A comprehensive review of the

Safety, Rehabilitation and Compensation Act

Getting the best outcomes for injured and ill workers

September 2025

Prepared by the Independent Panel for the review

Ms Justine Ross, Panel Chair | Emeritus Professor Robin Creyke AO | Mr Gregory Isolani

Acknowledgement of Country

The independent review panel acknowledges the Traditional Owners and Custodians of Country throughout the lands on which we work and live. We acknowledge their continuing connection to land, water and community. We pay our respects to the people, their cultures and the Elders past and present.

We are grateful to work on these lands and strive to build respectful and meaningful relationships with First Nations communities. First Nations knowledge and cultural practices have shaped and continue to enrich our shared Australian heritage. We recognise the enduring contributions and wisdom of First Nations people and have sought to ensure their voices were heard in the review.

Disclaimer

The material contained in this report has been developed by the independent panel reviewing the *Safety, Rehabilitation and Compensation Act 1988* (Cth), with the assistance of staff in the Department of Employment and Workplace Relations. While care has been taken to ensure that information contained in this report is true and correct at the time of publication, changes in circumstances after the time of publication may affect the accuracy of this information.

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The document must be attributed as *Getting the best outcomes for injured and ill workers*.

Foreword

In December 2023, the Australian Government announced that it would establish an independent panel to undertake a comprehensive review of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act). In 2024, we were appointed to the independent panel by the then Minister for Employment and Workplace Relations, the Hon Tony Burke MP.

At the heart of our review of the SRC Act lies a simple but powerful focus: improving outcomes for injured and ill workers. Every person who experiences injury or illness in the workplace deserves a system that is compassionate, fair and effective. We approached the review deeply committed to placing the needs, experiences and wellbeing of these workers at the centre of our work.

This focus is not only vital for the people and families directly affected by workplace injury or illness – it also delivers broader benefits. A system that supports recovery and return to work improves productivity, reduces long-term costs, strengthens workplace culture, and contributes to a healthier, more inclusive society. When we care for workers, everyone benefits: employers, communities and the economy. Crucially, a person-centred approach also supports the sustainability of a workers' compensation scheme – by reducing the duration and severity of claims, improving return to work outcomes, and ensuring resources are used effectively to deliver better results for workers and employers.

The current Commonwealth scheme (the Comcare scheme) – governed by the SRC Act – was designed to provide support and protection for injured and ill workers. However, despite its importance, the Act has not undergone holistic reform since it was passed nearly 40 years ago. Prior attempts to comprehensively modernise the Act did not succeed, leaving the Comcare scheme increasingly out of step with the realities of contemporary work.

Much has changed since the SRC Act was introduced. Employment is now more diverse and dynamic – with many workers working from home rather than in employer-provided offices. Workers may be casual or part time and have multiple jobs. Many continue to work after traditional retirement ages. Types and causes of workers' compensation claims have also changed; although still predominantly physical, psychological injuries and illness are on the rise.

Australia's workforce is changing too, and so are the challenges faced by injured and ill workers. Increasingly, workers come from diverse cultural and linguistic backgrounds, with a significant proportion of Australian's population born outside Australia[1] and more than 1 in 5 Australians speaking a language other than English at home.[2] Regional and remote workers who have a work-related injury are confronted with specific challenges in accessing services to assist their recovery and those responsible for rescue or reconstruction following the devastating effects of climate change face increased risk of injury.

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[1] Australian Bureau of Statistics (ABS), *Australia's population by country of birth*, ABS , June 2024, accessed 26 August 2025. Available at www.abs.gov.au/statistics/people/population/australias-population-country-birth/latest-release.

[2] ABS, 'Cultural Diversity of Australia', 2022, ABS, accessed 26 August 2025. Available at https://www.abs.gov.au/articles/cultural-diversity-australia#language.

Contemporary research shows health and return to work outcomes are poorer for people receiving benefits from scheme systems. It emphasises the need for a person-centred approach that moves away from the procedural models of the past and instead prioritises recovery, wellbeing and timely support.

This is the background against which the review was commissioned.

Reforms in other schemes made our task of addressing these issues easier. In some ways, the Comcare scheme's design has fallen behind state and territory schemes, with all other schemes now providing some form of early support payments to injured or ill workers. The focus of other schemes has shifted to prioritise supporting workers to return to health and work.

Our work also builds on previous reviews of the Comcare scheme. Many of the recommendations made by Peter Hanks QC and Dr Allan Hawke AC more than a decade ago remain relevant. We have drawn extensively on them, particularly where they related to fundamental problems with the SRC Act. We are grateful for their insights.

Our views have also been shaped by the many organisations and people who responded to our call for input. All have a stake in the success of the Commonwealth's scheme. The level and volume of responses was overwhelming. We received more than 150 submissions and nearly 600 survey responses, and spent over 100 hours speaking with individuals and groups.

We are particularly grateful to the workers and family members who provided submissions or completed the survey. Recounting events was often difficult for them and we were moved by their experiences. We also owe a particular debt to the members of the tripartite reference group, who generously shared their time and expertise. We sought their advice on the drafts of the recommendations and the report, and they journeyed with us to the end. Their insights were invaluable.

We believe our recommendations reflect the person-centred focus of our review. The evidence is emphatic. Those closely involved have spoken, and the analysis has been done. Change is urgent. It is now time to deliver long-overdue reform to the Commonwealth's workers' compensation scheme.

We would like to thank the departmental secretariat for assisting us with our review and for ensuring we met our extended deadline.

The independent panel

Ms Justine Ross, Panel Chair
Emeritus Professor Robin Creyke AO
Mr Gregory Isolani

Contents

Glossary

Term	Meaning
1971 Compensation Act	*Compensation (Commonwealth Government Employees) Act 1971* (Cth)
AAT	Administrative Appeals Tribunal (replaced by the ART, see below)
ABS	Australian Bureau of Statistics
ACTU	Australian Council of Trade Unions
ADR	Alternative dispute resolution Processes used to resolve disputes before formal hearing (for example, mediation and conciliation)
AHRC	Australian Human Rights Commission
AHPRA	Australian Health Practitioner Regulation Agency
AIHW	Australian Institute of Health and Welfare
AMA	Australian Medical Association
AMA Permanent Impairment Guides	American Medical Association Permanent Impairment Guides
AMWU	Australian Manufacturing Workers' Union
APRA	Australian Prudential Regulation Authority
APS	Australian Public Service
APSC	Australian Public Service Commission
ART	Administrative Review Tribunal
ART Act	*Administrative Review Tribunal Act 2024* (Cth)
AWOTEFA	Average Weekly Ordinary Time Earnings of Full-Time Adults
Australian Government worker	A person employed by the Commonwealth or a Commonwealth authority, or those deemed as such under the SRC Act
Biopsychosocial	The interrelationship between biological, psychological and social factors
CDDA Scheme	Compensation for Detriment caused by Defective Administration A scheme for compensating people for losses due to government administrative errors
CCRF	Commonwealth Consolidated Revenue Fund The main account for government funds, including Comcare's reserves
Claimant	A worker or former worker who makes a claim for workers' compensation
Claims agent	This term is typically used in Victoria and NSW, and refers to a third party engaged and authorised to manage claims

Term	Meaning
Comcare	The body established under s 68 of the SRC Act, which is responsible for administering the Commonwealth workers' compensation scheme
Comcare Permanent Impairment Guide	*Safety, Rehabilitation and Compensation Act 1988 – Guide to the Assessment of the Degree of Permanent Impairment Edition 3.0*. (Cth) The approved guide used to assess the degree of permanent impairment, made under s 28 of the SRC Act
Comcare scheme	The workers' compensation scheme established by the SRC Act
Commonwealth authority	A term defined in s 4 of the SRC Act, covering bodies corporate incorporated for a public purpose under a law of the Commonwealth, and the Australian Capital Territory
Commonwealth entity	Primary bodies that are part of the Commonwealth (such as government departments and agencies), and Commonwealth corporate entities and companies that have separate legal status
Competition test	A requirement under s 100 of the SRC Act that private sector employers must meet to access self-insurance under the Comcare scheme, requiring that they are carrying on business in competition with a Commonwealth authority or former Commonwealth authority
Corporate Commonwealth entity	A Commonwealth entity that is a body corporate
CPSU	Community and Public Sector Union
CSIRO	Commonwealth Scientific and Industrial Research Organisation
DCM	Delegated claims management
Determining authority	The body (Comcare, licensee or delegated agency) responsible for making decisions on claims under the SRC Act
DEWR	Department of Employment and Workplace Relations
DSM	*Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition, Text Revision)*, prepared by the American Psychiatric Association
DVA	Department of Veterans' Affairs
Early intervention	Employer-led activities or programs to support workers pre-claim or while a claim is being determined
Early support	Benefits and support provided by the determining body to injured or ill workers before claim liability is determined, aimed at improving recovery and return to work. Also known as 'provisional liability'
Entitlements	Workers' compensation benefits, including compensation for incapacity, medical expenses, permanent impairment and death

Term	Meaning
FIWAC	Family and Injured Workers Advisory Committee established under the *Work Health and Safety Act 2011* (Cth)
FW Act	*Fair Work Act 2009* (Cth)
FWC	Fair Work Commission
Gig economy	A labour market characterised by short-term, task-based jobs, often facilitated by digital platforms or apps, where workers are hired for specific 'gigs' rather than as permanent workers; also known as the 'platform economy' or 'on-demand workforce'
Hanks Review	Peter Hanks QC, *Safety, Rehabilitation and Compensation Act Review: Report—February 2013*, report to the Australian Government Department of Education, Employment and Workplace Relations, 2013
Hawke Review	Dr Allan Hawke AC, *Safety, Rehabilitation and Compensation Act Review: Report of the Comcare Scheme's Performance, Governance and Financial Framework*, report to the Australian Government Department of Education, Employment and Workplace Relations, 2013
HWCA	Heads of Workers' Compensation Authorities
icare	Insurance and Care New South Wales
Incapacity	The inability to work due to injury or disease
IME	Independent medical examination
IME Guide	*Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024* (Cth), made under s 57A of the SRC Act
IMP	Injury management plan
Improving the Comcare Scheme Bill	Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth)
It Pays to Care	An evidence-based policy promoting national discussion on fair, efficient compensation schemes developed by the Australasian Faculty of Occupational and Environmental Medicine of the Royal Australasian College of Physicians
Journey claim	A claim for injury sustained while travelling to or from work
Licensee	An employer (Commonwealth authority or eligible corporation) holding a self-insurance licence under the SRC Act
LQMP	Legally qualified medical practitioner A legally qualified medical practitioner is a doctor who is registered with the Medical Board of Australia and authorised to diagnose medical conditions, issue certificates of capacity, and provide treatment under relevant legislation
Long-tail scheme	A workers' compensation scheme that pays benefits for the duration of a worker's incapacity

Term	Meaning
Minister	Minister responsible for the SRC Act
Monash user-experience study	Monash University, *User experiences of the Comcare workers' compensation scheme, Qualitative Research Study Findings – Final report*, 2025. Commissioned to support this review
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
Non-Commonwealth licensee	Licensee that is not a Commonwealth entity
Non-corporate Commonwealth entity	Commonwealth entity that is not a body corporate
NWE	Normal Weekly Earnings A basis for calculating incapacity payments
OHS	Occupational health and safety – replaced by 'work health and safety' in most states and territories, but still used in Victoria
OPC	Office of Parliamentary Counsel
Permanent impairment	A loss of, the loss of the use of, or the damage or malfunction of, any part of the body or of any bodily system or function or part of such system or function that is likely to continue indefinitely
Person-centred	Involving the worker in discussions and decisions about their treatment. Also referred to as worker-centric, human-centred, individual-focused, whole-of-person or similar
PIAWE	Pre-injury Average Weekly Earnings
PIEF	Personal Injury Education Foundation
PGPA Act	*Public Governance, Performance and Accountability Act 2013* (Cth)
Premium payers	Australian Government agencies that pay premiums to Comcare
Provisional liability	Payments or support provided before a claim is formally accepted, to facilitate early intervention (see 'early support')
PTSD	Post-traumatic stress disorder
RACP	Royal Australasian College of Physicians
RANZCP	Royal Australian and New Zealand College of Psychiatrists
Rehabilitation authority	The principal officer of an organisation providing workplace rehabilitation to a worker
Redemption	The process of converting ongoing payments into a lump sum, usually for low-level incapacity claims
Rozen Review	P Rozen QC, *Improving the experience of injured workers: A review of WorkSafe Victoria's management of complex workers' compensation claims*, 2021, WorkSafe Victoria

Term	Meaning
Significant contribution test	The requirement that an ailment be contributed to, to a significant degree, by the worker's employment
Short-tail scheme	A workers' compensation scheme imposing a benefit period or amount restriction on claimants
SIRA	State Insurance Regulatory Authority (NSW)
SRC Act	*Safety, Rehabilitation and Compensation Act 1988* (Cth)
SRCC	Safety, Rehabilitation and Compensation Commission
SRCLA	Safety Rehabilitation and Compensation Licensees Association
SRC Regulations	*Safety, Rehabilitation and Compensation Regulations 2019* (Cth)
Step-down	The reduction in weekly income replacement payments after a certain period of incapacity, typically from 100% of pre-injury earnings to a lower percentage, such as 75% or 70%
Stop clock	A period when a statutory timeframe for a decision is paused
SWA	Safe Work Australia The Commonwealth entity responsible for developing national policy relating to work health and safety and workers' compensation
SWA template national guide	The template guide for assessing the degree of permanent impairment, developed by Safe Work Australia
Taylor Fry/Taylor Fry report	Taylor Fry, *SRC Act reform options: Actuarial costings*, 2025. Actuarial analysis commissioned to support this review
Treatment and care plan	A plan developed for an injured or ill worker outlining required medical treatment, aids and services
TRG	Tripartite reference group A group formed to assist the independent panel with this review
WHS	Work health and safety
WHS Act	*Work Health and Safety Act 2011* (Cth)
WPI	Whole Person Impairment
WRP	Workplace rehabilitation provider An approved provider engaged to support an injured or ill worker's recovery and return to work

Executive Summary

The review was established to make recommendations for reform of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act). Previous calls for comprehensive reform, including from Peter Hanks QC and Dr Allan Hawke AC in 2013, did not lead to the significant changes they recommended.

Since the SRC Act's commencement in 1988, workers have been profoundly affected by national and international events, including the consequences of the COVID-19 pandemic. We have seen the rise of work-from-home arrangements, the emergence of new industries, the ageing of our workforce, a greater focus on work health and safety, and shifts in the types and causes of workers' compensation claims. The legislation needs to reflect and be able to respond to these developments.

The terms of reference called for a comprehensive review of the SRC Act, particularly in light of workers' experiences, while maintaining the financial viability of the Comcare workers' compensation scheme (Comcare scheme). Specifically, our review was to cover best practices in workers' compensation, the scheme's coverage, governance arrangements, scheme entitlements, how best to resolve disputes and scheme administration.

To meet these objectives, we were to canvass the views of a wide selection of those with a stake in the Comcare scheme. We held targeted consultations with representatives of organisations and individuals, including those with experience of making a claim and those supporting injured and ill workers. We received submissions from these individuals and groups. We were supported by a tripartite reference group, comprising unions, employers and government, and our work was informed by expert advice, research and data analysis. Part B of this report chronicles how we conducted our review and consultations.

Chapter 1. Creating a best practice legislative scheme to respond to change and challenge

We produced a suite of principles to guide the development of the new SRC Act. Key principles include tailored and timely support for workers and adaptability to ensure the legislation is sufficiently flexible to deal with current and future workplace developments. The SRC Act lacks an objects clause, and we recommend that these principles form the basis for the objects in the new Act.

The extensive nature of the changes we have recommended means there is no option but to redraft the current legislation. Legislative drafting practices have developed significantly since the SRC Act was first developed. As the new SRC Act will be drafted using modern drafting practices, it will provide workers with a much-needed plain language statement of their rights and obligations.

Chapter 2. Providing a fair no-fault entitlement to compensation

We considered who should be eligible for compensation, who should be covered by the scheme and in what circumstances, and what injuries and illnesses should entitle an individual to receive benefits. Significantly, we concluded that judicially considered, long-established central concepts in the legislation should not be tampered with.

We recommend retaining the current dual test for injury and disease, but improving its clarity and providing guidance to reduce confusion and disputes. One of the most controversial topics raised with the review was the circumstances that would deprive a claimant of the right to receive compensation, particularly through the exclusion of injuries and illnesses caused by an employer's reasonable administrative action. We also recommend maintaining the current no-fault approach, with clear exclusions for reasonable administrative action and serious and wilful misconduct, while ensuring the scheme is responsive to modern work arrangements, and psychological injuries and illnesses.

Journey claims were also a controversial area. We adopted a middle course and recommend reinstating entitlement to compensation for journey claims but only for journeys when the worker is on call, or for travel from the employer-provided workplace to home to resume work.

Chapter 3. Intervening early to support recovery and removing barriers to return to work

We recommend introducing a statutory duty for employers to intervene early after injury, and for the Comcare scheme to provide early payments and supports while claim liability is being determined. If liability is ultimately denied for a claimant who has received early support, the payments are only to be recovered if the claim was fraudulent.

In relation to the vexed question of who is responsible for managing rehabilitation, we recommend a hybrid arrangement: the decision-maker is responsible for injury management and the employer for return to work. We recommend introducing clear duties for both employers and determining bodies. The package is supported by our recommendations for enhancing training and professional development of return to work coordinators, in accordance with courses approved by the governing board. In the absence of an employer who can take on the liable employer role, we recommend that Comcare assume that role.

Chapter 4. Effectively and proactively determining and managing claims to prevent further harm

We examined the management of claims and found that the process should be streamlined, with a one-step model, and simpler systems for notification and lodgement. These steps should trigger early supports, including financial, medical and rehabilitation assistance, as required. The supports should continue until liability is decided.

We recommend keeping the statutory timeframes for decision-making, taking a person-centred approach to claims management and review, and introducing mandatory training for claims managers. Our recommendations include embedding principles of fairness, transparency and trauma-informed practice in claims management, requiring service standards and public reporting to drive continuous improvement. We found that delegated claims management arrangements can create confusion, inconsistencies and a lack of accountability. We recommend that these arrangements not continue in their current form.

Chapter 5. Providing equitable benefits to effectively support injured and ill workers and their families

We recommend updating benefits under the Comcare scheme to reflect contemporary work and living costs. This includes adopting a fairer approach to calculating pre-injury earnings, removing 'step-downs' in some circumstances, and giving consideration to ensuring that superannuation is included. We propose combining impairments from multiple injuries, increasing lump sum payments for permanent impairment and death to match best practice, and providing crisis payments and support services for families. For those approaching retirement at the time of injury or illness, compensation should continue for a period after retirement in certain circumstances.

Chapter 6. Achieving successful resolution to reduce harm and cost

We found that delays and complexity are major barriers to effective resolution of disputes. We recommend providing access to independent alternative dispute resolution (ADR) at all stages of the claims and rehabilitation process. Legal representation and appropriate costs should be available at reconsideration and during ADR as an incentive to resolve disputes earlier. Our recommendations include introducing voluntary commutation (lump sum settlement) options with appropriate safeguards, increasing the redemption ceiling, clarifying Comcare's authority to settle claims, and ensuring costs and appeal rights are fair and proportionate. We also propose that the Administrative Review Tribunal be empowered to review commutation agreements.

