AUSTRALIAN GOVERNMENT

Licensing and other immediate amendments under the *Safety, Rehabilitation and Compensation Act 1988*

Regulation Impact Statement

Department of Employment

February 2014

Table of Contents

1. Background

The *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) provides rehabilitation and workers' compensation arrangements for Commonwealth and Australian Capital Territory (ACT) Government employees as well as employees of a small number of private corporations (licensees). The SRC Act also applies to members of the Australian Defence Force (ADF) who were injured before 1 July 2004 during non-operational service.

The SRC Act establishes the Safety, Rehabilitation and Compensation Commission (SRCC) and Comcare as co-regulators of the SRC Act. Comcare also has responsibility for regulation of the Commonwealth *Work Health and Safety Act 2011* (WHS Act), which prescribes the work health and safety (WHS) requirements for Commonwealth employers and employees, and those private corporations currently covered by the SRC Act. This work health and safety and workers' compensation framework is referred to as the Comcare scheme.

The Comcare scheme supports two categories of employers – premium payers and licensees. Australian Government agencies and statutory authorities (excluding members of the ADF) and ACT Government agencies and authorities pay premiums to Comcare under the SRC Act and are termed the premium payers. The SRC Act also enables current and former Commonwealth authorities, and private corporations which can demonstrate that they are in competition with a current or former Commonwealth authority to seek a licence to self-insure for workers' compensation purposes under the SRC Act – termed the licensees. Licensees carry the financial risk for their own claims and manage them either directly or through contracted third party claims administrators. Claims for the ADF members under the Comcare scheme are managed by the Department of Veterans' Affairs. ADF members injured on or after 1 July 2004 are covered by the *Military Rehabilitation and Compensation Act 2004*.

Self-insurance arrangements provide a choice to eligible corporations to manage and bear the costs and risks of workers' compensation claims submitted by their own employees. Self-insurance was introduced into the Comcare scheme to enable Commonwealth authorities, former Commonwealth authorities, and corporations that are in competition with a Commonwealth authority or former Commonwealth authority to apply for workers' compensation coverage as a licensed authority under the Comcare scheme. This arrangement for private sector corporations to join the Comcare scheme was introduced to provide competitive neutrality.

As at 2012-2013, about 57 per cent of all employees covered under the Comcare scheme were employed by premium payers, and the remaining 43 per cent by licensees.[1]

The current process for private corporations seeking a licence is a two stage process with the corporation first obtaining a declaration by the Minister that it is eligible to be granted a licence and then lodging an application for a licence with the SRCC.

[1] Comcare Annual Report 2012-2013

Stage 1: Ministerial Declaration

Under subsection 100(1) of the SRC Act, the Minister responsible for the SRC Act may declare a corporation eligible to be granted a licence. At present, only corporations that are:

a. ongoing Commonwealth authorities; or
b. who are declared by the Minister to be 'eligible corporations' – corporations that are, but are about to cease to be a Commonwealth authority; corporations that were previously a Commonwealth authority; corporations carrying on business 'in competition' with a Commonwealth authority or with another corporation that was previously a Commonwealth authority,

are able to apply for a licence.

Stage 2: Assessment by the SRCC

The SRCC is responsible for considering applications for a licence. Before the SRCC can approve a licence for self-insurance, it must be satisfied that the application meets a number of financial and prudential criteria as outlined in s 104(2) of the SRC Act and may also have regard to any other matter that it considers relevant for the purposes of assessing whether a licence should be granted as per s 104(1) of the SRC Act.

In response to the 2004 Productivity Commission Inquiry into *National Workers' Compensation and Occupational Health and Safety Frameworks* (2004 Productivity Commission Inquiry), from March 2007, corporations that were licensed under the SRC Act for workers' compensation coverage were also covered by the Commonwealth's occupational health and safety (OHS) legislation. This meant that licensees were subject to one integrated OHS, rehabilitation and compensation system no matter what state or territory they operated in or where their employees were located.

In December 2007, the previous government placed a moratorium on new applications for declarations of eligibility from private sector corporations seeking self-insurance licences under the Comcare scheme. More recently on 2 December 2013, the current Government lifted this moratorium.

In 2011, the Model Work Health and Safety Act provided model laws to be enacted in each jurisdiction to harmonise work health and safety laws across Australia. The Commonwealth has enacted the WHS Model laws. Under the Commonwealth WHS laws, new entrants to the Comcare scheme will not be covered by the Commonwealth WHS regime. This limitation was introduced in anticipation of national harmonisation of work health and safety laws. However, two states, Victoria and Western Australia have not adopted the model work health and safety laws, with Queensland recently considering amendments to the model laws. Hence, currently any new licensee to the Comcare scheme will have to retain coverage and comply with the WHS laws of each jurisdiction in which they operate.

Corporations operating and employing in two or more states and territories are required to maintain workers' compensation cover in each jurisdiction in accordance with each state or territory's workers' compensation legislation. Corporations are also required to comply with WHS laws in each state and territory and deal with each jurisdictional WHS regulator.

The additional costs of complying with up to eight workers' compensation and WHS regimes and regulators, imposes an unnecessary burden on business which adversely impacts productivity.

These issues of multi-state employers having to maintain multiple workers' compensation arrangements and comply with different jurisdictions for WHS have been raised and consulted on through several reviews and inquiries over the past two decades.

The Industry Commission (now the Productivity Commission) first examined the issue of greater national consistency with reference to workers' compensation in 1994 and with reference to OHS in 1995. Both inquiries concluded that national consistency was desirable and in the case of OHS that national uniformity was the preferred objective.

In its 2004 Inquiry, the Productivity Commission examined the issue of national frameworks and concluded that the multiplicity of workers' compensation and OHS systems impose a significant compliance and cost burden on multi-state employers. The Productivity Commission consultation process involved public hearings in all capital cities, opportunities to provide submissions prior to and after the release of the Interim Report and informal discussions with Australian, state and territory governments and over 100 organisations and individuals in all jurisdictions, representing a range of interests, including: injured workers and injured worker support groups; unions; employers and employer associations; insurers and insurer associations; licensees and licensee associations; academics; medical and allied health professionals; safety professionals; lawyers; and actuaries[2]. In addition, the Productivity Commission requested advice from consulting actuaries on the potential impact on the state workers' compensation schemes of widening access to self-insurance on a national basis.

The Comcare Review undertaken by the then Department of Education, Employment and Workplace Relations in 2008 examined a range of issues relating to self-insurance arrangements under the Comcare scheme, including OHS, workers' compensation arrangements, financial viability, governance arrangements and access. Taylor Fry Consulting Actuaries were engaged to review and undertake consultations in relation to self-insurance arrangements under the Comcare scheme. The review entailed an analysis of 80 written submissions, and consultations with 20 stakeholder organisations including state, territory and Australian governments; employer and employee groups; legal bodies; and current licensees. Corporations and industry groups that were interested in national self-insurance also made submissions and were consulted. In addition to the Taylor Fry actuarial report, the 2004 Productivity Commission Inquiry Report on *National Workers' Compensation and Occupational Health and Safety Frameworks* (2004 Productivity Commission Report), was also examined during this review.

Most recently in 2012-2013, a review of the SRC Act (SRC Act Review) was undertaken by Mr Peter Hanks QC and Dr Allan Hawke AC. Mr Hanks reviewed the SRC Act's workers' compensation benefit

[2] Productivity Commission Inquiry Report No 27, March 2004 -*National Workers' Compensation and Occupational Health and Safety Frameworks*

structure; rehabilitation and return to work provisions and Dr Hawke reviewed the Comcare scheme's performance, in particular the governance and financial frameworks.

Throughout the SRC Act Review, Mr Hanks and Dr Hawke consulted extensively and engaged with participants in the Comcare scheme to assist in the development of the recommendations. The participants consulted included employer associations and employers, employee organisations, medical practitioners, rehabilitation professionals, lawyers and other professionals, government agencies, current licensees and Scheme administrators. Consultations were conducted at the planning and development stages such that stakeholders were extensively involved in the initial stages of identification of issues, through to the development of recommendations and post publication of the recommendations.

The Australian Government is committed to building on and improving the existing workplace relations system and eliminating unnecessary red-tape for Australian businesses.

This Regulation Impact Statement examines certain amendments to the SRC Act that will reduce red tape and compliance costs for employers who are required to meet workers' compensation requirements in multiple jurisdictions.

The department considers that the issues in this proposal have been discussed, reviewed and consulted on extensively over the last two decades. Additionally, the department recently consulted with states and territories and its relevant authorities and has included the feedback in this Regulation Impact Statement.

Description and scope of the problem

Each of the eight states and territories has their own workers' compensation scheme. The 2004 Productivity Commission Inquiry identified the compliance burden and costs for multi-state employers as the most significant issue arising from the differences in the schemes. The Productivity Commission report highlighted that Australian businesses which operate and employ in more than one state or territory are required to maintain licenses and/or pay premiums in each state and territory jurisdiction and comply with mandatory OHS and workers' compensation requirements. This results in unnecessary red tape and cost duplication for multi-state employers.

Currently, there are 30 licensed corporations covered by the SRC Act. According to the Australian Bureau of Statistics (ABS) data, from 30 June 2007[3] (most recent), there were 5 876 large[4] employing businesses, of which 1 959 or one third, were operating in two or more states[5]. Of the 1 959 companies operating in two or more states, there are 234 companies operating and employing in all eight states and territories.

The 2004 Productivity Commission Inquiry found that costs for multi-state employers meeting the requirements of the various jurisdictions, rather than those of a single national scheme, can be in the order of millions of dollars a year[6]. In addition, scheme differences result in inequities for employees of the same corporation but working in different jurisdictions.

Even though current provisions under the SRC Act allow private corporations to apply for a self-insurance licence under the Comcare scheme, they can only do so if they meet the competition test and are subsequently declared eligible by the Minister. Hence, access to the Comcare scheme is currently not available to the majority of Australian corporations who operate and employ in two or more states as they are not in the industries in which current or former Commonwealth authorities generally operate. These industries mainly comprise: Telecommunications – with Telstra being a former Commonwealth authority; Road freight - Australia Post as a current Commonwealth authority; and Banking – the Commonwealth Bank of Australia as a former Commonwealth authority.

More recently, the SRC Act Review concluded that removing the competition test for multi-state employers 'would assist in reducing red tape, while broadening the Comcare scheme to allow a national approach for employers who satisfy the associated set of criteria and would build on the national disability strategy and approach'.

2.1 Compliance costs and regulatory burden for multi-state corporations

According to the 2004 Productivity Commission Inquiry, multi-state employers face a problem of increased costs of compliance, sometimes amounting to millions of dollars a year, as a result of

[3] ABS 8165.0 - Counts of Australian Businesses, including Entries and Exits, Jun 2003 to Jun 2007
[4] The ABS definition of a large employing business is a business employing 200 workers or more
[5] This (June 2007 publication) is the most recent ABS data that lists whether businesses operate in more than one state, and provides a break down on the number of states in which businesses operate. This data is no longer collected
[6] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks*

workers' compensation coverage and OHS obligations in multiple jurisdictions. The report highlighted some estimates of the direct costs of multiple schemes[7]:

- *Optus (sub. 57) estimated that, if it received a single national self-insurance licence, it would expect savings of up to $2 million per annum of its $6 million annual workers' compensation costs. It estimated (sub. 134) that the cost of complying with multiple workers' compensation and OHS arrangements adds about 5 to 10 per cent to the cost of workers' compensation premiums.*
- *CSR (sub. 109) estimated the cost of maintaining and renewing five self-insurance licences at over $700 000 per annum, compared to $200 000 for a single licence.*
- *Insurance Australia Group (sub. 89) estimated that the existence of multiple schemes added $10.1 million to the (once-off) cost of setting up a single national IT platform. In total, it estimated that having to comply with multiple jurisdictions adds about $1.7 million to IT costs annually. Further, it estimated that a national scheme could offer overall operating cost savings to the group of $1.2 million per annum and reduce actuarial costs by $400 000 per annum.*
- *BHP Billiton (sub. 110) commented that it cost in the vicinity of $50 000 to purchase a system to manage and supply information for each of the jurisdictions.*
- *Skilled Engineering, (sub. 177) estimated that the annual cost saving from operating under a single set of national OHS and workers' compensation rules would be in excess of $2.5 million, or some 15 per cent of the company's annual costs of OHS and workers' compensation.*

The report found that: *Multi-state employers which self-insure in more than one jurisdiction are required to comply with the differing prudential requirements of each of those jurisdictions. This involves the replication of costs of meeting the different financial capability requirements, bank guarantees and reinsurance policies, both initially and on an on-going basis*[8]. The report also identified the issue of different compliance requirements across the different jurisdictions.

2.2 Inequity in benefits for workers

All employees of a corporation currently self-insured (licensee) under the Comcare scheme would have the same workers' compensation entitlements regardless of the state or territory they worked in. However, this is not the case for employees of a multi-state corporation that is not currently under the Comcare scheme.

The 2004 Productivity Commission Inquiry recognised that having multiple schemes across the different jurisdictions instead of the one scheme under a national framework meant that injured or ill employees of a multi-state employer could receive different benefits for the same type and severity of injury depending upon the jurisdiction involved and that mobile workers are also faced with issues of differences in coverage and differences in the allocation of benefits[9].

