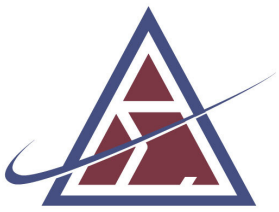

Institute of Actuaries of Australia

The Comcare Self-Insurance Option

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Abstract

The Australian government has moved to adopt some of the Productivity Commission's recommendations for improving national consistency of workers' compensation and OH&S.

The particular direction being pursued is to facilitate access by employers to the OH&S and workers' compensation provisions for Commonwealth employees through self-insurance under the Commonwealth agency, Comcare.

We assess the Comcare self-insurance option against the alternatives of remaining under separate state jurisdictions as either an insured or self-insured employer. We particularly focus on:

- differences in the OH&S and workers' compensation frameworks
- cost differentials
- implications for the state workers' compensation schemes if employers exit to Comcare.

Keywords: Workers' compensation; self-insurance; WorkCover; Comcare; Bruce Watson, Rod McInnes, Mark Hurst, XIth Institute of Actuaries of Australia Accident Compensation Seminar

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Summary

The Productivity Commission's 2004 report on national workers' compensation and OH&S frameworks concluded the multiplicity of workers' compensation and OH&S systems impose a significant compliance and cost burden on multi-state employers. The Commission recommended a hierarchy of options to establish an alternative national workers' compensation scheme to operate in parallel with the existing state and Territory schemes.

Step 1 was to immediately encourage self-insurance applications from employers who meet the competition test to self-insure under the SRC Comcare scheme. The Commonwealth government supported this step but did not support further escalation. The Government has passed legislation for Comcare self insurers to be covered nationally by the Commonwealth OH&S legislation and has legislation before Parliament to exclude journey claims from the Comcare scheme and tighten the definition of "contributing factor" to limit access to compensation. These changes make Comcare a more attractive option.

In practice this provides an opportunity for a multi-state employer to:

- adopt the workers' compensation benefits and framework of the Comcare scheme for all employees nationally;

- move to a single national OH&S framework instead of multiple state frameworks.

The option is limited to employers who can pass a competition test (Section 100 of the SRC Act): the Minister for Employment and Workplace Relations must determine that an employer is in competition with a current or former Commonwealth government entity to be eligible. Currently there are 15 companies who are self insured under these Comcare arrangements and another 9 who have been declared eligible by the Minster but have not yet commenced self-insurance.

This represents what is the latest in an ongoing series of actions by the Commonwealth dating back to the early 1990's to reduce the compliance and regulatory burden on national employers in relation to workers' compensation and also OH&S. Initially the focus of these actions was to encourage the States and Territories to improve national consistency. The progress to date by the States and Territories in achieving a level of consistency has been limited.

The Victorian WorkCover Authority contested the constitutional validity of the Commonwealth authorising employers to self insure under the Comcare scheme (and leaving the state based scheme) in the case of Optus. This matter was considered by the Federal Court and ultimately the High Court. The High Court recently found in favour of the Commonwealth, based on similar reasoning to the WorkChoices case, confirming the validity of these provisions. This decision removes any residual uncertainty around the validity of the arrangements and removes a further barrier to national employers to pursuing the Comcare self-insurance option.

This situation raises a number of questions:

- Is this Comcare self-insurance option a viable and sensible option for national employers?

- Is it only a transition towards a more centralised workers' compensation model?

- What do these developments mean for the state workers' compensation schemes and WorkCover authorities?

A lot of assertions have been made about these questions. It is a highly political topic, not least because of the perceived connections with the broader industrial relations agenda of WorkChoices.

The WorkCover Authorities have responded by establishing projects to improve harmonisation between the state-based schemes. These projects focus on streamlining the self-insurance regulatory framework, data collection and claims and injury management. If successful this would represent a significant result, as a previous attempt in the mid-1990s achieved little in terms of improved consistency. However these projects do not address key areas of fundamental difference between the schemes (for example related to coverage, entitlements, benefit levels and access to common law).

The main part of our paper assesses Comcare self-insurance as an alternative to remaining in state-based workers' comp and OH&S arrangements, from the point of view of a (hypothetical) national employer. Our assessment is based on a number of sources, including:

- a survey we have a conducted of several national employers who have considered this as an option
- the Productivity Commission's report
- submissions made to various government inquiries and committees
- public statements in the media and at conferences
- reports we have been involved in for companies who have analysed the costs and benefits of Comcare.

Our findings are:

OH&S framework: The Commonwealth OH&S regulatory framework is not substantially different from state-based frameworks. The most substantial difference, and a potential motivator for some employers, is that the NSW strict liability provisions are not replicated in the Commonwealth legislation (or any of the other state-based jurisdictions). There are also a myriad of minor differences between the states, and hence moving to a single regime reduces complexity and compliance costs.

OH&S enforcement: Each jurisdiction has its own approach and policy to enforcement of its OH&S regulatory framework. The differences in regulatory outcomes (prosecutions and prohibition/improvement notices) appear to be largely, if not totally, dependent on policy approach rather than the differences in regulatory frameworks. While currently Comcare has limited enforcement resources and has adopted an advisory approach to OH&S regulation, this approach may change if large numbers of (non-clerical) employers were to shift to Comcare. From the available data there is no clear correlation between the regulatory approach and OH&S outcomes (i.e. injury rates).

Workers' compensation framework: Our assessment of the Comcare entitlements and rules is that we would generally expect a change from State-based benefits to Comcare benefits would increase direct workers' compensation costs for a national employer. The main reason is the higher rates of long term weekly benefits paid by Comcare. The cost difference should be reduced by the proposed legislative changes to Comcare benefits. One of the other factors driving different outcomes is the current dispute resolution framework, where Comcare has long average times to resolution. Actual cost differences between jurisdictions will vary depending on the circumstance of individual employers. Irrespective of the direct claims cost differences there are significant operational and practical advantages for a national employer in operating in a single framework across Australia, although these benefits for the employer may not necessarily flow through as improved entitlements or less complexity for their employees.

Self-insurance regulation: Each state and territory has its own regulatory framework for self insurers. These frameworks are based on similar principles and objectives but in practice there are some significant differences between the jurisdictions. The Comcare self-insurance framework is similar to the state-base frameworks. Again, for an employer which currently self-insures in multiple states the

practical advantages of Comcare arise from dealing with a single regulator and operating in the one compliance framework.

State scheme exit provisions: The Victorian and South Australian State-based government schemes have introduced specific exit provisions for employers moving from the State scheme to Comcare self-insurance. These provisions can require the payment of substantial fees which are designed to ensure the State scheme is not financially disadvantaged by the employer moving to Comcare (for example South Australia has a significant deficit and the employers remaining in that scheme would be otherwise required to fund the exiting employers contribution to that deficit). These fees can act as a real barrier to employers leaving the State-based schemes.

Implications for State Schemes: The States will continue to face increasing pressure from the Commonwealth and national employers to address the differences between the schemes. While ever there is not meaningful reform to improve consistency, increasing numbers of larger employers will leave the state schemes. In the short term the impact of these exits is likely to be small; we estimate that the movement of 10% of a state scheme to the Comcare implies a premium increase in the order of 2.5%. Over the longer term this process will increasingly leave the State schemes with smaller and poorer risks, though under the current policy settings and competition test the viability of the State schemes is not seriously threatened. Finally if the Commonwealth is not satisfied with the rate of change there always remains the opportunity for the Commonwealth to escalate the pressure by adopting further Productivity Commission recommendations or other similar initiatives. Of course the States could take the necessary steps to achieve a satisfactory level of consistency. This would require a degree of commitment and political will, not demonstrated to date.

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1. Introduction

1.1 The Productivity Commission Inquiry

In March 2003 the Australian Government asked the Productivity Commission (PC) to assess possible models for establishing national frameworks for workers' compensation and OH&S arrangements.

The PC issued an Interim Report in October 2003 and its Final Report in March 2004, having received 262 written submissions and spoken to 120 organisations.

The key recommendations of the PC's final report (refer page xxiii) were:

- for OH&S: *"**national uniformity in OH&S regulation** should be established as a matter of priority"*
- for workers' compensation: *"each scheme reflects community norms, evolving workplace arrangements and the legal and medical practices of that particular jurisdiction. However, this leads to compliance and cost issues for multi-state employers that should, and can, be addressed. The solution is the **progressive expansion of a scheme offering alternative national coverage, which would operate alongside those of the individual jurisdictions**…. In addition, all jurisdictions should collectively pursue improvements to workers' compensation by establishing a formal review mechanism similar to that already in place for OH&S."*(emphasis added)

The PC's progressive scheme for national workers' compensation coverage had three steps: encourage self-insurance under Comcare; establish an alternative national self-insurance scheme; and establish an alternative national underwritten scheme.

1.2 The Government's response

The Australian government has moved to adopt some of the PC's recommendations on improving national consistency of workers' compensation and OH&S, but rejected some of the PC's recommendations. The specific recommendations are summarised below together with the Federal government's response and current status.

OH&S:

- Reform National Occupation Health and Safety Commission (NOHSC): Response was to establish the Australian Safety and Compensation Council (ASCC)
- Allow access to Commonwealth OH&S regime: This has been implemented for Comcare self-insurers (from 15 March 2007) per the OHS and Safety, Rehabilitation and Compensation (SRC) Legislation Amendment Act 2006
- Establish uniform OH&S legislation: Response was to develop this cooperatively through the ASCC

Workers' compensation:

- Encourage self-insurance under Comcare: The Government supported this recommendation and it is happening. In addition, the Government has introduced legislation to amend Comcare to make it a more attractive option for national employers

- Alternative National self-insurance scheme: This recommendation was not supported

- Alternative National underwritten scheme: This recommendation was not supported

- National cooperative institutional reform: This recommendation was not supported.

The particular direction being pursued by the Government is to facilitate access by employers to the OH&S and workers' compensation provisions for Commonwealth employees through self-insurance under the Commonwealth agency, Comcare.

In practice this provides an opportunity for a multi-state employer to:

- adopt the workers' compensation benefits and framework of the Comcare scheme for all its employees nationally, and

- move to a single national OH&S framework instead of multiple state frameworks.

1.3 Purpose of this paper

The purpose of our paper is to assess the Comcare self-insurance option against the alternatives of remaining under separate state jurisdictions as either an insured or self-insured employer. We particularly focus on:

- differences in the OH&S and workers' compensation frameworks

- cost differentials

- implications for the state workers' compensation schemes if employers exit to Comcare.

Our assessment is based on information sourced from:

- a survey we have a conducted of several national employers;

- the Productivity Commission's report;

- submissions made to various government inquiries and committees;

- public statements in the media and at conferences;

- reports we have been involved in for companies who have analysed the costs and benefits of Comcare.

1.4 A framework for assessment

Any consideration of workers' compensation and OH&S options should consider four key components of these systems:

- What OH&S standards apply and how are they regulated?
- What workers' compensation benefits and entitlement provisions apply?
- How is workers' compensation funded and managed – a monopoly managed scheme, insurance or self-insurance funding?
- Who regulates workers' compensation?

The following table defines the Comcare self-insurance option in terms of the four key components outlined above, and compares this option with:

- the two existing options for a national employer – insurance or self-insurance under the different state schemes, and
- a conceptual national underwritten workers' compensation scheme, which is the third and final step in the PC's recommended progression. While this is not being seriously pursued at present and is not considered further in our paper, it helps to indicate the full range of possibilities.

Table 1-1 Range of OH&S and workers' compensation arrangements for employers

Arrangement	Current arrangements for insured employers	Current arrangements for self-insured employers	"Comcare self-insurance option"	"National scheme" concept
OH&S standards (and regulator)	Individual state OH&S acts (WorkCover/WorkSafe authorities)	Individual state OH&S acts (WorkCover/WorkSafe authorities)	Commonwealth OH&S Act (Comcare)	Commonwealth OH&S Act (Comcare)
Workers' comp benefits and entitlements	Individual state workers' comp acts	Individual state workers' comp acts	SRC Act ("Comcare benefits")	To be established (eg. HWCA 1995 report)
Workers' comp admin and funding	Individual state workers' comp schemes, ie. WorkCovers (most states) or private insurers (WA, Tas, NT)	Self-insurance, ie. managed and funded by employers	Self-insurance, ie. managed and funded by employers	"National WorkCover"?
Workers' comp regulator	Individual state workers' comp regulators, ie. WorkCovers (most states), Q-Comp (Qld), etc	Individual state workers' comp regulators, ie. WorkCovers (most states), Q-Comp (Qld), etc	Comcare	National scheme regulator (ASCC? Comcare?)