Chapter 7. Ensuring scheme integrity, and strong governance and administration to secure scheme sustainability

We considered governance, scheme integrity and financial sustainability. We recognise the importance of robust oversight, clear accountability and effective leadership for the Comcare scheme. We found that the current arrangements are complex and sometimes lack clarity. To address this, we recommend establishing a new governing board with tripartite representation. It should be responsible for setting strategic direction and standards, monitoring performance, and ensuring the scheme's ongoing financial viability. We also propose clarifying the eligibility criteria and regulatory requirements for self-insurance, strengthening the powers and resources available to the regulator, and ensuring that governance structures are sufficiently flexible to adapt to changing needs and risks.

We believe a broader cost–benefit analysis is needed to weigh the financial effect of our recommendations against the improved outcomes for workers and workplaces. While actuarial modelling informed our work, it could not capture the full value of the fairer, more compassionate systems we propose. Insights from the Monash user-experience study and the *It Pays to Care* reports show that person-centred approaches can improve recovery and reduce long-term costs – benefits that should be factored into future costings.

Together, these recommendations form a blueprint for a modern workers' compensation scheme that is fair, efficient and responsive to the needs of workers and employers alike. We believe that, with these reforms, the Comcare scheme can deliver better outcomes for injured and ill workers and their families, support recovery and return to work, and remain sustainable in the face of future challenges.

Part A

Background and context

Background

Introduction

On 24 June 2024, we were appointed as an independent panel to conduct a comprehensive review of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act), the legislative framework that underpins the Comcare workers' compensation scheme (Comcare scheme). Our biographies are at Appendix A.

What we were asked to do

The terms of reference (see Appendix B) asked us to make recommendations to the Australian Government for legislative reforms to improve outcomes for injured and ill workers, and to ensure that the Comcare scheme has the flexibility to respond to new and emerging workplace practices while maintaining its ongoing financial viability. The terms of reference asked us to consider:

1. Best practice in workers' compensation – Chapter 1
2. Workers' experience of the scheme – chapters 3 and 4
3. Scheme coverage – chapters 2 and 7
4. Governance arrangements – Chapter 7
5. Scheme entitlements – chapters 3 and 5
6. Resolving disputes in the scheme – Chapter 6
7. Scheme administration – Chapter 7.

Part C of this report contains 7 chapters that align with the overarching themes of the terms of reference.

The approach we took

We completed the review in 6 phases between July 2024 and September 2025. There was considerable overlap between some phases due to their importance and the extensive work involved. The phases were:

1. **Planning and initial research**: We examined the current legislative framework to assess its alignment with contemporary work practices and workforce needs. We considered data and existing research and findings from previous reviews to identify evidence-based insights. From these sources, we developed and disseminated *Getting the best outcomes for injured workers: Public consultation issues paper* (issues paper).
2. **Research**: We commissioned research and specialist advice to understand key trends in workers' compensation and gather insights from people with lived experience.
3. **Consultation**: We engaged extensively with scheme participants to capture diverse perspectives, including from rehabilitation and claims managers, supervisors, employer and employee representatives, medical and legal professionals, and especially from people who have made

Comcare claims. We wanted to ensure their voices were incorporated into our recommendations for scheme design. See Part B for an overview of this process.

4. **Analysis**: We analysed and evaluated the information gathered in the previous phases and developed initial recommendations for consultation with stakeholders.
5. **Draft report**: We synthesised insights from research, the submissions process, consultation with diverse stakeholders and expert reports to develop our draft recommendations. We sought feedback from our tripartite reference group (TRG) on the draft report.
6. **Final report**: We incorporated TRG feedback and settled on our recommendations, which are in this final report.

What guided our work

To guide the review process and the development of recommendations, we identified 7 principles:

1. **No fault**: Workers' injuries and illnesses are compensated regardless of fault.
2. **Fair and accessible**: Workers can depend on receiving secure benefits so they do not become a financial burden on their family or the community, and can access their entitlements without delay or stigma.
3. **Cause no harm**: Harm caused by interacting with the scheme is prevented or reduced.
4. **Prevention**: The scheme foundations are not adversarial, and disputes should be prevented or reduced.
5. **Inclusion, diversity and equity**: Review recommendations are assessed through a diversity lens to ensure equity of outcomes.
6. **Continuity and certainty**: Recommended changes result in genuine and valuable improvements, comply with these principles, and are not change for the sake of change.
7. **Viability**: The Comcare scheme remains financially viable, noting that whether a workers' compensation scheme is financially viable is indicated by its net funding ratio.[1]

[1] The net funding ratio measures the ratio of assets to outstanding claims liability. A net funding ratio of below 100% indicates that a scheme may be underfunded according to Safe Work Australia (SWA), *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, p 345. Comcare's target minimum funding ratio is 100% (see Comcare, *Corporate Plan 2024–25*, 2024, Comcare, p 15. Available at www.comcare.gov.au/about/governance/corporate-plan). In 2023–24, it reported a minimum funding ratio of 112% (see Comcare, *Annual Report 2023–24*, 2024, Comcare, p 31. Available at www.comcare.gov.au/about/governance/annual-report). Comcare has advised us that its funding ratio at the end of June 2025 was 120%.

Context

Overview of the current Comcare scheme

The SRC Act provides the legislative framework for the Comcare scheme, and establishes the foundation for:

- **safety**: promoting safe workplaces, including through the setting of premiums and regulatory contributions, and establishing Comcare
- **rehabilitation**: facilitating workers' recovery and supporting their return to work
- **compensation**: ensuring workers who experience work-related injuries or illnesses receive financial and medical support.

The Comcare scheme was established in 1988 to cover Australian Government workers, including military personnel. The scheme was the successor of earlier Commonwealth schemes that had been providing workers' compensation since 1912.

Scheme coverage has changed significantly over time. When the scheme was first established, the government provided services to the Australian people through organisations such as Telstra, Qantas, the Commonwealth Bank and Medibank, which have since been privatised.[2] From 1992, the SRC Act enabled these privatised organisations to maintain their coverage under the SRC Act as self-insurers, ensuring continuity of entitlements for their workers. The scheme then expanded further to cover corporations in competition with these privatised organisations, allowing them to apply for self-insurance licences. The first private corporation was granted a licence to self-insure with Comcare in 2005. Since 2018, self-insured licensees have accounted for more than half of the workers in the scheme.[3] Currently, 53.5% of workers covered by Comcare work for self-insured licensees in both the public and private sector.[4]

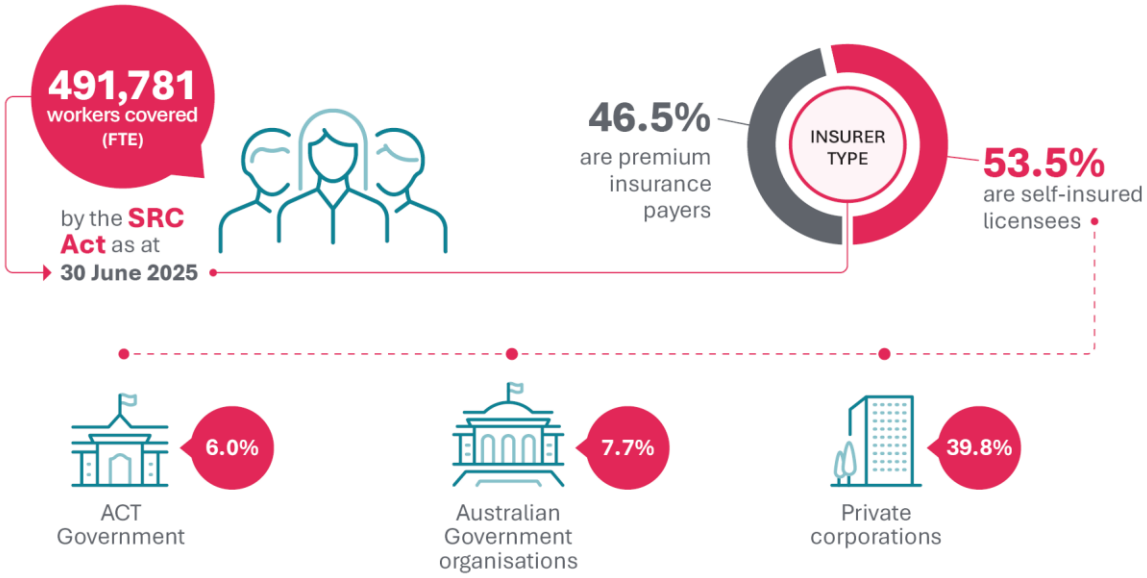
Other changes include that the scheme no longer covers some military personnel. Since 1 July 2004, serving members of the Australian Defence Force and certain others have been covered by the Military Rehabilitation and Compensation Scheme.

In 1989, the Australian Capital Territory became self-governing, but ACT Government workers remained in the Comcare scheme. The ACT Government became a self-insurer in 2019.

[2] Reserve Bank of Australia, *Privatisation in Australia: Reserve Bank of Australia Bulletin*, 1997, Reserve Bank of Australia, accessed 25 July 2025. Available at www.rba.gov.au/publications/bulletin/1997/; Department of Finance, *Medibank sale*, Department of Finance website, December 2020, accessed 25 July 2025. Available at www.finance.gov.au/government/government-business-enterprises/medibank-sale.
[3] Unpublished Comcare data.
[4] Unpublished Comcare data.

Today, the SRC Act covers around 491,000 workers (Figure 1).[5] This includes workers employed by the Australian Government and self-insured entities, including the ACT Government.

Figure 1: Workers covered, total and by employer type, 30 June 2025



Source: Unpublished Comcare data.
Note: Australian Government organisations are self-insuring corporate Commonwealth entities and their subsidiaries: Australian National University, Reserve Bank of Australia, and Australian Postal Corporation and its subsidiaries StarTrack Express and StarTrack Retail.

Workforce statistics

The Comcare scheme has always covered workers in a mix of industries, such as transport and communications, as well as public administration. Since the scheme began in 1988, there has been a structural shift in the composition of Australia's economy. Australia has moved away from industries such as manufacturing towards services such as health care and social assistance.

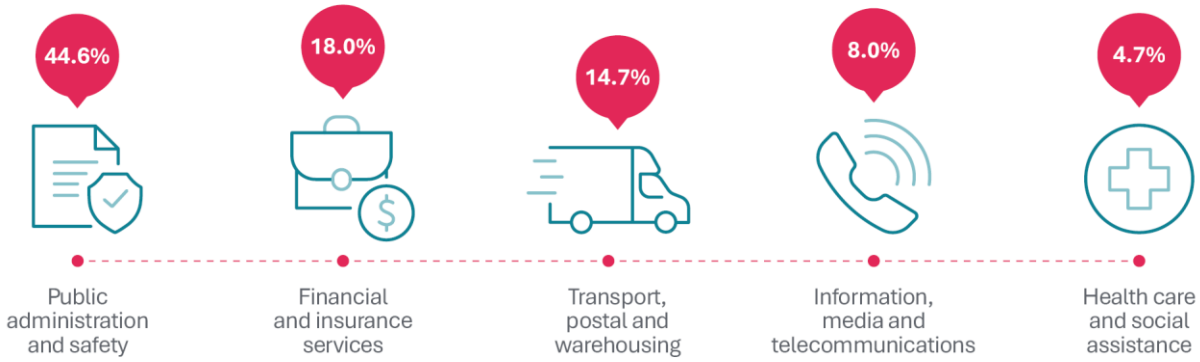
Figure 2 highlights data showing that the Comcare scheme mainly covered people working in service-based industries in 2024–25.

The main industries are largely consistent for both premium payers and licensees, but the composition varies. For premium payers, the main industry is public administration and safety (80.3%; Figure 3). For licensees, the public administration and safety industry is the third-largest industry (13.7%; Figure 4) due to coverage of ACT Government workers.

[5] Comcare, 'The Comcare Scheme' July 2025, Comcare, accessed 22 August 2025. Available at www.comcare.gov.au/scheme-legislation/scheme-performance/overveiw.

The top industry for licensees – that is, financial and insurance services (32.9%; Figure 4) – does not appear in the top 5 industries for premium payers (Figure 3) but is second in the scheme total (Figure 2).

Figure 2: Top 5 industries, Comcare scheme total (full-time equivalent (FTE) workers), 30 June 2025

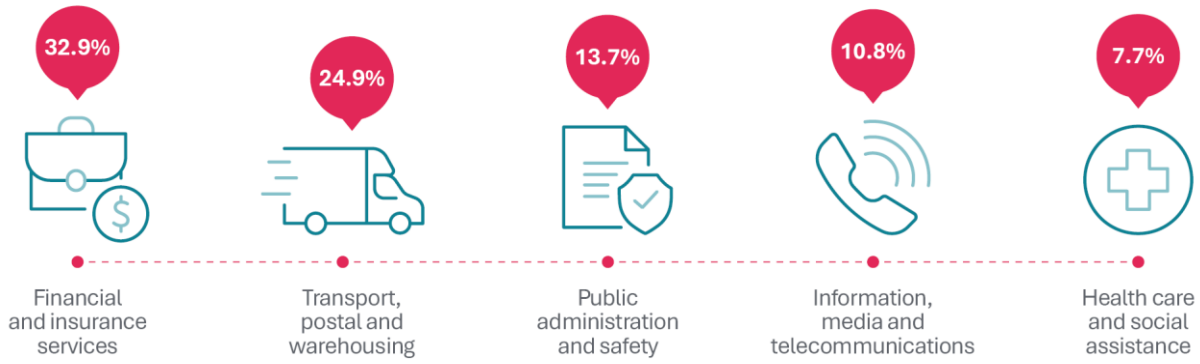


Source: Unpublished Comcare data.

Figure 3: Top 5 industries, Comcare premium payers (FTE workers), 30 June 2025

Source: Unpublished Comcare data.

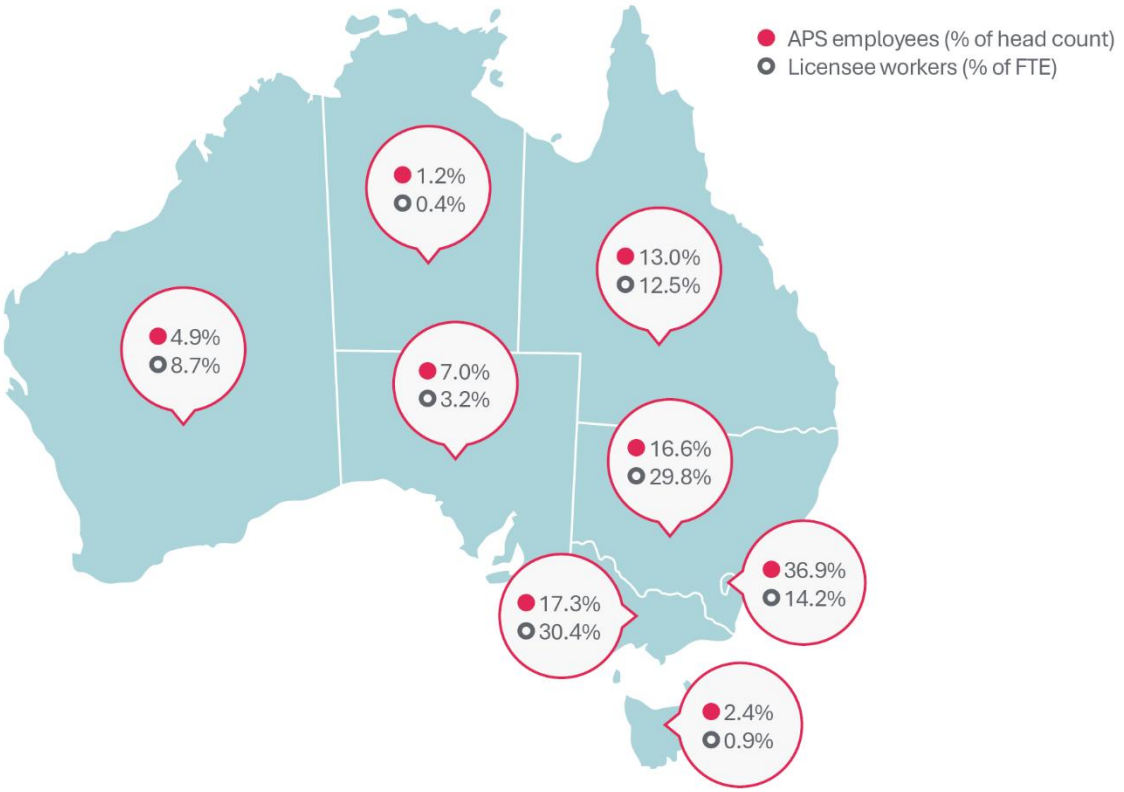
Figure 4: Top 5 industries, Comcare self-insured licensees (FTE workers), 30 June 2025



Source: Unpublished Comcare data.

Figure 5 shows the breakdown of workers in each Australian state and territory. Data from the Australian Public Service Employee Database shows most Australian Public Service (APS) employees are located in the Australian Capital Territory. An additional 0.8% of APS workers are located overseas. Comcare data shows most workers employed by self-insured licensees are in Victoria and New South Wales.

Figure 5: APS employees and licensee workers covered by location, 30 June 2024



Source: Australian Public Service Employee Database; Unpublished Comcare data.

Key statistics in the Comcare scheme

Comcare data provides an overview of the nature of claims in the Comcare scheme.[6]

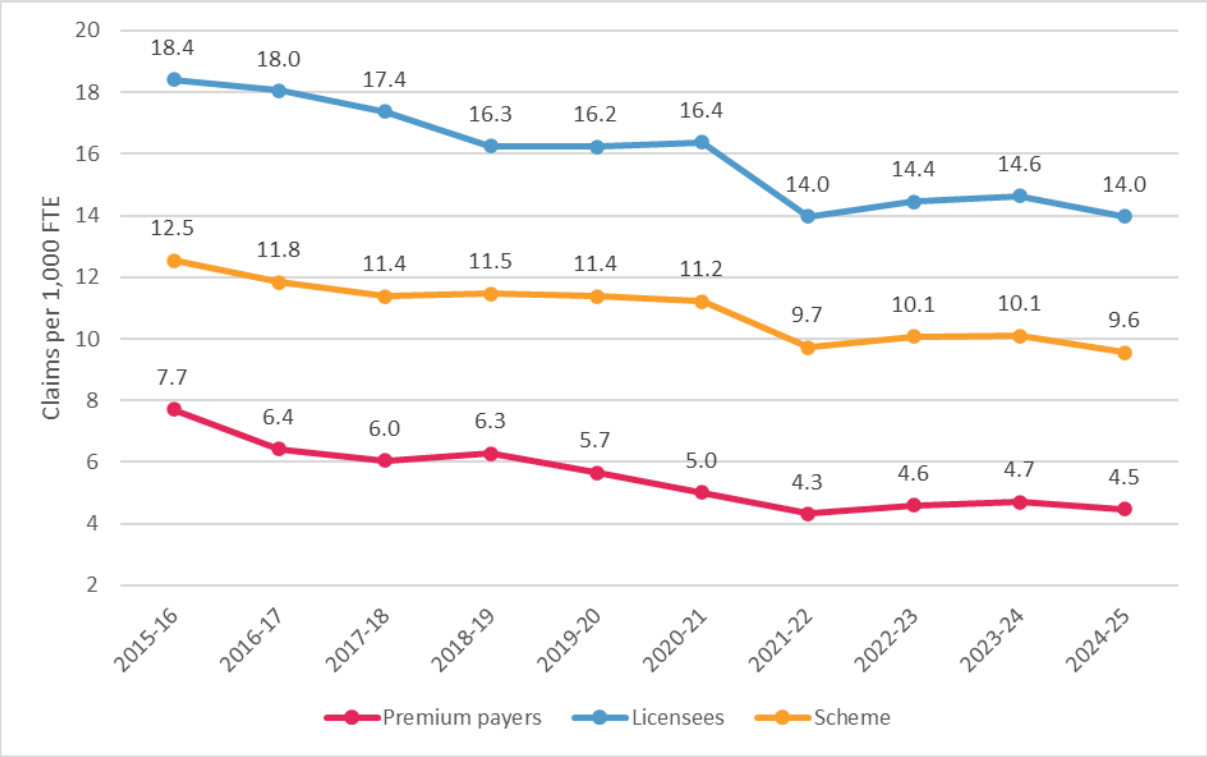
Number of claims

Figure 6 shows that the number of accepted claims fell between 2015–16 and 2021–22 and has fluctuated since then.