---

[7] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* - Overview Chapter

[8] Ibid – page 20

[9] Ibid – page 23

As identified by the Productivity Commission, variations in benefits are only one element causing difficulties for the employees of corporations that operate in more than one jurisdiction. Employees are also faced with differences in degrees of access to common law; different rehabilitation and return to work requirements.

2.3 Group licences

Currently there are no provisions for group licenses in the SRC Act, which is contrary to the situation in most state and territory workers' compensation schemes. This means that corporations within a group or different parts of a business would require individual declarations of eligibility and individual licences from the SRCC including when new companies become a part of the group as a result of restructuring. For example, in 2011, AaE Retail Pty Ltd, a new company arising from the restructure of an existing licensee the AaE Group, had to apply for a separate self-insurance licence.

The Comcare Review identified that assessing corporations individually against the eligibility criteria set out in the SRC Act, leads to instances where larger members of the group meet all the requirements to qualify for the eligibility declaration while smaller members may only partially meet these requirements. This would result in a situation where some parts of a business or some entities of a group may be in the Comcare scheme while some may not be covered by the scheme, leading to significant inequities amongst these corporations and inequity and inconsistency in benefits for employees working for the same business or group.

The SRC Act Review identified that most of the current licensees were specifically concerned with the inability of the Comcare scheme to grant group licences, which results in higher administrative costs of applying for each licence and higher compliance costs as opportunities to aggregate obligations are lost.

2.4 Lack of access to an integrated national framework for work health and safety

As for workers' compensation coverage, the 2004 Productivity Commission Inquiry found that multi-state employers face costs associated with dealing with the different requirements for OHS in the various jurisdictions. The report stated[10]:

> *The multiplicity of OHS and workers compensation arrangements, their divergent elements and their constant change impose a significant compliance burden and cost, particularly on multi-state employers. They also present problems for an increasingly mobile workforce…*
>
> *…Whether, in practice, cross-border problems arise in any numbers is, in some ways, a secondary issue. The fact is that subtle differences in wording open the opportunity for different interpretations and adds confusion and uncertainty for business...*

[10] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* – page 17 and page 27

Optus estimated that the cost of complying with multiple OHS and workers' compensation arrangements adds about 5 to 10 per cent to its workers' compensation premiums[11].

From March 2007, occupational health and safety coverage was provided for all SRC Act licensees – both Commonwealth authorities and private corporations licensed under the SRC Act. However, with the enactment of the Commonwealth WHS Act, new licensees entering the Comcare scheme from 1 January 2012 have not been provided access to the Commonwealth's WHS regime. This change was introduced in anticipation of national harmonisation of work health and safety laws, which has not occurred in Victoria and Western Australia.

As a result, from 1 January 2012, any private sector corporation seeking self-insurance for their workers' compensation obligations in the Comcare scheme will not be covered for work health and safety under the Commonwealth's work health and safety legislation. This inability to be covered under a single national regulator compromises an integrated approach to work health and safety and rehabilitation for these corporations and adds to unnecessary costs and administrative burden.

2.5 Off-site recess breaks

Section 6 of the SRC provides that an injury sustained while an employee was at his or her place of work for the purposes of their employment, or 'was temporarily absent from that place during an ordinary recess in that employment', will be considered an injury 'arising out of, or in the course of' that employment.

The Productivity Commission's 2004 Inquiry found that the employer's ability to exert control over workplace recess breaks and social activities is a relevant consideration and recommended that coverage for recess breaks and work-related events be restricted, on the basis of employer control, to those undertaken at workplaces and at employer-sanctioned events[12].

Coverage for off-site recess breaks was removed by the then Coalition Government in 2007, and reintroduced by the previous Government in 2011.

The effect of this provision is that workers' compensation could be payable, for example, where an employee sustains an injury while shopping or playing sport during a lunch break. This is despite the fact that the employer has no control over the activities of the employee or the environment in which the employee engages in those activities. This increases costs for employers as a result of a higher incidence of accepted claims.

2.6 Serious and wilful misconduct

The SRC Act pays compensation in most cases where an injury is sustained "out of, or in the course of, employment". Whether the employer or the employee is at fault is generally not relevant to the consideration of eligibility for compensation.

However, the SRC Act recognises that there are situations where compensation should not be payable. Relevantly, these include:

---

[11] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* – page 19

[12] Ibid – page 186

(a) if an employee sustains an injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury (subsection 6(3));
(b) if the injury is intentionally self-inflicted (subsection 14(2)); or
(c) if an injury is caused by the serious and wilful misconduct of the employee (Subsection 14(3)).

In respect of (c) above, the SRC Act currently provides a qualification when considering serious and wilful misconduct. Where an injury is caused by the serious and wilful misconduct of the employee, compensation is payable where death or serious and permanent impairment occurs. This means that under the Comcare scheme, there is capacity within the existing SRC Act provisions for compensation to be paid in instances where death or serious and permanent impairment occurs, notwithstanding that the injury was caused by the serious and wilful misconduct of the employee.

This policy has not been reviewed since the commencement of the SRC Act in 1988. There have been developments in the Comcare scheme experience over the past 25 years, particularly in relation to community expectations on relevance and personal accountability. In circumstances where a claimant's injury is the result of their own serious and wilful misconduct, community expectations are that the injury would not be compensable.

2. Objectives

Reducing red tape for Australian business in order to ensure that all unnecessary barriers to productivity are removed is a significant priority for the Government. While addressing the aforementioned problems, the Government's overarching policy objectives are reducing red tape and regulatory burden for businesses and reasonable equity and simplicity for workers employed by businesses including those operating across multiple jurisdictions.

As noted earlier, there is an opportunity to reduce significant compliance costs, simplify processes and boost productivity and efficiencies for businesses that operate and employ across at least two states and territories and which are required to meet workers' compensation and work health and safety requirements in multiple jurisdictions.

3. Options

In considering how this objective of reducing red tape for businesses and attaining simplicity and equity in benefits for its workers could be achieved, a range of options have been presented for consideration and include:

- maintaining the status quo (Option 1);
- an approach which would allow national employers (required to meet workers' compensation obligations under the laws of two or more states or territories) to apply for a licence to self-insure their workers' compensation obligations under the Comcare scheme and also enable access to group licences (Option 2);
- opening up the Comcare scheme to national employers to apply for a licence to self-insure their workers' compensation and work health and safety obligations under the one national regulator and also enable access to group licences (Option 3);
- removing coverage for injuries that occur during off-site recess breaks (Option 4);
- removing coverage for injuries that occur as a result of serious and wilful misconduct (Option 5).

4.1 Option One – Maintain the status quo

4.1.1 Licensing process

If the status quo is maintained, the current two stage process for obtaining a self-insurance licence will remain such that only those corporations which (1) obtain a declaration from the Minister that they are in substantial competition with a current or former Commonwealth authority, and have addressed Ministerial Guidelines regarding the level of competition and certain public policy principles, will then (2) be able to apply to the SRCC for a license to self-insure their workers' compensation obligations under the SRC Act.

4.1.2 Group licences

With the status quo, those corporations with a number of wholly owned subsidiaries or entities would need to apply and be assessed individually, firstly by the Minister for a declaration of eligibility to apply and secondly by the SRCC for a licence for each entity within that group.
As a result a group could have some companies' eligible to apply and some not.

In addition to requiring individual declarations of eligibility and submitting individual applications instead of a group level application, these corporations are required to conduct administrative and compliance activities at the individual company level which further adds to administrative costs and red tape.

4.1.3 Work health and safety

If the status quo is maintained, those corporations which can demonstrate competition and obtain a licence to self-insure their workers' compensation liabilities under the Comcare scheme, will still not be able to access work health and safety arrangements nationally under the Commonwealth's WHS Act. Hence, multi-state corporations new to the Comcare scheme from 1 January 2012 will still need to interact with up to eight state regulators in regards to their work health and safety obligations. It also means that inequity within licensees exists as some of them will be covered under the Comcare scheme for work health and safety while some will not.

Under this option, work health and safety obligations will not be the same for employees working in the one corporation and employees will need to be aware of their responsibilities and obligations under the laws of each jurisdiction they work in. Hence, this option will not address the issues of inequities in benefits or compliance costs associated with multiple workers' compensation regimes and jurisdictional obligations for work health and safety. The majority of states and all territories have introduced harmonised WHS legislation; however national employers are still required to deal with the costs and complexity of transacting with up to eight different WHS regulators and regulatory regimes.

4.2 Option Two – enable national employers (corporations required to meet workers' compensation obligations under the laws of two or more states and territories) access to self-insurance and group licences but not WHS under the Comcare scheme

4.2.1 Licensing process

Under Option Two, the SRCC will consider eligibility and application for licence from employers who are required to meet workers' compensation obligations under the laws of two or more states or territories – defined as national employers. This option allows the SRCC to consider the suitability of an applicant for a self-insurance licence in a one-step, streamlined process and removes the need for either an eligibility declaration by the Minister or the competition test. This option will still require the corporation to meet the stringent financial, prudential and work health and safety performance requirements that are currently imposed by the SRCC in granting a licence.

Note that under this option, the 'national employer' eligibility requirement will not apply to existing licensees or to corporations that are about to cease being or were previously a Commonwealth authority, as they may not always be able to meet the requirements of having met workers' compensation obligations in two or more states or territories.

4.2.2 Group licences

Option Two allows for the SRCC to grant a group licence to an eligible group of corporations. This will be in line with current commercial realities and provisions in the state regimes.

Under this option, for licensing purposes, the SRCC will be given the discretion to treat corporations as a group or to treat them as separate corporations depending on the particular circumstances.

4.2.3 Work health and safety

As with the status quo, under Option Two, new entrants to the Comcare scheme (from 1 January 2012) will still be excluded under the Commonwealth's WHS Act and will have to comply with work health and safety requirements of the different jurisdictions they operate in. Hence, national employers new to the Comcare scheme will still have to deal with the costs and complexity of dealing with up to eight different regulators and regulatory regimes in regards to their WHS obligations and their employees having to be aware of their obligations under each jurisdiction they work in.

4.3 Option Three – enable national employers (corporations required to meet workers' compensation obligations under the laws of two or more states and territories) to access self-insurance, group licences and WHS provisions under the Comcare scheme

4.3.1 Licensing process

As in Option Two, this option will allow employers who are required to meet workers' compensation obligations under the laws of two or more states or territories – defined as national employers - to apply directly to the SRCC for a self-insurance licence. As in Option Two, this option provides for a streamlined one-step eligibility and application process and will remove the need for corporations to seek a declaration of eligibility from the Minister prior to applying to the SRCC for a licence.

As with Option Two, existing licensees will be exempt from the 'national employer' eligibility and so will the corporations that are about to cease being or were previously a Commonwealth authority.

4.3.2 Group licences

As in Option Two, this option provides the ability for the SRCC to grant group licences to an eligible group of corporations.

4.3.3 Work health and safety

Option Three will enable all licensees under the SRC Act to be covered by the Commonwealth WHS Act. Under this option, as is the case with current licensees new entrants to the Comcare scheme will be covered by the Commonwealth work health and safety regime. Hence, multi-state corporations will need to only comply with a single national regulator instead of up to eight state regulators in regards to their work health and safety obligations.

A single workers' compensation and work health and safety system will help to overcome inequities in benefits for workers employed by the corporations across the various jurisdictions, address employee and employer issues of meeting differing WHS requirements and reduce the cost of compliance. It is an opportunity for multi-state corporations to have consistency across their operations both in terms of benefits to their employees and regulatory requirements, therefore reducing the costs and complexities and improving efficiencies and productivity.

4.4 Option Four - Removal of off-site recess breaks coverage

Under this option, the provision removing coverage for off-site recess breaks will be restored to the SRC Act. This means that there will continue to be workers' compensation coverage for injuries sustained during authorised recess breaks at the employee's place of employment and attendance at employer-sanctioned events, but not for other recess breaks taken away from the place of employment.

This option affords an equitable balance between an employer's obligations to provide a safe workplace and the workers' capacity to undertake their own activities during off-site recess breaks.

4.5 Option Five - Removal of coverage for injuries that occur as a result of serious and wilful misconduct

This option proposes to remove any availability for compensation where an employee's injury is caused by their own serious and wilful misconduct, even if it results in death or serious and permanent impairment. This is a new concept in workers' compensation schemes in all Australian jurisdictions but is aligned with evolving community expectations in terms of personal accountability.

4. Impact Analysis

Key amendments proposed to the Comcare scheme and addressed in this analysis include:

- simplifying the current licensing process by removing the requirement of the competition test for eligibility;
- expanding the coverage of the Comcare scheme to national employers;
- allowing group licenses to be granted for a related group of companies or entities; and
- enabling private corporations new to the Comcare scheme access to a single national regulator for work health and safety.

This Regulation Impact Statement includes the department's analysis of the impact of the proposed changes to the SRC Act on Australian corporations operating and employing in two or more states and territories.

5.1 Option One – Maintain the status quo

Option One maintains the status quo and is used as the benchmark for considering the costs and benefits of the three Options.

5.1.1 Licensing under Option One

Benefits of licensing arrangements as at the status quo

There are no benefits to employees or employers in having constrained access to self-insurance licence provisions as with the status quo. Only those limited numbers of corporations that can establish substantial competition to be declared eligible by the Minister to apply for a licence are able to realise the related substantial savings in compliance and administrative costs that come from working with a single scheme and a single regulator.