This table highlights some of the key issues facing any national employer considering the Comcare self-insurance option:

- OH&S and workers' compensation each need to be considered as separate issues
- workers' compensation costs (and therefore premiums) largely reflect the level of entitlements provided by each of the state and commonwealth schemes
- for an employer which is currently insured, the costs and benefits of becoming self-insured need to be considered as an issue in their own right [this issue is beyond the scope of our paper]

- Comcare's role in this option is as the regulator of workers' compensation self-insurers, in addition to its "core business" of management of the Commonwealth insurance scheme and regulation of OH&S.

1.5 Scope of the paper

Some of the questions which arise in evaluating the Comcare self-insurance option include:

- is the employer eligible to pursue the Comcare option?
- how real and costly are the inefficiencies of multiple state OH&S schemes? How difficult would it be for the states to harmonise them?
- what capability and capacity does Comcare have to enforce its OH&S regime if coverage is significantly extended?
- how appropriate and effective are Comcare's workers' compensation entitlements for workforces in new industries and locations?
- how effectively will workers' compensation claims be managed under a change to Comcare self-insurance? What are the cost implications if outcomes slip?
- what are the barriers and costs for insured employers seeking to become self-insured?
- what provisions exist in state WorkCover schemes for insured employers exiting to Comcare self-insurance (eg. exit fees)?
- is it true that exit of large employers from state WorkCover schemes will cause premium increases for remaining employers? Could it threaten the schemes' viability?
- is it appropriate for one agency (eg. Comcare) to both regulate and deliver workers' compensation (as well as regulating OH&S and self-insurers)?
- is Comcare the best option for large employers or would a better option be to have more consistent benefits across states with lower compliance costs?

This paper addresses a number of these questions, with a particular focus on:

- the implications of the different OH&S frameworks
- OH&S enforcement approaches
- workers' compensation frameworks and cost differences
- self-insurance regulatory arrangements, including exit provisions, and
- implications for state and territory workers' compensation schemes.

2. The Comcare Self-Insurance Option explained

2.1 Comcare

Comcare is the Commonwealth Government's workers' compensation insurer. Commonwealth authorities can self-insure under Comcare's SRC Act if they satisfy certain criteria.

Other corporations can also apply to self-insure under the SRC Act if they satisfy the self-insurance criteria and also satisfy the competition test (Section 100 of the SRC Act). The competition test requires that the Minister for Employment and Workplace Relations must determine that the employer is in competition with a current or former Commonwealth government entity.

There are currently 15 self-insured authorities and corporations under Comcare, including recent joiners Linfox (on the basis of competition with Australia Post) and John Holland (on the basis of competition with Defence construction).

Table 2-1 Self-Insurers under Comcare

ADI Limited trading as Thales Australia	Australian Air Express Pty Ltd	Australian Postal Corporation	CSL Limited
K&S Freighters Pty Limited	John Holland Group Pty Ltd	John Holland Pty Ltd	John Holland Rail Pty Ltd
Linfox Australia Pty Ltd	Linfox Armaguard Pty Ltd	Optus Administration Pty Ltd	Pacific National (ACT) Limited
Reserve Bank of Australia	Telstra Corporation Limited	Visionstream Pty Ltd	

Source: http://www.comcare.gov.au/self_insurance/current_self_insurers_under_the_src_act

A further 9 corporations have been declared eligible to be granted licences but are not currently self-insurers under Comcare (see Table 2-2). National Australia Bank has been declared eligible as they compete with the CBA who are a former Commonwealth Authority, and are expected to join Comcare from 1 April 2007. Chubb have also recently been declared eligible to join Comcare.

Table 2-2 Unlicensed Eligible Corporations

Chubb Security Personnel Pty Ltd	Chubb Security Services Ltd	JRH Biosciences Pty Ltd	National Australia Bank Limited
Network Design & Construction Ltd	Snowy Hydro Limited	Toll IPEC Pty Ltd	Toll North Pty Ltd
Toll Transport Pty Ltd			

Source: http://www.comcare.gov.au/__data/assets/pdf_file/25526/Notices_of_Declaration_under_section_100-SRC-Act.pdf

Comcare self-insurers operate in the following industries:

- Banking
- Chemical manufacture

- Communications
- Construction
- Defence
- Transport.

To be eligible to self-insure under Comcare an employer must satisfy Comcare's licensing and prudential criteria, as well as meeting the competition test. We consider the licensing requirements in Section 5.

2.2 The Optus case

The first non-Commonwealth employer to enter Comcare was Optus who applied in 2004 (on the basis of competition with Telstra).

Optus was not a self-insurer in state schemes previously and was insured with the VWA in Victoria. The Victorian Government commenced legal proceedings to prevent Optus leaving the state scheme arguing that large employers leaving the Scheme would cause premium increases for the remaining employers and may ultimately threaten the viability of the scheme.

Just prior to publication of our paper, the High Court of Australia issued its decision on the final appeal by the Victorian Government against the Minister's decision to grant Optus a self-insurance licence (*Attorney-General (Vic) v Andrews,* [2007] HCA 9). The Court upheld the 2005 decision of the Federal Court, confirming that Optus is eligible to join Comcare as self-insurer, thus validating the PC's and Government's model of encouraging national employers to take up the Comcare option.

The High Court accepted that Victoria had standing to appeal the Federal Court's decision (one of Victoria's arguments for obtaining standing was that the departure of Optus would have a financial impact on the state scheme). Victoria contended that the Constitution's limitation of Commonwealth powers to exclude "state insurance" prevented the Federal Minister for Employment and Workplace Relations from approving Optus' Comcare application, but the High Court rejected this by a 5-2 majority.

2.3 Occupational Health and Safety

In September 2006 an Act was passed (the OHS and SRC Legislation Amendment Act 2006) which meant that all Comcare self-insurers will be covered by the Commonwealth OH&S legislation (effective 15 March 2007).

Without this legislation, employers such as Optus who elected to self-insure under Comcare would have continued to be subject to the different OH&S legislation and regulation in each state and territory. The Act is therefore an important additional incentive for the Comcare self-insurance option.

We consider the OH&S implications in Section 3 of our paper.

2.4 Workers' compensation entitlements and benefits

Benefits payable to workers' compensation claimants differ between each of the state jurisdictions and Comcare. A summary table of the main entitlements is set out in Appendix A.

The key differences between Comcare and state benefits are:

- weekly benefits are more generous under Comcare than most of the individual states:
    - the 100% replacement rate continues for the first 45 weeks, which is longer than most schemes (South Australia at 52 weeks being the main exception)
    - the replacement rate of 75% after 45 weeks is higher than NSW (with its AWE cap), Queensland and ACT, similar to Victoria and NT but lower than the 80% or 85% rates in WA, SA and Tasmania
    - entitlement to weekly benefits continues for long-term total incapacity claims, without the limits which apply in some states (eg Queensland, WA and Tasmania)
    - Comcare does not have the restrictive work capacity tests for partial incapacity claims which apply in some states (eg Victoria and Queensland)
- redemptions under Comcare are allowed only under very restricted circumstances (as for all other states except South Australia)
- impairment and non-economic loss lump sums under Comcare are similar to or lower than the states. The Comparative Performance Monitoring (CPM) reports illustrative comparison for a severe permanent incapacity shows that Comcare produces a comparable outcome to other jurisdictions when weekly benefits and lump sums are combined
- there is limited access to common law under Comcare; most state schemes have either no or limited access to common law, with Queensland the main exception
- journey claims are currently compensated under the SRC Act; they are also compensated in NSW, Queensland (with some restrictions), NT and ACT but not in Victoria, SA, WA or Tasmania
- stress claims are compensated in Comcare as in all states although restricted in most states.

We look further at the relative costs of the workers' compensation benefits in Section 4.3.

2.5 SRC Amendment Bill

The Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 is currently before Federal Parliament. The report on the bill by the Senate Standing Committee was issued in February 2007[1].

This Bill proposes several changes to the entitlements under Comcare, including:

[1] The Bill was passed by Parliament on 27 March 2007.

- Journey claims: the Bill would exclude coverage of non work-related journey claims under the SRC Act. If passed the impact on claim costs may be significant for some employers

- Stress claims: the Bill aims to reduce the number of stress claims by limiting the scope of coverage (i.e. a worker's employment has to have contributed to a 'significant degree' and claims arising from reasonable management actions, such as performance appraisals, are excluded)

- Potential earnings: the Bill would change the "suitable employment" test to broaden the ability for a claimant's weekly benefits to be reduced due to potential earnings in alternative employment.

If the Bill is passed, these changes would reduce the cost of the Comcare scheme and thus make it more attractive to employers wishing to join as self-insurers.

2.6 National Harmonisation

There is currently a combined push from the heads of several workers' compensation schemes (the National Self-insurance Working Group) for improved harmonisation of self-insurance arrangements between states.

The main aim of this National Standards and Harmonisation project is to reduce the compliance costs (time & money) currently required to satisfy state and territory workers' compensation self-insurance licensing requirements. Reducing some of the complexity and overhead may reduce the number of large multi-state employers who would seek to move to Comcare.

A number of projects have been commenced:

- a common set of financial indicators

- multi-state financial application process

- information sharing between states

- bank guarantee and security requirements (i.e. bank guarantees to a minimum of 150% of actuarial estimates; for example, an increase from 130% for NSW).

This project is the subject of another paper at this Seminar and we have not considered it in any further detail.

2.7 Survey of national employers

There are many reasons why a national employer may consider moving to Comcare.

As part of the research for this paper we surveyed six national employers to find out whether they have considered moving to Comcare as a self-insurer and what were the main factors in their considerations.

The survey revealed a range of views, perhaps reflecting the different circumstances of the companies we spoke to. In the survey the following broad considerations were offered as possible influences on the decision about whether to pursue the Comcare self-insurance option:

- Workers' compensation financial implications (100% of respondents agreed)
- Workers' compensation regulatory / compliance burden (100% of respondents agreed)
- OH&S financial implications (83% of respondents agreed)
- OH&S regulatory compliance burden (100% of respondents agreed)
- Strict OH&S liability (50% of respondents agreed)

Survey responses consistently emphasised the advantages of being able to operate under a uniform set of legislation and regulations, including observations that regulatory and compliance savings would compensate for the costs of the more generous workers' compensation benefit structure under Comcare.

Some respondents noted concerns that the approach taken by some state regulators towards self-insurers was not supportive.

Strict liability in New South Wales was a primary consideration for some respondents, but was not a material issue for others.

There were also a number of perceived disadvantages of a move to Comcare, including:

- the more generous benefit structure
- potential backlash from employee associations and/or unions.

Additional issues arise for companies which are currently insured in some or all jurisdictions, as they would need to exit the state scheme(s) and establish the capability and resources to become a self-insurer. Some survey respondents in this position noted an additional hurdle is the possibility of an exit fee for their tail liabilities in the state scheme upon moving to Comcare as a self-insurer. Transfer conditions vary between jurisdictions, and for under-funded statutory schemes the exit fee can be substantial. We look into these requirements in Section 4.5 of the paper.

A summary of the survey responses, including employer responses on the advantages and disadvantages of moving to Comcare, is set out in Appendix F.

3. Occupational Health and Safety

3.1 Single OH&S legislation

Under the OHS and SRC Legislation Amendment Act 2006, employers who become Comcare self-insurers will be covered by the Commonwealth OH&S legislation instead of the individual state and territory OH&S legislation. This took effect from 15 March 2007.

We compiled a list of the legislation, regulations and codes in the main jurisdictions and the Commonwealth (refer Appendix G). We also reviewed some of the major provisions of the OH&S frameworks. While we are not experts in OH&S, we concluded that essentially there are similar OH&S rules operating across all states (in an agreed national framework) but with a considerable amount of difference in detail. However, one notable difference is the New South Wales strict liability provisions, which we discuss below in Section 3.2.

For a national employer, therefore, we would expect that moving to the Commonwealth's OH&S system would not result in a great difference in the nature of the obligations and responsibilities, but would create a significant reduction in the cost and complexity of compliance with the myriad state frameworks. Our survey certainly showed that employers who have considered the Comcare self-insurance option perceive there are significant savings to be made.

One particular issue for a national employer considering Comcare self-insurance is that Comcare licences are not issued on a group basis. If an employer were to self-insure only some of its subsidiaries with Comcare, it would end up with some employees covered by Comcare OH&S legislation and some covered by state OH&S legislation.

The view from employees and unions can be quite different. While uniformity and simplicity is created for the employer the opposite may happen on worksites, with employees and/or contractors working in similar jobs on the same or similar sites being subject to different OH&S regulations. Particular concern has been raised about Comcare's ability to apply and enforce OH&S requirements in workplaces and locations where it has not had much experience in the past, for example construction sites.