The rate of accepted claims for premium payers is generally lower (4.5 per 1,000 FTE in 2024–25) than for self-insured licensees (14.0 per 1,000 FTE in 2024–25).

[6] Note: Australian Government data refers to entities that pay a premium to Comcare. Self-insured licensee data includes the ACT Government and self-insuring corporate Commonwealth entities.

Figure 6: Accepted claims per 1,000 FTE, Comcare scheme, 2015–16 to 2024–25

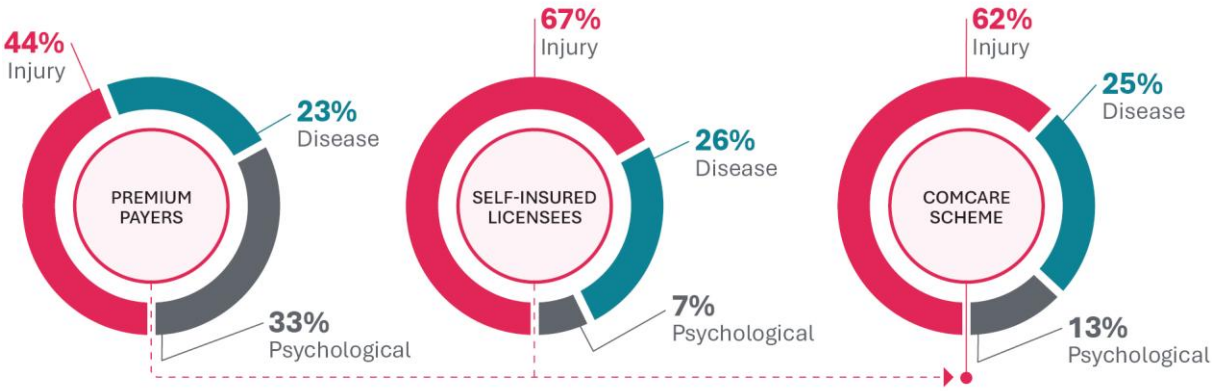


Source: Unpublished Comcare data.

Types of claims

There is a noteworthy variation between the types of claims for premium payers and self-insured licensees, affecting the scheme totals for injury (excluding disease) and psychological claims.

Figure 7: Types of claims, 2024–25



Source: Comcare, Scheme Performance. Available at www.comcare.gov.au/scheme-legislation/scheme-performance.

Figure 7 shows self-insured licensees have more injury claims (67% in 2024–25) compared to premium payers (44% in 2024–25). Psychological claims are significantly more prevalent for premium payers (33% in 2024–25) than licensees (7% in 2024–25). This difference has been consistent over

time. Disease claims are relatively even for premium payers (23% in 2024–25) and licensees (26% in 2024–25).

Cause of claims

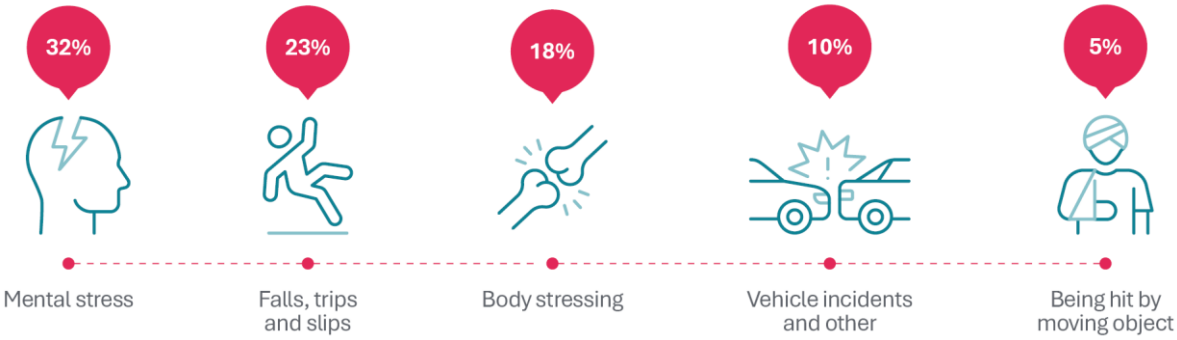
Figure 8 shows the top 5 main causes of claims in the Comcare scheme in 2024–25, drawn from mechanism of incident coded data under the Type of Occurrence Classification Systems (TOOCS). TOOCS is used to classify workers' compensation claims and other injury or illness datasets. Mechanism of incident is 'the overall action, exposure or event that best describes the circumstances that resulted in the most serious injury or disease'.[7]

Mental stress is the most prevalent cause of claims for premium payers (32%; Figure 9), whereas body stressing is the highest cause of claims for licensees (42%; Figure 10). Body stressing is also a significant cause of claims for premium payers (Figure 9). Falls, trips and slips of a person and being hit by moving objects are more consistent between premium payers and licensees.

Figure 8: Top 5 causes of claims, Comcare scheme total, 2024–25

Source: Comcare, Scheme Performance. Available at www.comcare.gov.au/scheme-legislation/scheme-performance.

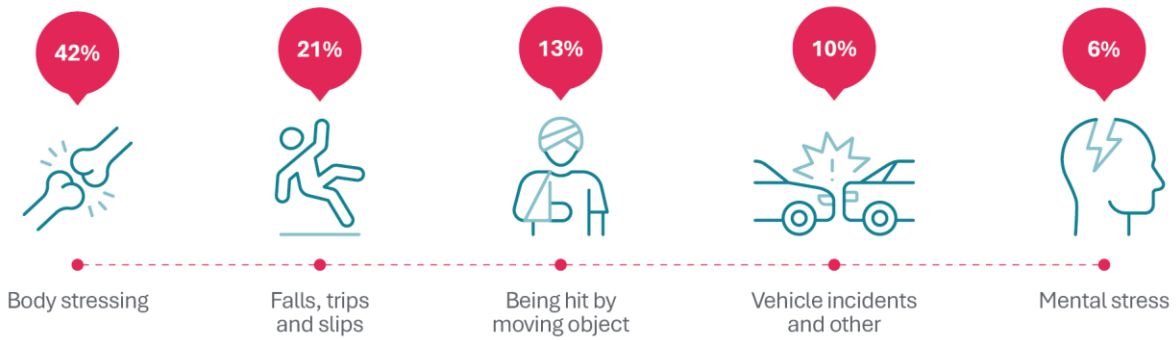
Figure 9: Top 5 causes of claims, Comcare premium payers, 2024–25



Source: Comcare, Scheme Performance. Available at www.comcare.gov.au/scheme-legislation/scheme-performance.

[7] SWA, *Types of Occurrence Classification Systems (TOOCS), 3rd edn*, SWA, accessed 16 September 2025. Available at data.safeworkaustralia.gov.au/about-our-datasets/type-occurrence-classification-system-toocs-3rd-edition.

Figure 10: Top 5 causes of claims, Comcare self-insured licensees, 2024–25

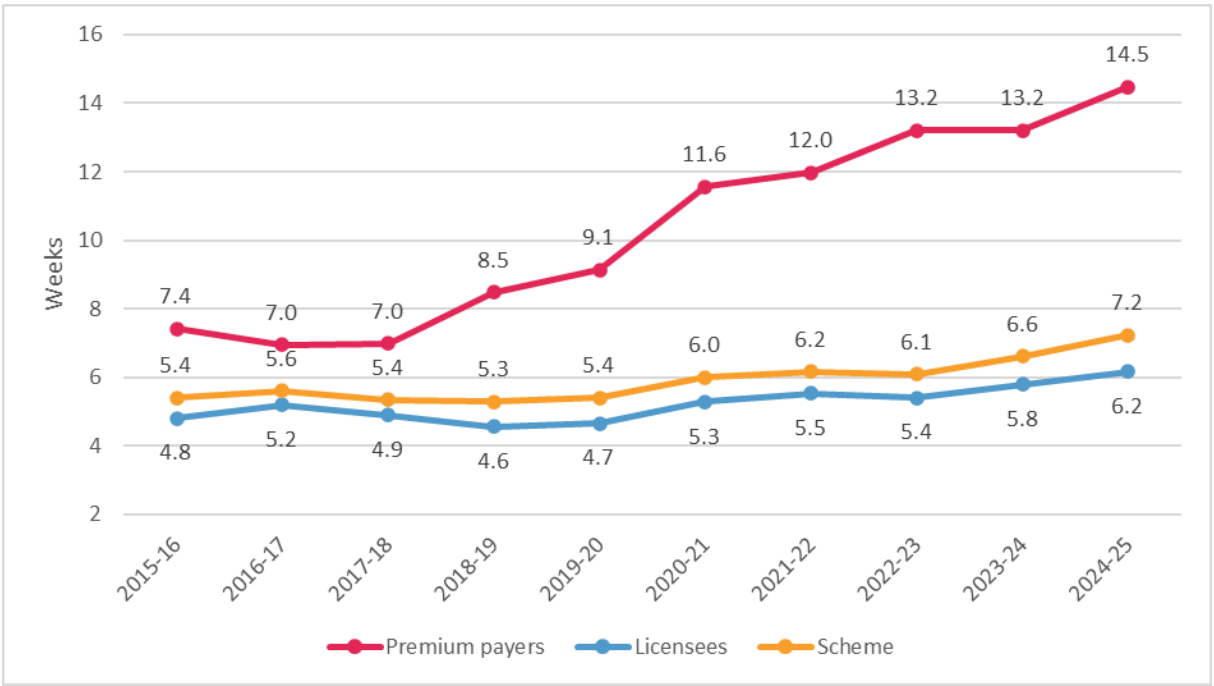


Source: Comcare, Scheme Performance. Available at www.comcare.gov.au/scheme-legislation/scheme-performance.

Time off work

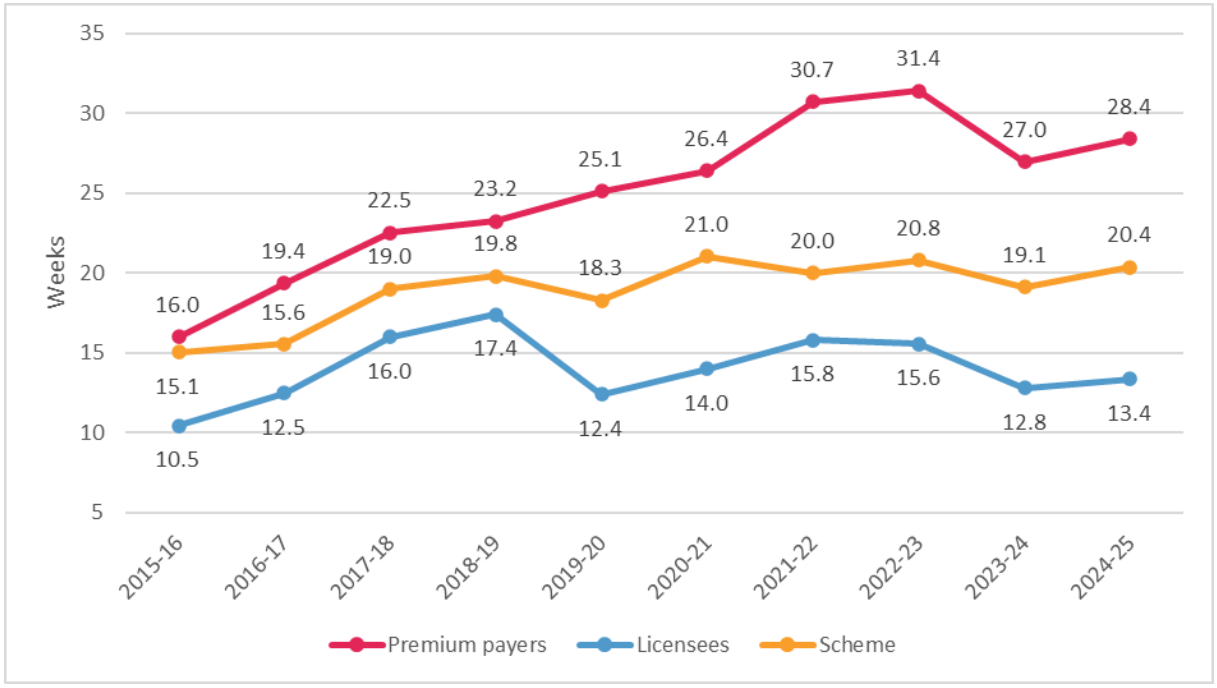
There is a notable difference between premium payers and licensees in time off work metrics. The median duration is longer for premium payers than for licensees, and this is the case for all claims (Figure 11) and psychological claims (Figure 12). The gap has increased over time.

Figure 11: Median time off work, all claims, 2015–16 to 2024–25



Source: Unpublished Comcare data.

Figure 12: Median time off work, psychological claims, 2015–16 to 2024–25

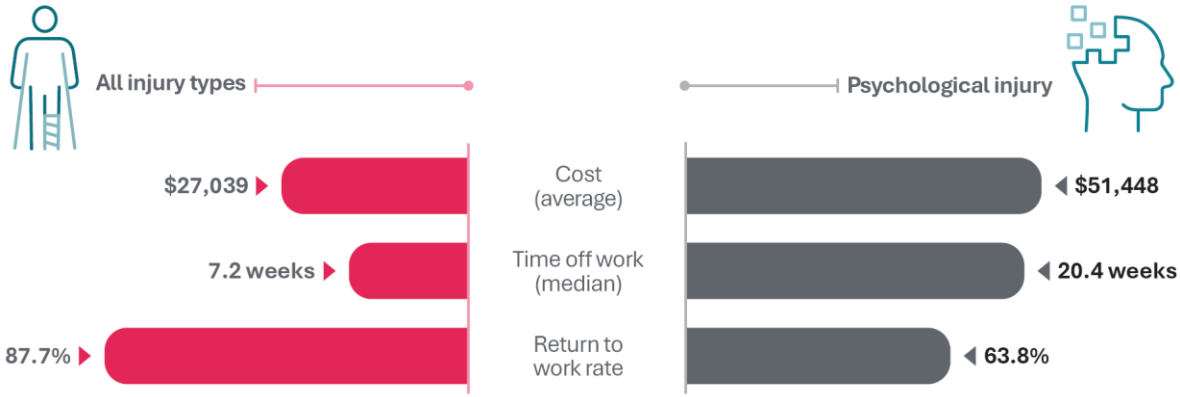


Source: Unpublished Comcare data.

Cost of claims

The cost of claims is rising over time. For example, in 2023–24, the average cost of all claims was $26,106.[8] In 2024–25, this rose to $27,039. This is due to a multitude of factors, including changes to scheme coverage and healthcare costs. Figure 13 compares typical outcomes and shows that costs and time off work are higher for psychological claims, and the return to work rate is lower.

Figure 13: Typical claims, Comcare scheme, 2024–25

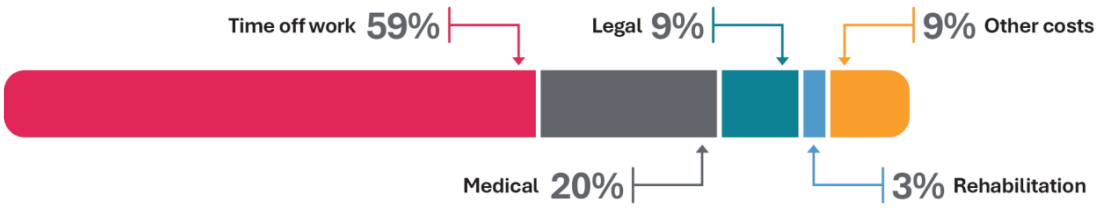


Source: Unpublished Comcare data.

[8] Claims with no payment in the financial year are excluded when calculating the average.

Costs include time off work, medical, legal, rehabilitation and other costs (Figure 14). The distribution of claim expenses has been steady since 2015.

Figure 14: Comcare claim costs, 2024–25



Source: Comcare, Scheme Performance. Available at www.comcare.gov.au/scheme-legislation/scheme-performance/overview.

History of reform to the SRC Act since 1988

While the SRC Act has not been comprehensively overhauled since its introduction in 1988, it has been subject to incremental and reactive amendments. The consequence is a patchwork of legislative updates. Most amendments have been introduced to:

- address legal anomalies arising from court and tribunal decisions
- respond to evolving employment and corporate arrangements, including the rise of self-insurance and privatisation
- reflect broader shifts in work health and safety (WHS) expectations and employment demographics.

While these amendments have helped the Comcare scheme respond to change and function effectively in today's environment, they have also increased complexity and fragmentation within the legislative framework. Table 1 outlines key legislative changes to the SRC Act over time.

