 1930 Act or the 1971 Act. It removed any doubt that NT government employees covered by sections 7A and 7B of the 1971 Act, and who suffered a work related injury between 1 July 1978 and 30 December 1986 inclusive, are covered by the SRC Act.
24. Under section 7B of the 1971 Act, the NT government was liable to pay the compensation benefits awarded under that Act for its employees. However, when the SRC Act was passed and the liability to pay compensation fell on Comcare, no account was taken of the fact that there were in fact ex NT government employees who had been covered by the 1971 Act and whose compensation payments were being paid by the NT government. Although the insertion of subsection 124(1A) in 1991 had confirmed that these ex NT government employees were covered by the SRC Act, legislation to allow Comcare to recover the payments it makes to these employees from the NT government was not passed until 1 October 2001. As the Explanatory Memorandum to the 2001 amendment [i.e. new subsection 124A(1)] indicated:

“This item will include an additional transitional provision in the SRC Act to reflect an already existing administrative arrangement between the Northern Territory and Comcare.

New section 124A provides that the Northern Territory shall reimburse Comcare for payments of compensation made by Comcare to persons employed by the Northern Territory government during the period 1 July 1978 to 1 January 1987, and who were injured during that time."

25. The 2001 amendment put on a sound legislative basis an administrative practice that had been ongoing since the passage of the SRC Act. In itself it did not deal directly with the question of coverage of ex NT government employees. However, it supports the view that those ex NT government employees covered by section 7A of the 1971 Act should have their benefits determined under the SRC Act and not the repealed 1971 Act.

Need for regular ANAO compliance auditing

26. Comcare's claims management function is subjected to periodic internal audits. This is part of a highly developed management systems review and improvement program, which examines legislative compliance and also acknowledges best practice. In addition, Comcare reports its performance against a range of performance indicators to the Safety, Rehabilitation and Compensation Commission. As to the nature and extent of ANAO's audit process, Comcare is not in a position to set audit parameters for ANAO and this issue would best be taken up with the ANAO.

NSW fire fighters transferred to the Commonwealth

27. The issue of the level of entitlements payable to NSW fire fighters that transferred to the ACT in the mid-1970s was raised with Comcare in 1996. At that time, advice was provided to the effect that this was, and is, a matter between the employees and their current employer, the ACT Government. Comcare is only empowered to pay workers' compensation in accordance with its enabling legislation [i.e. the relevant provisions of the 1971 Act and the SRC Act].
28. Any payments in excess of the prescribed statutory benefits that were agreed to in the relevant Award remains a separate issue to any statutory workers' compensation entitlement. The proposal that a study be undertaken of a sample of ex-NSW fire fighters with the possibility of a standard Act of Grace payment being considered is beyond the scope of Comcare's authority. These issues should be taken up with the ACT Government.