Costs of licensing arrangements as at the status quo

Under the current two stage process, corporations that are not able to meet the 'competition test' eligibility are not able to access the benefits of savings in compliance and administrative costs associated with access to a single national system for workers' compensation.

Multi-state corporations have raised the issue of inconsistent coverage and regulatory burden caused by the requirements of reporting to multiple (potentially as many as eight) jurisdictions. The 2004 Productivity Commission Inquiry Report noted the range of direct costs to multi-state employers in meeting the requirements of the various jurisdictions, rather than those of a single national scheme[13].

It was estimated by Insurance Australia Group (IAG) in their submission (sub. 89), that having to comply with multiple jurisdictions adds about 1.7 million to IT costs annually while given access to a single national system for workers' compensation and work health and safety, their direct cost savings would be as high as $4.0 million per annum[14].

---

[13] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* – page 17

[14] Ibid – page 19

BHP Billiton (sub 110) submitted to the Productivity Commission[15]:

> *A national workers' compensation framework will avoid the need for BHP Billiton to pay duplicate actuarial valuations and bank guarantees for the various statutory authorities across Australia. Companies could instead obtain a single national actuarial valuation and lodge a single bank guarantee at a reduced cost. Being self-insured under a single national body would bring about significant savings in audit costs that exists in our 5 self-insured states.*

The fundamental reasons for a corporation having one workers' compensation and work health and safety system rather than meeting differing requirements in up to eight different jurisdictions has not changed over the years. Being required to adhere to the requirements of multiple jurisdictions not only impacts on the costs of a business but also creates inequity in benefits to their employees working in different jurisdictions.

With the requirement to meet the competition test under the status quo, many multi-state corporations miss out the benefits of the one national coverage and incur the regulatory burden of having to report across multiple jurisdictions and higher compliance costs.

5.1.2 Group licences under Option One

Benefits of the lack of group licence arrangements as at the status quo

There are no benefits of not having group licences as under the status quo.

Costs of the lack of group licence arrangements as at the status quo

Currently, corporations covered under the Comcare scheme must be individually assessed for eligibility to apply for a self-insurance licence, including entities of a group of companies. If all entities are declared eligible, they are required to submit individual applications instead of one at a group level, as currently there is no provision for group licence under the Comcare scheme.

Under the status quo, administrative and compliance activities such as work health and safety systems have to be managed at the individual company level instead of at the group level which adds to administrative costs and red tape. Hence, in the absence of group licences corporations miss out savings from economies of scale that can be achieved through reduced reporting, management and compliance burden.

During consultations for the SRC Act Review and the Comcare Review, licensees raised concerns specifically in relation to the inability of the Comcare scheme to grant group licences.

---

[15] BHP Billiton Limited submission to 2004 Productivity Commission Inquiry into *National Workers' Compensation and Occupational Health and Safety Frameworks* – page 3

5.1.3 Work health and safety under Option One

Benefits of WHS arrangements as at the status quo

Under the status quo the benefit and cost savings from access to a single national regulator for WHS is only available for corporations currently under the Comcare scheme. As at 1 January 2012, coverage under the Commonwealth's work health and safety regime is not available for new entrants to the Comcare scheme.

Costs of WHS arrangements as at the status quo

Under the status quo, some private licensees (entering the Comcare scheme before 1 January 2012) will be covered under the Commonwealth's work health and safety regime while licensees entering the Comcare scheme after the 1 January 2012 will have to continue compliance with the different jurisdictions that they operate in.

Even though harmonisation of work health and safety legislation has occurred in some states and territories, not all jurisdictions have entirely consistent regimes and also continue to have differences in the regulatory aspect. Harmonisation at a general level has occurred in the Australian Capital Territory (ACT), Northern territory (NT), New South Wales (NSW), Queensland (Qld) and South Australia (SA). However, Victoria and Western Australia have not adopted the model work health and safety laws and recently Queensland has indicated that it is considering amendments to the model WHS laws.

This means that if multi-state corporations are not covered under the Commonwealth's work health and safety regime, they have to fulfil WHS obligations in all of the various jurisdictions that they operate and deal with up to eight different WHS regulators and regulatory regimes.

There also exist the complexities resulting from different regulatory environments for employees who move between states. The 2004 Productivity Commission Inquiry found that the multiplicity of OHS and workers' compensation arrangements, their divergent elements as well as their constant change impose a significant compliance burden and cost, particularly on multi-state employers[16].

As a guide to the potential costs to multi-state employers, Skilled Engineering, a labour hire company operating in all eight states and territories estimated an annual cost savings in excess of $2.5 million by operating under a single set of national OHS and workers' compensation legislation. The 2004 Productivity Commission Report noted the following comments from Skilled Engineering[17]:

> *Workers' Compensation and OH&S legislation is becoming increasingly complex as regulation increases. This has the effect of:*
>
> - *Consuming resources due to the degree of staff specialisation required for each set of regulations. These resources could otherwise be directed toward accident prevention.*

[16] Productivity Commission Inquiry Report No 27, March 2004 - *National Workers' Compensation and Occupational Health and Safety Frameworks* – page 17

[17] Ibid – page 20

- *Prevents the establishment of national best practice, reducing the effectiveness of internal systems.*
- *Increases the risk to the company of non-compliance.*
- *Adds costs to the company. (sub. 177, p. 6).*

Current licensees provided feedback to the *Review of Self-Insurance Arrangements under the Comcare Scheme* in 2008 that being under the Comcare scheme provided optimum arrangements to operate under a unitary program, for both its occupational health and safety and workers' compensation coverage and was a viable option given the additional complexity that arises from individual self-insurance licenses at a state level[18].

As identified in the Regulation Impact Statement of the OHS and SRC legislation Amendment Bill 2005, multi-state employers are potentially subject to higher compliance costs than Commonwealth authorities covered under the Commonwealth OHS system (OHS (CE)), through additional administration associated with complying with up to eight sets of state and territory OHS legislations. Licensees are also unable to maintain a consistent and integrated approach to workers' compensation and OHS and this places them at a competitive disadvantage to licensees that are covered under the Comcare scheme for work health and safety.

In addition to compliance costs and red tape to employers, work health and safety regimes across multiple jurisdictions also causes confusion in relation to WHS requirements for employees working in different jurisdictions. Differential requirements also restrict an employee's ability to take up, at short notice, duties in another State/Territory for the employer[19].

The OHS and SRC legislation Amendment Bill 2005 provided OHS coverage for all SRC Act licensees including private sector licensees under the Commonwealth's occupational health and safety system. However, with the Commonwealth WHS Act not providing coverage for new entrants to the Comcare scheme from 1 January 2012, the issues of competitive disadvantage, multiple regulators and higher compliance costs as faced by multi-state corporations have surfaced again.

5.2 Option Two – enable national employers (corporations required to meet workers' compensation obligations under the laws of two or more states and territories) access to self-insurance and group licences but not WHS under the Comcare scheme

5.2.1 Licensing under Option Two

Benefits of licensing arrangements under Option Two

Option Two will enable more corporations to access the Comcare scheme and also simplify the current licence application process. A national employer test is a simpler and broader eligibility criterion than the current assessment against the competition test.

[18] Comcare Review 2008 – submissions by K&S Freighters and John Holland Pty Limited

[19] Explanatory Memorandum to the OHS and SRC Legislation Amendment Bill 2005

Enabling multi-state corporations to access the Comcare scheme will allow corporations to offer equity in compensation benefits for their employees working in different jurisdictions and afford the corporations the opportunity to significantly reduce their workers' compensation and WHS compliance costs, thereby enjoying greater efficiencies and increased productivity.

Each state and territory has its own workers' compensation scheme. These schemes all deal with key aspects such as coverage, benefits, return to work provisions, self-insurance, common law, dispute resolution and cross-border arrangements. *The Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2013,* published by Safe Work Australia, provides information on the operation of workers' compensation schemes in each of the jurisdictions in Australia and New Zealand and outlines the similarities and differences in the schemes. Benefits to employees of a multi-state employer covered under one workers' compensation regime include the uniformity of cover and benefit regimes for any and all workers in the company who sustain a workplace injury, no matter the state or territory in which they work.

The state and territory schemes provide a mixture of benefit structures with some schemes being 'long- tailed' and some 'capped'. Schemes with 'capped' benefits either cease incapacity and medical benefits up to 2 to 5 years following injury, or cease certain or all benefits after a certain level of expenditure has been reached on payments. By contrast one of the key benefits to employees under the SRC Act is that the Comcare scheme is a 'long-tail' scheme, which means that income replacement is payable in most cases for as long as there is incapacity for work (up to 65 years of age – the current age of access to the age pension) and medical and other benefits are payable for as long as required (there is no capped amount or age cut-off). As a result of the more generous long term and uncapped access to benefits, there is comparatively minimal access to common law settlements and redemption of payments under the SRC Act.

The recommendation to open up access to the Comcare scheme is also in line with a key recommendation of the 2004 Productivity Commission Inquiry which promoted the compliance cost savings and productivity benefits of enabling all Australian multi-state corporations access to one national workers' compensation framework.

The 2004 Productivity Commission Inquiry found that in self-insuring under a single national scheme for OHS and workers' compensation, eligible employers could avoid the costs and complexities of meeting different state and territory scheme requirements and introduces equality across the full spectrum of compensation, rehabilitation and return to work for their workers.

Opening up the Comcare scheme to multi-state corporations will provide equity and consistent coverage for employees working for that corporation no matter which jurisdiction the business operates in. Other potential benefits to employees of being covered under the one national system for workers' compensation will be that more attention could be given to safety and rehabilitation prevention activities rather than as currently, diverted to compliance with different state and

territory schemes. As the Pacific National noted in its submission to the 2004 Productivity Commission Inquiry[20]:

> *Rather than being proactive and developing better prevention and implementation strategies, internal safety management staff must spend time training and researching jurisdictional differences.*

Multi-state corporations have raised the issue of regulatory burden, employee benefit inequity and costs associated with having coverage of workers' compensation across multiple jurisdictions. CSR Limited in their submission to the Productivity Commission[21] stated that it would save $500 000 per annum by reduction in administration staff, reduction in administration fees and reduction in reporting costs under the one self-insurance licence; while Skilled Engineering submitted[22]:

> *...the introduction of a national system would save the company in excess of 2.5 million which represents greater than 10% of its annual earnings before tax...*

Woolworths estimated a saving of up to 50 per cent of costs associated with self-insurance licensing under a single national system[23].

More recently, the SRC Act Review concluded that lifting the moratorium and competition test and allowing national employers (who satisfy the associated set of criteria) to join the Comcare scheme, would assist in reducing red tape for businesses and boost productivity for large multi-state corporations who are required to meet workers' compensation requirements in multiple (potentially up to eight) jurisdictions.

Costs of licensing arrangements under Option Two

Under Option Two, corporations will have a choice as to whether they apply to join the national scheme, depending on the costs and benefits of being covered under the Comcare self-insurance licence versus their current multi-state jurisdictional coverage. This change will not impact existing licensees as the 'national employer' threshold will not apply to existing licensees.

The impact of set up costs for businesses covered under the one national Comcare scheme would be very likely offset by the savings made in compliance and administrative costs of not having to report to the multiple jurisdictions.

In its submission to the 2004 Productivity Commission Inquiry, Optus estimated savings of $2.0 million per annum under a national licence scheme with a minimal saving in year one stating that the first year would need to fully provide for claims and a prudential margin[24].

---

[20] Productivity Commission Inquiry Report No 27, March 2004 –*National Workers' Compensation and Occupational Health and Safety Frameworks* – page 21

[21] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* – Overview Chapter

[22] Skilled Engineering submission to the 2004 Productivity Commission Inquiry into *National Workers' Compensation and Occupational Health and Safety Frameworks* – IR208 – page 5

[23] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* – page 21

The impact on the Commonwealth regulator, Comcare, is considered minimal, as confirmed in its submission to the Comcare Review 2008. In their submission Comcare stated[25]:

> *A model is already in place to address the need for ongoing human and financial resources in response to:*
>
> *• growth in the size of the Comcare scheme*
>
> *• any changes in the nature of its coverage including the geographical location of the entities regulated, and*
>
> *• the industry types and risk profiles of the entities regulated.*

Comcare went on to say[26]:

> *The model also incorporates a process of calculating the costs of OHS regulation in the Comcare scheme and a mechanism (under section 97D of the SRC Act) for attributing those costs to participants in the system and charging them accordingly. This mechanism provides a guarantee that all entities entering the Comcare scheme will contribute an appropriate amount to the costs of regulation…*

Hence, implementation costs to Comcare are expected to be minimal one-off costs. These minimal implementation costs for Comcare will be passed on to the licensees.

Impact of Option Two on remaining employers and state schemes

Actuarial assessments and reviews including the 2004 Productivity Commission Inquiry, the Taylor Fry actuarial report which informed the Comcare Review of 2008 and the recent SRC Act Review, found that the exit of licensed self-insurers and/or premium payers from state and territory schemes to the Comcare scheme had very minimal impact on the viability of the state or territory schemes.