Table 1: Timeline of key amendments to the SRC Act

Year	Topic	Amendment
1992	Self-insurance	The *Commonwealth Employees' Rehabilitation and Compensation Amendment Act 1992* (Cth) expanded the scheme to allow for corporatised or privatised Commonwealth authorities to self-insure. To maintain a 'level playing field', private sector corporations carrying on business in competition with a Commonwealth authority or privatised Commonwealth authorities could also self-insure. The Act was also renamed the *Safety Rehabilitation and Compensation Act 1988*.
2002	Self-insurance	The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001* (Cth) streamlined the licensing arrangements by reducing 5 specific licence types into one generic licence. It also enabled the Minister to give directions to the Safety, Rehabilitation and

Year	Topic	Amendment
		Compensation Commission (SRCC) on matters to be taken into account in granting a self-insurance licence.
2004	Defence	The *Military Rehabilitation and Compensation Act 2004* (Cth) moved responsibility for existing claims under the SRC Act for military personnel from Comcare to the Military Rehabilitation and Compensation Commission.
2006	Occupational health and safety (OHS) coverage	The *OHS and SRC Legislation Amendment Act 2006* (Cth) implemented the Australian Government's response to the 2004 Productivity Commission inquiry 'National Workers' Compensation and Occupational Health and Safety Frameworks'. This provided for corporations licensed under the SRC Act to also be covered under the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (Cth).
2007	Injury and disease	The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* (Cth) removed compensation for work-related journey and recess breaks, introduced the reasonable administrative action exclusion, and replaced 'material' with 'significant' in the employment contribution test for diseases.
2007 to 2013	Moratorium on self-insurance	In December 2007, the Minister for Employment and Workplace Relations announced a moratorium on new applications from non-Commonwealth employers wanting to self-insure under the Comcare scheme.
2008	Same-sex relationships	The *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* (Cth) amended the definitions for dependents to provide equality for same-sex partners and their children.
2011	Recess breaks and coverage	The *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011* (Cth) reinstated coverage during an ordinary recess, extended coverage to certain workers while overseas, and allowed compensation for medical expenses where payment of other compensation is suspended. It also gave Comcare access to the Consolidated Revenue Fund to pay certain compensation claims for diseases with long latency periods.
2011	Presumptive provisions	The *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011* (Cth) introduced presumptive provisions for firefighters with nominated cancers.
2013	WHS coverage for self-insured licensees	Since commencement of the *Work Health and Safety Act 2011* (Cth) on 1 January 2012, new self-insured licensees are no longer automatically covered by the Commonwealth WHS laws. Instead, new licensees continue to be regulated by state and territory WHS laws.
2017	Pension age and catastrophic injury	The *Comcare and Seacare Legislation Amendment (Pension Age and Catastrophic Injury) Act 2017* (Cth) included a new definition of 'catastrophic injury', and removed the cap on weekly compensation for household services and attendant care services and the 28-day wait period for household services compensation. The Act also replaced references to the age of 65 with 'pension age' to ensure there is no gap

Year	Topic	Amendment
		between cessation of incapacity payments and the Age Pension age as defined in the *Social Security Act 1991* (Cth).
2017	Defence	The *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017* (Cth) amended the SRC Act as part of moving all defence-related claims to an Australian Defence Force–specific scheme, the *Safety, Rehabilitation and Compensation (Defence-related claims) Act 1988* (Cth).
2022	Firefighters	The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) streamlined access to workers' compensation for firefighters covered by the SRC Act.
2023	Self-insurance	The *Safety, Rehabilitation and Compensation Directions 2019* were amended to limit self-insurer access to the scheme. The amendments required the SRCC, in granting a licence, to be satisfied that the applicant is a member of a corporate group in which the majority of workers are already covered by the SRC Act, and that granting the licence would not result in an overall reduction in workers' compensation entitlements for the applicant's workers.
2023	Presumptive provisions	The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) introduced presumptive workers' compensation coverage under the SRC Act for first responders and members of a class of employees declared by the Minister who suffer or are suffering from post-traumatic stress disorder (PTSD).
2023	Claims management and rehabilitation	The Closing Loopholes changes also required Comcare, in consultation with the SRCC, to prepare the *Guide for Arranging Rehabilitation Assessments and Requiring Examinations* to support the exercise of powers to arrange rehabilitation assessments and independent medical examinations. The guide took effect in 2024. The Closing Loopholes amendments also made decisions for claimants undergo independent medical examination subject to merit review.

Previous reviews

In undertaking our review, we drew on the work of relevant review and reports on workers' compensation. At the Commonwealth level, we were mainly informed by the following reports:

- *Inquiry report – National Workers' Compensation and Occupational Health and Safety Frameworks*, Productivity Commission, 2004
- *Safety, Rehabilitation and Compensation Act Review, Report on the Comcare scheme's performance, governance and financial framework*, Allen Hawke AC, 2012 (Hawke Review)
- *Safety, Rehabilitation and Compensation Act Review Final Report*, Peter Hanks QC, 2013 (Hanks Review)
- *The National Return to Work Strategy 2020-2030*, agreed between all governments in 2019

- *Inquiry Report – Mental Health*, Productivity Commission, 2020
- *Taking Action: A best practice framework for the management of psychological claims in the Australian workers' compensation sector*, SuperFriend and Safe Work Australia, 2021
- *Mental Health and Suicide Prevention – Final report*, Select Committee on Mental Health and Suicide Prevention, 2021
- *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023*, Safe Work Australia, 2024
- *The Final Report of the Royal Commission into Defence and Veteran Suicide*, 2024.

We have also been informed by reviews and frameworks of state and territory workers' compensation schemes, as many of the issues we were asked to look at are issues confronting all schemes in Australia. We were mainly informed by the following reports:

- *Clinical Framework for the Delivery of Health Services*, Transport Accident Commission and WorkSafe Victoria, 2012
- *Review of (NT) Workers Rehabilitation and Compensation Act*, Roussos Legal Advisory and CrossInnovate Consulting, 2014
- *Review of the Workers' Compensation and Injury Management Act 1981*, WorkCover WA, 2014
- *Independent Reviewer Report on the Nominal Insurer of the NSW Workers Compensation Scheme*, Ms Janet Dore for the State Insurance Regulatory Authority, 2019
- *Improving the experience of injured workers: A review of WorkSafe Victoria's management of complex workers' compensation claims*, Peter Rozen QC, 2021
- *2023 Review of the Operation of the Queensland Workers' Compensation Scheme*, Ms Glenys Fisher and Professor David Peetz, 2023
- *Review of the Workers' Compensation Scheme*, Standing Committee on Law and Justice, Legislative Council, NSW Parliament, 2023.

List of recommendations

We recommend the following principles guide the reform to the Comcare scheme so the scheme aligns with current thinking on best practice to ensure future challenges can be met.

Best practice principles key


Harm prevention


Collaboration


Certainty


Accountability and adaptability


Support


Sustainability


Fairness and equity

Chapter 1. Creating a best practice legislative scheme to respond to change and challenge

Recommendation 1

We recommend the following principles guide the reform to the Comcare scheme so the scheme aligns with current thinking on best practice to ensure future challenges can be met:

a. **Harm prevention**:
   i. Injured and ill workers achieve a sustainable return to health and a safe return to work

b. **Certainty**:
   i. Injured and ill workers can easily understand and access their entitlements
   ii. Clarity is provided on specific requirements of the legislation, so duties are discharged

c. **Support**:
   i. Supports are tailored to individual needs by adopting a person-centred approach

   ii. Injured and ill workers are provided with proactive rehabilitation, retraining, other supports and guidance to help them navigate the scheme and their recovery process
   iii. Injured and ill workers and their families are effectively supported and represented throughout the case management process

d. **Fairness and equity**:
   i. Injured and ill workers are treated fairly, with dignity and respect, and interactions with employers and determining bodies are positive
   ii. Decision-making is efficient, compassionate and transparent, and applies equitably to all injured and ill workers
   iii. Injured and ill workers and their families are quickly and adequately compensated
   iv. Disputes are resolved quickly, informally and fairly to minimise harm

e. **Collaboration**:
   i. Participants consult, cooperate and coordinate activities to improve outcomes
   ii. Claims management is active and responsive to achieve optimum outcomes

f. **Accountability and adaptability**:
   i. Compliance with duties is effectively enforced
   ii. Governance arrangements are robust, transparent, efficient and fit for purpose and scale
   iii. Scheme arrangements adapt to changes in workplace environments and technological developments

g. **Sustainability**:
   i. The scheme remains financially viable and premium and regulatory settings improve safety outcomes
   ii. Education, research and other initiatives are undertaken to improve services.

Recommendation 2

We recommend the SRC Act be redrafted using modern drafting practices and embedding trauma-informed language and principles, including by ensuring:

a. its title reflects the objectives the Act is to achieve and sets the tone for achieving those objectives
b. there is a logical structure that aids navigation and assists with ease of comprehension
c. there is an objects clause that focuses on what the Act should achieve and is consistent with the best practice principles
d. there are simplified outlines of chapters.

Recommendation 3

We recommend the new Act contains a requirement to conduct a review of the Act no later than 5 years after its commencement. We further recommend that Comcare's governing board is provided with the ability to recommend to the responsible Minister changes to the Act, or a full review of the Act or of specific parts (including during the initial 5-year period).

Chapter 2. Providing a fair no-fault entitlement to compensation

Recommendation 4

We recommend the term 'worker' is used in the new Act and captures independent contractors working for the Commonwealth or Commonwealth authorities, using the 'whole of relationship test' in the *Fair Work Act 2009* (Cth).

Recommendation 5

We recommend that the coverage arrangements for independent contractors of self-insured licensees in s 5(1A) of the SRC Act are replicated in the new Act.

Recommendation 6

We recommend the ability for the Minister to declare a person be covered by the scheme is replicated in the new Act. We further recommend that the Act provides that when this occurs, there is the ability to declare the relevant employing entity.

Recommendation 7

We recommend that s 5(4) is not replicated in the new Act.

Recommendation 8

We recommend no change to the definition of 'injury', 'disease', 'ailment' and the employment nexus test as this may impact eligibility. This means:

a. no separate test for psychological injury
b. no change with respect to workers injured during an 'interval' or 'interlude' during an overall period of work
c. no change with respect to an injury sustained while temporarily absent from employment during an 'ordinary recess' taken during a discrete period of work
d. no change with respect to injury sustained while entering or exiting a place of work.

This recommendation is subject to the making of drafting improvements or simplifying the definitions and tests without changing the substantive meaning.

Recommendation 9

We recommend partial restoration of journey claims for workers on call or travelling from an employer-provided workplace to a home workplace to resume work.

Recommendation 10

We recommend guidelines be developed by the governing board that decision-makers must have regard to in determining whether an injury sustained during an interval (including while working from home), when travelling for work, or when working away from the usual place of work, is in the course of employment.

Recommendation 11

We recommend that the post-traumatic stress disorder presumption is extended to all workers covered by the Comcare scheme who are deployed in disaster-affected areas when a national emergency is declared under the *National Emergency Declaration Act 2020* (Cth).

Recommendation 12

We recommend that the reasonable administrative action exclusion in s 5A is changed in the new Act to require that the injury be 'wholly or predominantly' caused by the exclusionary action. The list of reasonable actions in s 5A(2) is to be exhaustive.

Recommendation 13

We recommend the exclusion for submitting to an abnormal risk of injury is extended in the new Act to operate beyond the circumstances in s 6 and that it is made clear it applies to situations where the worker is reckless as to the risk.

Recommendation 14

We recommend no change to the exclusions for serious and wilful misconduct or wilful and false representation.

Recommendation 15

We recommend the exclusion in s 14(2) (excluding compensation for self-inflicted injury) is not replicated in the new Act.

Chapter 3. Intervening early in the workers' compensation process to support recovery and remove barriers to return to work

Recommendation 16

We recommend that employers:

a. have a duty to intervene as soon as possible after an injury or incident or as symptoms emerge

b. are prohibited from making an offer of early support conditional on not making a claim for workers' compensation.

Recommendation 17

We recommend establishing a system of early payments and support for all injuries that includes compensation for incapacity, medical expenses and rehabilitation, with no caps on entitlements.

Recommendation 18

We recommend that early payments and supports cease when a claim is rejected or accepted.

Recommendation 19

We recommend the ability for a determining body to refuse to deal with a claim under s 58 of the SRC Act is replicated in the new Act.

Recommendation 20

We recommend that early payments and supports are only recovered in cases of fraud.

Recommendation 21

We recommend immediate crisis payment and support upon death to family members who lived with the worker in the 6 months prior to death:

a. domestic partner: $10,000 (indexed to the Consumer Price Index)
b. other eligible family member: $5,000 (indexed to the Consumer Price Index)
c. the total amount is capped at $50,000 (indexed to the Consumer Price Index)
d. payable in 7 days.

Recommendation 22

We recommend a hybrid model of rehabilitation is introduced, with the determining body responsible for injury management and the employer responsible for return to work.

Recommendation 23

We recommend introducing the concept of a 'liable employer' for return to work obligations (to address a lack of incentives for new employers to support return to work).

Recommendation 24

We recommend introducing the requirement for the 'liable employer' and the 'new employer', so far as is reasonably practicable, to consult, cooperate and coordinate regarding the worker's return to work.

Recommendation 25

We recommend that for premium payers, Comcare has the ability to take over rehabilitation where the employer is not known or able to support return to work.

Recommendation 26

We recommend employer duties in relation to return to work are to:

a. develop a return to work program and policy

b. identify and assess the biological, psychological and socio-economic risk factors to recovery and, so far as is reasonably practicable, eliminate or minimise them in order to restore an injured or ill worker to their fullest physical, psychological, social and vocational capabilities

c. so far as is reasonably practicable, consult, cooperate and coordinate with the worker and their representative, insurer, rehabilitation provider and, subject to consent, their treating practitioner

d. develop an individual return to work plan by agreement with the worker and their representative

e. maintain contact with the injured or ill worker

f. appoint and train return to work coordinators

g. maintain employment until all rehabilitation options have been exhausted and the worker agrees to a commutation or a lawful termination unrelated to the injury applies

h. provide suitable work.

Recommendation 27

We recommend the governing board has the ability to approve courses and training for return to work coordinators, when that training is required to be provided and taking into account recognition of prior experience and training.

Recommendation 28

We recommend mandatory training for return to work coordinators include:

a. training approved by the governing board

b. cultural competency training

c. training in trauma-informed practices.

Recommendation 29

We recommend that if a worker wishes to return to work and has capacity, they can submit a request for suitable employment to which an employer must respond.

Recommendation 30

We recommend the duty to provide suitable employment in relation to a worker employed by:

a. a Commonwealth authority should fall on the Commonwealth
b. a licensed corporation should fall on that corporation.

Recommendation 31

We recommend widening the suitable employment definition to include:

a. consideration of pre-injury remuneration
b. in the case of employment in a licensed corporation:
    i. employment by that corporation, or
    ii. other self-insured licensee corporations if there is no suitable employment within that licensee, or
    iii. any employment if there is no suitable employment with other self-insured licensee corporations.

Recommendation 32

We recommend duties of determining bodies in relation to injury management are to:

a. develop an injury management policy

b. develop an injury management plan for a worker who sustains an injury and is unable to return to their pre-injury role for more than 7 working days. The plan should be developed in consultation with the injured or ill worker and their nominated treating doctor (with consent) and specify the risk factors to recovery

c. so far as is reasonably practicable, consult, cooperate and coordinate with the worker and their representative, the employer, rehabilitation provider and, subject to consent, the treating practitioner.

d. train injury management staff.

Recommendation 33

We recommend worker duties in relation to return to work are to:

a. cooperate in the preparation and implementation of return to work and injury management plans

b. communicate with parties in an open and honest manner

c. make reasonable efforts to return to work

d. if on reduced hours, take reasonable steps to attend a medical practitioner outside employment hours.

Recommendation 34

We recommend that if a worker fails to discharge their duties without a reasonable excuse, compensation rights in relation to the injury subject to the plans are suspended, aside from compensation for medical treatment.

Recommendation 35

We recommend allowing a worker to choose their Comcare-approved workplace rehabilitation provider and that they are provided with at least 3 options, where available.

We further recommend there is the ability for a worker to request additional options in exceptional circumstances if they are not satisfied with the provider. If a worker fails to select within a reasonable timeframe (being a reasonable time in all the circumstances), we recommend that the determining body appoints a provider on their behalf.

Recommendation 36

We recommend data concerning the performance of workplace rehabilitation providers operating in the scheme is made publicly available.

Recommendation 37

We recommend the introduction of return to work inspectors with enforcement powers.

Recommendation 38

We recommend providing penalties for breaches of employer and determining bodies' return to work duties and introducing incentives to facilitate return to work.

Recommendation 39

We recommend consideration is given to providing union officials with the right to enter a workplace to investigate suspected contraventions in relation to employer return to work duties.

Chapter 4. Effectively and proactively determining and managing claims to prevent further harm

Recommendation 40

We recommend employers have a duty to make workers aware of their workers' compensation rights in a form and language they can understand.

Recommendation 41

We recommend streamlining the injury notification and claim-making process to make it a one-step model:

a. injury notified and claim lodged online with determining body, with notice provided to the employer

b. lodgement triggers both employer's obligation to provide early support (if not previously notified by other means) and determining body's obligation to begin support and incapacity payments in the current or next pay cycle if the minimum information required has been provided, including certificate of capacity (unless exceptional circumstances exist)

c. minimum information can constitute a properly made claim or further information can be requested for proper constitution of the claim. A new claim is required for a new injury.

Recommendation 42

We recommend that ss 55 and 56 are replicated in the new Act.

Recommendation 43

We recommend that a health practitioner under the Health Practitioner Regulation National Law or health practitioner recognised by the governing board (including psychologists and nurses) are able to issue medical certificates for the purposes of certificate of capacity at the notification/claim lodgement stage or at other stages the governing board has determined.

Recommendation 44

We recommend that once a claimant has proved their incapacity and liability is accepted, incapacity payments continue until the determining body decides that it is no longer liable, or revokes the acceptance of liability.

Recommendation 45

We recommend current timeframes are replicated in the new Act for the initial determining of claims but the ability to pause the decision-making timeframe is only retained when a claimant has advised that they will be submitting further evidence.

Recommendation 46

We recommend that if timeframes are not met, there is a deemed acceptance of the claim, but no civil penalties imposed for failure to meet the timeframes.

Recommendation 47

We recommend a timeframe of 10 days attaches to determining benefits for medical treatment.

Recommendation 48

We recommend that if the timeframe referred to in Recommendation 47 is not met, there is a deemed acceptance of the claim for medical expenses unless certain exceptions apply, including decisions related to surgery, and in such circumstances, the clock is stopped.

Recommendation 49

We recommend a slight change to the timeframe and process for requesting a reconsideration:

a. Workers have 30 days from receiving a decision to request a reconsideration and 60 days to provide supporting evidence and the reasons in support of the reconsideration.
b. Workers retain the ability to request an extension of time. A decision by the determining body not to grant an extension is a reviewable decision.
c. The independent review officer has 30 days from receiving the request for reconsideration, or 30 days from receiving the evidence and reasons, to make a decision.
d. Where the matter is scheduled for alternative dispute resolution, allow a 30-day extension to the timeframe for the decision to be reconsidered.

Recommendation 50

We recommend that worker costs are covered at the reconsideration stage. Costs to be covered are the reasonable cost of obtaining one medical expert report per injury at the set rate and fair and reasonable legal costs at the rate set, except where the determining body has determined:

a. the claim is frivolous, vexatious, misconceived or an abuse of process
b. the claim or subject has already been determined, redetermined or reviewed, or
c. there has been a failure to participate in good faith throughout the process.

We further recommend the refusal to pay is a reviewable decision.

Recommendation 51

We recommend that the 'Commonwealth' only be able to request Comcare reconsider a determination if there is significant or new evidence that would materially affect the outcome of the determination.

Recommendation 52

Further to Recommendation 51, we recommend that if the reconsideration produces a different result, the new determination does not operate retrospectively except in the case of fraud.

Recommendation 53

We recommend that a determining body can only revoke liability in circumstances where there is significant or new evidence that liability should not have been accepted, and:

a. the onus is on the determining body to justify, and the worker remains in receipt of compensation entitlements until the reconsideration period expires or until the outcome of any stay application at the Administrative Review Tribunal (if the decision is stayed, payments necessarily continue)

b. the worker's fair and reasonable legal costs are covered irrespective of the outcome at the Administrative Review Tribunal, and capped at maximum hourly rates that are prescribed.

Recommendation 54

We recommend claimants be able to request a reconsideration and/or apply for a review by the Administrative Review Tribunal (that is, *Comcare v DSLB* is not overturned).

Recommendation 55

We recommend an enhancement of information-gathering powers:

a. a requirement that the claimant provide relevant information to the decision-maker, and

b. a power for the determining body to reasonably request information from a third party, but not compel production.

Recommendation 56

We recommend no change to the *Guide for Arranging Rehabilitation Assessments and Requiring Examinations*, pending the outcome of its review.

Recommendation 57

We recommend that the governing body and the worker's employer must not interfere in, or act in a manner inconsistent with, the worker's right to choose:

a. the registered person who will provide medical treatment for the injury

b. who is present during medical treatment for the injury.

We further recommend a penalty attaches to a contravention of worker's rights.

Recommendation 58

We recommend that Comcare is required to comply with the Digital Transformation Agency's *Policy for the responsible use of AI in government*.

Recommendation 59

We recommend arrangements are made to fund free, confidential non-legal advice or assistance to claimants; for example, similar to services provided by the Injured Workers Service in the Australian Capital Territory.

