



REVIEW OF SELF-INSURANCE ARRANGEMENTS UNDER THE COMCARE SCHEME

Submission by the
Australian Chamber of Commerce and Industry

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ABOUT ACCI

The Australian Chamber of Commerce and Industry (ACCI) is Australia's peak council of business associations and Australia's largest and most representative business organisation.

ACCI represents over 350,000 businesses nationwide, including:

- Over 280,000 smaller enterprises employing less than 20 people.
- Over 55,000 medium sized enterprises employing 20 to 100 people.
- Australia's top 100 companies.

Businesses within the ACCI member network employ over 4 million working Australians and ACCI members are employer organisations in all States and Territories and all major sectors of Australian industry. ACCI membership comprises State and Territory Chambers of Commerce and national employer and industry associations. Each ACCI member is a representative body for small employers and sole traders, as well as medium and larger businesses.

On OHS issues ACCI also consults with a wide range of peak employer bodies who are members of ACCI and are members of the ACCI employers network through the National Employers' OHS Consultative Forum (NEOHSCF).

A full list of ACCI members and NEOHSCF is available on the ACCI website at www.acci.asn.au

As the peak national employer and business organisation, ACCI represents industry at the Australian Safety and Compensation Council. As a member of the ASCC, ACCI is also involved in the ASCC tripartite technical groups that involve workers' compensation matters and the review and development of OHS Standards and Codes of Practice.

ACCI is also a signatory to the government's National OHS Strategy which supports a nationally consistent framework. A nationally consistent approach is essential for employers and employees.

ACCI takes a leading role in OHS and workers' compensation, representing views of Australian business to government. Our objective is to ensure that the voice of Australian business is heard, whether they are on of the top 100 Australian companies or a small sole trader. Some of our specific activities include:

- Representation and advocacy to government, parliaments and policy makers both domestically and internationally;

- Representing business on OHS and workers' compensation in national and international fora such as the Australian Safety and Compensation Council and the International Labour Organisation.
- Research and policy development on issues concerning Australian business.

ACCI has developed a *Modern Workplace: Safer Workplace* Blueprint as the next step in improving Australia's OHS performance and systems of regulation and to provide leadership for industry in that task.

This year, ACCI is also developing a Workers' Compensation Blueprint which will address ways in which to achieve the vision industry has for workers' compensation.

OVERVIEW

The Australian Chamber of Commerce and Industry welcomes the opportunity to provide input and comment on the Review of Self Insurance Arrangements under the Comcare scheme. This is an important issue for certain employers in the private sector, and one which bears on both economic efficiency and social equity in those businesses.

In making this submission, ACCI seeks to provide a general overview only. It is for the specific companies eligible to seek licences to operate under Comcare, or which already operate under Comcare, to provide the primary source of information concerning the issues raised in the terms of reference.

BACKGROUND

The Comcare scheme is primarily a scheme for the rehabilitation and compensation of injured workers falling within the jurisdiction of the relevant Commonwealth law (the 'SRC Act'). This review however extends beyond the consideration of the rehabilitation and compensation aspects of the Comcare scheme, also including inter-related occupational health and safety arrangements applicable to those employers, employees or other person who are regulated by the Comcare scheme.

The Background Information Paper published by the Department of Education, Employment and Workplace Relations in January 2008 to accompany this Review has been useful in consultation with industry on this issue, and is referred to in the narrative parts of this submission. ACCI acknowledges the work undertaken by DEEWR in this regard.

CONTEXT

Importantly from an industry perspective, this review also occurs in the context of a moratorium on granting further self-insurance licences under the Comcare scheme having been announced by the Hon Julia Gillard MP, Minister for

Employment and Workplace Relations on 11th December 2007. Of itself, this announcement was not a surprise to industry. It took into account the fact that in the lead-up to the 2007 federal election, the Australian Labor Party proposed a moratorium on the future granting of licences to corporations seeking to self-insure, until the arrangements in the Comcare scheme were reviewed.