3.2 Strict liability

One of the advantages of moving to Comcare which is often raised by employer groups is that it would allow them to "escape" from the strict liability provisions which apply in NSW. Half of the national employers we surveyed identified strict liability as a factor in determining whether to move to Comcare, including one that ranked strict liability as the most important consideration.

"Strict liability" in NSW arises in the wording of the OH&S legislation where the onus of proof is on the employer to show that everything practicable had been done to establish a safe workplace. This is different from all other jurisdictions (including the Commonwealth) where there is an onus of proof on the regulator to show that the employer had not done everything practicable. In Appendix C we have set out a comparison of the relevant legislative provisions.

Our layman's explanation is that in NSW the occurrence of a workplace injury prima facie shows the employer had failed to provide a safe workplace, whereas in other jurisdictions there is a need to produce evidence to establish that the employer hadn't taken adequate action to make the workplace safe.

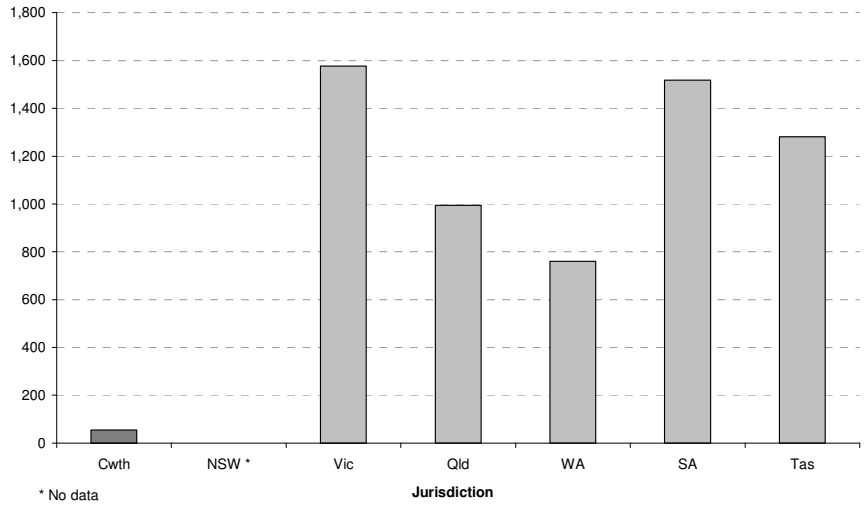
Some commentators criticise the NSW legislation as creating a presumption of guilt for the employer and applying unachievable criteria to prove innocence (eg Ken Phillips of the Institute of Public Affairs, *"Chance for safer workplaces, if laws matched the new attitude"*, Sydney Morning Herald, 6 March 2007).

The existence of strict liability makes it easier for the OH&S authority to prosecute an employer, and in NSW the regulator has been prepared to use this power. This is one factor in the relatively high level of OH&S prosecutions in NSW, as we will see in the next section.

3.3 Enforcement of OH&S

Although it appears that Commonwealth OH&S legislation is not generally less stringent than the various state schemes, there is evidence that there are material differences in the approach to OH&S enforcement among the jurisdictions. Figure 3-1 shows substantial differences in the rate of OH&S inspections unrelated to workplace incidents between the Commonwealth and state jurisdictions, as well as among the states themselves. Since proactive interventions often represent advisory visits, we interpret differences between jurisdictions as indications of the relative emphasis on prevention rather than enforcement.

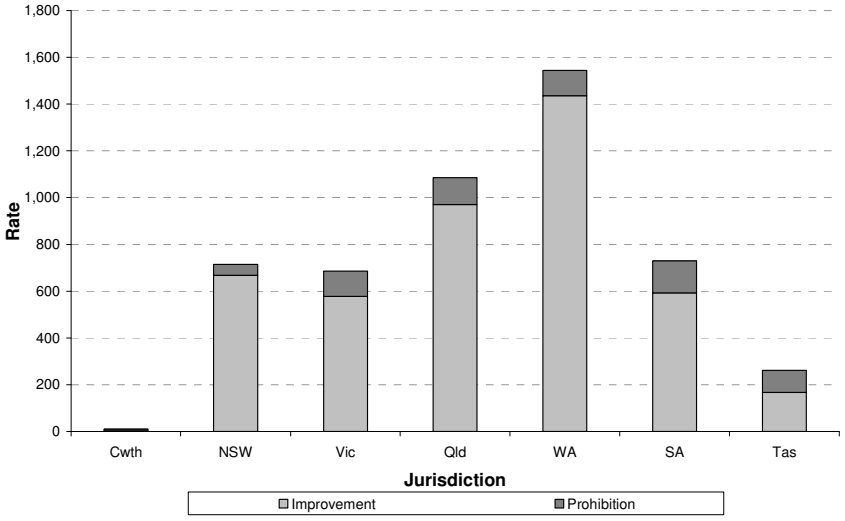
Figure 3-1 Proactive Interventions per 100,000 Employees



Source: Comparative Performance Monitoring Report – Eighth Edition

Figure 3-2 highlights differences between the jurisdictions in the rate at which enforcement notices are issued. The Commonwealth again has a level of activity substantially below that evidenced in the states. Comparing Figure 3-1 and Figure 3-2, there are also signs of an inverse relationship between relative rates of proactive interventions and enforcement notices among the states.

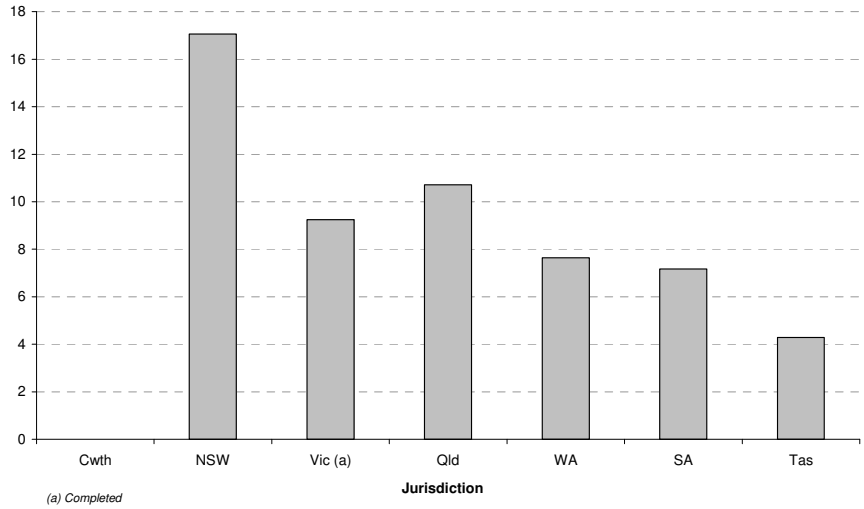
Figure 3-2 Notices Issued per 100,000 Employees



Source: Comparative Performance Monitoring Report – Eighth Edition

The most severe enforcement action available to OH&S regulators is prosecution. As illustrated in Figure 3-3, New South Wales commences legal proceedings at a substantially higher rate than the other state jurisdictions. The rate of prosecutions commenced over the two years (2003-04 and 2004-05) is summarised in Figure 3-3. The Commonwealth did not commence a OH&S prosecution action during the period.

Figure 3-3 Prosecutions Commenced per 100,000 Employees



Source: Comparative Performance Monitoring Report – Eighth Edition

As well as a high rate of legal action commencements, New South Wales also has a relatively high conviction rate (over 80%). These outcomes for New South Wales may in part be a reflection of the strict liability provisions described in Section 3.2, which undoubtedly makes achieving a successful prosecution easier. In practice however it is more likely they both reflect the Government's and WorkCover's policy approach.

The Commonwealth's historical approach to enforcement is clearly very different from that applied in the states, even after recognising that there are substantial differences between the exposures of the Commonwealth and the states. However as the coverage of Commonwealth OH&S legislation changes, both in terms of geography and industry mix, an important question is whether the style and resourcing of OH&S regulation by the Commonwealth will need to change.

From the limited data we were able to find, we could not observe any clear correlation between the style of regulatory approach and the OH&S outcomes, i.e. injury rates. This may be an interesting area for further research.

3.4 Conclusions

Our conclusions in relation to OH&S are:

- Streamlining of OH&S by moving to a single regulatory framework is potentially a significant advantage for an employer moving to Comcare

- Although there are numerous minor differences in OH&S legislation between jurisdictions, our view is that the various legislative regimes have a similar overall effect, except for the strict liability provisions which exist only in NSW

- For some employers, escaping NSW's strict liability provisions is a real motivator for considering Comcare self-insurance

- The greatest differences between the jurisdictions in OH&S arise through their approach to enforcement, rather than to the differences in the acts and codes themselves.

- Comcare appears to currently take a non-interventionist approach to OH&S and has limited resources dedicated to proactive interventions and enforcement. However this may be due to Comcare's historical role as the OH&S regulator for mostly white-collar Commonwealth Government employees, and could change if large numbers of employers from other industries were to come under its supervisory umbrella.

4. Workers' Compensation

4.1 Consistent set of benefits across all states

There are significant advantages to an employer being able to operate with a single set of benefits across all Australian operations. Self-insuring in the Comcare environment (as opposed to self-insuring in each jurisdiction) will enable:

- a uniform set of benefits and rules across all employees – ensuring equality between staff
- simpler systems and processes, eg a single claims management system and simpler links to HR and payroll systems
- capacity to standardise and perhaps centralise and streamline claims management functions.

Consistency of the regime was identified by a number of respondents to our survey as a key attraction of moving to Comcare.

4.2 Benefit structure

There are a number of characteristics of the Comcare benefit structure (compared with the state and territory schemes):

- generally higher weekly benefit entitlements
- lower lump sum permanent impairment benefits
- limited access to common law
- expected exclusion of journey claims (legislation is currently before parliament)
- restricted access to redemptions.

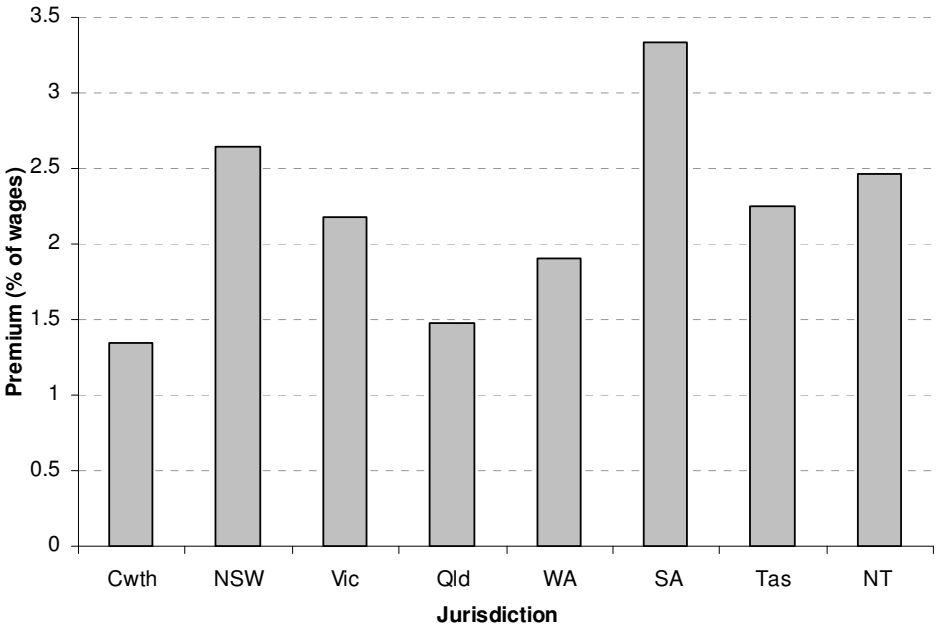
The Comcare scheme is very much a pension style compensation scheme with claimants remaining on weekly benefits until they are fit to resume work or they reach retirement age. A more detailed comparison of the benefit entitlements for each of the jurisdictions is included in Appendix A.

4.3 Claim costs

It is difficult to derive a comparable measure of the relative costs of the state and Commonwealth schemes due to the different characteristics of the schemes in terms of scope, coverage, benefit structures and industry mix.

An obvious initial comparison is the Workplace Relations Ministers' Comparative Performance Monitoring (CPM) reports. The CPM reports include comparisons of "standardised" average premium rates. The comparison from the latest report (CPM-8, September 2006) is included below in Figure 4-1.

Figure 4-1 Standardised Average Premium Rates by Jurisdiction 2004/05



Source: Comparative Performance Monitoring Report: Eighth Edition September 2006

The standardisation in CPM-8 however does not standardise for industry mix. As Comcare predominantly covers Commonwealth public servants and the state and territory jurisdictions cover a broad range of industries we do not consider this a meaningful like-with-like comparison. Therefore even though the average Comcare premium rate is the lowest across Australia it does not mean the scheme is the least costly.