In its 2004 Inquiry, the Productivity Commission highlighted that many of the large employers would be self-insurers (licensees) and found that on the exit of premium payers, while there is a small risk that state and territory governments could charge higher premiums for remaining employers, including small businesses, the level of this impact would depend on the extent of cross subsidies in the relevant state scheme. The 2004 Productivity Commission Inquiry also noted that in privately underwritten schemes (WA, Tas, ACT, NT), the nature and extent of cross-subsidies is likely to be limited by commercial considerations and competitive pressure among insurers such that there are few if any cross subsidies, while in the publicly underwritten schemes (NSW, Vic, Qld, SA), most governments have policies to limit the nature and extent of cross-subsidisation[27].

---

[24] Optus submission to the 2004 Productivity Commission Inquiry into *National Frameworks for Workers' Compensation and Occupational Health and Safety*

[25] Comcare's submission to the Comcare Review 2008 – 71 - page 21

[26] Comcare's submission to the Comcare Review 2008 – 73 - page 21

[27] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* – page 122

The actuarial analysis undertaken for the Productivity Commission Inquiry confirmed that cross-subsidies are not expected to effect the states and territories in the privately underwritten schemes and the exit of large employers should have a relatively neutral impact on the premiums for the remaining companies in the publicly underwritten schemes[28].

The Productivity Commission commissioned Taylor Fry and AM Actuaries for its 2004 inquiry to estimate the potential impact of its proposals for national frameworks on state and territory workers' compensation schemes and of widening access to self-insurance on a national basis. The assessment of both the actuarial reports to the 2004 Productivity Commission Inquiry indicated that the exit of large employers was not expected to have a material impact on the average premium rate for remaining employers. As larger employers tend to have 'experience' rated premiums (i.e. the premium is based on the employer's own claims experience and the larger the employer, the closer the premium is to the 'true' cost of claims and expenses), actual levels of cross subsidies would be minimal such that the exit of such large employers would be relatively neutral to the state and territory schemes.

Quantifying the impact, Taylor Fry reported that if all eligible employers were to join Comcare (those employers with more than 500 employees and who meet the competition requirement as set out under the *SRC Act*) the maximum premium revenue reduction that can be expected is 13.5 per cent and, in the event that one in five of those employers considered eligible actually elect to transfer to national self-insurance, then the premium revenue reduction would be 2.7 per cent[29].

Using estimates made by Taylor Fry, AM Actuaries further estimated and concluded that the percentage of exiting employers would represent less than 10 per cent to scheme revenues and probably less than 5 per cent. They further found:

> *...Even assuming that all eligible employers exit and cross subsidise the scheme at the rate of 30 per cent of their premiums, the average premium increase is 3.6 per cent…*

Actuarial analysis of the Victorian WorkCover Authority (VWA) data considered the impact of broadening access to national self-insurance by removing the 'competition' criteria and concluded[30]:

> *...if all organisations (apart from the identified exclusions) transfer to national self-insurance, then the VWA could expected scheme remuneration and premiums to reduce by 23 per cent. However, assuming that one in five companies will transfer to national self-insurance, which is a more likely assumption, then it is expected that both scheme remuneration and premiums would reduce by around 4 per cent to 5 per cent…*

In its assessment of current self-insurers for the 2004 Productivity Commission Inquiry, the actuarial reports found that even though national self-insurance in the smaller schemes as that in Tasmania could result in increases in the licence fee for the remaining state self-insurers, the impact on the

---

[28] Ibid – page 435

[29] Ibid - page 433

[30] Ibid – page 455

larger schemes would not be as great[31]. Provided sufficient state-based self-insurers remain, they are likely to cover the fixed costs of regulation while the service requirements (and hence scheme costs) are likely to reduce in a similar proportion to the number of self-insurers by reduction in the obligation to regulate, monitor and report on self-insurers under the legislation.

The 2004 Productivity Commission report identified that schemes with a small number of self-insurers have lower fees and levies for comparable self-insurers than that imposed by schemes with more self-insurers that suggests that the fixed costs of assessing self-insurance applications and administering self-insurers on an ongoing basis is considerable, and thus the impacts of exiting self-insurers on those that remain, are likely to be very low[32].

Providing information on their administration costs, the VWA reported[33]:

> *...if all eligible organisations elect to transfer to national self-insurance...the proportion remaining is a similar order of magnitude to that previously assessed for Tasmania...*
>
> *...it is expected that the cost of supervising self-insurers will decrease in proportion to the number of remaining self-insurers and is unlikely to affect the finances of the scheme...*

The other potential cost of employers exiting from the publicly underwritten state and territory schemes (SA, Vic, NSW and Qld) is unfunded liability of claims incurred up to the date of transfer. As the Productivity Commission found, unfunded liability recovery from the exiting employer could be achieved by transferring the 'tail' to the exiting employer. All publicly underwritten schemes have now legislated to deal with this risk[34].

On the other hand, in the privately underwritten jurisdictions insurance companies would continue to be responsible for all claims liabilities arising up to the date the employer transfers to national self-insurance.

Impact on employees

The key benefit to employees of multi-state employers covered under one workers' compensation regime will be the uniformity of cover and benefits, no matter which state or territory the employees are working in when they sustain a workplace injury.

Workers' compensation benefit schedules differ across the various jurisdictions. The 2004 Productivity Commission report found that variations in benefits are only one element of the many differences among jurisdictions and that a relative disadvantage in one element of a scheme may be offset, to varying degrees, by advantages in other elements[35]. The Productivity Commission did not

---

[31] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* – page 436

[32] Ibid – page 127

[33] Ibid – page 456

[34] Ibid – page 448

[35] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* - Overview Chapter

consider that equality of benefits, assessed in isolation from other scheme elements, necessarily represents a disadvantage of multiple jurisdictions[36].

The Productivity Commission report found that in terms of compliance costs, lack of uniformity does not affect the majority of employers and employees operating within a single jurisdiction, as costs of differing workers' compensation arrangements within Australia are pre-dominantly borne by multi-state employers. The report concluded that a national framework needs to primarily address the problems faced by multi-state employers and that their employees could also benefit from improved whole-of-company workplace safety, compensation and rehabilitation processes[37].

The Report also noted that any impact on employees of an employer moving to the Comcare scheme could be a matter for discussion during enterprise bargaining negotiations and should there be adverse impacts from a move, the employer may wish to offer countervailing benefits[38].

Impact of Option Two on small business

As mentioned above, actuarial advice to the 2004 Productivity Commission Inquiry concluded that the move of large employers to the national self-insurance system is likely to have little impact on existing schemes as the relevant employers would predominantly be self-insurers. It also found that where the exiting employer is a premium payer, any increase in average premiums on remaining employers including small business would be very small.

The Productivity Commission found[39]:

> *There is some evidence, however, that small business benefits currently from cross-subsidies built into some schemes, although most jurisdictions have policies to reduce or minimise such cross-subsidies over time…the exit of larger non-self-insuring businesses from premium paying schemes into national self-insurance has the limited potential to change the premiums faced by the remaining employers, including small business. However, empirical analysis using a wide range of values for uptake by larger employers of national self-insurance and of levels for cross-subsidies reveals that any increases on average premiums are likely to be very small.*

Impact of Option Two on the Commonwealth

Removal of the competition test and consequent broadening of the Comcare scheme to allow national employers to apply for a self-insurance licence under the Comcare scheme, will place the Commonwealth as the 'insurer of last resort' if any of these large corporations becomes insolvent or if bank guarantees are found insufficient or if reinsurance policies are found to be inadequate to meet outstanding liabilities. A similar threat exists for each of the State jurisdictions as well and the risk of these provisions proving to be inadequate are minimal as the protection provided in meeting

[36] Ibid - page 23

[37] Ibid - page 34

[38] Ibid - page 115

[39] Ibid – Overview Chapter

any outstanding liabilities by bank guarantees and reinsurance policies are well established financial instruments used across the jurisdictions.

Comcare scheme performance data shows that licensee performance on SRCC scheme performance measures has consistently been better than that of premium payers, particularly in some key areas including preparedness to intervene more quickly to achieve earlier rehabilitation planning and more effective return to work rates for injured employees[40]. The SRC Act Review also found that *the licenced insurers exercise a much greater level of control over the determination-making process when compared with employers in the premium-funded scheme.*

There is no indication that this performance will not continue if more self-insurance licences are granted.

Also, the current licence assessment processes are robust. In assessing licence applications, the SRCC tests whether an applicant meets the rigorous prudential requirements under the SRC Act. It is also a condition that the licensee must obtain a bank guarantee for the discharge of liabilities should the corporation face financial difficulty. Additionally, if the Government has specific concerns about the granting of licences under the SRC Act, including concerns about the prudential requirements, the SRC Act allows the Minister to give consequential directions to the SRCC concerning any matter relating to the granting of licences.

The SRC Act Review concluded that lifting the moratorium and the competition test; allowing national employers to join the Comcare scheme and granting of group licences 'would be welcomed by business, while the major concerns raised by the ACTU will be satisfied by the SRCC processes'.

5.2.2 Group licences under Option Two

Benefits of group licence arrangements under Option Two

Under Option Two, providing for group licences in the Comcare scheme will result in savings in administrative costs and red tape for businesses particularly as many of the national employers entering the Comcare scheme may have subsidiaries or related entities.

The ability for the SRCC to grant a group licence to an eligible group of corporations will introduce some additional flexibility in the licence assessment process and be in line with both current commercial realities and provisions in the state regimes.

For the purposes of licensing, the SRCC will have the discretion to treat corporations as a group or to treat them as separate corporations depending on the particular circumstances involved. Introduction of group licences will reduce red tape and costs for corporations as it allows the SRCC to recognise that groups of corporations often share return to work and work health and safety systems. It will also recognise that each entity that forms part of a group does not individually need to meet the definition of a national employer. This licensing process will not only reduce costs for the group but also allow for timely and consistent coverage for all entities within the group including coverage of any additional entity that joins the group as a result of restructuring.

[40] Review of the Comcare Scheme's Performance, Governance and Financial Framework – Hawke Report – page 39

The SRC Act Review recommended that:

> *…the SRC Act should be amended to allow the SRCC to grant group licences to companies of licenced self-insurers with more than one entity, subject to satisfying all prudential requirements, in order to reduce administrative costs for scheme participation.*

The impact on small business is minimal as this benefit will be more suited to medium and large sized businesses. In terms of impact on state and territory schemes and the remaining employers in the scheme, the impact would be minimal or nil as this provision would mainly benefit large corporations many of whom will be self-insurers under state and territory schemes and therefore whose exit (as mentioned in the self-insurance arrangements under Option Two) will have minimal impact on the schemes they leave. As previously mentioned, the impact of premium payers exiting state or territory schemes is also expected to be minimal.

Costs of group licence arrangements under Option Two

Any risk of losing the safeguard of assessing individual applications against the eligibility criteria is mitigated by the fact that all entities covered under a group licence will be covered by a group bank guarantee. In addition, group prudential assessments will consider the group's ability to accommodate the potential cumulative and individual liabilities of all entities within the group. For the purposes of licensing, the SRCC will be given the discretion to treat corporations as a group or to treat them as separate corporations depending on the particular circumstances involved. For example, in some instances, the differences in the risk profile and safety performance of the separate corporate entities within a group may justify SRCC consideration as separate corporations.

5.2.3 Work health and safety under Option Two

Benefits of WHS arrangements under Option Two

As under the status quo, Option Two provides work health and safety coverage under the Commonwealth's WHS regime only to those corporations that entered the Comcare scheme before 1 January 2012. The coverage under a single national regulator - the Commonwealth's work health and safety regime - is not available for new entrants to the Comcare scheme.

Costs of WHS arrangements under Option Two

Under Option Two, as in the status quo, licensees entering the Comcare scheme after 1 January 2012 must continue to comply with the different jurisdictions in which they operate. Hence multi-state corporations will not achieve the benefit of reduced compliance costs and administrative efficiency of dealing with a single national regulator as opposed to up to eight different regimes.

Under this option, licensees are also unable to maintain a consistent and integrated approach to workers' compensation and WHS and this places them at a competitive disadvantage to licensees that are covered under the Comcare scheme for work health and safety.

As identified in the 2004 Productivity Commission Inquiry and the Regulation Impact Statement of the OHS and SRC legislation Amendment Bill 2005, in addition to compliance costs and red tape to employers, work health and safety regimes across multiple jurisdictions also causes confusion in relation to WHS requirements for employees working in different jurisdictions.

5.3 Option Three – enable national employers (corporations required to meet workers' compensation obligations under the laws of two or more states and territories) to access self-insurance, group licences and WHS provisions under the Comcare scheme

5.3.1 Licensing under Option Three

Benefits of licensing arrangements under Option Three
Under this option, as in Option Two, national employers will benefit under a single self-insurance arrangement by saving in compliance costs of dealing with a single system of regulatory and prudential requirements versus up to eight different ones. Self-insurance under the one national regulator enables a corporation to take financial responsibility for their liabilities whilst achieving one set of benefits for their employees and one set of compliance requirements for the business.

Costs of licensing arrangements under Option Three
Under Option Three, entering the Comcare scheme is a choice which allows a corporation to make that decision based on their own analysis of benefits and savings achievable by joining the one national scheme.

Under this option, as in Option Two, the impact of set up costs for businesses covered under the one national Comcare scheme would be very likely offset by the savings made in compliance and administrative costs of not having to report to the multiple jurisdictions.

Under Option Three, impact of the proposed change to the remaining employers and states and territories schemes; impact on small business and the impact on the Commonwealth will be minimal as assessed under Option Two.