Recommendation 60

We recommend the governing board has the ability to approve courses and training for claims managers, when that training is required to be provided and taking into account recognition of prior experience and training.

We recommend the governing board also approves steps for professional development.

Recommendation 61

We recommend mandatory training for claims managers include:

a. training approved by the governing board

b. cultural competency training

c. training in trauma-informed practices.

Recommendation 62

We recommend that the governing board develops indicators for scheme and claim performance and determines the information it requires to assess outcomes and what should be made publicly available.

Recommendation 63

We recommend determining bodies are required to triage claims and assess the risk of a claim becoming complex, to minimise the duration and severity of the injury or illness.

Recommendation 64

We recommend the new Act contains a set of principles to guide claims management. We further recommend that these principles do not impose legally enforceable obligations.

Recommendation 65

We recommend that the new Act requires determining bodies to adopt and apply service standards that are approved by the governing board. These should include:

a. procedures for dealing with complaints that service standards are not being followed

b. consequences for a breach of a service standard.

Recommendation 66

We recommend that Comcare's ability to delegate its claims management functions and powers to premium-paying agencies is not replicated in the new Act.

Chapter 5. Providing equitable benefits to effectively support injured and ill workers and their families

Recommendation 67

We recommend impairments for multiple injuries arising from the same incident can be combined to achieve a single whole person impairment rating arising out of injuries sustained in that incident.

Recommendation 68

We recommend the new Act allows for the adoption of the Safe Work Australia permanent impairment template national guide.

Recommendation 69

We recommend in the new Act compensation for permanent impairment be limited to persons suffering a 10% or greater whole person impairment resulting from one or more injuries sustained in the same incident, unless the impairment includes the loss, or loss of use, of a finger or toe (no threshold), the loss of the sense of smell or taste (no threshold), or hearing loss (5% binaural hearing loss, which translates to a 2.5% degree of impairment).

Recommendation 70

We recommend in the new Act the threshold for compensation for the worsening of an impairment arising out of all injuries sustained in a single incident is 5%.

Recommendation 71

We recommend maintaining current arrangements for measuring permanent impairment where a worker has a pre-existing permanent impairment.

Recommendation 72

We recommend an algorithmic model developed in the Hanks Review be used for determining the amount of compensation payable for permanent impairment.

Recommendation 73

We recommend compensation payable for permanent impairment is equivalent to the amount payable for death benefit.

Recommendation 74

We recommend liability for permanent impairment compensation for hearing loss lies with the last noisy employer, and that employer has a right of recovery against each other scheme employer that contributed to the permanent impairment of an amount reflecting the proportion of the other scheme employer's contribution.

Recommendation 75

We recommend simplifying the calculation of Normal Weekly Earnings, based on the Pre-Injury Average Weekly Earnings model in NSW:

a. Normal weekly earnings is the weekly average of a worker's gross earnings over the 52 weeks prior to their date of injury.

b. Earnings from all employment are included.

c. Earnings includes overtime, loadings, allowances, commissions and select non-monetary benefits.

d. Provision be given to vary the 52-week period for reasons such as being in the job for less than 52 weeks, ongoing changes in employment circumstances, or extended leave.

e. Post-injury adjustments are aligned with the applicable industrial instrument or, if none, to the Wage Price Index.

f. In respect of Commonwealth workers, the worker and employer may agree to the Normal Weekly Earnings. Comcare makes the decision in the absence of an agreement.

g. The details of the model are set out in a legislative instrument.

Recommendation 76

We recommend the removal of all step-downs or, if the cost of doing so is unacceptable, the removal of step-downs where:

a. a worker has made themselves available and an employer has refused or been unable to provide suitable duties, or

b. a worker has been retired (whether voluntarily or not) due to injury.

Recommendation 77

We recommend no change in relation to ability to earn in suitable employment and that s 19(4) is replicated in the new Act.

Recommendation 78

We recommend after 45 weeks of incapacity:

a. a worker should not drop below minimum wage due to the step-down

b. a worker should not receive more than 150% of Average Weekly Ordinary Time Earnings of Full-Time Adults.

Recommendation 79

We recommend the government review the treatment of workers' compensation payments in the *Superannuation Guarantee (Administration) Act 1992* (Cth). In the absence of a review or until that review is complete, we recommend that where the person remains employed and incapacitated for work, their employer should be liable to continue making employer superannuation contributions calculated with reference to the person's Normal Weekly Earnings and actual earnings for a maximum of 52 weeks in total.

Recommendation 80

We recommend deductions for superannuation (ss 20, 21, 21A) are not replicated in the new Act.

Recommendation 81

We recommend the reduction for incapacity payments while in a hospital or nursing home (s 22) not be replicated in the new Act.

Recommendation 82

We recommend that the new Act makes clear that a worker can take or accrue leave (such as annual, personal, long service leave) while employed by the employer and in receipt of compensation.

Recommendation 83

We recommend that the new Act allows for an entitlement to weekly payments of compensation to continue:

a. for a period of 104 weeks where a worker is injured 2 years before attaining retirement age, or

b. at any time after attaining that age or for a longer period of up to 260 weeks if the worker can demonstrate, on reasonable grounds, that they would continue working.

Recommendation 84

We recommend that compensation for matters such as rehabilitation, aids and appliances, repair and modifications fall under the definition of treatment and care.

Recommendation 85

We recommend that the governing board has the authority to specify via legislative instrument additional forms of treatment that would be 'medical treatment'. That power should explicitly include reference to First Nations cultural treatments.

Recommendation 86

We recommend that the governing board has authority to develop and make via legislative instrument binding guidance on what is reasonable treatment and care (such as medical, rehabilitation, aids, modifications, household and attendant care service), including consideration of emerging and cultural treatments.

Recommendation 87

We recommend the governing board has authority to issue, via legislative instrument, a non-exhaustive schedule of fees to determine the appropriate cost of treatment, with provision for variations in price according to location, and provide for exceptions.

Recommendation 88

We recommend private car transport to and from treatment be compensated in the circumstances, and at the rate, specified by the governing board and other forms of transport be compensated at reasonable cost.

Recommendation 89

We recommend the new Act provides for compensation for the loss or damage to artificial limbs and substitutes, and medical, surgical or other similar aids or appliances, where that loss or damage arose out of, or in the course of, the worker's employment.

Recommendation 90

We recommend that household and attendant care services be considered within treatment and care plans. Liability for compensation should be determined by reference to the needs of the worker arising because of the injury or, in the case of pre-existing needs, by what the worker did before the injury. Compensation caps should remain at an amount specified by the governing board, except for catastrophic injuries.

Recommendation 91

We recommend the new Act provide for the development of a treatment and care plan that provides, in relation to a worker who has suffered an injury, certainty for a fixed amount of medical treatment, travel-related expenses, household services and attendant care services for a specified period.

Recommendation 92

We recommend the definition of 'dependant' is a person who was totally or partly dependent on the worker's support and earnings at the time or, but for the incapacity, would have been so dependent, and includes spouses, children and parents.

Recommendation 93

We recommend that where the worker dies leaving dependants, the lump sum be shared among those dependants, having regard to the losses suffered by those dependants as a result of the cessation of the employee's earnings. Comcare and licensees should retain the ability to determine the share of compensation payable to dependants consistent with the formula specified, via legislative instrument, by the governing board.

We further recommend that where a worker dies without leaving dependants, the lump sum be payable to the estate.

Recommendation 94

We recommend that compensation for injuries resulting in death is increased, such that:

a. the lump sum amount for death is increased to be equal to the highest comparable amount and indexed annually

b. dependent children receive weekly payments based on the deceased worker's pre-injury earnings, subject to caps for 16- to 25-year-old children of deceased workers who are engaged in full-time or part-time education, and weekly entitlements should not cease where the person is in part-time employment. Further, the weekly entitlement for children should continue beyond 25 years where the child is unable to engage in employment due to

disability. The weekly entitlement is based on each child receiving up to 5% of the Normal Weekly Earnings per week, capped at 25% in total

c. the maximum funeral expense amount is increased to $16,000 and indexed annually.

d. reasonable expenses for financial advice and grief counselling be provided for the families of deceased workers, as well as respite care services in the case of terminally ill workers

e. where a deceased worker leaves no dependants, non-dependent family members receive reimbursement of reasonable expenses in cases of financial hardship.

Recommendation 95

We recommend that if a worker suffers from at least a 10% degree of impairment, the worker can irrevocably elect to take common law action for non-economic loss in lieu of receiving that permanent impairment compensation. We further recommend that the cap on damages for non-economic loss be removed and that the new Act specify that for the purposes of statutes of limitations, the cause of action to sue the employer for non-economic loss arises with the making of the election.

Recommendation 96

We recommend the new Act provides Comcare and licensees a statutory right of recovery, similar to the right in s 151Z of the *Workers Compensation Act 1987* (NSW). We further recommend that it is the duty of Comcare or the licensee to maximise damages recovered in an action against a third party.

Recommendation 97

We recommend sections akin to the current ss 118 and 119 of the SRC Act be replicated in the new Act.

Recommendation 98

We recommend a section akin to the current s 52 be replicated in the new Act.

Recommendation 99

We recommend the new Act does not contain any recovery or bar provisions relating to other forms of compensation or to damages for breach of contract.

Chapter 6. Achieving successful resolution to reduce harm and cost

Recommendation 100

We recommend access to voluntary alternative dispute resolution at any stage throughout the claims, rehabilitation and return to work process prior to Administrative Review Tribunal or court proceedings, with:

a. alternative dispute resolution provided on request from the claimant or on the recommendation of a claims manager, return to work coordinator, or decision-maker
b. alternative dispute resolution provided by an accredited independent specialist, not employees or contractors of Comcare.

Recommendation 101

We recommend a worker be able to rely on a Fair Work Commission determination that the employer's conduct did not amount to reasonable administrative action for the purposes of the new Act.

Recommendation 102

We recommend the governing board has the ability to determine the composition of members of the clinical panel and set independence requirements.

Recommendation 103

We recommend no change in relation to costs at the Administrative Review Tribunal.

Recommendation 104

We recommend that all determining bodies:

a. be prohibited from making submissions in the Administrative Review Tribunal or a court against the wishes of Comcare
b. be obliged to advise Comcare of any proceedings brought against them
c. upon request by Comcare, provide Comcare with any documents relating to those proceedings.

Recommendation 105

We recommend the new Act clarifies Comcare's legal basis for settlement and whether Comcare has the authority to settle matters on principles that reflect good management of the Comcare scheme, overall fairness to the claimant and the best use of Comcare resources.

Recommendation 106

We recommend a form of voluntary commutation to allow workers to opt out of the scheme (that is, an extinguishment of liability for a compensable injury or illness), subject to thresholds and safeguards. Eligibility criteria would be the following:

a. The injured or ill worker has undertaken all reasonable rehabilitation treatments for the impairment and more than 2 years on compensation has elapsed since the first receipt of compensation.
b. The insurer and the injured or ill worker have agreed to bring an end to compensation payments of all kinds in relation to the compensable injury or illness.
c. The sum is agreed by both parties with the assistance of medical reports obtained by each side.

d. The sum provides sufficient funds based on the injured or ill worker's most recent incapacity payments to sustain the worker and their dependants for a period of total or partial incapacity.
e. The sum enables the injured or ill worker to meet the cost of their foreseeable needs for treatment and rehabilitation, household and attendant care.
f. The sum includes an amount for permanent impairment payment (if relevant).
g. The sum is exclusive of legal costs, subject to caps.
h. The injured or ill worker has received financial and legal advice.
i. The agreement is endorsed by an independent body.

Recommendation 107

We recommend the threshold for the operation of s 30 (compulsory redemption) be increased and continue to be indexed.

Chapter 7. Ensuring scheme integrity, and strong governance and administration to secure scheme sustainability

Recommendation 108

We recommend that self-insurance remains part of the scheme.

Recommendation 109

We recommend multi-jurisdictional private sector employers remain part of the scheme, with the ability to self-insure subject to the adoption of our recommendations regarding governance of the Comcare scheme in Chapter 7 and our recommendations regarding rehabilitation and return to work in Chapter 3.

Recommendation 110

We recommend that granting a group employer licence would be possible where all employers within the corporation qualify for licensing under the new Act.

Recommendation 111

We recommend that the maximum licence term of 4 years is set in the new Act, with a streamlined renewal process.

Recommendation 112

If the recommendations specified in Recommendation 109 are not adopted, we recommend the scheme is closed to private sector employers and those in the scheme are transitioned back to state and territory schemes.

Recommendation 113

If the recommendations specified in Recommendation 109 are adopted, we recommend:

a. the eligibility criteria in s 100(1) is retained, but the test is tightened to require for new entrants into the Comcare scheme that:
   i. the corporation is wholly and predominantly engaged in competition
   ii. every company within the corporate group is in competition, and
   iii. competition is an ongoing requirement and is not just satisfied at the time of application
b. that worker agreement is required to transition to and remain in the Comcare scheme
c. that a further criterion is added to ensure that only employers with significant operational and financial capacity are able to enter the scheme
d. the one-step application process and the granting of eligibility to hold a licence by the Minister is not replicated in the new Act
e. that Comcare makes the initial decision to grant/renew/suspend/cancel a licence with internal review by the governing board and an external merits review by the Administrative Review Tribunal

f. that the governing board is provided with the ability to make guidelines for Comcare on assessing eligibility, issuing licences and ongoing monitoring of licensees.

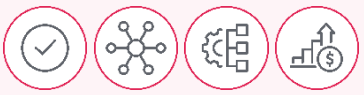
Recommendation 114

We recommend Comcare is provided with a full set of regulatory powers and functions (like its work health and safety functions) to regulate self-insured licensees.

Recommendation 115

We recommend that the new Act makes it clear that coverage of the Comcare scheme is not available where employees and employers are covered by specialist industry-based workers' compensation arrangements like Coal Mines Insurance Pty Ltd.

Recommendation 116



We recommend the work health and safety transition period ends for non-Commonwealth licensees. However, for non-Commonwealth licensees that were former Commonwealth authorities, we recommend that upon renewal of a licence the governing board gives consideration to whether the licensee should be transitioned to state or territory work health and safety schemes and makes a recommendation to the Minister as to whether a regulation should be made to remove them from the coverage of the Commonwealth's *Work Health and Safety Act 2011*.

We further recommend the outcome of a vote of the licensees' workers about which work health and safety laws they want to be covered by is a mandatory consideration for the governing board.

Recommendation 117

We recommend establishing a new tripartite governing board (to replace the Safety, Rehabilitation and Compensation Commission), to which the Chief Executive Officer of Comcare is responsible, with the ability to establish sub-committees:

a. **Functions of the governing board**: oversee the whole Comcare scheme, which includes setting strategic direction including issuing policies; setting and supervising the direction of

Comcare; establishing operational, accountability and funding policies; approving the investment of funds; ensuring the governing board is a tripartite forum; and providing advice to the Minister.

b. **Functions of Comcare**: assume liabilities; operate as claims manager, regulator, scheme manager and issuing authority; and regulator for self-insured licensees.

c. Under the new Act, the Minister should have the ability to issue directions to Comcare.

d. The power to appoint and remove the Chief Executive Officer and members of the governing board should be conferred on the Minister.

e. Consideration should be given to whether Comcare is required to be a corporate entity or is established as a non-corporate entity to ensure coverage of the Compensation for Detriment Caused by Defective Administration Scheme and full coverage of the *Legal Services Directions 2017* (Cth).

f. Composition of the governing board:

   i. Chair

   ii. up to 3 x representatives of unions

   iii. up to 3 x employers

   iv. up to 3 x experts

   v. 1 x Chief Executive Officer of Comcare (non-voting).

g. The governing board will have the ability to establish sub-committees to draw on expert advice, including a standing lived experience sub-committee to provide advice to the governing board on the experience of injured and ill workers, their families, carers and other significant persons in their lives.

h. To be eligible for appointment to the governing board, a person should possess more than one of the Australian Institute of Company Directors' recommended skill areas, including health and safety and regulatory knowledge.

i. The governing board must hold the number of meetings that are necessary for the efficient performance of its functions, and a minimum of 4 each calendar year.

Recommendation 118

We recommend Comcare has the ability to invest Comcare-retained funds in a broader range of investment types with:

a. the governing board having oversight of the drawing and investment of these funds

b. appropriate safeguards being put in place to manage risks and ensure adequate reserves for outstanding claims liabilities.

Recommendation 119

We recommend the new Act provides clarity in relation to providing supplementary funding to Comcare in the event of a catastrophe.

Recommendation 120

We recommend Comcare review the premium setting arrangements to ensure the model incentivises good performance and management of psychosocial hazards and risks.

Recommendation 121

We recommend Comcare be able to charge regulatory contributions, licence fees and the activity costs outside the standard financial year timeframes.

Recommendation 122

We recommend the new Act provides for safety net arrangements to manage ongoing liabilities in circumstances where a licensee goes into liquidation and/or is wound up.

Recommendation 123

We recommend that where a licensed corporation has been wound up, Comcare or a person who has willingly entered into an arrangement with Comcare:

a. is authorised to accept liability for injuries of employees of the former licensed corporation suffered during the licence period or attributable to employment but sustained after the licence period
b. must manage the claims of a former licensed corporation
c. discharges the liability when Comcare pays money from the bank guarantee
d. is the relevant authority for the employees
e. takes over any proceedings on hand that the former licensed corporation was involved in.

Part D Caring and costs

Recommendation 124

We recommend that when our package of recommendations is costed, before the government makes a decision, it performs a thorough quantitative and qualitative cost–benefit analysis.

Part B

Consultation process

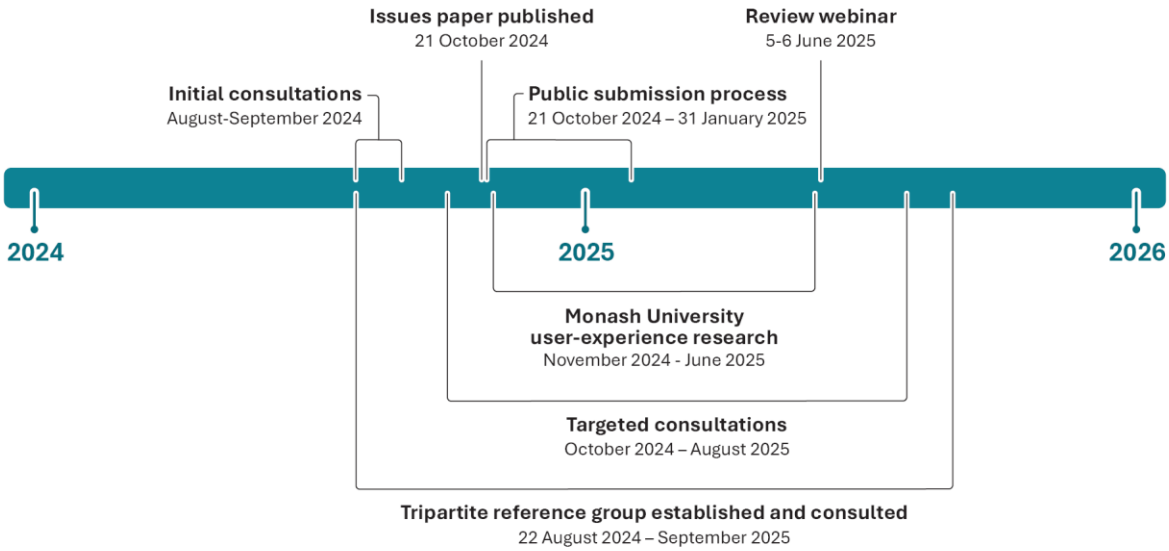
Consultation process

What we did

In undertaking our review, we consulted widely with a diverse range of stakeholders. What we heard was instrumental in helping us understand the challenges in the scheme and identify areas for reform. We are grateful to all those who contributed their time, expertise and insights to the review.