SUMMARY OF ACCI POSITION

The ACCI submission can be summarised in the following 12 points:

1. ACCI supports the prompt conclusion of this review, so that a decision can be made concerning the moratorium on the consideration of any further self insurance licences which has existed since 11th December 2007.
2. ACCI believes that the review should conclude that grounds exist for the moratorium to be lifted, subject only to the maintenance of sufficient resourcing capacities within government for the necessary oversight of the scheme, should it expand in accordance with the existing legal framework.
3. ACCI considers that the checks and balances in the current legal framework of the Comcare scheme are sufficient to warrant objective consideration of any further licence applications. There are no inherent disadvantages to employers as a whole or employees as a whole from that approach continuing.
4. ACCI does not consider the operation of the Comcare scheme, in its current contained form, to constitute a threat to workers compensation or occupational health and safety structures of States and Territories. In any event, ACCI considers that the economic and social benefits arising from the migration of eligible self insured employers into the Comcare scheme outweigh any jurisdictional protectionism by States and Territory regulators opposed to the loss of self insured employers from their schemes.
5. In particular, ACCI considers that there are both economic and social benefits arising from the migration of nationally operating self insured employers into the Comcare scheme.
6. The economic benefits (which are expanded on by companies making submissions to this review) arise from the more efficient administration of workers compensation rights and obligations, and occupational health and safety obligations, since those companies would be operating within one national framework rather than multiple different State and Territory frameworks. Economic efficiency in turn contributes to productivity. Conversely, maintaining the moratorium on entry by national self insured companies entering the Comcare scheme is to maintain a moratorium on economic efficiency and productivity in those businesses.
7. That is not consistent with the proper management of Australia's regulatory system nor the economic goals of the government of Australia.
7. The social benefits arising from allowing sensible entry by nationally operating self insured employers into the Comcare scheme arise from the greater equity amongst employees of these nationally operating companies. Different standards or duties of care concerning occupational health and safety rights and responsibilities is not equitable, particularly where it concerns employees of the one company. Nor is it equitable for different values to be accorded to compensation for the same injury by employees in the one company doing the same work but who happen to be working in different jurisdictions.
8. The goals of the workers compensation system would be enhanced. There is evidence of better return to work rates after injury by employees of self insured employers. This is a significant issue, and one which bears directly on the bottom line economic and social goals of a workers compensation system. It is a matter for the individual companies making submission to this review can be expected to expand upon.
9. ACCI does not consider the Comcare scheme to be deficient in its overall benefit structure for workers compensation, or its OHS structures for that matter. This is unsurprising, given that the scheme operates in the Commonwealth public sector. It is hardly likely that successive Commonwealth governments and parliaments would legislate a deficient workers compensation or OHS scheme for their own employees. A consideration of recent Comparative Monitoring Performance data amongst schemes, and related comparative data of workers compensation and occupational health and safety laws between jurisdictions supports this position.
10. In supporting the lifting of the moratorium, ACCI does not advocate one national workers compensation system for the whole of the private sector, though we do support appropriate national consistency amongst the laws and processes of regulators in the various jurisdictions. ACCI also supports appropriate mechanisms for nationally operating companies to access a national structure if certain criteria are met. However, that access cannot be at the expense of the interests of small businesses operating on an intra state basis under one particular scheme. There may also be significant advantages from competitive federalism in what is a fee paying (taxation like) area of policy (with annual premiums from Australian employers of approximately \$7 billion). These are broader issues not specific to the terms of reference, but place the ACCI submission in some context. They are issues that require further consideration by governments, industry and unions.

11. The interests of premium paying small businesses or intra state employers are not materially disadvantaged by the movement of national self insurers into the Comcare system under current rules, given the restricted nature of eligibility to that scheme, and given the self insured status of the migrating companies.
12. ACCI considers that regular actuarial reviews of the Comcare scheme are needed as the private sector profile increases. The scheme was not designed for a private sector profile. This does not mean that good performing private sector employers migrating to the scheme will or do cause problems for the scheme. However, actuarial and policy consideration should be given, over time, to the scheme and whether new alternatives to it should be created. This too is an issue beyond the purposes for which this review has been commissioned.

THE COMCARE SYSTEM

The Safety, Rehabilitation and Compensation Act 1988 (the SRC Act) establishes a statutory framework of workers' compensation for employers and employees in the Commonwealth jurisdiction, including corporations that are licensed to self-insure their workers' compensation liabilities. Non-licensed authorities, primarily Australian and Australian Capital Territory Government agencies, pay annual premiums to insure their liabilities.

