

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2010-2011**

Agency - Comcare

Senator Humphries asked on 20/10/2010, Hansard page 6.

Question EW0548_11

COMCARE STAFF- MR RICHARDS

Senator HUMPHRIES—Ms Janean Richards is, or at least was at this time, an officer of Comcare. Is that correct? Mr O'Connor—Correct. Senator HUMPHRIES—I understand her husband, David Richards, has appeared on a number of occasions as counsel for Comcare. Is that correct? Mr O'Connor—I believe so. I can take on notice the number of occasions. Senator HUMPHRIES—I would appreciate knowing in how many Comcare cases Mr Richards was retained, what percentage of cases in which Mr Richards was retained went to full hearing in the AAT and what percentage of matters that Mr Richards was handling were settled before the cases were actually heard in the court or the AAT with Comcare paying legal costs to the claimants. I understand that Ms Richards has now left Comcare. Is that the case? Mr O'Connor—Correct. Senator HUMPHRIES—Is Mr Richards still being retained as counsel for Comcare? Mr O'Connor—I am not aware, but I will be able to take that on notice.

Answer

Comcare has provided the following response:

From time to time, Comcare is represented by barristers in matters before the Administrative Appeals Tribunal (AAT) and the Federal Court arising under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

The barristers are usually retained by Comcare's panel of legal services providers to act on Comcare's behalf.

David Richards is a barrister at the Blackburn Chambers which is an independent bar in the Australian Capital Territory. His areas of practice are workers' compensation law, administrative law, civil matters, medical negligence, personal injury law and insurance law.

Comcare understands that Mr Richards has been retained on over 100 occasions by injured workers, licensed corporations or Comcare as counsel in SRC Act matters determined since 2004 by the AAT and the Federal Court.

Mr Richards was first briefed to appear as counsel for Comcare in November 2008 and was most recently retained in September 2010.

As at 9 November 2010, Mr Richards has appeared as counsel on behalf of Comcare

on 14 occasions concerning SRC Act matters. Nine of those matters have concluded and five remain before the AAT. Thirteen of those matters have involved Mr Richards appearing as counsel for Comcare in the AAT. One matter involved Mr Richards being briefed to appear as counsel in a Supreme Court common law matter.

The percentage of cases in which Mr Richards was retained to appear in the AAT and which proceeded to a hearing is 6/8 or 75 per cent. The percentage of cases in which Mr Richards was retained which settled prior to hearing, with associated costs being paid to claimants, is 2/8 or 25 per cent.

The table below outlines the outcomes in the AAT matters in which Mr Richards has been retained as counsel for Comcare.

Decision set aside	Decision affirmed	Awaiting hearing	Awaiting decision	TOTAL
3	5	4	1	13

Ms Janean Richards was Comcare's General Counsel from February 2006 – March 2010. While Ms Richards was employed by Comcare, she declared a conflict of interest and did not participate in any discussions or decisions relating to any Comcare AAT or court matter that involved Mr Richards. Ms Richards declared a conflict of interest in all matters in which Mr Richards was involved, regardless of whether Mr Richards was engaged by Comcare, by an injured worker or by a licensed corporation. The principle of Mr Richards's engagement by Comcare was approved by Comcare's Deputy Chief Executive Officer in the first of these matters. Ms Richards had no involvement in any decision to retain Mr Richards as counsel for Comcare.

Prior to Ms Richards leaving Comcare in March 2010, Mr Richards was retained to appear in AAT matters four times. Mr Richards continues to be retained by Comcare as counsel. Following Ms Richards' departure from Comcare, the rate at which Mr Richards has been retained has increased. Mr Richards has been retained nine times since March 2010.