5.3.2 Group licences under Option Three

Benefits of group licence arrangements under Option Three
Under Option Three, businesses will benefit through some additional flexibility in the assessment process and reduced administrative costs with the introduction of group licences, as mentioned in Option Two.

Costs of group licence arrangements under Option Three
Under this option, as in Option Two, for the purposes of licensing, the SRCC will be given the discretion to treat corporations as a group or to treat them as separate corporations depending on the particular circumstances involved. For example, in some instances, the differences in the risk profile and safety performance of the separate corporate entities within a group may justify SRCC consideration as separate corporations.

5.3.3 Work health and safety under Option Three

Benefits of WHS arrangements under Option Three
The opportunity for national employers that apply for self-insurance under Comcare, have coverage under the Commonwealth's national work health and safety regime assists businesses with

reduction in regulatory burden and simplification of operations for the business and its employees across different jurisdictions.

Providing access to the Commonwealth's work health and safety regime will ensure that multi-state corporations comply with only one WHS laws and its employees are required to be aware of their obligations only under the one set of WHS laws irrespective of which state they are based in. Compliance with only one set of workers' compensation and work health and safety requirements and a single national regulator will ensure consistency in the treatment of all licensees and lead to a substantive reduction in administrative burden for businesses.

For instance, in its submission to the 2004 Productivity Commission Inquiry, Skilled Engineering (sub. 177) estimated that the annual cost saving from operating under a single set of national OHS and workers' compensation rules would be in excess of $2.5 million, or some 15 per cent of the company's annual costs of OHS and workers' compensation[41].

Similarly, Optus[42] estimated that the cost of complying with multiple OHS and workers' compensation arrangements adds about 5 to 10 per cent to workers' compensation premiums and Woolworths[43] stated that it could save approximately $400 000 per annum if it could maintain a single OHS management system.

The 2004 Productivity Commission Inquiry recommended enabling those corporations that are licensed under the SRC Act for workers' compensation, to elect to be covered by its occupational health and safety legislation too[44]. The Productivity Commission concluded[45]

> *...this would increase the administrative savings for multi-state firms, and enable greater coordination and feedback between the workers' compensation and OHS regimes...*
>
> *...In addition, having forms operate under an OHS regime and a workers' compensation scheme with the same jurisdictional coverage, and with related administrations, would enable improved data monitoring, feedback and reform...*

The Productivity Commission found that:

> *A uniform national regime would make it much more efficient for multi-state employers to ensure that their management and employees understand the one set of requirements and any changes to it. Also, equipment could be moved interstate and not be in contravention of local regulations. Employers could establish a single safety culture, with common associated manuals and procedures, throughout their organisations. Employees could be trained in, and*

---

[41] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* - Overview Chapter

[42] Ibid – page 19

[43] Ibid – page 21

[44] Ibid – Overview Chapter

[45] Ibid- page 103

understand, the one set of OHS requirements, irrespective of the locality in which they work[46].

In their submissions to the Productivity Commission, employers expressed views on the benefits to employees for OHS compliance under one regulatory regime versus the multiple regulators in the various jurisdictions and suggested benefits such as the redirection of savings to further improve OHS. The Productivity Commission found that:

> *Some caution should be exercised in assessing whether the resources saved would be redirected to other areas of OHS rather than to the company's bottom line. Nonetheless, to the extent that companies must pay a certain level of attention to OHS matters, this would be better directed towards outcomes rather than managing unnecessary differences between jurisdictions. In this way, employees of multi-state firms could benefit from a common culture of safety, compensation and rehabilitation throughout the company*[47].

In its Regulation Impact Statement, the OHS and SRC Legislation Amendment Bill 2005 that provided OHS coverage for all SRC Act licensees including private sector self-insurers under the Commonwealth's occupational health and safety system quoted the following benefits to businesses, employees and Government:

> *Benefits to businesses*
> *Obtain nationally consistent OHS arrangements where the corporation operates in multiple jurisdictions; no longer be subject to multiple costs associated with State/Territory OHS legislation compliance; have the benefits of a single integrated prevention, compensation and rehabilitation scheme; and be placed in a competitively neutral environment vis-à-vis other licensees.*
>
> *Benefits to licensee employees*
> *Greater certainty for employees who work in more than one jurisdiction in relation to their OHS rights and obligations and equity in the enforcement of OHS obligations for employees of corporation across Australia.*

Hence, the simplicity of dealing with one set of work health and safety requirements and one regulator rather than up to eight across the different jurisdictions will provide both cost savings and efficiency gains for corporations.

More recently in submissions to the Comcare Review 2008, current licensees noted the primary rationale of them moving to the one national regulator as the need for a 'national consistency' for its employees and for the company. They confirmed that these benefits were achieved right from year one of moving into Comcare (NAB). NAB stated benefits of its transition to the Comcare scheme as below[48]:

---

[46] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* – Overview Chapter

[47] Ibid - page 21

[48] Submission to the Comcare Review 2008

- *Equity in Compensation entitlements for all workers;*
- *Single framework for Workers' Compensation, Rehabilitation and OH&S;*
- *Consistency in injury and workers' compensation claims management and dispute resolution;*
- *Provision of a single OH&S management system;*
- *A platform to develop uniform policies, processes and procedures;*
- *Administrative efficiencies; and*
- *Cultural change.*

John Holland Group Pty Limited (another current licensee) in its submission to the Comcare Review stated that it[49]:

> *...found the savings and efficiencies of a single workers' compensation system to be significant and more importantly, the Commonwealth OHS regulatory and enforcement framework has not only streamlined and simplified our safety management system and procedures, it has actively contributed to our improved OHS performance…*

Access Economics in its analysis for the Decision RIS for OHS regulations (Safe Work Australia 2011) estimated that health and safety outcomes would be improved by 1.4 per cent for multi-state firms as a result of the reforms to OHS Acts through harmonisation[50].

The recently released (May 2012) Productivity Commission research report on *Impacts of COAG Reforms* analysed the impact of the Council of Australian Governments reforms including the recent work to harmonise WHS laws. The report defined the Comcare Scheme 'as a relatively low-cost means of achieving a national approach for some large multi-state firms (that is, an opt-in approach attractive to business)'[51].

In reference to changes to OHS laws and regulations through the recent harmonisation, the report noted that:

> *…the OHS reforms through harmonisation do not fundamentally change the way OHS regulation seeks to achieve safety outcomes...*
>
> *…Instead, they revolve around improving the clarity of provisions, increasing the number of enforcement tools available to regulators and providing a more consistent approach across jurisdictions to onus of proof and union rights to entry. Such changes could increase workplace health and safety through reducing the complexity of becoming familiar with OHS laws, thereby increasing compliance[52]…*

The model WHS laws are generally based on current Victorian OHS laws with some considered changes. In fact, the model WHS laws draw on the 'best' aspects of pre-harmonised state and

---

[49] Submission to the Comcare Review 2008

[50] Productivity Commission Research Report - Impacts of COAG Reforms: Business Regulation and Vet – Volume 2 – Business Regulation – page 174

[51] Ibid - page 153

[52] Ibid - page 169

territory OHS laws. However, even with harmonised WHS laws across most of the jurisdictions, multi-state employers are faced with the complexity and additional cost of dealing with multiple regulators which is simplified if reporting to a single national regulator as in the Comcare scheme.

The Commonwealth has adopted the model WHS laws which means that employers and employees with access to this national WHS regulatory regime achieve the benefits of improved clarity of provisions, improved workplace health and safety outcomes as well as reduced regulatory and compliance costs.

In terms of Victoria and Western Australia not adopting the model WHS laws, the Productivity Commission research report stated[53]:

> *…Western Australia, as mentioned earlier, stated that it was unlikely to adopt certain clauses of the model Act where significant differences existed between the proposed and Western Australian legislation[54]...*
>
> *…Victoria's adoption of the model laws was to be subject to its own review (WorkSafe Victoria 2011). This review was released in April 2012 and suggested Victorian businesses could face additional costs over the next five years under the proposed national laws (Baillieu and Rich-Phillips 2012). Among other things, the report noted that from a Victorian perspective 'many of the key changes reflect a general approach of the Model WHS [Workplace Health and Safety] laws to prescribe in greater detail the types of risks to be controlled and the nature of controls to be used' (PricewaterhouseCoopers Australia 2012, p. 5)...*

A key justification for these jurisdictions not adopting harmonised arrangements was the impact on single state businesses.

Costs of WHS arrangements under Option Three

The set up costs to a national employer covered under the Commonwealth's WHS scheme are likely to be offset by cost savings of having to meet the requirements of a single national regulator versus a regulator in each state and territory that it operates in. Also, entering the Comcare scheme is a choice which a corporation can make if it believes there are benefits and savings for the business in joining a single national scheme for work health and safety and workers' compensation.

The Regulation Impact Statement for the OHS and SRC Legislation Amendment Bill 2005 noted that costs to states, small business, government and the regulator will be neutral if self-insurers were granted coverage for work health and safety too:

> *Impact on small businesses and their employees*

---

[53] Ibid - page 155

[54] The four areas where the Western Australian Government does not support the model OHS laws relate to: the level of penalties; union rights to enter worksites where there is a suspicion of an OHS breach; powers of health and safety representatives to stop work; and the reverse onus of proof for charges of discriminatory conduct.

Providing coverage under the OHS(CE) Act for private sector corporations which self-insure under the SRC Act is expected to have little or no impact on small business. The States currently fund their OHS prevention and enforcement activities through special OHS contributions paid by employers or through the budget. State governments also receive revenue through fines imposed on organisations that breach OHS laws.

Costs to Government

Costs borne by Comcare to administer the OHS(CE) Act in relation to private sector corporations would be covered by an OHS contribution included in the corporation's self-insurance licence fee. As corporations are self-funded, OHS contribution costs would not be borne by the Commonwealth from revenue.

Costs to Comcare

Corporations are self-funded and the cost to the SRCC in monitoring the OHS components of the licensing conditions is fully covered by the licensing fees. Hence, administration of the OHS(CE) Act by the regulator is cost neutral.

5.4 Impact of removal of coverage for off-site recess breaks

In response to stakeholder submissions, the Productivity Commission, in its 2004 Inquiry, accepted that employer's ability to exert control over workplace recess breaks and social activities is a relevant consideration.

The Commission recommended[55]:

> *'coverage for recess breaks and work-related events to be restricted, on the basis of lack of employer control, to those at workplaces and at employer sanctioned event's'.*

This option aims to exclude certain authorised recess breaks that are beyond the employer's control from workers' compensation arrangements under the Act. This amendment affords an equitable balance between an employer's obligations to provide a safe workplace and the workers' compensation costs to business.

5.5 Impact of removal of coverage for injuries that occur as a result of serious and wilful misconduct

Community expectations are that workers' compensation benefits should be available only in respect of work contributed injuries and/or diseases, not those injuries that result from an employee's own serious and wilful misconduct. While claims in the serious and wilful misconduct category are rare, when they do occur, there is a negative impact to the credibility of the Comcare scheme. The proposed amendment of removing coverage for injuries that occur as a result of serious and wilful misconduct will remove this risk.

[55] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* – page 167

5. Regulatory cost calculations

The department has identified reductions in regulatory burden through the proposed legislative amendments to eligibility for workers' compensation self-insurance and work health and safety cover. These changes will broaden the range of corporations that can seek to enter the Comcare scheme and hence provide a nationally consistent coverage to their employees for workers' compensation and work health and safety, no matter which jurisdiction the employees work in. These changes will also lead to a reduction in administrative costs associated with managing compliance requirements and reporting across multiple jurisdictions.

The 2004 Productivity Commission Inquiry found that multi-state employers face associated costs due to their dealings with the different OHS and workers' compensation requirements in the various jurisdictions and that there are significant benefits to multi-state employers being able to operate within a single national scheme. More recently, the SRC Act Review noted that the licensees have consistently been able to achieve better outcomes on the Comcare scheme performance measures when compared to premium payers and recommended lifting the moratorium and competition test for all multi-state employers. The Review also recommended granting group licenses under the SRC Act.

According to the ABS data, from 30 June 2007[56](most recent) there were 5 876 large [57] employing businesses in Australia of which one third (1 959) operate and employ in two or more states. Each of these 1 959 businesses could benefit from the compliance cost savings of the recommended option, and of these the least savings would be afforded to the 420 (20 per cent) businesses which operate in only two states and territories and the greatest savings would be afforded to the approximately 234 (10 per cent) businesses who operate and employ in all eight states and territories.

The department acknowledges that while there will be benefits in terms of administrative cost savings for corporations moving to a single national regulator, under the proposed arrangements, businesses will have a choice of seeking a self-insurance license under the Comcare scheme and will do so based on their own cost benefit analysis.

In their submissions to the 2004 Productivity Commission Inquiry, some multi-state employers identified costs associated with having to report in the multiple jurisdictions and the potential savings under the one national system for workers' compensation and work health and safety.

The administrative costs estimated by the department are based on the costs identified by multi-state companies operating in multiple jurisdictions as reported in their submissions to the 2004 Productivity Commission Inquiry. These costs have been used in several actuarial assessments and reports such as the Taylor Fry report 2008 and the Deloitte Access Economics report for Safe Work Australia (2009), as they provide the best estimate of administrative costs to businesses.