The terms of reference for the review required us to consult with a tripartite reference group (TRG), representing unions, employers and government. We were also asked to conduct public consultations and engage with key stakeholders, including people with experience of workers' compensation or personal injury and illness claims, such as injured workers and their unions and legal representatives, as well as advocacy groups, self-insured licensees and their representatives, employers, Comcare and the Safety, Rehabilitation and Compensation Commission (SRCC).

Figure 15: Review timeline



In line with the terms of reference, we designed the consultation process (Figure 15) to be broad, accessible and transparent. Over a 12-month period, we sought the views of stakeholders through a variety of avenues including:

- regular engagement with the TRG
- the public release of our issues paper and a call for written responses.
- the public release of a short survey for workers and other stakeholders with lived experience of the Comcare scheme
- targeted consultations with 42 different groups

- commissioning a research project conducted by Monash University, which held comprehensive, trauma-informed interviews with 30 scheme participants to understand their lived experiences and perspectives
- webinars with employers and worker representatives to report on the results of consultations
- targeted consultations on our draft recommendations.

We met 12 times with the TRG over the course of the review. The TRG was a forum for collaborative discussions on all aspects of the review. We tested the ideas we heard through consultations and conducted 'deep dives' into specific issues in the SRC Act. These consultations helped ensure that the views of all those involved in the Comcare scheme were understood and properly considered.

The insights and guidance we received from the members of the TRG were invaluable. Members attended more than 55 hours of meetings throughout the review process. We acknowledge the significant time and travel commitment involved and thank all members for their contribution. The membership included representatives from the:

- Australian Council of Trade Unions
- Community and Public Sector Union
- Australian Manufacturing Workers' Union
- Department of Home Affairs, representing Commonwealth premium-paying employers
- Australian Taxation Office, representing Commonwealth employers using delegated claims management (DCM)
- Safety Rehabilitation and Compensation Licensees Association, representing self-insured licensees
- Department of Employment and Workplace Relations (DEWR), representing the Australian Government.
- Observers from the ACT Government and Comcare were also present at all meetings.

Figure 16: Tripartite reference group representation

We acknowledge submissions and comments received in writing from TRG members in response to our draft report. We were grateful for this feedback, some of which is reflected in our final report. Some submissions raised matters of policy detail which will best be considered at the time of the implementation of any of our recommendations, and we refer further consideration of those submissions to DEWR.

Issues paper and public submission process

Issues paper

On 21 October 2024, we published an issues paper that included discussion questions on specific issues in the terms of reference. We had identified these questions during our preliminary consultations and research. The issues paper was published on DEWR's consultation platform. We also promoted it through a variety of outlets, including social media, newspapers, media releases, DEWR's website and via emails to stakeholders of interest. We also asked key stakeholders, including peak bodies, unions and government agencies, to promote the review through their networks. We thank all those who did so.

The public submission process was open for 8 weeks, ending on 20 December 2024. We received 160 submissions. Figure 17 and Figure 18 show the number of submissions received from organisations and individuals. A copy of the issues paper is available on DEWR's website.[1]

Figure 17: Submissions by organisations

[1] Department of Employment and Workplace Relations, *Getting the best outcomes for injured workers – Public consultations issues paper*, 2024, DEWR website, accessed 16 September 2025. Available at https://www.dewr.gov.au/workers-compensation/resources/getting-best-outcomes-injured-workers-public-consultation-issues-paper.

Figure 18: Submissions by individuals

Survey

As an alternative to making a submission, we also gave respondents the option of completing a short survey covering key questions. Through this process, we received further valuable feedback from injured and ill workers and their families, as well as claims managers and employers. The survey results will be published on DEWR's website.

The survey was open for 15 weeks, closing on 31 January 2025. We received 599 responses.

We thank everyone who shared their stories, experiences and recommendations as a part of the review. All responses were considered, even if we did not directly reference them in the body of this report.

Targeted consultations

From November 2024 to August 2025, we met with 42 groups to consult on a broad range of issues in the terms of reference. Those consulted represented employers, unions, academics, the legal profession, government agencies, senior administrators from state and territory schemes, and those with lived experience of the Comcare scheme.

Meetings were generally 1.5 hours long, allowing for in-depth conversations on the key areas of concern and for the panel to benefit from participants' expertise. Those consulted were also invited to provide written submissions and many provided further evidence to support the consultation.

We also held consultations in person in Canberra, Melbourne and Sydney, and virtually with stakeholders from across the nation. See Appendix C for a complete list of targeted consultations.

Gathering of lived experience

It was important to us that we heard directly from people with lived experience of the Comcare scheme. In addition to the public submission process, we engaged an experienced and impartial third party (a research team from Monash University, see next) who could collect information on the lived experience of workers in a trauma-informed way.

User-experience research

Monash University were engaged to conduct an independent research project to explore how the Comcare scheme can improve outcomes for injured and ill workers.

The research team interviewed individuals with lived experience of the Comcare scheme, including injured and ill workers, claims managers, rehabilitation case managers and supervisors who support workers making a workers' compensation claim. Over the course of the project, the team conducted in-depth interviews with 30 people, including 15 injured workers and 15 workers' compensation professionals. The team selected a varied sample of participants from a pool of interested people to reflect diverse perspectives on the scheme. The injured workers included people with different genders, primary injury types and employing organisations, including employees in government departments with and without delegated claims management arrangements.[2] The workers' compensation professionals were employed by 13 different organisations including Commonwealth government departments and agencies and self-insured organisations. Participants from Commonwealth government organisations included claims managers, rehabilitation case managers and line managers or supervisors whose claims were managed by Comcare or under DCM Arrangements.[3] All participant confidentiality was assured.

The research team submitted their report to the panel on 27 June 2025. The report identified several opportunities for reform including:

- clarifying in the legislation that returning injured and ill workers to work and health is the core objective of the scheme, to ensure this is the focus of all supporting regulation, guidelines, scheme procedures and processes
- shortening the timeframes for claims decision-making
- providing more support for the psychological health of claimants, including early supports
- broadening access to settlement of claims through redemption of compensation benefits for long-term claimants
- introducing alternative dispute resolution processes
- supporting families who are caring for injured or ill workers
- funding superannuation for injured and ill workers.

Webinars and further meetings with stakeholders

We held webinars with employer and employee representatives on 5 and 6 June 2025, and legal representatives on 28 August 2025. The webinars were attended by 109 people over 3 sessions.

[2] Monash University, *User experiences of the Comcare workers' compensation scheme, Qualitative Research Study Findings – Final report*, 2025 (Monash user-experience study), p.14.
[3] Advice to panel, 19 September 2025.

The purpose of the webinars was to report back to key stakeholders on what we had heard through consultations and advise them of how their views had informed our thinking on the types of reforms under consideration.

Diverse voices

Throughout consultations, we wanted to hear from a diverse group of people to understand how different people experience the Comcare scheme. This included Aboriginal and Torres Strait Islander people, people with disability, people who are neurodiverse, people from a range of age groups, of different genders and sexual orientations, and those from culturally and linguistically diverse backgrounds.

In the targeted consultations, we met with representatives from the National Indigenous Australians Agency and Aboriginal Hostels Limited. We also used the First Nations Employee Network to invite further participation from Aboriginal and Torres Strait Islander people and met with the National Women's Health Advisory Council. The Monash user-experience study research team also sought to achieve representation from people across diverse groups.

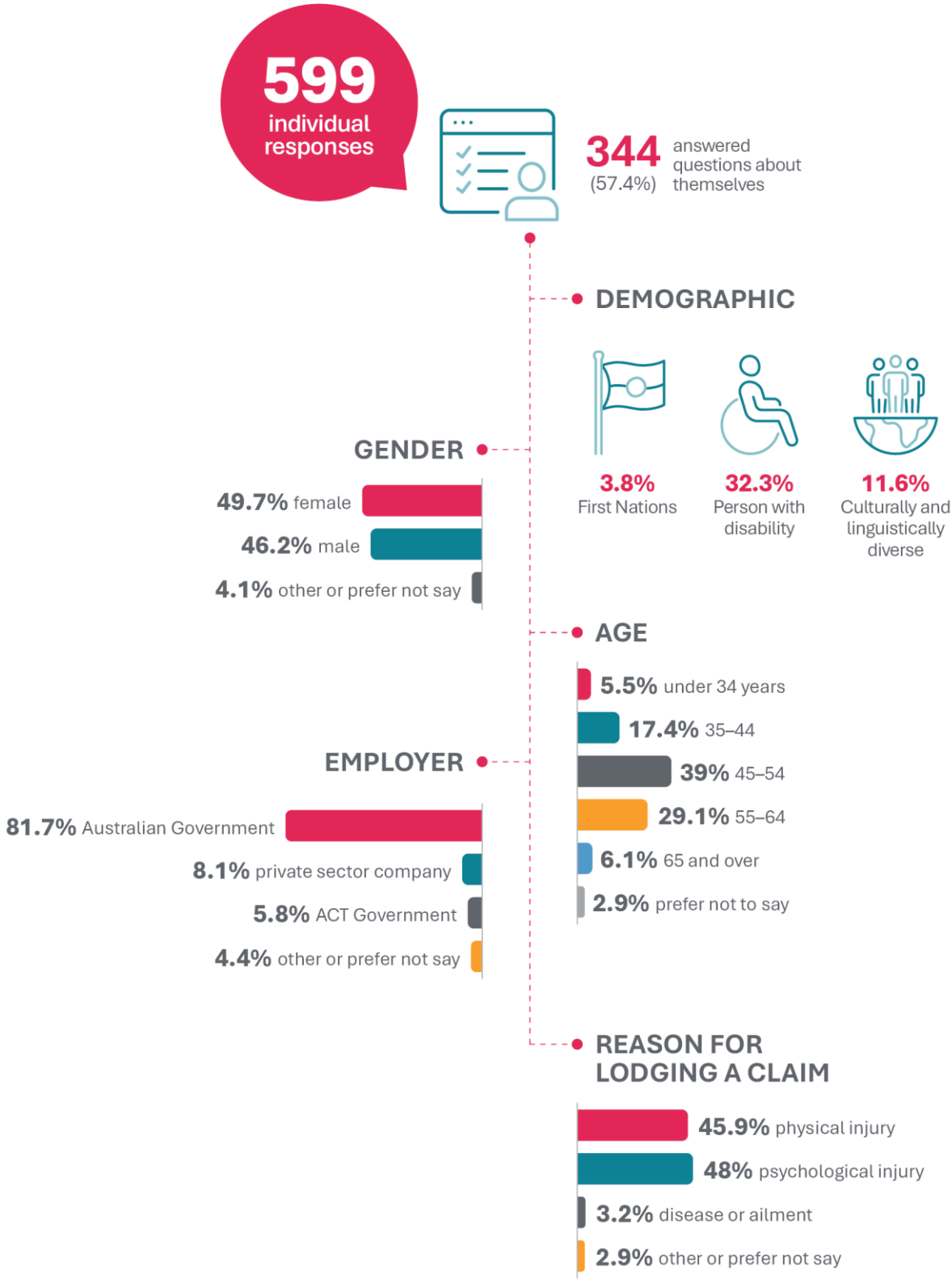
We also wanted to understand workers' experiences from an intersectional perspective – that is, how various aspects of a person's identity (such as their age, background and disability) can combine to create unique experiences of the scheme. We heard that women from culturally and linguistically diverse backgrounds have particular difficulties when dealing with the scheme. For example, they may be assigned a male rehabilitation provider despite having a culturally informed preference for a female provider.

Survey responses

The survey gave participants the option of providing demographic information. Of the 599 people who responded, 344 chose to do so. Of those, 13 (3.8%) identified as being of Aboriginal or Torres Strait Islander descent, 111 (32.3%) identified as a person with disability, 40 (11.6%) identified as being from a culturally and linguistically diverse background and almost 50% identified as being a woman or female. Only one respondent identified as non-binary, and one used a different term not available for selection.

Of those who provided their age, the largest cohorts were aged 45–54 (39%) and 55–64 (29.1%). Only 19 people were aged under 34. That was to be expected given the worker profile of the Comcare scheme. See Figure 19.

Figure 19: Survey results and demographics



Summary of what we heard

The stakeholder consultation process produced a variety of views covering all aspects of the terms of reference. There were areas of consensus and of divergence.

Areas of consensus

Reduce complexity

It was broadly agreed that action is needed to reduce the complexity of the SRC Act. Over the years, amending legislation has resulted in new provisions being inserted without a review of the legislation as a whole, which has made the Act harder to navigate. This has made it more difficult for users to understand how the SRC Act applies to them.

Many stakeholders argued that the SRC Act should be completely redrafted to follow a more logical claimant pathway, with modern drafting techniques, such as plain language to make it easier to understand, and placing detailed rules in legislative instruments or guidelines, where possible.

They also called for the Act to be supported by updated fact sheets and guidance to make its application more consistent.

We deal with this issue in Chapter 1.

Clear statement of objectives

The issues paper raised the question of whether the SRC Act should include a statement of objectives – there was consensus that it should. Popular suggestions for objectives included focusing on early intervention, effective rehabilitation and prioritising return to work.

Most stakeholders advocated for person-centred objectives. However, some employer representatives also raised the issue of balancing the needs of employers and workers with the Comcare scheme's financial sustainability.

We deal with this issue in Chapter 1.

Early intervention

An area of consensus among stakeholders was that the SRC Act needed to provide processes for earlier intervention, including early supports, prompt identification of complex claims through a triage process, and ensuring there are no gaps in assistance when a claim is made.

There was consensus that speedier and earlier support is key to helping injured and ill workers to return to work and to reducing the harm caused by lengthy claims processes.

We deal with this issue in Chapter 3.

Remove stigma

Many stakeholders argued that the stigma associated with workers' compensation was a barrier to workers making a claim. Injured and ill workers reported that they were not believed or supported by their workplace during the lodgement process. Being stigmatised was a particular problem for those with a mental stress claim. Both workers and employers agreed the review should consider ways to remove or reduce this stigma through methods such as training leaders in the workplace.

We deal with this issue in Chapter 4.

Clarify roles and responsibilities

It was broadly agreed that the SRC Act needed to provide greater clarity on the obligations, roles and responsibilities of the various entities in the Act, including employers, determining bodies and workers. Changes should also highlight the importance of good communication, coordination and cooperation between entities.

We deal with this issue in chapters 3 and 4.

Enhance capability

Stakeholders saw benefit in the Act including training requirements and/or standards for claims managers, their supervisors and the people supporting rehabilitation. Developing greater levels of expertise would improve services and outcomes for claimants. These needs were recognised not only by claimants but by claims managers, supervisors, rehabilitation providers and other stakeholders as well.

We deal with this issue in chapters 3 and 4.

Reduce disputes

Submissions and those we consulted agreed that reaffirming the principle of no fault and reducing the adversarial nature of the Comcare scheme is fundamental to achieving its desired outcomes. They also told us effectively resolving medical disputes and ensuring medical evidence is independent would reduce the number of disputes and, overall, should speed up the claims process. To achieve earlier outcomes the relevant research and submissions also emphasised the importance of making alternative dispute resolution processes available for the settlement of disputes by negotiation.

We deal with this issue in Chapter 6.

Prevent or reduce harm

Stakeholders advised that the scheme would benefit from the introduction of tightly controlled early exit mechanisms for workers for whom the scheme is 'doing more harm than good'. The requirement for injured or ill workers to continually provide evidence of their injury or illness and engage with the scheme can have a negative effect, prolonging their recovery and creating barriers to them finding suitable work.

We deal with this issue in Chapter 6.

Facilitate inclusion and diversity

Stakeholders emphasised the value of removing barriers or negative effects on claimants in diverse groups. Claims management and rehabilitation practices should consider the intersectionality of claimant characteristics and circumstances. Many thought this would form an important part of the shift to a person-centred approach.

We deal with this issue in chapters 3 and 4.

Areas of divergence

Self-insurance

Self-insurance under the Comcare scheme was a contentious area between unions and employers. The position taken by union representatives on the TRG was that self-insurance should not be a feature of workers' compensation schemes. Where self-insurance is available, they said it should be regarded as a privilege, and not a right. In particular, they considered that self-insurance should not be a feature of the Comcare scheme, because it was originally designed for the public service and to cover white collar workers, and because private corporations are better served and regulated in state and territory schemes. Unions suggested that if self-insurance was to remain an option in the Comcare scheme, the rules for inclusion should be tightened and accountability measures strengthened.

The employers' position was that access to a national scheme for large employers provided administrative efficiencies and more consistent, equitable benefits for workers.

We deal with this issue in Chapter 7.

Work health and safety coverage

Our terms of reference asked us to consider whether non-Commonwealth licensees should continue to be covered under the *Work Health and Safety Act 2011* (Cth).

Broadly speaking, employer groups argued national work health and safety (WHS) coverage provides administrative efficiencies for those organisations, and better outcomes for workers, due to consistent national regulations.

Unions argued that states and territories are best placed and resourced to provide the regulatory oversight needed to ensure compliance and safe workplaces. WHS legislation is now largely harmonised across Australia, negating the argument that national coverage achieves administrative efficiencies.

We deal with this issue in Chapter 7.

Delegated claims management

The Comcare scheme currently allows certain premium-paying agencies to opt into DCM arrangements. Under a DCM arrangement, the agency has complete control of the claims management and decision-making processes for its own workers.

Two agencies currently operate under a DCM arrangement: the Australian Taxation Office and Services Australia. Both say the arrangement creates significant efficiencies in the claims process and provides better outcomes for workers. Those opposing DCM arrangements, including unions and injured and ill workers, argue the process lacks transparency, gives too much power to employers, creates an inherent conflict of interest, and brings adverse outcomes for workers.

We deal with this issue in Chapter 4.

Common law

Stakeholders disagreed about access to common law rights under the Comcare scheme. Some preferred the current arrangements, which restrict access to common law actions against the employer, on the basis that wider access is not appropriate for a long-tail scheme and may negatively affect workers' recovery and return to work.

Legal and employee representatives generally supported greater access to common law. They argued that workers should be able to pursue non-economic loss damages under common law as well as economic entitlements under the no-fault scheme. They also argued that giving workers greater access to common law rights would allow injured and ill workers to pursue a lump sum payment. This would enable them to exit the scheme and avoid the adverse effects of remaining in the system.

We deal with this issue in Chapter 5.

Alternative dispute resolution

Some stakeholders suggested making dispute resolution mechanisms available to claimants before escalating issues to the Administrative Review Tribunal. This would give workers and employers an opportunity to agree to a settlement and avoid lengthy, costly legal processes with uncertain outcomes.

Others argued that alternative dispute resolution would simply add another layer of complexity and cause further delay before a decision is made, resulting in additional harm to workers. Another concern was that the power balance in alternative dispute mechanisms lies with employers, creating a risk that workers would receive less than their entitlement through the process.

We deal with this issue in Chapter 6.

Australian Federal Police

A proportionally high number of submissions and consultations raised concerns about the interaction between the Comcare scheme and the Australian Federal Police (AFP). Due to the often dangerous and sometimes unpredictable nature of their work, police officers face unique health challenges and are over-represented as claimants in the Comcare scheme. Submissions highlighted several issues, including the growing number of psychological injury claims, and the need to have appropriate entitlements and early intervention strategies for members of the AFP.