Comcare does cover a small number of industries that are not traditional public service, namely transport and storage; finance and insurance; and property and business services. Table 4-1 below shows the Comcare premium rate compared to the average rates across the remaining jurisdictions from the previous CPM report.

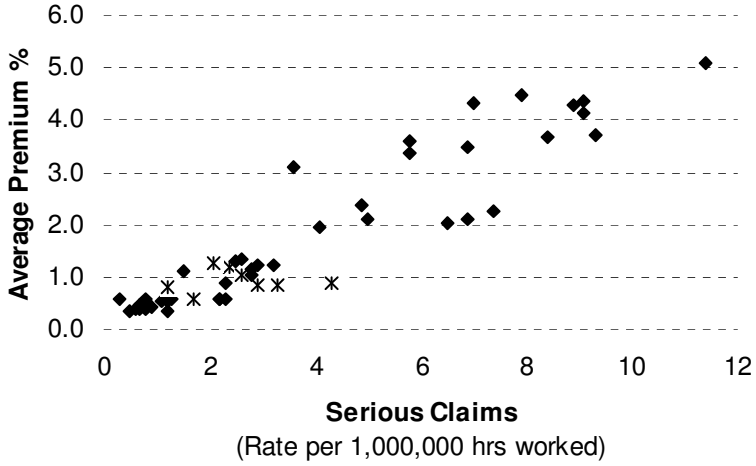
Table 4-1 Comparison of Premium Rates for Selected Industries

	2002-03		2003-04	
	Comcare	Aust. Avg.	Comcare	Aust. Avg.
	%	%	%	%
Transport & Storage	1.05	3.57	1.17	3.48
Finance & Insurance	0.89	0.52	1.25	0.54
Property & Business Services	0.57	1.14	0.82	1.07

Source: Comparative Performance Monitoring Report: Seventh Edition

These data do not show any clear trend and again the extent of the differences suggest the comparison is not like with like. This is supported by the following graph which shows premium rates versus the incidence of serious injuries (more than 12 weeks lost time) for the above three industries for the jurisdictions of NSW, Victoria, Queensland, South Australia and Comcare for each of the latest three years.

Figure 4-2 Incidence vs Premium Rates for Comcare-related Industry Groups



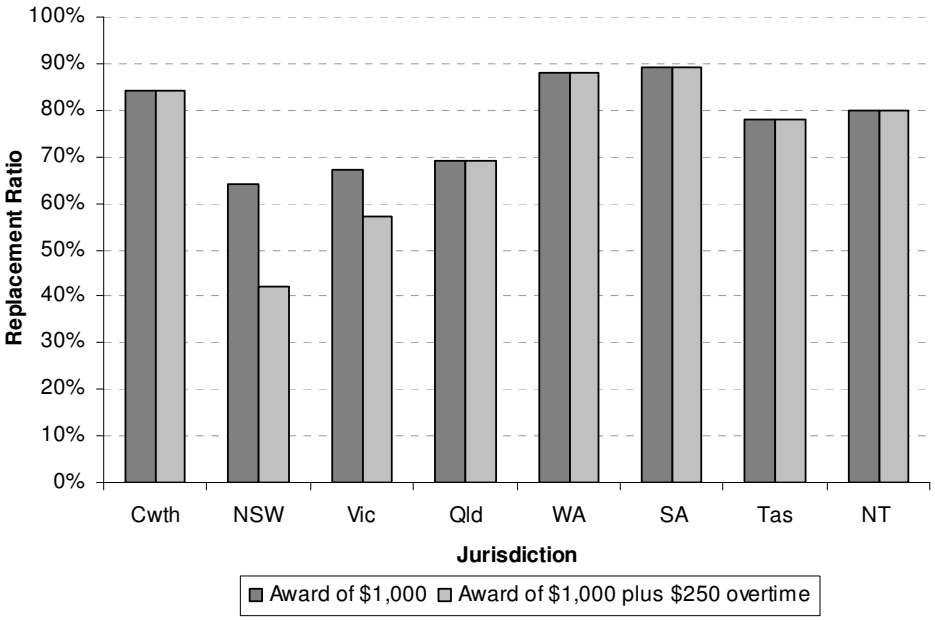
Source: Comparative Performance Monitoring Report: Seventh Edition

The graph shows that the premium rate is broadly proportional to the incidence of serious claims – as you might expect. The results for Comcare are consistent with this broad trend (Comcare points are shown as "*"). This suggests that the difference in premium rates between Comcare and the state schemes reflect the incidence of serious claims not the underlying level of benefits.

The CPM reports also include comparisons of the benefit entitlements under the workers' compensation regimes across Australia. These comparisons are for selected examples only but are illustrative of the levels of entitlement under each scheme.

We have focused on the entitlement to weekly benefits as they are the biggest single payment type. The schemes provide differing levels of weekly benefit entitlements relative to the workers pre-injury earnings. The ratio of benefit to pre-injury earnings (or replacement ratio) is shown for selected examples in Figure 4-3 (refer CPM report for full details).

Figure 4-3 Average Replacement Ratio for a Worker Incapacitated for 120 Weeks



Source: Comparative Performance Monitoring Report: Seventh Edition

While these are only two examples they do suggest that the level of entitlement to weekly benefit under Comcare is among the highest and is significantly higher than the major states of NSW, Victoria and Queensland.

As part of the data gathering for this paper we conducted a survey of companies that had considered the Comcare self-insurance option. The majority of those companies that responded indicated that they concluded claims costs under Comcare would be higher than under the average of the state and territory schemes. While this result is only based on a small sample, it adds to the case that Comcare is a more costly scheme. The results of this survey are summarised in Appendix F.

We have also undertaken analysis on this question as consulting engagements for several clients of our firm. Our conclusions are consistent with those from the survey. On average we estimate claims costs under Comcare to be around 10% higher than a weighted average cost of the state and territory schemes.

Please note that results will vary significantly from company to company and may vary greatly from this average result, depending on a range of factors, including balance of business between the jurisdictions, industry, typical injury mix and the extent of any special conditions in awards and agreements (eg agreements to pay top-up benefits). In addition these claims costs comparisons include no allowance for the impact of indirect effects on claims costs such as the dispute resolution system and the OH&S framework.

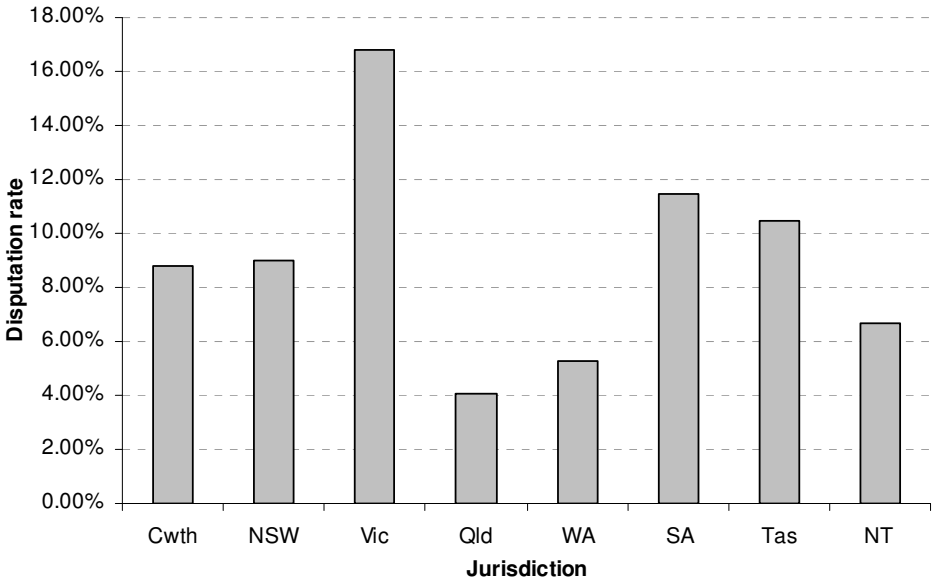
There is currently legislation before Federal Parliament to amend Comcare legislation to remove coverage for journey claims, reduce the number of stress claims and broaden the suitable employment test for deeming potential earnings (refer Section 2.5). If passed this will significantly affect the costs under Comcare. Again the impact will vary by company depending, for example, on the proportion that journey claims represent (or would represent) of their total claims. However on balance we would expect Comcare will remain on average to be more costly than the average of the state and territory schemes, albeit possibly by a relatively small margin.

4.4 Dispute resolution

Each jurisdiction has established its own dispute resolution processes for resolving disputes within their workers' compensation system. In many cases these are bodies created solely for that purpose. Disputes in the Comcare scheme are heard by the Administrative Appeals Tribunal which is responsible for hearing disputes related to a wide range of administrative decisions by Commonwealth government agencies.

Dispute rates in the Comcare scheme are around the average for all State jurisdictions combined, as can be seen in Figure 4-4 below.

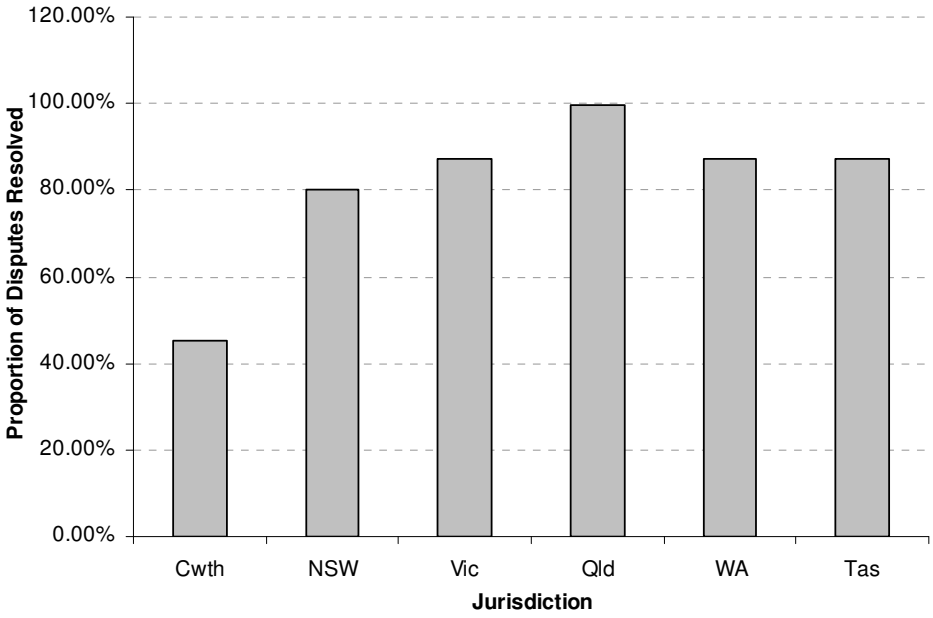
Figure 4-4 Disputation Rate by Jurisdiction 2004/05



Source: Comparative Performance Monitoring Report: Eighth Edition September 2006

While the disputation rate for Comcare is around the Australian average, the resolution rate for Comcare disputes would appear to be the slowest of the Australian jurisdictions for which data is available. This can be seen from Figure 4-5, which shows the proportion of disputes resolved within nine months of lodgement.

Figure 4-5 Proportion of Disputes Resolved within 9 Months by Jurisdiction



Source: Comparative Performance Monitoring Report: Eighth Edition September 2006

It appears Comcare has the least efficient dispute resolution system. Delays in the resolution of disputes generally leads to higher levels of friction costs and can undermine rehabilitation and return to work initiatives. This may have negative outcomes for the scheme and inflate scheme costs.

4.5 Tail provisions and Exit fees

When an employer moves to Comcare self-insurance, claims incurred under the state schemes ("tail claims") remain within the regulatory control of each scheme. Each jurisdiction has a different approach to managing employers exiting their scheme to move to Comcare self-insurance. The approach may also vary depending on whether the employer is self-insured or insured in that state. Tail provisions for each state are shown in Appendix E.

Two states, Victoria and South Australia, have introduced a specific capacity to charge an exit fee on employers moving from state insurance to Comcare self-insurance. These fees can, depending on the circumstances, be sizable (potentially in excess of a year's premium).

There are sound policy reasons why such a fee may be appropriate. For example there is a significant deficit in South Australia and employers leaving the scheme without such a fee would not be funding their "share" of the deficit and would therefore increase the burden on those remaining in the scheme. Similar considerations have applied in the past when employers left the state schemes to self-insure in that state, but in those cases the scheme transferred the tail claims and a "share" of the fund to the employer.