---

[56] ABS Data Table 80506.0 –report from Businesses by Industry Division by Single State/Multi State, by Employment Size Ranges, 2006–07. This (June 2007 publication) is the most recent ABS data that lists whether businesses operate in more than one state, and provides a break down on the number of states in which businesses operate. This data is no longer collected

[57] The ABS definition of a large employing business is one employing 200 workers or more.

For the purposes of this cost benefit estimation, the department has focussed on cost savings as provided by CSR Limited (operating in five states and territories at the time) in their submission to the 2004 Productivity Commission Inquiry. Using these figures the department has estimated the cost savings that will be made by employers operating in five jurisdictions if they were to be covered under the Comcare scheme for workers' compensation and work health and safety. The overall savings from the proposed amendments are expected to be higher as employers who have workers' compensation obligations under the laws of two or more states or territories will be eligible to apply for self-insurance licencing and WHS provisions under the Comcare scheme.

Even though other multi-employers reported to the 2004 Productivity Commission Inquiry, substantial savings under a single self-insurance licence for workers' compensation and work health and safety, the department focussed on administrative costs from one reasonably sized multi-state employer – namely CSR Ltd – which in 2004 employed 4 535 staff across five states and territories[58]. Although other savings such as IT costs have not been used in these calculations (provided as aggregate figures by other multi-state businesses such as IAG and Optus and hence difficult to classify or quantify[59]) these are nonetheless expected to further enhance the level of savings for businesses under the Comcare scheme.

Cost savings estimated by other multi-state employers in their submissions to the 2004 Productivity Commission Inquiry include[60]:

- IAG, with coverage in all jurisdictions submitted a saving of $1.7 million in IT costs, $1.2 million in operating costs and $400 000 by reduction in actuarial costs;
- Optus estimated a savings of $2 million per annum; and
- Skilled Engineering operating in all jurisdictions estimated the annual cost savings from operating under a single set of national OHS and workers' compensation rules to be in excess of $2.5 million.

In the analysis below, it has been assumed that one in five national employers may move to the Comcare scheme for coverage of workers compensation and WHS. This assumption is similar to as used in the actuarial reports completed for the 2004 Productivity Commission Inquiry that one in five multi-state employers may seek a self-insurer licence under the the national system for workers' compensation and work health and safety.

As per the ABS data mentioned above, there are 402 (20 per cent) of large employing businesses that operate and employ in five states and territories. Using the assumption that one in five of these businesses may move to the Comcare scheme for workers' compensation and work health and safety cover, it is estimated that about 80 large employing businesses (with operations in five states or territories) will seek coverage under the scheme following the removal of the competition test. It is further assumed in the estimate that on a yearly basis, on average 12 businesses of the 80, would

[58] CSR Limited Annual Report 2004

[59] Productivity Commission Inquiry Report No 27, March 2004 – *National Workers' Compensation and Occupational Health and Safety Frameworks* – Overview Chapter

[60] Ibid

seek a licence under the Comcare scheme. The department and Comcare have received 11 inquiries to date, since the lifting of the moratorium in Dec 2013.

At the estimated rate, in about 6.5 years, the estimated 20 per cent of businesses operating in 5 or more states will be covered under the Comcare scheme. These regulatory cost savings under the proposed amendments to self-insurance arrangements are a fairly conservative estimation by the department as it includes only one type of administrative cost savings and also does not consider savings for the other over 1500 businesses (with operations in two or more states) that will also be eligible to apply for a self-insurance license under the Comcare scheme. On the other hand, the department also notes that not all companies may seek to join the Comcare scheme as the administrative efficiencies and cost savings will depend on the particular company structure and their current arrangements with the states and territories they operate in.

6.1 Administrative costs related to licensing

This administrative cost savings has been calculated for businesses operating in five states or territories.

CSR Limited (sub 109) estimated a savings of $500 000 per annum under one self-insurance license in comparison to the five self-insurance licences and attributed these cost savings to a reduction in administration staff, administration fees and reporting costs[61]. This multi-state employer stated cost savings of $150 000 per annum of implementing a single scheme, single licence claims management service in addition to those estimated above for licence administration.

Using these costs (with 50 per cent costs allocated to workers' compensation regulatory and 50 per cent to work health and safety) the department has made an estimate of some of the cost savings that will be made by employers operating in five states or territories if they were to be covered under the national system for workers' compensation.

Applying the above mentioned cost savings to 12 corporations each year with an assumption that the first year impact may be rationalised by any set up costs under the Comcare scheme (Optus sub. 57[62]), the proposed changes would result in a compliance cost saving of $ 19.68 million per annum in total for the 80 businesses if covered under the one Comcare self-insurance licence for workers' compensation instead of a self-insurance licence in five different jurisdictions. This cost savings has been calculated using the Office of Best Practice Regulation Business Cost Calculator.

[61] Productivity Commission Inquiry Report No 27, March 2004 - *National Frameworks for Workers' Compensation and Occupational Health and Safety* - page 20.

[62] Ibid – Overview Chapter.

Table 1: Administrative cost savings for national employers under one workers compensation regime

Administrative Cost Savings for national employers				
Sector/Cost Categories	**Business**	**Not-for-profit**	**Individuals**	**Total by cost category**
Administrative Costs	$250 000	$N/A	$N/A	$12,300,000
Claims Management Service	$150 000	$N/A	$N/A	$7,380,000
Delay Costs	$ N/A	$N/A	$ N/A	$N/A
Total by Sector	$400 000	$N/A	$N/A	$19,680,000
Annual Cost Offset				
	Agency	**Within portfolio**	**Outside portfolio**	**Total**
Business	N/A	N/A	N/A	N/A
Not-for-profit	N/A	N/A	N/A	N/A
Individuals	N/A	N/A	N/A	N/A
Total	N/A	N/A	N/A	N/A
Proposal is cost neutral? * yes **Proposal is deregulatory * yes** **Balance of cost offsets to be banked $___N/A_____**				

6.2 Costs related to group licensing

The issue of lack of group licences under the Comcare scheme has been raised by corporations currently licensed under the Comcare scheme[63]. One of the recommendations of the SRC Act Review is the introduction of group licences to the SRC Act.

Currently, each company or entity in a group of associated corporations is assessed individually for eligibility to apply for a self-insurance licence under the Comcare scheme following which each of these is granted a separate licence under the scheme. Corporations have raised this as a lengthy and bureaucratically complex process which could be improved through the ability to access group licences.

In its submission to the Comcare Review 2008, Commonwealth Bank of Australia Limited (CBA) raised the issue of group licences and suggested that a corporation may be faced with a situation with some of the entities within the group not able to participate in the Comcare scheme if not deemed eligible individually. Given that many of the multi-state corporations that are most likely to be attracted to the Comcare scheme may be made up of groups of associated corporations, group licencing would provide for a better set up with consistent coverage for all entities within the one group and its employees.

As there is no available data on administrative cost savings if a group licence was to be granted to a group of companies, no estimate of cost savings has been completed for this part of the proposal. However, anecdotal and qualitative evidence provided by employers indicates that the absence of

[63] Comcare Review 2008 and the SRC Act Review

group licencing leads to an additional administrative burden. In addition to these additional administrative requirements, if one of the group of corporations does not meet the requirements to be declared eligible to seek a licence under the current two stage process, this would create inconsistency for both the group of corporation and its employees in workers compensation coverage provisions across the corporations' operations.

In its submission to the Comcare Review CBA recommended corporate group licencing would streamline several processes of licencing such as[64]:

- *The need to provide separate declarations in respect of salary and other data reports for each licensee;*
- *The need for separate bank guarantees, reinsurance policies etc;*
- *The requirement that rehabilitation coordinators be an employee of each licensee;*
- *The need for the CEO of each licensee to formally issue delegations to Worker's Compensation Case Managers to enable claims determinations; and*
- *As noted above, the need for a separate, formal process of license eligibility and application, should additional companies become part of a Group, which delays the effect of consistent coverage for employees of the Group.*

Introducing group licencing under the Comcare scheme will reduce red tape and costs for eligible corporations as it will recognise that groups of corporations often share return to work and WHS systems. The risk of introducing new licensees through group licences is low as the Comcare scheme performance data shows that licensee performance on the SRCC scheme performance measures is consistently better than that of premium payers. Under the proposed changes, a group bank guarantee will cover all entities under the group licence. In addition, group prudential assessment will consider the group's ability to accommodate the potential cumulative and individual liabilities of all entities within the group.

6.3 Administrative costs related to work health and safety

This administrative cost savings has been calculated for businesses operating in five states or territories.

The third component of this proposal is providing access to an integrated framework for work health and safety for multi-state corporations that seek self-insurance under the Comcare scheme. With Victoria and Western Australia not having harmonised their WHS provisions in line with the model work health and safety laws and new entrants under the SRC Act (from 1 January 2012) not covered by the Commonwealth WHS regime, multi-state corporations would still face costs in administering work health and safety laws across the different jurisdictions and dealing with up to eight different regulators.

The calculation includes savings of $250 000 per annum due to compliance with the Commonwealth's WHS system rather than having to comply and report to five different jurisdictions and regulators. This is 50 per cent of total administrative cost savings (i.e. the WHS component) of maintaining and renewing a single licence under one WHS and workers' compensation regulator

[64] Submission by the Commonwealth Bank of Australia to the Comcare Review 2008 – page 1

rather than maintaining and renewing five licences - as estimated by CSR Limited in its submission to the Productivity Commission (sub 109)[65]. As mentioned previously, this saving has been attributed by CSR Limited to reduction in administration staff, administration fees and reporting costs.

Applying the above mentioned cost savings to 12 corporations each year with an assumption that the first year impact may be rationalised by any set up costs under the national system, the proposed changes for WHS cover to new licensees under the Comcare scheme would result in a compliance cost saving of $12.3 million in total per annum for the 80 businesses operating in five states and territories. This cost savings has been calculated using the Office of Best Practice Regulation Business Cost Calculator.

In addition, the Regulation Impact Statement of the OHS and SRC Legislation Amendment Bill 2005 that enabled private sector corporations to obtain work health and safety coverage under the Comcare scheme in 2007, highlights that multi-state employers are potentially subject to higher compliance costs than Commonwealth authorities covered under the Commonwealth OHS system due to additional administration associated with complying with up to eight sets of state and territory OHS legislations.

It is arguable that harmonisation of work health and safety laws in some of the states may have helped to reduce some costs, however, multi state employers continue to have additional compliance and administrative burden given the reforms have not been introduced in all states and they still have to comply with eight different jurisdictions and report to different regulators if not covered under a single national regulator.

[65] Productivity Commission Inquiry Report No 27, March 2004 - *National Frameworks for Workers' Compensation and Occupational Health and Safety* -page 20

Table 2: Administrative cost savings for national employers under the Commonwealth WHS system

Administrative Cost Savings for national employers				
Sector/Cost Categories	**Business**	**Not-for-profit**	**Individuals**	**Total by cost category**
Administrative Costs	$250 000	$N/A	$N/A	$12,300,000
Substantive Compliance Costs	$N/A	$N/A	$N/A	$N/A
Delay Costs	$ N/A	$N/A	$ N/A	$N/A
Total by Sector	$250 000	$N/A	$N/A	$12,300,000

Annual Cost Offset				
	Agency	**Within portfolio**	**Outside portfolio**	**Total**
Business	N/A	N/A	N/A	N/A
Not-for-profit	N/A	N/A	N/A	N/A
Individuals	N/A	N/A	N/A	N/A
Total	N/A	N/A	N/A	N/A

Proposal is cost neutral? * yes
Proposal is deregulatory * yes
Balance of cost offsets to be banked $___N/A_____

6.4 Costs to the remaining employers and state and territory schemes

Actuarial assessments done for the 2004 Productivity Commission Inquiry and for the Comcare Review indicate that the impact of the exit of corporations on state based schemes or remaining employers is minimal.

Taylor Fry 2008 (in their report to inform the 2008 Review of self-insurance arrangements under the Comcare Scheme) concluded that the financial impacts of exits to the Comcare scheme from the other Australian jurisdictions have been insignificant. It concluded:

> *The prudential and financial requirements of licensees mean that the risk to premium payers or the Commonwealth is minimal.*
>
> *All the available evidence suggests that the actual impacts on state and territory workers' compensation schemes of corporations exiting those schemes to join Comcare have been insignificant. The likelihood of future impacts being significant is low.*

For the purpose of this cost benefit estimation, costs to employers (including licence fees) when setting up coverage for workers' compensation and work health and safety under the Comcare scheme has been offset by savings made by moving to the national system. This is supported by anecdotal and qualitative evidence provided by current licensees to the Comcare Review 2008 that they have achieved the savings and efficiency gains of moving under the one regulator[66].

[66] John Holland and K&S Freighters submissions to the Comcare Review 2008

Optus in its submission to the 2004 Productivity Commission Inquiry stated[67]:

> *…If Optus received a national license to become a self-insurer at or before 1 July 2003, the Savings to Optus would be minimal in year one. In this year Optus would need to fully provide for claims received plus potential injuries incurred but not reported as well as provide for a prudential margin. The margin would ensure that Optus had no financial exposure if it suffered unexpected adverse claims. However, after one year Optus would expect savings of some $2 million per annum.*

6.5 Regulatory Impact Analysis of other proposed amendments

The impact of opening the Comcare scheme to national employers, allowing the granting of group licence to an eligible group of corporations and enabling private corporations new to the Comcare scheme access to a single national regulator for work health and safety have been considered and assessed in detail in this Regulation Impact Statement.