Many of the issues highlighted were similar to those faced by other workers in the scheme. However, we were asked to make recommendations tailored specifically for the AFP workforce, including inserting police-specific provisions into the SRC Act. Some individuals reported their claims managers did not understand the dangers of working in the AFP. Some even argued for a standalone workers' compensation Act for police, including those deployed overseas in conflict zones.

The Australian Federal Police Association suggested introducing an 'AFP Blue Card', similar to the Veteran White Card and Gold Card, which support claimants with a pre-approved limit for medical payments. They also called for reform to 'step-down' provisions, which they said push police officers back to work sooner than their health conditions warrant. These issues are explored further in Chapter 5.

We are grateful for a submission we received from a former AFP officer that we considered encapsulated the concerns we heard from current and former AFP claimants (see the following case study). Along with the other submissions we received from injured and ill workers and their families, it helped us ensure our recommendations are grounded in the realities of people's lives and are inclusive, relevant and effective.

Case Study
Former AFP Officer

Over a 20-year career with the AFP, Helen* served in various roles, including leadership positions. After experiencing bullying in the workplace, Helen's experience with the internal review process further traumatised her, causing her to seek professional help and take short-term leave.

After returning to work, continued stress began to affect Helen's performance at work and she reduced her working hours to help her cope with the pressures of work and family life. She also used the AFP's early access program, seeking help from a psychologist, but the reimbursement of fees for the costly appointments could take weeks to be processed, adding to the stress. Helen did not submit a Comcare claim, as she feared that the stigma surrounding workers' compensation would make her appear weak, and she was worried about the effect on her career.

To support her return to work, Helen was reassigned to a different team, but the move created further anxiety and her sleep was affected. She also feared returning to a workplace where her bully might be present. As Helen's psychological health deteriorated further, she submitted a Comcare claim. She became suicidal and was submitted to hospital for treatment.

Despite this, Helen continued to try to reintegrate into the AFP, undergoing multiple phases of return to work, adjusting her schedule and duties to help her cope. However, the lack of appropriate workplace placement further exacerbated her condition. Some of the roles she was assigned to exposed her to distressing content, such as child abuse investigations, suicides and violent crimes.

Helen's claim to Comcare was initially denied, then denied again upon reconsideration, forcing her to pursue an appeal through the Administrative Appeals Tribunal (AAT). Ultimately, the matter was settled before being considered by a tribunal member. The lengthy and complex process led

to stress and a delay in receiving adequate support. Further to this, Comcare did not accept that the injury occurred when Helen was working 4 days a week. Instead, it calculated her benefits based on a 3-day week, which had a significant financial effect on her family.

Although her claim was eventually accepted, by that point Helen's health had deteriorated significantly and she was experiencing suicidal ideation, flashbacks from previous work experiences, panic attacks and severe sleep disturbances, which led to her hospitalisation again. Shortly afterwards, Helen had a second Comcare claim accepted relating to post-traumatic stress disorder (PTSD), which she had been experiencing for some time but had been scared to mention due to the severe effect the Comcare process had on her.

Eventually, Helen's ongoing workplace challenges and worsening psychological health led to her medical retirement. With ongoing medical treatment, her health conditions began to stabilise.

However, her dentist recommended she receive a night mouthguard to help treat her bruxism (grinding of the teeth). Despite the dentist's report, and previous approval for treatment associated with the condition, Comcare required additional evidence and, after its own review, withdrew support for treatment. A breakdown in communication meant Helen's union was unable to provide a response to Comcare's reconsideration process, leaving Helen with an appeal to the AAT as her only recourse.

She is now supported by a pension from her superannuation fund, and has lodged an appeal through a no-win, no-fee solicitor, with financial support from her union.

*A fictitious name has been used to protect the identity of the claimant

Part C

Areas of reform

Chapter 1. Creating a best practice legislative scheme to respond to change and challenge

What this chapter considers

The terms of reference asked us to identify the key features that underpin a best practice workers' compensation scheme and how these features can be incorporated into the Act. The terms of reference also asked us to ensure the Comcare scheme promotes a person-centred approach, embeds best practice principles and is responsive to workplace challenges. These challenges include the rise in reported psychological injuries and illness, cultural and linguistic barriers, an ageing workforce and changes to working arrangements.

This chapter considers:

- the main challenges and trends affecting the Comcare scheme
- how to create principles for a best practice scheme
- how to create principles for a best practice legislative framework.

Links to other chapters

The discussion and recommendations in this chapter are linked to all chapters in Part C. As explained in Part A, throughout this report we use icons to indicate the principles we consider are given effect to by our recommendations.

1.1 Challenges and trends

1.1.1 Background

As the nature of work has changed, so too has the profile of claims and claimants in the Comcare scheme, as well as claimants' expectations of the scheme. The terms of reference asked us to consider how the legislative framework can best respond to current and future workplace challenges.

1.1.2 What we considered

In identifying challenges facing the Comcare scheme, we drew on Commonwealth Scientific and Industrial Research Organisation research on megatrends and their effect on Australia.[1] Megatrends are large, transformative and long-term shifts that affect broad aspects of society, the economy and the environment. We have identified the megatrends that could affect workers' compensation schemes over the next 10–20 years. We have also outlined their implications for the Comcare scheme and identified which of our recommendations will ensure the scheme is equipped to meet the challenges they bring.

We have also considered the trends already affecting workers' compensation schemes in Australia, which have led some jurisdictions to propose or make legislative changes.

Psychological health in the workplace

Description

The prevalence of mental health conditions in Australia has remained relatively stable over time.[2] However, in workers' compensation schemes across Australia, the number of claims for psychological injury increased by 64% in the decade after 2012–13.[3]

Comcare scheme implications

Comcare faces an increase in psychological claims. They now make up 13% of all claims, with a significantly higher number among workers of premium-paying employers.[4]

Psychological injury claims are typically more complex to manage and have slower and poorer return to work outcomes, leading to higher direct and administrative costs.

Claims management is more complex, requiring claims managers to have more diverse skills and competencies to perform well, including by taking a trauma-informed approach.

Claims managers and return to work coordinators need to be protected against vicarious trauma.

Key Recommendations

Recommendations 8, 12, 16, 17, 26 to 28, 31, 60, 61 and 116.

[1] C Naughtin et al., *Our Future World: Global megatrends impacting the way we live over coming decades*, 2022, CSIRO.
[2] Australian Institute of Health and Welfare (AIHW), *Mental Health*, 2025, AIHW, see 'Changes to the mental health of Australians over time', accessed 7 August 2025. Available at www.aihw.gov.au/mental-health/overview/prevalence-and-impact-of-mental-illness#changeovertime.
[3] Safe Work Australia (SWA), *Key work health and safety statistics Australia 2024*, 2024, SWA, p 14.
[4] Comcare, *The Comcare Scheme*, 2025, Comcare, see 'Body part injured', accessed 22 August 2025. Available at www.comcare.gov.au/scheme-legislation/scheme-performance/overview.

Ageing population and workforce

Description

The average age of Australia's workforce is increasing in line with the ageing of the population. Older Australians are also staying in the workforce longer. By 2060–61, 23% of Australia's population is expected to be aged over 65, up from 16% in 2019–20.[5] The number of APS workers aged over 55 increased by 25% between 2015 and 2024.[6]

Comcare scheme implications

The workforce as a whole will be more experienced, including in managing workplace risks. But currently workers aged over 55 have the highest rate of work-related injury or illness and need more time to recover.[7]

Key recommendations

Recommendations 26, 29, 31, 79, 80 and 83.

A more diverse workforce

Description

The workforce is more diverse, with nearly half of Australians either born overseas or with at least one parent born overseas.[8] Women's participation in the labour force is growing.[9]

The Australian Public Service (APS) is aiming to increase the number of First Nations workers to 5% by 2030. Of APS workers, 9.2% identify as LGBTIQA+ and an increasing number of APS workers consider themselves to be neurodivergent.[10]

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[5] C Naughtin et al., *Our Future World: Global megatrends impacting the way we live over coming decades*, 2022, CSIRO, p 21.

[6] Australian Public Service Commission (APSC), *State of the Service Report 2023–24*, 2024, APSC, Appendix A – APS workforce trends, Table A 10: Number of APS employees by aged group at 30 June (2015 to 2024), accessed 25 August 2025. Available at www.apsc.gov.au/initiatives-and-programs/workforce-information/research-analysis-and-publications/state-service/state-service-report-2023-24/appendices/appendix-1aps-workforce-trends#age-profile.

[7] SWA, *Key Work Health and Safety Statistics Australia 2024*, 2024, SWA, p 11, see 'Work-related injury and illness – Demographics (age)'.

[8] Workplace Gender Equality Agency, *Gender equality and intersecting forms of diversity*, Workplace Gender Equality Agency, accessed 26 August 2025. Available at www.wgea.gov.au/gender-equality-and-diversity.

[9] Australian Bureau of Statistics (ABS), *Labour Force, Australia*, August 2025, ABS, accessed 13 September 2025. Available at www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release.

[10] APSC, *State of the Service Report 2023–24*, 2024, APSC, p 46.

Comcare scheme implications

These changes are creating a more diverse workforce of people with varying needs and preferences. While diverse workplaces have many benefits, this is also increasing psychosocial risk, which could result in increased claims if the risks are not properly managed.

Claims management is more complex and will require claims managers to have more diverse skills and competencies to perform well.

Arrangements to support dependents of deceased workers need to reflect the diverse family and living arrangements of Australians.

Key recommendations

Recommendations 1, 26b, 28, 40, 41, 61 and 85.

Changes to working arrangements

Description

Worker expectations are evolving, with flexible work arrangements a mainstay in the workplace, following the COVID-19 pandemic. In 2022, around 46% of Australians worked from home at least once a week.[11] Of APS workers, 61% worked away from the office at least some of the time.[12]

Comcare scheme implications

Working from home has both benefits and potential risks for the psychological health of workers. Benefits include reducing over-stimulation for workers with neurodiversity, while risks arise from isolated work and reduced visibility to managers and supervisors. Without careful management, this could further contribute to a rise in psychological injury claims, but Comcare data does not yet show this.

It can be complex to determine eligibility for compensation when a worker is injured at home or during travel between work and home to resume work.[13]

Key recommendations

Recommendations 9. Also see our proposals for psychological injury and claims.

[11] AIHW, *Australia's welfare 2023: topic summaries*, 2023, AIHW. See 'Changing patterns of work'.
[12] APSC, *State of the Service 2023–24*, 2024, APSC, Table AB 46.
[13] Comcare, *Scheme guidance – Claims for injuries and diseases arising from home-based work*, Comcare, accessed 4 June 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/scheme-guidance-claims-for-injuries-and-diseases-arising-from-home-based-work.

Change in the nature of work and employment relationships

Description

The nature of work in Australia has changed significantly since the 1980s. More of today's jobs involve non-routine cognitive and emotional demands.

Casual employment and labour hire make up a greater proportion of the Australian workforce. Gig or platform-based workers now also feature.[14]

Comcare scheme implications

Workers are more likely to be exposed to psychological rather than physical hazards.

Determining eligibility and entitlement for compensation becomes more complex due to the effect of work status on entitlements, protections and obligations, as well as workers holding more than one position.

Key recommendations

Recommendations 4, 5 and 75.

Technological changes – Digitisation

Description

Digitisation has enabled an increase in remote work, meaning more employees may now be based in rural and regional Australia.

Rapid uptake of digital health initiatives has occurred since 2020. Accessing digital services relies on digital inclusion, where the gap between lower- and higher-income earners has widened.[15]

Comcare scheme implications

Access to medical services for injured and ill workers may be limited in rural and regional areas.[16]

Digital health initiatives may improve access to services where the individual has sufficient technical capability but may not be adequate for all injuries and illnesses.

Key recommendation

Recommendation 43.

[14] ABS, *Characteristics of Employment, Australia*, August 2024, ABS, accessed 30 July 2025. Available at www.abs.gov.au/statistics/labour/earnings-and-working-conditions/characteristics-employment-australia/latest-release.
[15] C Naughtin et al., *Our Future World: Global megatrends impacting the way we live over coming decades*, 2022, CSIRO, p 33, 'Digital health is becoming mainstream'.
[16] AIHW, *Rural and remote health*, 2024, AIHW, 'Access to health care', accessed 13 September 2025. Available at www.aihw.gov.au/reports/rural-remote-australians/rural-and-remote-health.

Artificial intelligence augmentation and automation

Description

Artificial intelligence (AI) is set to profoundly change the global economy, with some seeing it as a new industrial revolution. In labour markets, AI may boost productivity by replacing humans in some jobs and complementing them in others.[17] Certain cohorts – such as women, older workers, First Nations Australians and people with disability – may face disproportionate risks due to occupational concentration and digital access issues.[18] AI is being widely adopted in workplace systems, including in insurance claims processing.[19]

Comcare scheme implications

If not implemented well in the workplace, psychological risks to worker health may arise from concerns around job security, skills development, retraining, privacy, data collection and surveillance.[20] This may increase psychological injury claims.

AI-based decision-making substituting human decision-making rather than supplementing it, can result in unfair and poor outcomes for injured and ill workers, but it may also improve efficiency by giving claims managers more time to personally assist claimants.

Key recommendations

Recommendations 58 and 65. Also see our proposals for psychological injury and claims.

[17] M Cazzaniga et al., 'Gen-AI: Artificial Intelligence and the Future of Work', 2024, *International Monetary Fund*, p 1.
[18] Jobs and Skills Australia (JSA), *Our Gen AI Transition – Implications for Work and Skills*, 2025, JSA, p 9.
[19] C Naughtin et al., *Our Future World: Global megatrends impacting the way we live over coming decades*, 2022, CSIRO, p 35; S Bhattacharya et al., 'AI revolution in insurance: bridging research and reality', 2025, *Front Artif Intell*.
[20] Transitioning Well for the National Workplace Initiative, *Mentally healthy workplaces: Managing change and disruption guide*, 2024, National Mental Health Commission, pp 9–12, accessed 25 August 2025. Available at www.mentalhealthcommission.gov.au/projects/mentally-healthy-work/national-workplace-initiative/managing-change-and-disruption-series.

Climate change

Description

The effects of climate change on public health are predicted to include a rise in heat-related deaths, infections and viruses associated with flooding, the exacerbation of cardiovascular and respiratory conditions,[21] and increased rates of anxiety, depression and suicide.[22]

Climate change also brings more frequent and intense disaster events, including bushfires, storms and floods, which require a public service response. Additionally, these events damage infrastructure and put pressure on critical services such as transportation, health care, communication and energy supply.[23]

Comcare scheme implications

Increased claims for climate-related injuries, illnesses and fatalities.

Increased claims caused by climate-related events including for post-traumatic stress disorder (PTSD).

Increased wait times to access medical services, especially in remote and regional areas, exacerbating health conditions and extending claim duration and costs.

Key recommendations

Recommendations 11, 28 and 61. Also see our proposals for psychological injury and claims.

[21] C Naughtin et al., *Our Future World: Global megatrends impacting the way we live over coming decades,* 2022, CSIRO, p 10, 'Preparing to live in a hotter world'; A Yang et al., 'Hospitalization risks associated with floods in a multi-country study', 2025, *Nat Water 3*, pp 561–570; Environmental Health Standing Committee*, enHealth Guidance for public health agencies | Managing prolonged smoke events from landscape fires*, 2024, Department of Health, Disability and Ageing, accessed 26 August 2025. Available at www.health.gov.au/resources/collections/enhealth-guidance.

[22] Royal Commission, *Royal Commission into National Natural Disaster Arrangements Report*, Royal Commissions, 2020, pp 345–346.

[23] C Naughtin, et al., *Our Future World: Global megatrends impacting the way we live over coming decades*, 2022, CSIRO, p 11 'Impact of climate change on critical infrastructure'.

1.2 Best practice scheme

1.2.1 Background

The central aims of the SRC Act can be ascertained from the title, and from the functions of Comcare and the Safety, Rehabilitation and Compensation Commission (SRCC). These are to:

- encourage the prevention of workplace injury and illness
- compensate fairly
- ensure equity of outcomes
- assist workers with recovery and return to work
- charge premiums that reflect risk
- fully fund liabilities.

Comcare has a Service Charter setting out how Comcare is to provide services, including the standards it will meet and the values underpinning its activities.[24] They also provide guidance to determining authorities on best practice principles to be applied to decision-making under the SRC Act, on matters including procedural fairness, the requirement to provide reasons, accountability and equity.[25]

There is no accepted best practice approach to workers' compensation. A move from a 'medical' approach to one focusing on care for the worker is being widely adopted. Typically, this means considering the whole person, including their injury, in the context of their psychological and social needs. This approach tailors treatment and rehabilitation to the individual's circumstances and is designed to improve outcomes. A key feature of the approach is earlier intervention, along with processes that avoid further trauma to injured and ill workers.

Biopsychosocial approach

'Biopsychosocial' is a portmanteau of 'biological', 'psychological' and 'social'. It recognises the interrelationship of the 3 factors that positively influence recovery for the ill or injured. In this terminology:

- 'biological' refers to the physical or psychological health condition
- 'psychological' recognises personal factors that can influence functioning
- 'social' recognises the environmental factors or situational context of the person that can influence functioning.[26]

[24] Comcare, *Service charter*, 2023, Comcare, accessed 13 June 2025. Available at www.comcare.gov.au/about/governance/service-charter.
[25] Comcare, *Scheme guidance – Best-practice decision making under the SRC Act,* 2025, Comcare, accessed 13 June 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/best-practice-decision-making.
[26] World Health Organization, *Towards a common language for function, disability and health*, 2002, WHO.

The inclusion of psychological and social considerations distinguishes this approach from the biological or medical care only model formerly practised in Australia. The biopsychosocial model was first proposed in 1977 by George Engel to improve research, teaching and health care.[27] Since then, the model has become the orthodox model for health care.[28]

In 2011, the Heads of Workers Compensation Authorities and Heads of Compulsory Third Party prepared and published the Biopsychosocial Injury Management position paper. It recognises 'the World Health Organization's generic biopsychosocial model of health, illness and disability as relevant to workers' compensation regulation, policy, and scheme administration'. The paper acknowledges this approach is 'critical to improving outcomes for injured people' across treatment, rehabilitation, return to work and claims management.[29]

Person-centred approach

Taking a person-centred[30] approach means involving the injured or ill worker in discussions and decisions about their treatment plan. The plan needs to focus on what will work best for the worker in their circumstances, including their abilities, culture and social environment. For case management, the model requires taking a flexible and responsive approach to meeting individual needs, rather than applying standard processes and procedures.[31] Person-centred processes have been shown to improve worker safety, compliance with rehabilitation, and the quality and cost-effectiveness of health care.[32]

The National Disability Insurance Scheme (NDIS) uses a whole-of-person approach that puts people with disability at the centre of decision-making. This is implemented through a care plan developed and agreed with the person. The plan is designed to provide support for the person in pursuing their goals and taking part in work and community life.[33] The recipient has discretion about how to use their funding to pay for NDIS supports (services and items) in their plan that relate to their disability.[34] Best practice requires a similar approach for those injured at work.