There is also a degree of uncertainty around the level of these fees, for example the regulations in South Australia provide that the level of any exit fees is determined by WorkCover with significant flexibility in the methodology for its calculation.

Ultimately the existence and the uncertainty around exit fees act as a barrier to moving Comcare self-insurance.

5. Licensing and Regulation

5.1 Licensing arrangements

To be licensed as a self insurer under Comcare an employer must first be able to demonstrate that it meets the eligibility criteria, that is, it must either be a current or former Commonwealth Authority or a competitor of a current or former Commonwealth Authority. Once declared eligible an applicant must:

- meet financial and prudential requirements
- demonstrate the capacity to meet standards for claims management, benefit delivery, prevention and rehabilitation
- demonstrate that granting a licence will not be contrary to the interests of employees.

A company cannot apply for a group licence under Comcare, so each company in the group needs to apply separately for a licence. However there is no minimum size requirement, so this would not appear an onerous restriction and employment can be transferred to a single entity if preferred. By comparison, in Queensland there is a minimum requirement of 2,000 employees and NSW 500 employees. These limit the potential pool of self insurers. A detailed comparison of licensing criteria by jurisdiction is included in Appendix D.

Aside from the eligibility criteria the Comcare self-insurance licensing process is similar to most jurisdictions. The eligibility criteria are a restriction and will presumably preclude some employers from Comcare self-insurance, but it is not clear how much of a limitation it will be in practice.

5.2 Compliance costs

There are obvious attractions to only dealing with a single regulator as opposed to up to eight different regulators, especially as each regulator has its own set of licensing criteria, reporting arrangements and standards. These advantages include:

- single licensing process
- one actuarial valuation instead of (up to) eight
- single reporting requirement and licence review process.

All jurisdictions require self-insurers to provide a bank guarantee to secure the claims liability. For Comcare a bank guarantee of approximately 2 times the liability is required (i.e. the projected liability in 2 years at the 95th percentile plus one reinsurance retention) whereas for most states bank guarantees are 1.5 times the liability, the exceptions being SA (1.75) and NSW (1.3). However the costs of bank guarantees are generally low relative to other costs and therefore may not be a significant factor in the decision to move to Comcare.

Each jurisdiction charges self-insurers a levy to fund the administrative costs of the scheme. The calculation method varies by jurisdiction. Again it is difficult to make direct comparisons between Comcare levies and those for the states but for a notional average employer Comcare levies appear to be lower. However the actual outcome will vary significantly by employer depending on the employer's industry and size.

The regulatory and compliance burden was cited by all respondents to our survey as a significant consideration in assessing whether to move to Comcare self-insurance.

The cost of complying with eight separate regulatory requirements is a significant burden. Overall Comcare compliance costs are expected be significantly less than those for the sum of the states.

6. Implications for State Schemes

6.1 Introduction

One objection which is regularly raised in discussion of the national self-insurance model is the unfavourable effects it will have on the state and territory workers' compensation schemes. Some examples:

> *"…a substantial exit of employers from any scheme will detrimentally impact the financial viability of the scheme they have left"* (Submission by WorkCover Queensland to the Productivity Commission 2003)
>
> *"The financial pool in the state systems will reduce, increasing premiums for remaining businesses in the state schemes and increasing pressure on workers' entitlements".* (Submission by the ACTU to the Senate Employment, Workplace Relations and Education Legislation Committee Inquiry into the OHS and SRC Legislation Amendment Bill 2005)
>
> *"There are concerns that the departure of large employers could have a negative impact on residual premium pool. Premium systems require industry premium pools of sufficient size to reduce the pendulum effect of large claims."* (Submission by the Workers' Compensation and Rehabilitation Commission of WA to the Productivity Commission 2003)
>
> *"…some small self-insurers are concerned that the introduction of a national self-insurance scheme may endanger the stability of state-based self-insurance regimes."* (Submission by the Victorian Government to the Productivity Commission 2003).

The potential financial effects were considered in detail by the Productivity Commission, which commissioned several pieces of actuarial advice on the topic (reproduced as Appendix D of the Commission's Final Report).

One of the important findings from this analysis is that – based on Victorian data – the maximum proportion of the schemes' premium base which would be eligible to self-insure under Comcare's competition test is less than 10%. In practice this might be higher, depending on exactly how the competition test is applied by the Minister. Also, the proportion may be higher in other states; for example, the Victorian scheme includes the state public sector. On the other hand, a number of large national employers have shown no desire to self-insure their workers' compensation in the past.

We expect the actual proportion which would consider Comcare self-insurance under the current eligibility test is less than 10% of the premium pool.

In our view there are three potential financial implications which need to be considered:

- scale diseconomies if state schemes lose part of their premium base
- effects on employer premium rates, particularly through loss of cross-subsidies
- loss of critical mass in state-regulated self-insurance.

6.2 Scale diseconomies

One potential concern is that the fixed component of scheme operating expenses, when spread across a reduced remuneration base of participating employers, will increase to a level which threatens the viability of the scheme in that jurisdiction. The threat would logically be greatest in the smallest jurisdictions.

The CPM reports and authorities' annual reports provide information on scheme operating expenses and on their premium and remuneration base. From these various sources we compiled the table below which compares operating costs for the five government-underwritten schemes in three different financial years:

Table 6-1 Scheme administration expense rates

	Scheme annual reports 2005/06			CPM-8: Expenses as % Claims	
	Premium	Expenses	Expense Rate	2004/05	2000/01
	$m	*$m*	*% Premium*	*% Claims*	*% Claims*
NSW	2,925	1,004	34.3%	28.1%	18.3%
Victoria	1,668	392	23.5%	31.1%	18.9%
Queensland	861	157	18.3%	22.3%	22.5%
SA	544	80	14.7%	17.0%	18.7%
Comcare (Cth)	190	24	12.4%	17.5%	17.4%
Average (weighted by 2005/06 Premium)			26.8%	26.8%	19.1%

As always, comparisons such as this need to be treated with some caution because of scheme differences. The main points we note from the table are:

- operating expenses, including claim management costs, regulatory and dispute resolution (in most cases) account for around 20% of premium in the government-underwritten schemes, although expenses levels vary considerably
- the correlation between scheme size and expense rate is weak (and in more recent years appears inverse), which prima facie indicates a low level of fixed costs
- the government-underwritten schemes in Queensland, SA and the Commonwealth are substantially smaller than the NSW and Victorian schemes, but there is no serious question that their relatively small scale makes them not viable.

There is little evidence to support the scale diseconomies objection, particularly for NSW and Victoria, under the current criteria for Comcare self-insurance. It is perhaps a more open question for the smaller jurisdictions; but with expenses being a relatively small proportion of scheme costs, and given the low proportion of employers currently eligible to join Comcare, it is difficult to see that there should be any concern about viability.

6.3 Premium rate impacts

The question of premium rate impacts should affect only the government-underwritten jurisdictions.

In theory the design of the premium rate systems in all of these schemes should have created a situation where employers pay premiums which closely reflect their claims experience to the extent which this experience is credible. In particular:

- to the extent that claims risk and cost varies between employers in different industries, industry-based premium rates capture this
- to the extent that smaller employers have relatively higher claim costs than larger employers (for example, due to their limited ability to provide alternative duties for injured employers to return to work), the experience-rating mechanisms should modify industry-based premium rates to partially correct this effect

- large employers with significantly lower claim costs than their industry peers should pay lower premiums than their industry average rate.

This theoretical absence of cross-subsidies is less perfect in practice for various reasons, such as:

- information on industry claims experience may not be sufficient to be credible when schemes set their industry rates, particularly in the smaller schemes (this could be addressed through some inter-state co-operation and information sharing)

- some jurisdictions impose minimum and maximum premium rates (eg South Australia's 7.5% maximum rate)

- most jurisdictions impose caps on movements in industry premium rates each year, so it can take time for past anomalies to be removed

- small employers have little or no experience adjustment in most schemes

- experience-rating systems are not perfect in capturing the variation between employers within the same industry, eg through limiting the amount of claim costs which enter the experience rating calculation. This opens up the possibility of adverse selection, i.e. better-performing employers opting out of the state scheme and leaving the worse-performing employers behind.

As the Productivity Commission learned, it is very difficult to obtain sufficient data to investigate this question in enough detail to draw firm conclusions.

The government-underwritten schemes have made significant steps in recent years to reduce cross-subsidies in their premium systems, although Victoria noted in its response to the Productivity Commission's 2003 Interim Report that "Nonetheless, cross-subsidisation remains a feature of the Victorian workers' compensation scheme".

Our view on this question is that any premium impacts on employers in state schemes are due to the design of the premium systems, which are within the control of the state authority. While designs can never be perfect, they can respond fairly to material cross-subsidies emerging for a large employer. If the state authorities are concerned about losing employers to Comcare self-insurance because they are paying a disproportionate premium and subsidising other employers, it is within the control of the authority and/or its state government to mitigate this risk.

6.4 An illustration

From the various sources of information available, we constructed a scenario which we believe represents a reasonable worst case for the effect on premium rates of large numbers of employers leaving a state government-underwritten scheme to self-insure under Comcare. We assumed that:

- operating expenses represent 20% of scheme premiums, of which half are proportional to the size of the claims and premium pool

- large national employers who are eligible to self-insure under Comcare make up 10% of the premium pool of the scheme

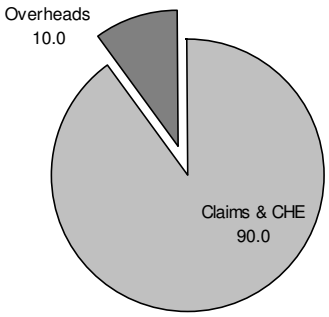
- these large employers pay premium rates which are 15% higher than they would be in the absence of cross-subsidies to small employers

- all of these employers elect to leave the scheme for Comcare self-insurance.

For illustration we have used a 2% average premium rate and a premium pool of $100m, although the conclusions are independent of these assumptions.

In this example, the scheme premium pool is $100 million per annum, or 2% of $5 billion wages. The premium funds $90 million of claims costs and claim management expenses and $10 million of scheme overheads. This is shown in Figure 6-1:

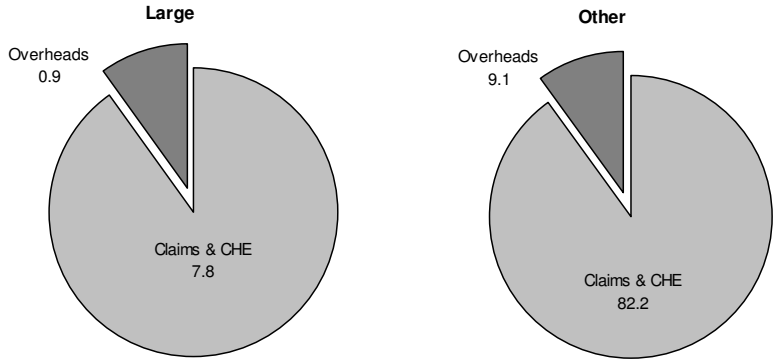
Figure 6-1 Initial Scheme Position



Wages	5,000
Required Premium	2.00%

Assuming a 15% cross-subsidy from large national employers to other employers in the scheme, we can split the scheme costs and premiums into two notional pools, as shown in Figure 6-2. This shows that the 15% cross-subsidy from large employers results in other employers paying on average 1.4% less than their "true" premium rate:

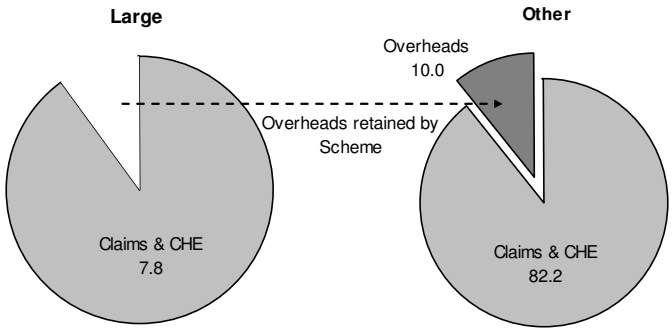
Figure 6-2 Premium Cross Subsidy



	Large Insurers	Other Insurers	Total Scheme
Wages	500	4,500	5,000
Required Premium	1.74%	2.03%	2.00%
Actual Premium	2.00%	2.00%	2.00%
Cross-Subsidy	15.0%	-1.4%	-

If all of the large employers leave the scheme, this cross-subsidy crystallises for the remaining employers. Further, their share of the fixed scheme operating expenses is spread across the remaining employers. The result is shown in Figure 6-3:

Figure 6-3 Remove Cross Subsidy and Re-allocate Expenses



	Other Insurers
Wages	4,500
Required Premium	2.05%
Previous Premium	2.00%
Increase	
% of Insured Wages	0.05%
% of Premium	2.42%

Even in this illustrative worst-case example, the average premium for the remaining employers increases by only 2.4%. As noted above, the assumption of 10% of employers leaving the scheme is extreme, given the current eligibility requirements for employers to qualify for Comcare.