The scheme of workers' compensation under the SRC Act is administered by the Safety, Rehabilitation and Compensation Commission (the Commission) and Comcare, and is commonly referred to as 'the Comcare scheme'.

SELF INSURANCE UNDER COMCARE

Self-insurance arrangements in the Comcare scheme were introduced to provide competitive neutrality for those corporations competing in the marketplace with Commonwealth-owned, or formerly owned, businesses to ensure that the Commonwealth did not have an unfair advantage.

For a number of years, all of the self-insurers under the Comcare scheme were either owned or formerly owned Commonwealth authorities.

Economic reform of the 1980's and 1990's brought with it privatization and corporatisation of many Commonwealth instrumentalities, and their presence in the private sector – often with wider briefs and in competition with private businesses.

Although the DEEWR background paper suggests that a number of corporations sought to self-insure under the Comcare scheme following the High Court's decision in *Attorney-General (Vic) v Andrews* [2007] HCA 9 (which upheld the validity of the SRC Act's self-insurance provisions), this trend preceded that decision. That decision did however

establish a more certain constitutional basis for the laws which permit eligible employers to make application.

DEEWR advises that there are currently 19 self-insurers under the Comcare scheme, with 15 corporations being declared eligible, although not yet granted a licence, and a further 11 applications for eligibility lodged.

DEEWR also advises that the Australian Government aims to ensure that the Comcare scheme has structures that:

- are based on sound public policy principles;
- pose minimal financial risk or cost to the Commonwealth;
- allow for transparency in the self-insurance licensing process;
- provide effective controls, governance and accountability
- ensure self-insurers demonstrate best practice in occupational health and safety, rehabilitation and claims management;
- provide for appropriate and effective enforcement; and
- minimise impacts on the financial viability of state and territory workers' compensation schemes.

ACCI supports these principles.

Eligibility to operate under the Comcare scheme is limited, and this should be a framing consideration in decisions by government concerning the moratorium. ACCI repeats and comments on a number of matters referred to by DEEWR in its background paper, as these underscore the limitations on eligibility and frame of reference required when Ministers or the Commission exercise their discretion under the SRC Act.

The scheme provides that only certain Commonwealth or former Commonwealth authorities and other eligible corporations may be granted a licence to self-insure. Under the licensing arrangements, self-insurers become liable to pay compensation and other amounts under the SRC Act. There is also provision for self-insurers to manage claims.

Licensing involves a declaration by the Minister under section 100 of the SRC Act that the applicant is an 'eligible corporation'; and the grant of a licence by the Commission under Part VIII of the SRC Act.

Both steps are linked, but the decisions of the Minister and the Commission are made independently, so that a declaration of eligibility does not automatically lead to the grant of a licence.

The decision of the Minister brings the restricted nature of the eligibility criteria into clear focus. Section 100 of the SRC Act provides that the Minister may issue a declaration

of eligibility if the Minister is satisfied that it would be desirable for [the SRC] Act to apply to employees of a corporation that:

- is, but is about to cease to be, a Commonwealth authority; or
- was previously a Commonwealth authority; or
- is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority; the Minister may, by notice in writing, declare the corporation to be eligible to be granted a licence under this Part.

No other employer is eligible to have a declaration made on their behalf by the Minister.

There are also a range of procedural checks and balances. To start the declaration process, a written request must be put to the Minister seeking a declaration of eligibility under section 100 of the SRC Act. Guidelines under section 100 are used by corporations to structure applications for eligibility and are used by the Minister when assessing their applications.

Upon receipt of an application from non-Commonwealth corporations seeking a section 100(c) declaration, the Minister has an obligation to consider whether the corporation should be declared eligible to apply to the Commission for the granting of a self-insurance licence under the Commonwealth's workers' compensation scheme.

To assist in consistent decision making under the provision, and to provide guidance to applicants and potential applicants under section 100(c), the Minister may give consideration to the areas of competition and public policy principles described in the next section in deciding whether it is desirable for particular employees to be covered by the SRC Act.