6.5.1 Off-site recess Breaks

The removal of coverage for injuries that occur during off-site recess breaks is estimated to result in a modest saving in workers compensation claim costs for premium payers and licensees.

The Explanatory Memorandum for the Safety, Rehabilitation Compensation and Other Legislation Amendment Bill 2011 estimated that reinstating coverage for off-site recess breaks will cost Comcare $1.7 million for 2010/11 and the same for the forward years (adjusted for indexation of 4.5% p.a.). This cost represented the additional cost for premium funded claims caused by the re-instatement of the off-site recess breaks provision. In 2012-2013, approximately 66 per cent of the total claim costs were attributed to premium payers and 33 per cent were from licensees (i.e. half of those for premium payers). In the absence of a direct estimate of recess claim costs for self-insurance licensees (as their valuation reports do no address this issue) and assuming a consistent ratio of recess claims to that of premium payers, the licensees' costs are estimated to be 0.5 x the premium claim payment cost. This amounts to approximately $0.85 million per annum in savings for licensees in terms of claims with the removal of coverage for off-site recess breaks.

There may be costs associated with disputation as to whether an incident is compensable or not, however as found in the 2004 Productivity Commission Inquiry, the proposed amendment is expected to reduce costs to employers and has the advantages of ease of understanding and administrative simplicity for employers and employees, therefore minimising delays and the scope for disputes.

6.5.2 Serious and wilful misconduct

The potential impact of this amendment in cost savings to licensees and premium payers in claim costs or premiums is expected to be negligible as the cases under this provision are rare.

---

[67] Productivity Commission Inquiry Report No 27, March 2004 - *National Frameworks for Workers' Compensation and Occupational Health and Safety* – Overview Chapter

Comcare have advised the department that it is difficult to ascertain the number of claims that are currently accepted despite 'serious and wilful misconduct' as the injury results in death or serious and permanent impairment. A search of current claims data was undertaken using the precise diagnosis and incident description to ascertain any claims that fell within the meaning of serious and wilful misconduct with an outcome of permanent impairment or death. However, no relevant claims were identified.

Comcare have advised the department that between 2002 and 2009, a total of 8 claims were rejected as a result of the operation of the serious and wilful misconduct exclusion provision (s 14 (3) of the SRC Act). This data and anecdotal evidence from Comcare suggests that claims determined under this provision will continue to be minimal and will also result in a small reduction in cost for licensees.

Table 3: Cost savings for all proposed amendments

Cost Savings				
Sector/Cost Categories	**Business**	**Not-for-profit**	**Individuals**	**Total by cost category**
Administrative Cost savings for national employers under one workers' compensation regime	$400 000	$N/A	$N/A	$19 680 000
Administrative Cost savings for national employers under the Commonwealth WHS system	$250 000	$N/A	$N/A	$12 300 000
Administrative Cost savings under Group licences	$0	$ N/A	$ N/A	$0
Substantive Cost savings by removal of coverage for off-site recess breaks	$850 000	$ N/A	$ N/A	$850 000
Cost savings by removal of coverage for injuries that occur as a result of serious and wilful misconduct	$0	$ N/A	$ N/A	$0
Total by Sector	$1 500 000	$ N/A	$ N/A	$32 830 000

Annual Cost Offset				
	Agency	**Within portfolio**	**Outside portfolio**	**Total**
Business	N/A	N/A	N/A	N/A
Not-for-profit	N/A	N/A	N/A	N/A
Individuals	N/A	N/A	N/A	N/A
Total	N/A	N/A	N/A	N/A

Proposal is cost neutral? * yes
Proposal is deregulatory * yes
Balance of cost offsets to be banked $___N/A_____

7. Stakeholder Consultation

The department has prepared a single-stage RIS, and as no decision has been previously announced an options-stage RIS is not required.

Over the last decade, extensive stakeholder consultation across a wide range of stakeholders has taken place on all the three key issues impacted by the proposed amendments. This includes – the Productivity Commission Inquiry into *National Workers' Compensation and Occupational Health and Safety Frameworks* in 2004, the Comcare Review in 2008 and the SRC Act Review in 2012-2013, with the recent two reviews specifically conducted in respect of the Comcare scheme.

The recent review conducted on the SRC Act in 2012-13 (the SRC Act Review) was a broad review that looked at a range of legislative and operational areas, including scheme governance, performance and access to self-insurance. The key purpose of the Comcare Review 2008 was to review self-Insurance arrangements under the Comcare scheme and ensure that the scheme provides a suitable OHS and workers' compensation system for employees of self-insurers.

The 2004 Productivity Commission Inquiry recommended OHS cover under the Commonwealth's OHS legislation for self-insured licensees in the Comcare scheme and a single workers' compensation system for multi-state employers to save costs.

The OHS and SRC Legislation Amendment Bill 2005 implemented the Productivity Commission's OHS recommendation of extending OHS coverage for self-insurance licensees in the Comcare scheme. This came into force in 2007, which was then changed from 1 January 2012 with the commencement of the model safety laws. Hence, issues faced by multi-state corporations is inherently the same now as it were at the time of the 2004 Productivity Commission Inquiry – unnecessary costs and regulatory burden of being required to deal with multiple legislations and regulators in up to eight jurisdictions for workers' compensation and WHS obligations.

The Taylor Fry report (Comcare Review 2008) stated that removal of the competition test is consistent with the strategy recommended in the 2004 Productivity Commission Inquiry and also recommended the introduction of group licensing provisions into the SRC Act. Most recently, the SRC Act Review also recommended the lifting of the competition test and the introduction of group licences in the Comcare scheme.

7.1 The SRC Act Review 2012-2013

Consultations commenced at the end of July 2012, and concluded in late December 2012 and included a range of face-to-face and teleconference meetings, and high level workshops to assist the reviewers in making their recommendations. Approximately 44 workshops, meetings and other consultations were held between July and November 2012. Written submissions for the Issues Paper closed on 25 October 2012 and 45 submissions were received.

On publication of the Review report in March 2013, further consultations were undertaken with key stakeholders which included feedback sessions held by the department and written submissions regarding the recommendations in the final report. 40 written submissions were received by the

department during April and May 2013. Stakeholders who made submissions and participated in workshops and consultations included workers, employer organisations, unions, insurers, Comcare, Commonwealth government agencies, current licensees under the Comcare scheme and premium payers under the scheme, health practitioner bodies and legal practitioners.

The Australian Industry Group strongly supported the removal of the competition test and allowing of national employers to enter the Comcare scheme. The Australian Chamber of Commerce and Industry and its member organisations supported removal of the competition test and the introduction of group licences.

In contrast, legal practitioners and associations such as the Law Council of Australia and Slater & Gordon Lawyers raised concerns about lifting the competition test and enabling the entry of national employers to the Comcare scheme purely as a means of enabling companies to save money and that companies should rather have to show themselves to be a superior performer in all areas. Also, in terms of granting of group licences, they were concerned that subsidiary companies will not be subject to the same rigor as the parent company when applying for the group license.

Some stakeholders such as the Suncorp group expressed concerns over the financial viability of other schemes in relation to lifting of the moratorium, while the others such as CSR (a current licensee), AON Hewitt and the National Australia Bank agreed with the removal of the competition test, access to the Comcare scheme for national employers and the introduction of group licences. They considered that removing the competition test and opening the Comcare scheme to national employers will reduce administrative overheads for national businesses and will also ensure employees of national businesses can receive a consistent benefit structure.

Unions (ACTU, AMWU, TWU and the Queensland Nurses Union) did not support the removal of the competition test or access to the Comcare scheme for national employers. The ACTU argued that

> *Employers wishing to become or remain self-insurers must earn that privilege by bringing to workers' compensation systems a superior performance in all areas of injury prevention, claims management and occupational health and safety standards. Self-insurers should be role models for other employers in terms of workplace safety, claims management and occupational rehabilitation by virtue of their special status.*

Under the proposed amendments, corporations will still be required to meet the stringent financial and prudential requirements imposed by the SRCC in order to be granted a self-insurance licence and/or a group licence. Also, multiple actuary reports and analysis have concluded that the move of employers out of the state based schemes have minimal impact. This low impact on state based schemes, the rigorous financial and prudential requirements levied by the SRCC and Comcare scheme performance data showing that licensee performance measures is better than that of premium payers, addresses the concerns and issues raised by stakeholders opposing opening of the Comcare scheme to national employers.

The SRC Act Review noted that opening up entry to the Comcare scheme would reduce red tape and boost productivity for large employers who are required to meet workers' compensation

requirements in up to eight jurisdictions and recommended lifting of the competition test and granting of group licences in the Comcare scheme.

More recently, the department sought feedback from the states and territories on the recommendations of the Review, in particular recommendations related to the lifting of the competition test and allowing national employers to join the Comcare scheme. Some states and territories expressed concerns similar to those expressed previously in relation to the potential impact on their state schemes including the potential impact on the remaining businesses in the state schemes.

Evidenced by actuarial assessments and reviews including the 2004 Productivity Commission Inquiry and the 2008 Comcare Review, the exit of licensed self-insurers and/or premium payers from state and territory schemes to the Comcare scheme is expected to have minimal impact on the viability of the state or territory schemes. It is also important to highlight the benefits that operating under a single workers' compensation scheme will provide to multi-state employers – reducing compliance costs, providing an opportunity to operate more efficiently under one regulatory regime and greater consistency in coverage and benefits for employees.

The Productivity Commission concluded that if self-insured employers exit the state or territory schemes, the scheme would lose the financial revenue from the levies and fees but would also forgo the administration cost for regulating the self-insurers[68].

In terms of the impact of the exit of premium payers on state and territory schemes, the Productivity Commission noted the impacts identified by the actuarial assessments:

- *the estimated reduction in premium revenue for the State and Territory schemes from exiting premium-paying employers eligible to self-insure under the Comcare scheme could range from a likely $154 million or 2.7 per cent (if one in five employers exited) to a maximum of $771 million or 13. 5 per cent (if all eligible employers exited); and*
- *as large premium-paying employers in existing schemes tend to be charged experience-rated premiums (and thus, should not in principle be cross-subsidising other employers), their exit should have a relatively neutral impact on the schemes[69].*

Actuarial analysis of VWA data considered the impact on Victoria and Tasmania of large national employers transferring to a national self-insurance arrangement and concluded that:

> *If all eligible organisations elect to transfer to national self-insurance…this proportion (20%) is a similar magnitude to that previously assessed for Tasmania (27%). Its is expected that the cost of supervising self-insurers will decrease in proportion to the number remaining self-insurers and is unlikely to affect the finances of the scheme[70].*

---

[68] Productivity Commission Inquiry Report No 27, March 2004 - *National Frameworks for Workers' Compensation and Occupational Health and Safety* - page 120

[69] Ibid – page 127

[70] Ibid – page 455

The Productivity Commission also noted that '…those schemes with a small number of self-insurers (for example, the Northern Territory has six and the Australian Capital Territory has eight) have lower fees and levies for comparable self-insurers than imposed by schemes with more self-insurers…This suggests that the fixed costs of assessing self-insurance applications and administering self-insurers on an ongoing basis, and thus the impacts of exiting self-insurers on those that remain, are likely to be very low'[71].

The 2008 Comcare Review concluded that:

> *All the available evidence suggests that the actual impacts on state and territory workers' compensation schemes of corporations exiting those schemes to join Comcare have been insignificant. The likelihood of future impacts being significant is low*[72].

Some states expressed concerns that access to national self-insurance has the potential to exacerbate the presumed insurance gap for coverage of contractors under the Comcare scheme. This risk is mitigated by the fact that the SRC Act requires that a person is taken to be employed by a licensed corporation if the person performs work for that corporation under the relevant State or Territory law and would be entitled to workers compensation cover in respect of that work (subsection 5(1A)(b)). This provision does not apply to contractors for service undertaking work for the Commonwealth or a Commonwealth authority.

Some states and territories expressed concerns related to uncertainty for jurisdictional responsibility under WHS laws, duplication and overlap of WHS enforcement activity and the possibility that WHS compliance standards will fall in workplaces if the employer transits to the Comcare scheme.

These concerns can be addressed by considering firstly, matters which must be addressed by the SRCC in the decision to grant or extend a self-insurance licence under the scheme and secondly, the changes in Comcare's inspectorate powers and its new obligations for licencing and authorising workplace risk mitigation processes with the introduction of the WHS Act in 2011.

The SRC Act requires that, in their decision to grant a licence, the SRCC take into consideration whether the applicant has the capacity to meet the standards set by the SRCC for the rehabilitation and occupational health and safety of its employees. The legislation also requires that the SRCC must not grant a licence if the applicant's past and likely future performance in complying with WHS legislation reveals that it has not met the standards of state legislators in the past, and is not likely to meet those required by Comcare, as the regulator for the WHS Act, and the SRCC in the future.

Comcare historically had a non-interventionist approach to work health and safety interventions and enforcement which is due to its former role as solely the regulator for Commonwealth government employees. This has changed over the past decade as Comcare has increased its capacity to regulate

---

[71] Productivity Commission Inquiry Report No 27, March 2004 - *National Frameworks for Workers' Compensation and Occupational Health and Safety* – page 127

[72] Taylor Fry report to the 2008 Comcare Review – page 81

non-Commonwealth licensees, including increasing its inspectorate and receiving government directions to increase its monitoring and enforcement activities.