Our results show a slightly bigger effect than the actuarial analysis provided to the Productivity Commission, which suggested an increase of only half this magnitude under similar assumptions for cross-subsidy.

6.5 State self-insurance viability

Each state maintains infrastructure to regulate self-insurers, generally funded by the levy to fund the workers' compensation and OH&S regulator(s) administration. These levies are determined according to a variety of methods, mostly based on a measure of employer size.

Large-scale exit by the larger self-insurers to Comcare would reduce the schemes' self-insurer levy income but would probably cause a smaller reduction in their regulatory overhead costs. All else being equal we would expect this to create some pressure for increases in administrative levies. As these levies generally fund a broad base of regulatory and administrative functions it is difficult to see how it would significantly impact levy rates in the general case.

However, for the smallest jurisdictions, which have few self-insurers, it is possible this could cause their number of self-insurers to fall below critical mass.

The current HWCA initiatives on harmonisation of self-insurance regulation should lessen this threat, as the jurisdictions should be able to reduce their regulatory costs by sharing common frameworks and tools.

7. Conclusions

OH&S framework:

- The Commonwealth OH&S regulatory framework is not substantially different from state-based frameworks. (Section 3.1)

- The most substantial difference, and a potential motivator for some employers, is that the NSW strict liability provisions are not replicated in the Commonwealth legislation (or any of the other state-based jurisdictions). (Section 3.2)

- There are also a myriad of minor differences between the states, and hence moving to a single regime reduces complexity and compliance costs.

OH&S enforcement:

- Each jurisdiction has its own approach and policy to enforcement of its OH&S regulatory framework. The differences in regulatory outcomes (prosecutions and prohibition/improvement notices) appear to be largely, if not totally, dependent on policy approach rather than the differences in regulatory frameworks. (Section 3.3)

- While currently Comcare has limited enforcement resources and has adopted an advisory approach to OH&S regulation, this approach may change if large numbers of (non-clerical) employers were to shift to Comcare. (Section 3.3)

Workers' compensation framework:

- Our assessment of the Comcare entitlements and rules is that we would generally expect a change from State-based benefits to Comcare benefits would increase direct workers' compensation costs for a national employer. The main reason is the higher rates of long term weekly benefits paid by Comcare. The cost difference should be reduced by the proposed legislative changes to Comcare benefits. (Sections 4.2 & 4.3)

- One of the other factors driving different outcomes is the current dispute resolution framework, where Comcare has long average times to resolution. (Section 4.4)

- Irrespective of the direct claims cost differences there are significant operational and practical advantages for a national employer in operating in a single framework across Australia, although these benefits for the employer may not necessarily flow through as improved entitlements or less complexity for their employees.

Self-insurance regulation:

- Each state and territory has its own regulatory framework for self insurers. These frameworks are based on similar principles and objectives but in practice there are some significant differences between the jurisdictions. The Comcare self-insurance framework is similar to the state-based frameworks. (Section 5.1)

- Again, for an employer which currently self-insures in multiple states the practical advantages of Comcare arise from dealing with a single regulator and operating in the one compliance framework. (Section 5.2)

State scheme exit provisions:

- The Victorian and South Australian State-based government schemes have introduced specific exit provisions for employers moving from the State scheme to Comcare self-insurance. These provisions can require the payment of substantial fees which are designed to ensure the State scheme is not financially disadvantaged by the employer moving to Comcare (for example South Australia has a significant deficit and the employers remaining in that scheme would be otherwise required to fund the exiting employers contribution to that deficit). These fees can act as a real barrier to employers leaving the State-based schemes. (Section 4.5)

Implications for State Schemes:

- The States will continue to face increasing pressure from the Commonwealth and national employers to address the differences between the schemes. While ever there is not meaningful reform to improve consistency, increasing numbers of larger employers will leave the state schemes.

- In the short term the impact of these exits is likely to be small; we estimate that the movement of 10% of a state scheme to the Comcare implies a premium increase in the order of 2.5%. (Section 6.4)

- Over the longer term this process will increasingly leave the State schemes with smaller and poorer risks, though under the current policy settings and competition test the viability of the State schemes is not seriously threatened. Finally if the Commonwealth is not satisfied with the rate of change there always remains the opportunity for the Commonwealth to escalate the pressure by adopting further Productivity Commission recommendations or other similar initiatives. Of course the States could take the necessary steps to achieve a satisfactory level of consistency. This would require a degree of commitment and political will, not demonstrated to date.

8. Limitations

This paper has been prepared solely for the purpose of discussion at the Institute of Actuaries of Australia XIth Accident Compensation Seminar. It does not constitute advice. Companies considering self-insurance under Comcare should make appropriate enquiries and obtain professional advice.

While the authors have used their best endeavours to present information which is accurate and up to date, the information is subject to change. Readers should not place sole reliance on the information provided in this paper.

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Appendices

A. Workers' compensation benefit comparison

B. Dispute resolution provisions comparison

C. OH&S liability provisions comparison

D. Self-insurance licence comparison

E. Tail exit fee provisions on exit to Comcare self-insurance

F. Employer survey responses

G. OH&S legislation

Appendix A Benefits – Comcare v States

Benefits [1]	Comcare	NSW	Vic	Qld	SA	WA	TAS
Journey claims	Excluded [2]	Included (some restrictions)	Excluded	Included (some restrictions)	Excluded (some exceptions)	Excluded (some exceptions)	Excluded (some exceptions)
Weekly benefits [3]							
- Starting level [4]	100% of Normal Weekly Earnings (NWE)	100% of Pre-injury wage up to max $1,450 pw	95% of Pre-injury wage up to max. $1,150 pw	85% of NWE	100% of Pre-injury wage up to max. $1,931	100% of Pre-injury wage up to max. $1,522	100% of NWE
- First step down	45 weeks	26 weeks	13 weeks	26 weeks	52 weeks	13 weeks	13 weeks
- % of starting level	75% of NWE	90% of workers AWE	75% or 60% depending on work capacity	75% for 26-39 wks of NWE then 65%	80% of workers AWE (adj for earnings)	85% of Pre-injury wage	85% for 13-78 wks of NWE then 80%
- Aggregate limit	N/A	N/A	N/A	$182,620 total	N/A	N/A	N/A
- Long term weekly benefit test	Retirement age	104 weeks	130 weeks[5]	5 years	Retirement age	Retirement age	9 years
Redemptions	Very Restricted	Very Restricted	Very Restricted	Restricted	Available by Agreement	Restricted	Restricted
Lump sums							
- Threshold	≥10% assessed impairment	>1% WPI (psych. 15%, hearing 6%)	≥ 10% WPI[6] (psych. 30%, hearing 10%)	None	None (except 5% for hearing loss)	None (except for hearing loss)	≥5% WPI (psych. ≥ 10%)
- Maximum [4]	Permanent Impairment $138K; Non-eco loss $52K	Permanent Impairment $200K; Non-eco loss $50K	Permanent Impairment $364K	$591K incl. extra payments for a) WRI > 50% and b) gratuitous care	Non-eco loss $127K + suppl. $86k for moderate to large losses.	Permanent Impairment $146K *less* value of weekly benefits paid.	Permanent Impairment $188K
Medical (& rehab)	no limits	no limits	no limits	no limits	no limits	no limits	no limits
Legal/other		no data	no data	no data	no data	no data	no data
Common law availability	Limited	Restricted > 15% whole person impairment (WPI)	None	Unrestricted if work related impairment (WRI) > 20%	None	Restricted > 16% disability	Restricted > 30% WPI
- Other conditions	n/a	No	n/a	Irrevocable election (either/or) for WRI < 20% of statutory max. comp threshold.	n/a	For < 30% impairment must elect within 6 months.	Must elect to claim CL damages within 2 years. Statutory benefits continue
Death benefits [4]							
- Lump sum	$206,252	$307,100	$212,070	$313,735	$213,060	$145,892	$187,725
- Family benefits	$69 pw / child	$97 pw / child	Earnings - based pension. 3 years for partner and until age 16 for children.	$11,430 per child + $65 pw / child	weekly benefit for spouse / children of 50% / 25% WAWE	$38.30 pw / child	Earnings - based pension. 2 years for partner and child allowance until age 16.
Claims for psychological injury	Excludes psychological injury resulting from "reasonable administrative action". [2]	Restricted	Restricted	Excludes psychological injury resulting from 1) reasonable management action related to workers employment 2) action by Q-COMP or an insurer in connection with the worker's application for compensation.	Restricted	Restricted	Restricted

Source: HWCA: Comparison of WC Arrangements Oct 2005

[1] *High level summary of benefits hence approximate only*

[2] *Pending passage of Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006*

[3] *Payments to worker only*

[4] *Benefit rates and limits correct at 01 Oct 2005. Amounts are usually subject to indexation, so current amounts may vary from those shown.*

[5] *Amended Nov 2005. Extended from 104 to 130 weeks for claims after 1 Jan 2005.*

[6] *Threshold is 5% WPI for Chapter 3 injuries since late 2003.*

Appendix B Dispute Resolution - Comcare v States

	Comcare	NSW	Vic	Qld	SA	WA	TAS
Dispute Resolution Resolution	Steps are: 1. Claimant may request internal reconsideration 2. Administrative Appeals Tribual (AAT) review - incl. compulsory conciliation 3. Can apply to Federal Court on questions of law.	All disputes referred to Worker's Compensation Commission (except for coal miners)	Dispute must be referred for conciliation before commencing court proceedings (except fatalities or compensation under table of maims)	Steps are: 1. Internal review by insurer 2. Formal review by Q-comp 3. Appeal to Industrial Magistrate or Commission 4. Appeal to industrial court	Steps are: 1. Reconsideration 2. Conciliation 3. Arbitration 4. Judicial Review 5. Full Bench Review 6. Appeal to the Supreme Court	Referred to Conciliation and Review Directorate. Up to 4 stages: 1. Conciliation 2. Review 3. Magistrate's Court 4. Supreme Court	Worker's Rehabilitation and Compensation Tribunal. Includes up to 3 stages 1. Conciliation 2. Arbitration 3. Appeal to Supreme Court on questions of law only
Medical Disputes		Approved Medical Specialists are appointed to assess medical disputes. Appeals exist under limited grounds.	Conciliation officer may refer medical questions to a medical panel. Opinion is final and conclusive. Appeals are by way of administrative law review or judicial review to the Supreme Court.	Steps are: 1) Referral to Medical Assessment Tribunal 2) No appeal unless fresh evidence submitted within 12 months.		Questions on medical issues referred to a Medical Asssment Panel	Tribual may refer to a medical panel when conflicting medical opinions. Determination of the medical panel is binding on the Tribunal.