The threshold test for a non-Commonwealth corporation to be declared eligible is to satisfy the Minister that they are 'in competition' with a Commonwealth authority. This is prescribed by section 100(c) of the SRC Act. In making this judgment on competition, the Minister may have regard to evidence provided by the applicant, or available in the public arena, in the following areas:

- the market in which the applicant and the Commonwealth authority operate, including the composition of the market and/or the market share of the applicant and the Commonwealth authority;
- the substitutability between the goods, services and other provided/produced by the applicant and those of the Commonwealth authority.

It is at the discretion of the Minister to make a judgment on the above areas or on any other factors the Minister considers relevant in the making of her decision. In addition to assessing threshold competition issues, the Minister will evaluate broad public policy considerations when deciding whether to declare corporations eligible under section 100 of the SRC Act. This discretionary power allows the Minister to make a declaration if she is satisfied that it would be 'desirable for this Act to apply to employees of a corporation'.

The DEEWR background paper indicates that the Minister may consider the following public policy principles:

- the likely impact on employees of the corporation to the grant of a licence;
- the likely impact on the corporation to the grant of a licence;
- the likely impact on the integrity of the Commonwealth scheme of workers' compensation under the SRC Act; and
- the likely impact on the operations of the State and Territory Government workers' compensation schemes.

In considering these principles, the Minister may also take into account:

- the size of the corporation (based on a minimum threshold of 500 employees); and
- the scope of the corporation's operation across jurisdictions (based on a minimum threshold of two jurisdictions); and
- where competition exists, whether this is a substantial part of the applicant's business.

DEEWR advise that the principles and threshold competition issues above are not intended to be exhaustive. Corporations, and other interested parties, are able to bring to the attention of the Minister any issues that bear on whether coverage under the SRC Act is desirable.

In all cases though, the Minister must operate within the legal constraints and corporations not eligible at law cannot be granted licences.

As the DEEWR background paper suggests, there is a review mechanism to decisions by the Minister.

A declaration under section 100 is a precondition to granting a licence under Part VIII of the SRC Act. DEEWR advises that corporations applying for a declaration under section 100 would be expected to apply for a licence within a reasonable period of time after being declared eligible to be granted a licence. In the event that a corporation does not proceed with an application to the Commission for a licence to self-insure within twelve months of the date that

a declaration has been granted, the Minister may review the need for the declaration and decide whether it should continue in force.

If a corporation is declared eligible by the Minister, it may apply to the Commission for a licence. The Commission considers applications and may grant a licence in accordance with sections 103 and 104 of the SRC Act. Section 104 sets out the criteria that an applicant must satisfy, that is:

- the applicant has sufficient resources to fulfill the responsibilities imposed on it under the licence; and
- the applicant has the capacity to ensure (where the scope of the licence so provides) that claims that are to be managed either by the licensee, or by another person identified in the licence on the licensee's behalf, will be managed in accordance with standards set by the Commission for the management of claims; and
- the grant of the licence will not be contrary to the interests of the employees of the licence whose affairs fall within the scope of the licence; and
- the applicant has the capacity to meet the standards set by the Commission for the rehabilitation and occupational health and safety of its employees.

The Commission has issued guidelines used by it when making such assessments.

Under section 108 of the SRC Act, the Commission can impose conditions of licence on self insurers. These can deal with financial viability and compliance capability issues, among other things. This is another important check and balance.

Self-insurers under the SRC Act are subject to a monitoring regime, carried out by Comcare on behalf of the Commission, which includes compliance with the SRC and OHS Acts. This includes reporting on workers' compensation data, reporting on management systems reviews and improvements, reporting on performance standards, site auditing and procedural auditing.

Under Schedule 3, Part 2 of the SRC Regulations 2002, applicants for self-insurance licences are required to provide evidence of consultation with employees about their intention to apply for a licence. Examples of evidence include any written notice to employees or employee representatives of the intention to apply for a licence, any written responses to the notices and any minutes of any consultative meetings.

OHS ASPECTS OF COMCARE

Since 14 March 2007, premium paying agencies and corporations licensed to self-insure under the SRC Act

have been subject to a single national workplace health and safety regime under the provisions of the Occupational Health and Safety Act 1991 (the OHS Act).