The *WHS Act 2011* has introduced Comcare as a single work health and safety regulator into the Federal jurisdiction which has provided greater flexibility in regulatory approaches and empowered inspectors and case managers. However, currently multi-state employers new to the Comcare scheme since 1 January 2012, lose the advantage of reporting to a single national regulator for WHS and hence forgo the reduced compliance costs and administrative efficiency it brings.

Even prior to the commencement of the *WHS Act 2011,* Comcare had shifted to a modern regulatory approach to include a range of educative, audit and advisory tools, in addition to the traditional investigative approach. The enactment of the *WHS Act 2011* gave clear backing to Comcare's preventative, educative and advisory approaches towards greater safety outcomes.

New functions for Comcare include inspectorate powers and new obligations for authorisation and licensing:

- the WHS Act confers on inspectors a wider range of advisory, issue resolution, and criminal investigative functions, as well as stronger coercive powers, than was provided under previous arrangements. The functions and powers of inspectors are no longer limited to the conduct of an investigation and mandatory issue resolution tasks.

- the WHS Act confers onto Comcare new obligations for licencing and authorising workplace risk mitigation processes such as: lead-based work; asbestos removal; high risk work; underground tanks; etc.

- The WHS Act creates specific due diligence obligations for officers of organisations. These obligations are preventative and proactively engage senior officers to ensure they verify safety management systems are in place and personally engage in their organisations risk management processes.

In response to concerns raised in relation to the number of Comcare field inspectors, the department notes that the rate of 1.0 inspector per 10,000 employees is very close to the national average of 1.1[73]. Even though in 2011-12 the number of field active inspectors employed by the Australian Government decreased, there was a substantial increase in the number of 'Other staff undertaking non-inspectorate activities'. This was due to prevention campaigns and education activities.

Duplication and overlap of WHS enforcement activity is unlikely to be a risk as multiple concurrent duties exist under model WHS laws in both the Commonwealth and state jurisdictions, and duty holders are only required to meet these so far as is reasonably practicable. Increased education and enforcement is likely to improve safety outcomes rather than cause confusion.

[73] p. 27 Safe Work Australia *Comparative Performance Monitoring Report - October 2013*

Given the WHS laws are not harmonised in Victoria and Western Australia, in those states there will currently be workplaces operating under either the state WHS system or the WHS Act. State and territory work health and safety laws can and do operate concurrently and Comcare has entered into agreements with state and territory regulators about the exercise of investigation and enforcement powers.

According to the *Comparative Performance Monitoring Report 2013* released by Safe Work Australia, for those jurisdictions with privately underwritten schemes, funding for non-workers' compensation functions come directly from government appropriation.[74] The movement of large employers from these small privately underwritten schemes, such as Tasmania and the Northern Territory, should not impact unduly on the regulation and management of work health and safety functions of these schemes.

7.2 The Comcare Review 2008

The majority of submissions to the Comcare Review acknowledged that a uniform national OHS and workers' compensation regime is a major factor in businesses seeking to self-insure under the Comcare scheme.

The industry associations were very supportive of multi-state corporations having access to a national system of OHS regulation and workers' compensation, particularly in terms of economic benefits to employers and commercial advantage to Australia's global competitiveness. They raised the issue of inconsistencies across multiple state workers' compensation and OHS regimes, and strongly supported the concept of self-insurance as a driver of high performance in OHS and injury management and cost savings.

Submissions by employers generally identified a need for large multi-state corporations to have one workers' compensation regime and proposed expanding access to the Comcare scheme by removing the 'competition test' requirement currently imposed in the legislation. The actuarial report (Taylor Fry 2008) also supported the removal of the competition test and the introduction of group licences.

By contrast, unions proposed that no further corporations should be declared eligible to gain self-insurance licences, until additional conditions were met including substantial tightening of eligibility criteria. Legal professionals and associations also called out for no further admissions at least until the review was completed.

In response to the issues raised in consultations about risk to premium payers in the Comcare scheme or to the Commonwealth if employers moved to the Comcare scheme and the likely impacts of corporations exiting the state scheme, the majority of employers, industry association and licensees identified this as a low risk and likely to have no significant impact.

Some of the submissions, primarily those from the unions and legal associations, suggested that the exits presented a significant threat to the viability of state and territory schemes, or would impact

[74] p. 27 Safe Work Australia *Comparative Performance Monitoring Report - October 2013*

negatively on the employers and employees that remained in the scheme. Some of the state and territory governments submitted that as employers in like industry types exit the state or territory schemes, the average premium rating for those industries could rise, thus placing additional premium burden on those employers left in the scheme.

State government bodies (WA, NSW, SA, Vic & Tas) recognised the potential benefits to a corporation for having access to national self-insurance, however, submitted that it did not see the benefits of integrating OHS and workers' compensation legislation and consequently feels that it is better placed to carry out OHS regulatory actions. In addition, Tasmania maintained that self-insured corporations exiting its scheme will place financial pressure on the local scheme.

Businesses and business organisations claimed that the impacts would be minimal as most of the large corporations would already be covered by state based self-insurance licences; therefore the impact of them exiting these schemes would be negligible. They submitted that even if the corporation is currently a premium payer under the state schemes, the impact of the exiting employers would be minimal as concluded in the 2004 Productivity Commission Inquiry. The impact would depend upon the nature and extent of cross subsidies existing under the present schemes, and the volume of premium that was lost with level of reduction in the premium polls of the states if all eligible corporations were to leave, would be between 8.1% and 13.5% as concluded by the Productivity Commission. They claimed that it is only reasonable to conclude that if this level of premium left the state and territory systems, this would mean that very substantial amounts of future claims liability would also leave the systems, and that therefore the effect would not be significant in a net sense.

In examining the financial arrangements for licensees under the Comcare scheme, the Taylor Fry report found that the prudential and financial requirements for licensees are sufficient to reduce the risk to premium payers in the Comcare scheme or to the Commonwealth, to minimal levels[75].

This is further confirmed with the Comcare scheme performance data showing that licensee performance on SRCC scheme performance measures has consistently been better than that of premium payers.

In response to the impact on state and territory schemes, Taylor Fry's report further noted that[76]:

> *The Productivity Commission concluded that the impact on state and Territories workers' compensation schemes was likely to be small. Some state schemes have introduced exit arrangements to reduce the risk that 'tail' claims left behind when an employer exits to join the Comcare scheme. Consultation with several of the state schemes indicated that they had commissioned actuarial advice in relation to the potential for exits to impact on the financial*

[75] Taylor Fry actuarial report for the Comcare Review 2008 – page 81

[76] Ibid - page 80

position of the scheme, and that advice was largely consistent with the conclusions in the Productivity Commission report[77].

Analysis in the Taylor Fry report concluded that financial impacts of exits to the Comcare scheme have been insignificant and this finding is consistent to that of the 2004 Productivity Commission report[78]:

> *All the available evidence suggests that the actual impacts on state and territory workers' compensation schemes of corporations exiting those schemes to join Comcare have been insignificant. The likelihood of future impacts being significant is low.*

Current licensees and applicants provided strong support for continued access of corporations, particularly multi-state corporations to the Comcare scheme. The licensee submissions were unequivocally in favour of the concept of self-insurance itself as a motivator to improve prevention and safety and to achieve better employee outcomes in return to work. Those corporations who previously had self-insurance status in the state schemes pointed to the resource savings in having their arrangements now in one jurisdiction.

The unions and legal associations raised concerns of the scheme regulator, Comcare being able to meet operational requirements should the scheme coverage be expanded, while Comcare confirmed in its submission that it was able to meet any/all additional requirements[79].

7.3 Consultations for the OHS and SRC Legislation Amendment Bill 2005

Extensive consultations with Commonwealth authorities and private sector licensees were undertaken during amendments to the OHS and SRC legislation in 2005[80]. All licensees supported the proposed amendment of the OHS (CE) Act to provide coverage under that Act for corporations which are licensed under the SRC Act and saw significant advantages in operating under the one OHS regime rather than having to operate under a multiplicity of jurisdictions.

Licensees indicated that the work involved in complying with multiple jurisdictions is an inefficient and inappropriate use of resources and stated that the primary benefit of the proposed amendment is better safety outcomes for employees and a number of administrative and commercial benefits.

These amendments provided work health and safety coverage from March 2007 to licensees- under the Comcare scheme.

---

[77] Productivity Commission Inquiry Report No 27, March 2004 - *National Workers' Compensation and Occupational Health and Safety Frameworks*

[78] Taylor Fry actuarial report for the Comcare Review 2008 – page 81

[79] Comcare's submission to the review of the Comcare scheme

[80] Explanatory Memorandum, OHS and SRC Legislation Amendment Bill 2005

7.4 Productivity Commission's 2004 Inquiry into National Workers' Compensation and Occupational Health and Safety Frameworks

The Productivity Commission released its Interim Report in October 2003 and provided opportunity for interested parties to comment on the preliminary analyses and findings through written submissions and participation in public hearings held in December 2003.

The Commission received 262 written submissions by the end of February 2004. The submissions were from organisations and individuals covering a wide spectrum of interests. Some raised selected matters of particular concern and others commented on a broader range of issues.

Reasons stated by businesses and their representative organisations for seeking to join the Comcare scheme focused on a desire to achieve an integrated approach to injury prevention, rehabilitation and workers' compensation, under a single national regime.

In terms of the proposed amendments, the 2004 Productivity Commission report concluded that there are significant benefits to multi-state employers from being able to operate within a single nationally available scheme and that their employees could also benefit from this. It also concluded that the impacts on state and territory schemes of multi-state employers moving to a national scheme are not considered to be significant.

The actuarial report to the Productivity Commission stated[81]:

> *the recent availability to the Commission of Victorian data has enabled a check to be made on the previous analysis quantifying the impact that alternative national self-insurance could have on the Victorian scheme's remuneration base and premium pool. The data enabled more accurate classifications to be made of workplaces and of the ability to qualify for alternative national self-insurance, and hence a more accurate estimate of impacts. Using the same criteria for assessing a corporation's potential to self-insure, the analysis estimated smaller effects than indicated previously. For example, under model A, if it was assumed that one in five of potentially eligible corporations were to transfer to the Comcare scheme, then the estimate of the premium reduction to the scheme would be 1.6 per cent as opposed to the 2.7 per cent indicated by the Taylor Fry analysis. Similarly, if it was assumed that all eligible corporate employers were to transfer to the Comcare scheme, then the estimate of the premium reduction would be 8.1 per cent as opposed to the 13.5 per cent indicated by the Taylor Fry analysis (appendix D).*

[81] Productivity Commission Inquiry Report No 27, March 2004 - *National Workers' Compensation and Occupational Health and Safety Frameworks* – page 128

8. Conclusion

The department recommends implementing Option Three – to enable corporations required to meet workers' compensation obligations under the laws of two or more states or territories ('national employer') to apply for a licence to self-insure their workers' compensation and access work health and safety obligations under a single national regulator; and to access group licences where appropriate. The basis for the department's recommendation is that it enables the most significant reduction in red tape and compliance costs for employers and a consistent coverage for its employees.

Key benefits of Option Three are as follows:

- broadening the coverage of the Comcare scheme enabling multi-state corporations to apply for coverage under a single regulator;
- enabling private corporations new to the Comcare scheme and all current licensees access to the one national regulator for workers' compensation and work health and safety; thereby reducing red tape;
- equity and consistency in benefits and obligations for employees no matter which state or territory they work in;
- reducing compliance and administrative costs for employers and improving efficiency and productivity; and
- streamlining the current self-insurance application and assessment process.

The department also recommends implementing Options Four and Five– removal of off-site recess breaks coverage and removal of coverage for injuries that occur as a result of serious and wilful misconduct. The basis for the department's recommendations, and the key benefit, is that they provide an equitable balance between an employer's obligations to provide a safe workplace and an employee's obligation to take responsibility for their own safety and actions.

The SRC Act Review recommended lifting of the moratorium, removal of the competition test and granting group licences under the Comcare scheme and concluded that this would assist in reducing red tape for multi-state businesses. This change would be welcomed by business, while the major concerns raised by other stakeholders will be satisfied by the robust licence assessment processes followed by the SRCC.

In response to concerns raised by states and territories on the impact of exiting employers – multiple actuarial assessments and reviews have found that the exit of licensed self-insurers and/or premium payers from state and territory schemes to the Comcare scheme had very minimal impact on the viability of the state or territory schemes.

Regulatory cost savings from changes proposed under Option Three and under the options of removing coverage for off-site recess breaks and for injuries that occur as a result of serious and wilful misconduct - are expected to be approximately $32 830 000.

The overall budgetary impact for the Government is nil.

9. Implementation and Review

The Government will introduce a Bill to legislate the proposed amendments in 2014. The key milestone to be achieved is the passage of legislation amendments implementing the measures outlined in Option Three, and the corresponding commencement of the new licencing process.

The department will monitor the impact of these legislative changes on employers and employees to ensure they meet their intended objectives. A key aspect of this monitoring will be whether the amendments have enabled more private multi-state corporations' access to the Comcare scheme and whether the predicted savings in compliance costs to businesses have been realised.