

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

2003-2004 BUDGET ESTIMATES HEARINGS – 2-3 JUNE 2003

**EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO
COMCARE
QUESTIONS ON NOTICE**

Outcome: Comcare

Question Number: W064-04

Question:

Senator Carr asked in writing:

Does Comcare's legislation provide protection for Commonwealth employees and public witnesses in OHS investigations? What are those protections and has Comcare sought to provide them to staff and former staff of the NGA?

Answer:

Section 76 of the Occupational Health and Safety (Commonwealth Employment) Act 1991 provides protection for Commonwealth employees in OHS investigations. It states:

- (1) *An employer must not:*
- (a) *dismiss an employee; or*
 - (b) *do an act that results in an employee being injured in his or her employment; or*
 - (c) *prejudicially alter the employee's position (whether by the deduction or withholding of remuneration or by any other means); or*
 - (d) *threaten to take action, in relation to the employee, that is referred to in paragraph (a), (b) or (c);*

because the employee:

- (e) *has complained or proposes to complain about a matter concerning the health, safety or welfare of employees at work; or*
- (f) *has assisted or proposes to assist, by the giving of information or otherwise, the conduct of an investigation; or*
- (g) *has ceased, or proposes to cease, to perform work, in accordance with a direction by a health and safety representative under paragraph 37(1)(b), not being a cessation or proposed cessation that continues after:*
 - (i) *the health and safety representative has agreed with a person supervising work the subject of the direction, that the cessation or proposed cessation was not, or is no longer necessary; or*
 - (ii) *an investigator has, under subsection 37(4), made a decision that has the effect that the employee should perform the work.*

Penalty: in the case of an employer that is a Government business enterprise—\$25,000.

- (2) *In proceedings for an offence against subsection (1), if all the relevant facts and circumstances, other than the reason for an action alleged in the charge, are proved, it lies upon the defendant to establish that the action was not taken for that reason.*

Comcare found that the NGA had breached s76 in relation to Brian Cropp. These protections are available to any employee of the NGA who assists an investigator. There are no protections in the Act for persons who are not employees.