Sources:
HWCA: Comparison of WC Arrangements Oct 2005

Appendix C OH&S Liability Provisions – Comcare v States

Jurisdiction	Cwth	NSW	Vic	Qld	WA	SA	Tas
Act / Reference	*Safety, Rehabilitation and Compensation Act 1988*	*Occupational Health and Safety Act 2000*	*Occupational Health and Safety Act 2004*	*Workplace health and safety Act 1995*	*Occupational Health and Safety Act 1984*	*Occupational Health, Safety and Welfare Act 1986*	*Workplace Health and Safety Act 1995*
General Liability Clause	s 16 - Duties of employers in relation to their employees etc.	s 8 - Duties of employers	s 21 - Duties of employers to employees	s 28 - Obligations of persons conducting business or undertaking	s 19 - Duties of employers	s 19 - Duties of employers	S 9 – Duties of Employers
Operative wording	An employer must take all reasonably practicable steps to protect the health and safety at work of the employer's employees.	An employer must ensure the health, safety and welfare at work of all the employees of the employer … ensuring that …the employees … are safe and without risks to health…	An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.	A person … who conducts a business or undertaking has an obligation to ensure the workplace health and safety of the person, each of the person's workers and any other persons is not affected by the conduct of the relevant person's business or undertaking.	An employer shall, so far as is practicable, provide and maintain a working environment in which the employees of the employer (the "employees") are not exposed to hazards	An employer must, in respect of each employee employed or engaged by the employer, ensure so far as is reasonably practicable that the employee is, while at work, safe from injury and risks to health…	An employer must, in respect of each employee employed by the employer, ensure so far as is reasonably practicable that the employee is, while at work, safe from injury and risks to health
Key words	"…reasonably practicable steps…" "…protect the health and safety…"	"…ensure the health, safety and welfare…" "…safe and without risks to health…"	"…so far as is reasonably practicable…" "…safe and without risks to health…"	"…ensure the workplace health and safety of the person… is not affected…"	"…so far as is practicable…" "…not exposed to hazards…"	"…so far as is reasonably practicable…" "…safe from injury and risks to health…"	"…ensure so far as is reasonably practicable…" "…safe from injury and risks to health…"

Jurisdiction	Cwth	NSW	Vic	Qld	WA	SA	Tas
Explicit defences	(s 81) Where this Act or the regulations require any act or thing to be done by a person, otherwise than in terms that require the person to take all reasonably practicable steps to do that act or thing, it is a defence to a prosecution of that person for refusing or failing to do that thing if the person proves that, because of an emergency prevailing at the time of the refusal or failure, it was not reasonably practicable to do that act or thing.	(s 28) … if the person proves that: (a) it was not reasonably practicable for the person to comply with the provision, or (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.	None Found	(s 37) for the person to prove— (a) if a regulation or ministerial notice has been made about the way to prevent or minimise exposure to a risk --that the person followed the way prescribed in the regulation or notice to prevent the contravention; or (b) if a code of practice has been made stating a way or ways to manage exposure to a risk (i) that the person adopted and followed a stated way to prevent the contravention; or (ii) that the person adopted and followed another way that managed exposure to the risk and took reasonable precautions and exercised proper diligence to prevent the contravention;	Various very specific clauses. e.g. where a code of practice applies: …demonstration that the person complied with the provision of the Act or regulations whether or not by observing that provision of the code of practice is a satisfactory defence. (i.e. a breach of a code of practice is not necessarily a breach of the Act or regulations)	None Found	None found

Jurisdiction	Cwth	NSW	Vic	Qld	WA	SA	Tas
				or (c) if no regulation, ministerial notice, or code of practice has been made about exposure to a risk —that the person chose any appropriate way and took reasonable precautions and exercised proper diligence to prevent the contravention. (2) Also, it is a defence in a proceeding against a person for an offence against division 2 or 3 for the person to prove that the commission of the offence was due to causes over which the person had no control.		
Other Interesting Clauses		(s 110) In any proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant.					

Source: Sourced by Finity from relevant state legislation.

Appendix D Self-Insurance Licence Requirements – Comcare v States

	Jurisdiction						
	Comcare	**NSW**	**Vic**	**QLD**	**SA**	**WA**	**Tas**
Number of employees	No Minimum	500	No minimum	2000	200	No Minimum	No minimum
Financial/prudential requirements	No prescribed standards. Solvency test based on indicators derived from audited financial statements and bank guarantees.	Net tangible assets individually assessed to demonstrate ability to pay claims. No prescribed financial ratios.	Based on: a) net worth; b) liquidity ratio (>1.3:1); c)equity to debt ratio (>1:1); d) net profit (+ve trend); e) return on equity; f) credit rating.	Net tangible assets > $100m and long term financial viability	Require 3 of the following: a) Net assets of >$50m; b) Gearing ratio ≤ 2; c) Liquidity ratio ≤ 1.3; d) ROE net of Tax ≥ 10%; e) Credit rating better than industry average. Ultimately at discretion of WorkCover SA	No prescribed standards. Based on analysis of financial ratios	No prescribed standards. Solvency test based on audited P&L and Balance Sheet
OHS requirements on licence application	Demonstrated compliance with OHS (Commonwealth Employment) Act 1991	Demonstrated compliance with OHS standards. Audit criteria detailed on WorkCover NSW website.	Based on: a) claims performance; b) OHS management systems; c) recent and pending prosecution; d) compliance history; e) occupational rehabilitation.	Satisfactory OHS performance.	Show WorkCover SA can meet performance standards.	No prescribed standards.	Have to meet safety map level and injury map.
Duration of licence	Up to 3 years	Generally 3 years	3 years initially then 4 years	2 years	Not more than 3 years. Based on rating system.	Annual Review	Up to 3 years
Bank guarantees/prudential margins	Projected outstanding claims liability at 95th percentile in 24 months + one reinsurance retention. Minimum $2.5m	Bank guarantee or deposits of 130% of central estimate.	Max(150% self-ins liability, $3M) plus 100% tail liability	Max(150% estimated claims liability, $5M) plus 100% tail liability	175% of assessed liability until Dec 2008. 200% of assessed liability thereafter	Max(150% self-ins liability, $1M)	Estimate of liability × "safety factors"
Restraints on company structure	For each legal entity e.g. Linfox Australia and Linfox Armaguard has two licences	Group or single licence. Wholly owned subsidiaries.	Have to self insure whole company.	Group licence only (One in/all in)	Has to be whole company. If make acq. may have to re-licence	No restraints	No restraints
Reinsurance cover	Unlimited XoL with retention determined by the Commission (based on actuarial advice)	Unlimited XoL with retention $0.1M - $1M (WorkCover NSW may approve higher retentions)	Unlimited XoL with retention $0.5M - 2M.	Unlimited XoL with retention $0.3M - 1M.	Min $100m indemnity. Per incident deductible ≥ $500k. For aggregate XoL, deductible must be no less than the greater of a) 3 × per incident excess and b) 110% of average incurred claims for prior 3 years.	Insurance cover for a minimum of $50M for any one event	Insurance cover for a minimum of $50M for any one event
Is outsourcing of claims management allowed?	Is allowed subject to approval	Is allowed subject to approval	Is allowed . Prescribed process.	Not currently allowed but will be.	Is allowed for short periods of time.	Yes	Is allowed subject to controls
Ongoing licence requirements	OHS: self-audit and periodic external audit. Compliance with directions of the Commission, the Act, and Regulations.	Regular self-audit. Annual self-audit of OHS system. Annual reports/actuarial reports to WorkCover NSW	Annual assessment of liabilities. Annual self audit programme. Must hold provision in accounts.	Annual audit.	Audits. Don't explicitly have to satisfy 200 employees on renewal. Meet code of conduct. If fatality then review of licence. Audits at renewal or more frequently if deemed necessary.	No special requirements - licences renewed annually.	Annual self-audit. Full audit upon renewal.
Annual levies	$30,000 base fee plus $12 per employee	Contributions = to 4.1% of deemed premiums	Contributions based purely on renumeration x 0.135% (not risk based)	Risk multiplied by wages	Percentage of industry levy rates x wages	Based on notional premiums	Based on notional premiums
Tail liabilities	Leave tail with state schemes	Acceptance of tail optional	Have to take on tail liability	Have to take on tail liability	Have to take on tail liability	-	-
Other matters	Must be a Commonwealth agency or previous Commonwealth agency or have competed with a Commonwealth agency.			Each self insurer provided with KPI report. If poor performance then review. Q-Comp is independent regulator/referee.	Code of conduct for self insurers - when workcover can review self insurers. Will have to pay exit fee now (as significant unfunded liabilty)	Must be able to provide on line data.	

Appendix E Tail provisions – Transfer to Comcare

	Jurisdiction			
Upon change to Comcare (self-insurer)	**NSW**	**Vic**	**Qld**	**SA**
State legislation governing tail liabilities:	No	Accident Compensation (Amendment) Act 2005	No	Gazetted determination under the Workers' Rehabilitation and Compensation Act 1986
Responsibility for tail liabilities:	Remains with state scheme by default.	Remains with state scheme.	Remains with state scheme by default.	Remains with state scheme by default.
Valuation and financial consideration for tail liabilities:	n/a	• Employer funds actuarial valuation of tail liabilities and the % of WorkCover assets available to fund those liabilities. • Any shortfall is paid to the Authority • Liabilities are revalued annually during a 6-year "liability period". • Changes in valuation are settled between the employer and the Authority in years 3 and 6.	n/a	No fixed method – determined by WorkCover WorkCover has broad powers to require supplementary levies from individual employers. Balancing payment is calculated incorporating: • historical claims experience • historical levy contributions • scheme funding position Can be expensive if employer claims experience implies shortfall in historical contributions.
Change to Comcare – Self-Insured Employers				
State legislation governing tail liabilities:	No	Accident Compensation (Amendment) Act 2005	Workers Compensation and Rehabilitation Act 2003	
Responsibility for tail liabilities:	Tail transfers with employer as a runoff scheme supervised by state authority.	Returns to state scheme.	Returns to state scheme.	
Valuation and financial consideration for tail liabilities:	n/a	As for Workcover-insured employers.	• Tail is valued and transferred to state scheme after 12 months, along with agreed payment. • Tail is revalued after 4 years and ant difference settled. • Bank guarantee is maintained until after final revaluation.	

Appendix F Summary of Survey Responses

Number Respondents	6
Est. Employees Represented	211,500

Respondents' current insurance arrangements [1]	
State-Based Insurance	50%
State-Based Self-Insurance	67%
Comcare Self-Insurance	17%

Considered Comcare self-insurance	
Yes	100%
No	0%

Eligibility to Join Comcare	
Yes	50%
No	17%
Pending / Unknown	33%

Current position on joining Comcare	
Yes	33%
No	33%
Pending	33%

		Ranking [2]	
Relevant Considerations	% Respondents	1	2 or 3
Workers comp financial implications	100%	60%	20%
Workers comp regulatory/ compliance burden	100%	0%	100%
OHS financial implications	83%	0%	0%
OHS regulatory/compliance burden	100%	0%	80%
Strict OHS liability	50%	20%	0%
Other [3]	100%	20%	0%

[1] Some respondents access both State-based insurance and State-based self-insurance

[2] Five of six respondents provided rankings

[3] Other reasons provided included:

- politicisation of regulators
- targeting of self-insurers
- interference in employee relationship
- barriers to exit imposed by state schemes
- employee associations
- consistency in injury management, claims, and health & safety

The Comcare Self-Insurance Option

	COMCARE	STATE SCHEMES
Advantages	▪ Nationally consistent scheme ▪ OH&S alignment capability (one jurisdiction) ▪ Streamlined/centralised service delivery of w/comp management and personnel ▪ Reduced license fees ▪ Permanent impairment benefits lower than state schemes ▪ Restricted access to Common Law ▪ Cheaper levies/premiums ▪ Systems/administrative alignment ▪ Avoid duplication of admin costs ▪ Partner with national service provider ▪ Nationally consistent procedures, documentation and training for staff ▪ One regulator ▪ One set of OH&S legislation ▪ Self-insurance may lead to financial savings ▪ Consistent national approach OH&S and IM approach ▪ Consistent self-insurance requirements ▪ Not having to deal with parochial heavily industrialized regulators ▪ Reduction in overall cost ▪ Reduced regulatory costs and compliance costs ▪ Less audit disruption ▪ Single framework for Rehab, WC & OH&S ▪ Consistent entitlements all employees	▪ Lower bank guarantees ▪ Lower reinsurance costs ▪ No further establishment fees ▪ High influencing capability ▪ Benefit structure ▪ Journey claims only payable in NSW ▪ Commutations available to "larger" claims ▪ Choice of where to locate business for benefits ▪ Overall benefits higher (for employees) ▪ Relatively easy to manage ▪ Costs are relatively well known ▪ Short tail liabilities
Disadvantages	▪ Higher weekly benefits structure ▪ Commutation or redemptions largely restricted ▪ Journey claims currently included (pending possible passage of new legislation) ▪ Entry fee of up to $100k ▪ License does not cover "Groups" ▪ Increased bank guarantees ▪ Higher reinsurance costs ▪ More generous benefits ▪ Potentially more volatile cash flows ▪ Long tail claims ▪ Reduced access to common law and lump sums for staff ▪ Increased benefits relative to some States ▪ Cost of transition	▪ Required presence in each state regardless of portfolio size ▪ On-costs higher ▪ Multiple jurisdictions for OH&S and administration ▪ Exit fees ▪ Premium Costs ▪ Fragmentation of systems and people ▪ Dust disease levy ▪ Duplicated admin costs ▪ Dealing with 8 separate pieces of OH&S legislation and Regulators ▪ Premiums not always reflective of the actual risk observed by the organisation ▪ Inclusion of journey claims ▪ Inconsistent approaches ▪ Politicisation of self-insurance issues, targeting of self insurers ▪ Cost of compliance

Appendix G Legislation, Regulations and Codes of Practice

Commonwealth

Acts

Occupation Health and Safety (Commonwealth Employment) Act 1991
Occupation Health and Safety (Maritime Industry) Act 1993
Safety, Rehabilitation and Compensation Act 1988
Seafarers' Rehabilitation and Compensation Act 1992
Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001 (relevant sections only)
Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Act 1992