ACCI agrees with the DEEWR view that the OHS Act adopts the approach advocated by the Robens Committee in the United Kingdom (1972). This has been considered 'best practice' and the standard framework in Australian jurisdictions over the past generation – and is generally supported by employers.

This involves the concept of shared responsibility for workplace safety, with a principal Act setting out general duties of care aimed to protect employees and others affected by activities at an employer's undertaking. Broad duties are supported by regulations detailing requirements on specific issues.

Under the OHS Act, duties of care extend to employers, employees, manufacturers and suppliers in relation to plant and substances and persons erecting or installing plant in a workplace; and a feature is participation by employees and their representatives in workplace safety issues. Part 2 of the OHS Act sets out the duty of care provisions.

The OHS Act makes a number of specific provisions for the involvement of employees and their representatives in workplace safety issues, including:

- Sub-section 16(d) requires employers to develop written health and safety management arrangements (HSMAS) in consultation with their employees. The subsection also provides that the HSMAS must enable effective cooperation between the employer and the employees in promoting and developing measures to ensure the employees' health, safety and welfare at work, provide adequate mechanisms for informing the employees about the arrangements, provide adequate mechanisms for reviewing the effectiveness of the arrangements and provide for a dispute resolution mechanism to address disputes arising in the course of consultations; and
- Section 16A provides that employee representatives can represent employees in consultations to develop or vary health and safety management arrangements.

Part 3 of the OHS Act provides for employees to select health and safety representatives to represent them at the workplace and sets out the powers and functions of those representatives. Part 3 also provides for the establishment at workplaces of health and safety committees which comprise representatives of both the employer and the employees.

THE NATIONAL POLICY FRAMEWORK

ACCI is committed to a workplace injury management environment that focuses on enabling injured workers to achieve durable return to work outcomes and seeks to reduce the incidence and cost of workplace injury and disease.

ACCI believes there is considerable scope to further reduce the human and economic loss that arises from injury and disease at work. The costs of such injuries are borne by employers, workers and their families and the community at large.

The member organisations of ACCI are committed to cost effective injury management and compensation schemes which are economically sustainable and sensitive to the workplace and commercial circumstances of employers, including small business.

The member organisations of ACCI are also committed to the establishment of nationally harmonised systems that provide consistency in the provision of appropriate support to workers following a workplace injury. Specifically these systems should provide consistent principles in premium determination, statutory benefits, injury management, dispute resolution, mutual responsibilities and common law.

Private sector participation in Comcare in the manner expressed in this submission contributes to these goals.

Workers' compensation and complementary arrangements can play a vital role in improving workplace health and safety. They can encourage prevention of work related injury and disease, compensate for such disabilities when they occur and make provision for rehabilitation and early return to work as a normal expectation.

Nationally consistent workers compensation systems incorporating a range of key fundamental principles, which are implemented and applied consistently in all jurisdictions, is the core of the ACCI Workers' Compensation Policy.

ACCI strongly supports the option for employers to self insure. The ability of an employer to seek self insurance should be continued, with appropriate criteria to ensure that this option is financially sustainable.

EXISTING ARRANGEMENTS FOR SELF-INSURANCE

ACCI recognises that the current individual jurisdictional arrangements are complex. These arrangements are even more complex and challenging where employers operate nationally or even across just one state border.

ACCI therefore supports the self insurance arrangements in the Comcare scheme which were introduced to provide competitive neutrality for those corporations competing in the marketplace with Commonwealth-owned, or formerly owned businesses to ensure that the Commonwealth did not have an unfair advantage. For large employers, national self insurance alleviates the administrative costs incurred in meeting the different jurisdictional arrangements.

TERMS OF REFERENCE

ACCI's submission now turns to some specific comments on individual terms of reference.

Safety and Compensation

a. Does the scheme provide appropriate OHS and workers' compensation coverage for workers employed by self-insurers?

Yes, provided adequate resources exist in government for the proper administration of the scheme, should its private sector profile amongst self insurers expand over time. For these employers, ACCI supports a scheme that provides national coverage. Given the differences and imbalances in OHS regulation amongst and between jurisdictions, applying to self insure under Comcare is a reasonable basis for regulation in these nationally operating businesses.