Regulations

Occupation Health and Safety (Commonwealth Employment)(National Standards) Amendment Regulations 1994
Occupation Health and Safety (Commonwealth Employment) Regulations 1991
Occupation Health and Safety (Commonwealth Employment)(National Standards) Regulations 1994
Occupation Health and Safety (Maritime Industry) Regulations 1995
Occupation Health and Safety (Maritime Industry) (National Standards) Regulations 1995

National Codes of Practice

National Code Of Practice For The Safe Use Of Ethylene Oxide In Sterilisation/Fumigation Processes
Code Of Practice For The Safe Removal Of Asbestos
Code Of Practice For The Management And Control Of Asbestos In Workplaces
National Code Of Practice For The Control And Safe Use Inorganic Lead At Work
National Code Of Practice For The Control Of Work-Related Exposure To Hepatitis And Hiv (Blood-Borne) Viruses
National Code Of Practice For The Control Of Scheduled Carcinogenic Substances
National Code Of Practice For The Control Of Major Hazard Facilities
National Code Of Practice For The Labelling Of Workplace Substances
National Code Of Practice For Noise Management And Protection Of Hearing At Work
National Code Of Practice For The Control Of Workplace Hazardous Substances
National Code Of Practice For Manual Handling
National Code Of Practice For The Preparation Of Material Safety Data Sheets
Storage And Handling Of Workplace Dangerous Goods
National Code Of Practice For The Prevention Of Occupational Overuse Syndrome
National Code Of Practice And Guidance Note For The Safe Handling Of Timber…
National Code Of Practice For The Safe Use Of Synthetic Mineral Fibres
National Code Of Practice For The Safe Use Of Vinyl Chloride

New South Wales

Acts

Occupation Health and Safety Act 2000
Workplace Injury Management and Workers Compensation Act 1998;
Workers Compensation Act 1987;
Workers Compensation (Brucellosis) Act 1979;
Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987;
Workers Compensation (Dust Diseases) Act 1942;
Workmen's Compensation (Lead Poisoning – Broken Hill) Act 1922;
Associated General Contractors Insurance Company Limited Act 1980;
Bishopgate Insurance Australia Limited Act 1983;
The Standard Insurance Company Limited and Certain other Insurance Companies Act 1963;
Sporting Injuries Insurance Act 1978
Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005
Workers Compensation Legislation Amendment Act 2000

Regulations

Occupation Health and Safety Regulation 2001
Workers Compensation Regulation 2003;
Occupational Health and Safety (Clothing Factory Registration) Regulation 2001
Workers' Compensation (Dust Diseases) Regulation 2003
Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2002
Workplace Injury Management and Workers Compensation Regulation 2002

Codes of Practice

Code of Practice: Electrical Practices for Construction Work.
Code of Practice: Facade Retention
Code of Practice: Mono-Strand Post-Tensioning of Concrete Buildings.
Code of Practice: Construction and Testing of Concrete Pumps.
Code of Practice: Pumping Concrete.
Code of Practice: Overhead Protective Structures.
Code of Practice: Safe Work on Roofs, Part 1, Commercial and industrial buildings.
Code of Practice: Safe Work on Roofs, Part 2, Residential buildings.

Code of Practice: Cutting and Drilling Concrete and other Masonry Products.
Code of Practice: Amenities for Construction Work.
Code of Practice: Tunnels Under Construction.
Code of Practice: Formwork.
Code of Practice: Occupational Health and Safety Induction Training for Construction Work.
Code of Practice: Excavation Work.
Code of Practice: Control of Workplace Hazardous Substances.
Code of Practice: Preparation of Material Safety Data Sheets.
Code of Practice: Labelling of Workplace Substances.
Code of Practice: Safe Handling and Storage of Enzymatic Detergent Powders and liquids
Code of Practice: Safe Use of Synthetic Mineral Fibres.
Code of Practice: Safe Use and Storage of Chemicals (including Pesticides and Herbicides) in Agriculture.
Code of Practice: Safe Use of Pesticides including Herbicides in Non-Agricultural Workplaces
Code of Practice for Cash in Transit.
Code of Practice for Noise Management and Protection of Hearing at Work.
Code of Practice for Hot and Cold Environments.
Code of Practice for Low Voltage Electrical Work.
Code of Practice for OHS Consultation
Code of Practice for Risk Assessment
Code of Practice for Technical Guidance
Code of Practice for Workplace Amenities
Code of Practice: Safe Use of Vinyl Chloride 1991.

Victoria

Acts

Occupation Health and Safety Act 2004
Accident Compensation Act 1985
Accident Compensation (Workcover Insurance) Act 1993

Regulations

Occupational Health and Safety (Asbestos) Regulations 2003
Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 1994
Occupational Health and Safety (Confined Spaces) Regulations 1996
Occupational Health and Safety (Entry Permits) Regulations 2005
Occupational Health and Safety (Hazardous Substances) Regulations 1999
Occupational Health and Safety (Issue Resolution) Regulations 1999
Occupational Health and Safety (Lead) Regulations 2000
Occupational Health and Safety (Major Hazard Facilities) Regulations 2000
Occupational Health and Safety (Manual Handling) Regulations 1999
Occupational Health and Safety (Mines) Regulations 2002
Occupational Health and Safety (Noise) Regulations 1992
Occupational Health and Safety (Plant) Regulations 1995
Occupational Health and Safety (Prevention of Falls) Regulations 2003
Magistrates' Court (OHS) Rules 2005
Accident Compensation Regulations 2001

Codes of Practice

Building and Construction Workplaces (No. 13, 1990)
Confined Spaces (No. 20, 1996)
Dangerous Goods Storage and Handling (No. 27, 2000)
Demolition (No. 14, 1991)
Demolition (Amendment No. 1) (No. 21, 1998)
First Aid in the Workplace (No. 18, 1995)
Foundries (No. 2, 1988)
Hazardous Substances (No. 24, June 2000)
Lead (No.26, 2000)
Manual Handling (No. 25, 2000)
Plant (No. 19, 1995)
Plant (Amendment No 1) (No. 23, 1998)
Prevention of Falls in General Construction (No 28, 2004)
Prevention of Falls in Housing Construction (No 29, 2004)
Provision of Occupational Health and Safety Information in Languages
Other Than English (No. 16, 1992)
Safe Use of Cranes in the Building and Construction Industry (No. 11,1990)
Safety in Forest Operations (No. 12, 1990)
Safety Precautions in Trenching Operations (No. 8, 1988)
Workplaces (No. 3, 1988)

Queensland

Acts

Workplace Health and Safety Act 1995
Workers' Compensation and Rehabilitation Act 2003
Workers' Accommodation Act 1952

Regulations

Workplace Health and safety Regulation 1997
Workers' Compensation and Rehabilitation Regulation 2003
Workplace Health And Safety (Industry Codes Of Practice) Notice 1999
Workplace Health And Safety (Codes Of Practice) Notice 2005
Workplace Health And Safety (Miscellaneous) Regulation 1995

Codes of Practice

Concrete Pumping Code of Practice 2005
Occupational Diving Work Code of Practice 2005
Plant Code of Practice 2005
Safe Design and Operation of Tractors Code of Practice 2005
Sugar Code of Practice 2005
Compressed Air Recreational Diving and Recreational Snorkelling Code of Practice 2005
Abrasive Blasting Code of Practice 2004
Asbestos Code of Practice 2004
Cash in Transit Code of Practice 2001
First Aid Code of Practice 2004
Forest Harvesting Code of Practice 2000
Formwork Code of Practice 2006
Foundry Code of Practice 2004
Glasswool and Rockwool Code of Practice 2000
Hazardous Substances Code of Practice 2003
Code of Practice for Horse Riding Schools, Trail Riding Establishments and Horse Hiring Establishments 2002
Code of Practice for Recreational Technical Diving 2002
Code of Practice for the Storage and Use of Chemicals at Rural Workplaces 2000
Manual Tasks Code of Practice 2000
Manual Tasks Involving the Handling of People Code of Practice 2001
Noise Code of Practice 2004
Prevention of Workplace Harassment Code of Practice 2004
Rural Plant Code of Practice 2004
Scaffolding Code of Practice 2004
Steel Construction Code of Practice 2004
Tilt-up and Pre-cast Construction Code of Practice 2003
Workplace Health and Safety Risk Management Code of Practice 2000

Western Australia

Acts

Occupational Safety and Health Act 1984
Workers' Compensation and Injury Management Act 1981

Regulations

Occupational Safety and Health Regulations 1996
Workers' Compensation and Injury Management Regulations 1982
Workers' Compensation Code of Practice (Injury Management) 2005
Workers' Compensation (DRD) Rules 2005

Codes of Practice

Abrasive Blasting, 2000
Concrete and Masonry Cutting and Drilling, 2004
Control of Noise in the Music Entertainment Industry, 2003
Control and Safe Use of Inorganic Lead at Work [NOHSC: 2015 (1994)]
Control of Scheduled Carcinogenic Substances [NOHSC: 2014 (1995)]
Excavation, 1996
Fatigue Management for Commercial Vehicle Drivers, 2004
First Aid Facilities and Services, Workplace Amenities and Facilities and Personal Protective Clothing and Equipment, 2003
Formwork for concrete AS 3610-1995
Guidelines for scaffolding AS/NZS 4576:1995
Health and Safety in Welding, Technical Note 7 (TN 7-98), Welding Technology Institute of Australia
Labelling of Workplace Substances [NOHSC: 2012 (1994)]
Management of HIV/AIDS and Hepatitis at Workplaces, 2000
Managing Noise at Workplaces, 2002

Manual Handling, 2000
Occupational Safety and Health in Call Centres, 2005
Preparation of Material Safety Data Sheets [NOHSC: 2011 (1994)]
Prevention and Control of Legionnaires' Disease, 2000
Prevention of Falls at Workplaces, 2004
Prevention of Occupational Overuse Syndrome [NOHSC: 2013 (1994)]
Safe Removal of Asbestos [NOHSC: 2002 (1988)]
Safe Use and Application of High Pressure Water Jetting Equipment, Australian High Pressure Water Jetting Association, 2001
Safe Use of Ethylene Oxide in Sterilisation/Fumigation Processes [NOHSC: 2008 (1992)]
Safe Use of Synthetic Mineral Fibres [NOHSC: 2006 (1990)]
Safe Use of Vinyl Chloride [NOHSC: 2004(1990)]
Safeguarding of Machinery Part 1: General Principles AS 4024.1 - 1996
Safety and Health of Children and Young People in Workplaces, 1999
Safety and Health within the Waste Management and Recycling Industries, Waste Management Association of Australia, 1999
Spray Painting, 2000
Styrene, 1996
Tilt-up and Precast Concrete Construction, 2004
Workplace Hazardous Substances [NOHSC: 2007 (1994)]
Workplace Violence, 1999

South Australia

Acts

Occupational Health Safety and Welfare Act 1986
Workers' Rehabilitation and Compensation Act 1986

Regulations

Occupational Health Safety and Welfare Regulations 1995
Workers Rehabilitation and Compensation (General) Regulations 1999
Workers Rehabilitation and Compensation (Claims and Registration) Regulations 1999
Workers Rehabilitation and Compensation (Disclosure of Information) Regulations 1999
Workers Rehabilitation and Compensation (Dispute Resolution) Regulations 1996
Workers Rehabilitation and Compensation (Rehabilitation Standards and Requirements) Regulations 1996
Workers Rehabilitation and Compensation (Reviews and Appeals) Regulations 1999

Codes of Practice

Approved Code of Practice for Asbestos Work (excluding removal) - No.8
Approved Code of Practice for Labelling of Workplace Substances
Approved Code of Practice for Logging Stanchions and Bulkheads
Approved Code of Practice for Manual Handling
Approved Code of Practice for Occupational Heath & First Aid
Approved Code of Practice for the Control of Workplace Hazardous Substances
Approved Code of Practice for the Preparation of Material Safety Data Sheets
Approved Code of Practice for the Safe Erection of Structural Steelwork
Approved Code of Practice for the Safe Handling of Timber Preservatives & Treated Timber
Approved Code of Practice for the Safe Removal of Asbestos
Approved Code of Practice for the Safe Use of Synthetic Mineral Fibres
Approved Code of Practice for Noise management and Protection of Hearing at Work

Tasmania

Acts

Workplace Health and Safety Act 1995
Workers Rehabilitation and Compensation Act 1988

Regulations

Workplace Health and Safety Regulations 1998
Workers Rehabilitation and Compensation Regulations 2001

Codes of Practice

Code of Practice for the Tasmanian Abalone
Forest Safety Code (Tasmania) 2002
Managing the Risk of Falling in Housing Construction
Safe Use of Reinforced Plastics (Revised Version)
Working at Heights in Commercial Construction
Code of Practice for Risk Management for Carnivals
Hairdressing Industry Code of Practice