ACCI would not support an extension of coverage for matters such as journey claims and broader access to common law.

b. Does the scheme regulator now have the enforcement policy and operation capacity to ensure self-insurers provide safe workplaces? What are the likely operation requirements should the scheme's coverage be expanded?

It is important that sufficient resources exist for the necessary tasks to be undertaken by government and its regulators. However, given that eligible employers migrating into the Comcare scheme are generally better performing self insured employers, there is no need for a disproportionate level of resources, though there needs to be a sensible level of enforcement and investigation capability. There also needs to be a strengthened Commonwealth and State government relationship which may disperse the perception that the Commonwealth's enforcement capacity is inferior.

ACCI's understanding is Comcare has recently established a new agreement with the jurisdictions to deliver OHS enforcement, which would give rise to adequate oversight of self-insurers providing safe workplaces in accordance with their legal obligations.

c. What arrangements are required to ensure that all workers and contractors working at workplaces controlled by self-insurers have their health and safety protected, regardless of coverage by Commonwealth or State and Territory OHS legislation?

There is no single or clear view even amongst the jurisdictions to this question about the coverage of contractors, and so it should not need to be answered fully or for all contractors to these national companies to be fully regulated by Comcare or for the Comcare scheme to be seen as a viable proposition for the relevant employer and its employees.

Commonwealth legislation should be as clear as possible in this regard, to avoid problems in the practical application of laws concerning contractor coverage in circumstances where the self insured is heavily dependent upon the use of contract labour.

Part of the confusion is due to inconsistent regulation that requires contractors to be compliant with more than one OHS regime. Additionally, enforcement agencies require employers to demonstrate their compliance in differing ways which imposes an unnecessary cost and compliance burden on organisations employing staff over multiple jurisdictions.

All parties involved would benefit from a well structured OHS program for self insured employers that provides for efficient and financially acceptable contractor compliance. In doing this it is important to note that shared arrangements are required, in that all parties have responsibilities and duties (to varying degrees) whether it is an employer, employee or contractor.

d. What effect have the recent changes to the Safety, Rehabilitation and Compensation Act 1988 had on the rehabilitation and return to work of injured workers?

The rehabilitation and return to work rates achieved by self insured employers represents some of the best practice in the Australian labour market. The criteria set down by States and Territories for the issue of self insured licences (some of which in our view is too restrictive), and the pro-active manner in which the relevant companies have attended to their OHS and rehabilitation obligations is evident in their claims records and their return to work rates. Recent changes to the SRC Act have not adversely impacted, based on early indications.

e. Does the scheme achieve effective return to work outcomes?

Ultimately it is employer and employee behaviour (as well as the rehabilitation industry behaviour) which determines

return to work rates. However, legislative frameworks matter and do make a difference. Those frameworks which remove unnecessary obstacles to employer / employee engagement in injury management are the most desirable. Given that most self insured employers also self manage claims or take a direct role in claims, the structure of the SRC Act – based as it is on self insured employers – is conducive to good return to work outcomes.

ACCI policy supports durable return to work as the cornerstone of all workers' compensation systems. All workers' compensation schemes should incorporate a Total Injury Management System and seek to achieve a return to work culture by encouraging both employers and employees to actively participate in rehabilitation programs for their workplaces.

Consultation

f. Does the requirement that employees be consulted about their employer's intention to apply for a self-insurance licence with Comcare (or vary an existing licence) result in meaningful discussion about occupational health and safety and workers' compensation coverage?

Consultation is generally desirable, though it is not amenable to legislative direction.

National self insurance should be available for national employers meeting predetermined criteria. ACCI supports consultation but whether its absence should be fatal to an application is another matter. Preferably, employers should be subject to national occupational health and safety requirements – which include forms of employee engagement and employee rights and responsibilities to accompany those of employers.

Employees should be advised of an employer's decision to apply to self insure not about their intention. There is no reason why employees could not be given an opportunity to put their views to the decision making authority.

g. Does that scheme ensure ongoing consultation with, and the involvement of, employees and their representatives in relation to workplace safety arrangements at workplaces of self-insurers?

All systems of workers' injury management and compensation should be based on principles of mutual responsibility for all stakeholders. The process for consultation is ongoing and is a valuable and effective way of addressing a wide range of issues such as identifying hazards and assessing any risks at the workplace;

Involving employees, and where appropriate their representatives in health and safety programs encourages commitment to the achievement of business OHS goals and an awareness of shared responsibilities.

Finance

h. Do the financial arrangements for self-insurers present any risk to premium payers in the scheme or to the Commonwealth?

If the prudential requirements are met and Comcare properly monitors self-insurer behaviour then risks should be very minimal to non-existent.

In mitigating the risk of insolvent self-insurers, Comcare currently requires self-insurers to provide some form of security bond. In self-insuring, ACCI supports appropriate criteria being established to ensure this option is financially sustainable for potential self-insurers.

Viability concerns arise where schemes are not fully funded and the cash flow from annual premium is substantially or fully utilised in underwriting current year costs and administration.

Jurisdictions with underfunded schemes will always create barriers to a national scheme due to the jurisdiction having to underwrite unfunded liability.

Seeking self-insurance provides a mechanism to fully internalise risk management and retain management, control and full responsibility for outcomes from OHS and claims management strategies. Where an employer has successful risk mitigation and claims management programs, cost savings are realised.

National employers benefit under a single self-insurance arrangement by resource saving through compliance with a single system of regulatory and prudential requirements.

i. What are the likely impacts on state and territory workers' compensation schemes of corporations exiting those schemes to join Comcare?

Minimal to zero. Self-insurers are not full premium payers to State or Territory, except for certain low-level administrative payments. They carry their costs directly.

The Productivity Commission's March 2004 report on national OHS and workers' compensation frameworks did not consider this to be a problem in relation to self-insured employers migrating from State and territory schemes.

Quite often an assumed impact is the perception of premium loss. However, the perceived risk through loss of premium to any scheme is balanced by the corresponding removal of claims and future risk from the scheme.

Financial viability of any workers' compensation scheme is strongly influenced by the performance of the scheme, including the number and cost of claims and the soundness of the premium rating process. Where the management and administration of the system is fundamentally sound, a small number of larger employers exiting the system should not unduly impact upon system viability.

If the exiting firm is already a self-insurer in the state system then there would be very little impact if any.

Access

j. Why do private companies seek self-insurance with Comcare? Are there alternatives available to address the costs and red tape for employers with operations across jurisdictions having to deal with multiple OHS and workers' compensation systems?

The option of self-insurance for private companies is attractive for a number of reasons. It is an opportunity for companies who operate in multiple jurisdictions to have consistency across their operations, therefore reducing the costs and complexities. The current inconsistencies that exist across the State and Territory schemes don't ensure that all injured workers in Australia are fairly and consistently compensated.

The independent idiosyncrasies in scheme administration throughout the country also make national self-insurance an appealing option. A large employer will seek self-insurance in order to reduce the costs of managing these differences, and add to efficiency and productivity.

k. If self-insurance under the Comcare scheme remains open to eligible corporations, should there be changes to the eligibility rules for obtaining a licence to self-insure under Comcare?

Some changes are required. In terms of financial and resource criteria changes are not required. This criteria along with the requirement to provide financial guarantees offers a sufficiently prudent level of protection to the scheme.

Changes to eligibility rules are required with further criteria established so that the option to self-insure is financially sustainable for employers. Further changes are required so that national self-insured organisations not in competition or carrying on a business in competition with a Commonwealth authority are eligible, given they meet prudential and other requirements. These employers should be able to seek self-insurance. That is what the Productivity Commission recommended in 2004, yet five years later no action has been taken by government on such an approach.

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Victorian Employers' Chamber of Commerce & Industry

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ACCORD - advocate for the consumer, cosmetic, hygiene and specialty products industry

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Agribusiness Employers' Federation

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Air Conditioning and Mechanical Contractors' Association

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Australian Hotels Association

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Facsimile: 02 6273 4011
Email: aha@aha.org.au
www.aha.org.au

Australian International Airlines Operations Group

C/- QANTAS Airways Qantas Centre
QCA4 203 Coward Street
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Telephone: 02 9691 3636

Australian Made, Australian Grown Campaign

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Australian Mines and Metals Association

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