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[27] GL Engel, 'The need for a new medical model: A challenge for biomedicine', 1977, 196(4286): *Science*, pp 129–36.
[28] D Bolton and G Gillett, 'Chapter 1 The Biopsychosocial Model 40 Years On', *The Biopsychosocial Model of Health and Disease: New Philosophical and Scientific Developments*, 2019, Cham (CH): Palgrave Pivot.
[29] Heads of Workers' Compensation Authorities and Heads of Compulsory Third Party, *Biopsychosocial Injury Management*, 2012, Heads of Workers' Compensation Authorities.
[30] This approach may also be called worker-centric, human-centered, individual-focused, whole-of-person or similar.
[31] Institute for Safety, Compensation and Recovery Research, *Best practice for person-centred case management: A literature review*, 2021, Evidence Review 298, p 4.
[32] Australian Commission on Safety and Quality in Health Care, *Patient-centred care: Improving quality and safety through partnerships with patients and consumers*, 2011, Australian Commission on Safety and Quality in Health Care.
[33] National Disability Insurance Scheme (NDIS), *Principles we follow to create your plan*, 2025, NDIS, accessed 16 June 2025. Available at https://ndis.gov.au/our-guidelines.
[34] NDIS, *Your Plan*, 2025, NDIS, accessed 16 June 2025. Available at https://ourguidelines.ndis.gov.au/your-plan-menu/your-plan.

Early intervention

Early intervention in workers' compensation is a rapidly developing area.[35] There is universal consensus that intervening shortly after illness or injury improves recovery and return to work outcomes. Currently, there is no consistent definition of what constitutes early intervention in workers' compensation, in literature or in practice.[36] Typically, early intervention is the provision of assistance as soon as possible after injury or illness, and within at least 3 months of onset.

There is strong evidence that early interventions that improve return to work outcomes in a workers' compensation setting are:

- early contact and exploration of support needs
- regular and effective communication
- genuine consultation in the workplace
- provision of vocational rehabilitation services
- coordinated multi-domain interventions between healthcare, workplace and insurer services.[37]

1.2.2 Previous reviews

Hanks Review

In 2012, the Australian Government commissioned a review of the SRC Act to be undertaken by Dr Allan Hawke AC and Mr Peter Hanks QC (now KC), who each reported separately on assigned parts of the review terms of reference.

The Hanks Review was intended to provide a blueprint for modernising the SRC Act. The report recommended changes to the SRC Act to incorporate best practice, such as:

- rewriting the SRC Act in the light of guiding principles, including the biopsychosocial model of health, illness and disability
- explicitly providing for early intervention as a primary form of rehabilitation, supported by provisional liability payments
- supporting rehabilitation provisions with an injury management and rehabilitation code of practice that reflects the biopsychosocial approach to injury management.[38]

None of these recommendations have since been reflected in amendments to the SRC Act. However, administrative changes to support a form of early intervention have been made, including through best practice guidance.

[35] Monash University, *Early Intervention in the workers' compensation process*,2024, SWA, p 6.
[36] Monash University, *Early Intervention in the workers' compensation process*, 2024, SWA, p 4.
[37] Monash University, *Early Intervention in the workers' compensation process*, 2024, SWA, pp 57–60, 68.
[38] Hanks Review, paras 3.18, 6.47, Recommendations 6.1, 6.9.

Rozen Review

Peter Rozen QC conducted a review of WorkSafe Victoria's management of complex workers' compensation claims under the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) (WIRC Act). Notably, he recommended a code of injured workers' rights.

Among other things, he was asked to inquire into 'whether case management processes and practices for complex claims reflect best practice and provide tailored treatment and support based on biopsychosocial factors, individual circumstances and medical advice'. Rozen recommended WorkSafe Victoria:

- identify whether claims are complex or at risk of becoming complex by triaging them based on individual needs (using biopsychosocial factors) and not just the duration of the claim, essentially changing the triage criteria
- establish a complex claims unit that uses a biopsychosocial approach to manage such claims.[39]

The Victorian Government's response noted complex claims are already managed by a unit that uses a person-centred approach for claims management.[40] As such, the government considers this recommendation to have already been implemented. Overall, however, the government supported the Rozen Review's recommendation for assessing the complexity of an injured worker's claim and developing a biopsychosocial model for triaging claims. The most recently published implementation update shows work on this recommendation is underway.[41]

Improving injury outcomes in the Tasmanian State Service project, 2025

The WorkCover Board Tasmania initiated a project to better understand experiences of injured Tasmanian State Service workers and identify opportunities to improve the workers' compensation process.

The project heard that workers felt dehumanised by workers' compensation processes, and that they were not treated as individuals with unique needs and circumstances. It recommends practical strategies to address this issue across all aspects of the workers' compensation process, with a focus on empathy, person-centred support, clear communication, and support tailored to the individual worker.[42]

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[39] P Rozen QC, *Improving the experience of injured workers: A review of WorkSafe Victoria's management of complex workers' compensation claims* (Rozen Review), 2021, WorkSafe Victoria, Recommendations 14, 19, 20.
[40] See response to recommendations 4 and 7, Victorian Government, *Independent Review into Complex Workers' Compensation Claims Management Victorian Government Response*, 2022, WorkSafe Victoria, accessed 26 August 2025. Available at www.vic.gov.au/victorian-workers-compensation-system-independent-review.
[41] WorkSafe Victoria, *WorkSafe Implementation Plan Quarterly Report July-September 2023*, July 2024, WorkSafe Victoria, accessed 2 July 2025. Available at www.vic.gov.au/victorian-workers-compensation-system-independent-review.
[42] WorkCover Board Tasmania, *Improving injury outcomes in the Tasmanian State Service project*, 2025, WorkCover Board Tasmania, accessed 18 September 2025. Available at www.workcover.tas.gov.au/our-work/compensation/improving-injury-outcomes-in-the-tasmanian-state-service.

The WorkCover Board Tasmania accepted all recommendations and funded a project to implement the findings. Implementation will involve collaboration between WorkSafe Tasmania, the Tasmanian State Service agencies, worker representatives and workers.[43]

1.2.3 State and territory arrangements

In addition to the examples of biopsychosocial approaches provided in recent reviews, jurisdictions are undertaking person-centred and early intervention activities. These include:

- using screening tools to triage and provide timely access to support for injured and ill workers
- providing systems navigation support for workers, employers and service providers
- enabling provisional liability, noting some schemes limit this to psychological injury claims
- using mobile case managers.[44]

Jurisdictions have also supported a clinical framework for delivering health services developed by WorkSafe Victoria and the Victorian Transport Accident Commission. The framework includes adopting the biopsychosocial approach in medical care, empowering the injured person and focusing on 'optimising function, participation and return to work'.[45]

The *Return to Work Act 2014* (SA) has embedded a person-centred approach in the operations of Return to Work SA. For example, mobile case managers are used when the injured or ill worker is likely to be absent for more than 2 weeks. The mobile case manager can meet in person with the worker, collaborating with them, their employer and treating practitioners to provide timely assistance and decisions. This can include on-the-spot decisions and approval for certain specialist support services such as:

- medical and allied health services
- return to work initiatives including worksite modifications
- job placement services if the worker is unable to return to their pre-injury employer.[46]

A person-centred approach is also applied to resolving disputes in South Australia. Claimants are encouraged to speak with their case manager. The legislation provides for claims to be redetermined to give effect to agreements reached between the parties or to reflect progress parties have made in resolving points of contention.[47]

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[43] WorkCover Board Tasmania, *Improving injury outcomes in the Tasmanian State Service project*, 2025, WorkCover Board Tasmania, accessed 2 July 2025. Available at www.workcover.tas.gov.au/our-work/compensation/improving-injury-outcomes-in-the-tasmanian-state-service.
[44] Monash University, *Early Intervention in the workers' compensation process*, 2024, SWA, pp 65–66.
[45] Transport Accident Commission and WorkSafe Victoria, *Clinical framework for delivery of health services*, 2022, WorkSafe Victoria.
[46] ReturnToWorkSA, 'Personalised claims management', ReturnToWorkSA, accessed 20 June 2025. Available at www.rtwsa.com/claims/when-an-injury-occurs/personalised-case-management.
[47] *Return to Work Act 2014* (SA), ss 31(9), 31(10)(a).

1.2.4 What we heard

Our issues paper sought views on what is best practice for workers' compensation. While this was not addressed in all submissions, those that did comment supported a person-centred approach that integrated biopsychosocial principles and prioritised early intervention.

Biopsychosocial approach

Submissions overwhelmingly supported a biopsychosocial approach to workers' compensation. Reasons given were that the Comcare scheme does not consider psychological and social factors alongside the claimant's injury, negatively affecting rehabilitation.[48] Many stakeholders stated that best practice recovery plans address these factors holistically.[49] The Safety Rehabilitation and Compensation Licensees Association (SRCLA) recommended implementing a biopsychosocial model for psychological injuries.[50] The Australian Council of Trade Unions (ACTU) recommended creating a 'complex claims unit' that applies biopsychosocial principles to recovery and rehabilitation of psychological claims.[51]

> A best practice workers' compensation scheme focuses on proactive identification and management of workplace injury and disease with a biopsychosocial approach to recovery.
>
> **John Holland Licensees submission, p 2.**

> Effective and proactive management of claims includes recognising the importance of the biopsychosocial approach.
>
> **Comcare submission, p 12.**

Person-centred approach

Submissions expressed concern that the Comcare scheme prioritises administrative processes and procedures over claimants' wellbeing. Several submissions observed that it has no empathy for claimants and that the process retraumatised them.[52] One claimant pointed out that 'the lack of empathy and comprehension from the many (10) case managers and senior staff has exacerbated my sense of isolation and frustration, making the journey through the system feel even more daunting and lonely'.[53]

The Royal Australian and New Zealand College of Psychiatrists' (RANZCP) submission said '[c]laimants who are experiencing mental ill health as a result of psychological injuries are vulnerable to traumatisation and further harm by opaque and adversarial systems'.[54]

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[48] Safety Rehabilitation and Compensation Licensees Association (SRCLA) submission (unpublished), p 3.
[49] Monash user-experience study, p 35; John Holland Licensees submission, p 2; Australian Manufacturing Workers' Union (AMWU) submission, p 45.
[50] SRCLA submission (unpublished), p 2.
[51] Australian Council of Trade Unions (ACTU) submission, p 13.
[52] AMWU submission, p 13; Individual submission No. 115, p 10; Mothers in Arms submission, p 4.
[53] Individual submission No. 96, p 2.
[54] Royal Australian and New Zealand College of Psychiatrists (RANZCP) submission, p 3.

Other submissions suggested developing equitable mechanisms to address barriers to engagement within the current scheme.[55] The Australian Community Industry Alliance said a person-centred approach is an important step to support injured workers, but 'also to maintain the sustainability of the scheme'.[56] Pacific National's view was that any scheme '… has to start with the injured worker at the heart of it'.[57] Others' focus was on those with life-long injuries and psychological injury.[58]

Many submissions called for the Comcare scheme to require consultation with the claimant throughout the claims process.[59] It was argued that this would ensure claimants are directly involved in their early intervention program, return to work plan, choice of rehabilitation provider and management of their claim, particularly in psychological injury cases.[60] The Australian Community Industry Alliance said worker choice must always be balanced with quality, safety and sustainability.[61] It suggested a best practice scheme would include an objective to integrate best practice services and safety for vulnerable people.[62]

> A person-centred scheme will work to benefit all workers, including those from diverse groups.
>
> **CPSU submission, p 17.**

> Ensuring rehabilitation plans are worker-centred rather than dictated by cost-cutting measures.
>
> **Individual submission No.153, p 2.**

> [Our] recommendations are designed to ensure a person-centred approach to compensation, especially for those people who are making mental health related claims.
>
> **RANZCP submission, p 2.**

Several submissions focused on the importance of training in trauma-informed care and communication skills.[63] The RANZCP pointed out the Comcare scheme needed to 'embed evidence-based and trauma-informed practices in the compensation process to ensure that claimants receive fair and effective support.'[64] The Family and Injured Workers Advisory Committee (FIWAC) suggested using 'trauma-informed and strength-based language' in any new or amended legislation.[65]

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[55] Australian Association of Psychologists Inc submission, pp 4–5; RANZCP submission, p 2.
[56] Australian Community Industry Alliance submission, p 9.
[57] Pacific National submission, p 2.
[58] Australian Community Industry Alliance submission, p 7; RANZCP, p 3.
[59] ACTU submission, p 10; Community and Public Sector Union (CPSU) submission, p 24; Electrical Trades Union submission, p 3.
[60] ACTU submission, pp 13, 30; CPSU submission, p 12.
[61] Australian Community Industry Alliance submission, p 8.
[62] Australian Community Industry Alliance submission, p 7.
[63] Grant Edwards submission, p 5; Monash user-experience study, p 35.
[64] RANZCP submission, p 2.
[65] Family and Injured Workers Advisory Committee correspondence to the SCR Act Review Panel 7 July 2025.

Early intervention

Several submissions suggested ways to incorporate best practice early intervention in the SRC Act, including defining the concept.[66] Many agreed it is vital to treat a worker's injury or illness in the period before a claim is determined.[67] Comcare said stronger early intervention programs should be incorporated into the Comcare scheme to achieve better health and return to work outcomes.[68] However, respondents to the survey indicated existing early intervention programs needed significant improvement.

A notable theme in the submissions was the need to establish robust early intervention initiatives for psychological claims. The Australian Association of Psychologists argued that early intervention for psychological injuries was critical, and pre-approved access to treatment should be standard.[69] The Australian Psychological Society referred to effective schemes in some state or territory schemes. An example was the WorkSafe Queensland scheme, which includes 'GP consultations, psychology sessions, psychiatry appointments, and medication'.[70] Comcare also supported timely access to psychological treatment.[71]

> Early intervention is critical in reducing the timeframe of an injury.
>
> **Slater and Gordon submission, p 5.**

> [The Scheme] has lagged in one important area in particular – the need for early intervention after injury.
>
> **Peter Sutherland submission, p 2.**

> A co-ordinated early intervention approach to managing workers' claims is essential.
>
> **Australian Psychological Society submission, p 2.**

1.2.5 What we considered

We considered the central aims of workers' compensation schemes and the principles that provide the framework for achieving them.

The aims of Australia's workers' compensation systems are to promote prevention, provide rehabilitation to support return to work, and provide compensation for associated financial losses. Effectively providing these 3 elements was previously considered best practice for workers' compensation.

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[66] CPSU submission, p 4.
[67] Peter Sutherland submission, p 2; ACTU submission, p 42; CPSU submission, p 11; Monash user-experience study, p 5.
[68] Comcare submission, p 35.
[69] Australian Association of Psychologists Inc submission, p 3.
[70] Australian Psychological Society submission, p 3.
[71] Comcare submission, pp 7–8.

The 1974 Woodhouse Report described this well.

> *'It is self-evident that the problem of incapacity, whether arising from injury or from sickness, demands an attack on three fronts. The most important is obviously prevention. Next in importance is the obligation to rehabilitate the injured and the sick. Finally, there is the need to provide economic assistance in the form of compensation for their losses. The priorities need to be emphasised and particularly is it [sic] necessary to ensure that the objective of compensation does not bear down upon the far more important need for the restoration of health and physical well-being.'*[72]

The Insurance Council of Australia (ICA) set out best practice governance principles for workers' compensation schemes. They were to:

- contribute to preventing injury
- support injured and ill workers' return to work
- assist with full recovery
- compensate fairly
- charge employer premiums that are affordable, reflect risk and fully fund the scheme.[73]

In addition to the above principles, the ICA said best practice workers' compensation schemes should:

- have clear objectives based on a coherent set of guiding principles
- minimise political involvement – noting that governments are important stakeholders, but purely political agendas should not drive scheme design or management.[74]

The Australasian Faculty of Occupational and Environmental Medicine (AFOEM) advocated for adopting the biopsychosocial approach in workers' compensation. AFOEM has published *It Pays to Care – Bringing evidence-informed practice to work injury schemes helps workers and their workplaces*, an evidence-based report in support of the biopsychosocial approach in workers' compensation. The report shows scheme regulation, case management, the workplace and the healthcare system can better operate to meet the individual needs of injured and ill workers. Their research highlights the benefits of returning individuals to health and work without causing further harm.[75]

It Pays to Care includes evidence of a significantly higher chance of poor health outcomes in a compensable setting than for the same condition in a non-compensable setting. At the same time, the report pointed out that the adverse effect of compensation on recovery and return to work diminishes

[72] AO Woodhouse and CLD Mears, *Report of the National Committee of Inquiry on Compensation and Rehabilitation in Australia*, 1974 Parliamentary Paper No. 100, Volume 1, 1974, Australian Government, p 4.
[73] Finity, *A best practice workers compensation scheme*, 2015, Insurance Council of Australia, p 4.
[74] Finity, *A best practice workers compensation scheme*, 2015, Insurance Council of Australia, p 12.
[75] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – Bringing evidence-informed practice to work injury schemes helps workers and their workplaces*, 2022, Royal Australasian College of Physicians.

when the employer responds positively to the injury, and the claimant has supportive interactions with their claims manager. These findings are illustrated in *It Pays to Care* by analysis of data from the National Return to Work Survey conducted in 2013 and 2014, which showed the following:

- When the employer's response to a worker's injury report was positive or constructive, the return to work rate was 43% higher in physical injury cases and 52% higher in psychological injury cases.
- When interactions with the case manager and the system in general were positive, the injured worker's return to work was 25% more likely for a physical injury and 13% more likely for a psychological claim.[76]

AFOEM reinforced these findings with calls for improved health outcomes for those accessing workers' compensation by:

- ensuring scheme culture, systems and processes do not create unnecessary barriers to recovery, and encourage factors known to assist recovery and return to work
- systematically capturing and using psychosocial information on individual claims to better manage psychosocial risk during the claims management process and provide claimants with timely support according to need.

An AOEFM companion paper to *It Pays to Care* proposed principles to achieve these aims in a health injury insurance scheme.[77] The paper incorporates early intervention and person-centred approaches. The paper incorporates early intervention and person-centred approaches.

Broadly, *It Pays to Care: A values and principles based approach* includes the following principles.

- **Leadership**: Regulators and insurers set the tone and standard for schemes through their actions in the areas of legislation, standards, culture, scheme oversight and delivery, and dispute systems.
- **A culture of collaboration**: Encouraging a collaborative culture develops high levels of trust or social capital between workers, supervisors, return to work coordinators, doctors, unions and other stakeholder groups.
- **Fairness**: Workers who perceive they have been treated fairly have a faster recovery, improved quality of life, better health and reduced healthcare service use. This translates to a 25% higher chance of returning to work. Quality decision-making and fair processes are central to this.
- **Health of workers is the priority**: Evidence-informed management is led by healthcare providers who offer holistic and culturally sensitive care.
- **Active and responsive management of individual cases**: Procedurally fair, timely, proactive and supportive case management produces better outcomes. It should be characterised by early communication with workers and employers and embedded in strong systems and support structures.

[76] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – Bringing evidence-informed practice to work injury schemes helps workers and their workplaces*, 2022, Royal Australasian College of Physicians, pp 28–29.
[77] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – A values and principles based approach*, 2022, Royal Australasian College of Physicians.

- **Effective communication**: Positive communication practices reduce costs and measurably affect recovery and return to work. Timely access to clear and appropriately presented information (that is, in plain language and with options for non–English speakers) also increases the perception of fairness.
- **Long-term thinking**: Considering the long term encourages broader and deeper focus on evidence-informed practice and offsets the limitations of a short-term reactive focus on key performance indicators and short-term financial results.

These principles are especially important when managing claims for psychological injury, which are considered complex because symptoms and treatments can vary between individuals, reporting is often delayed, recovery typically takes longer and relapse is common. SuperFriend and Safe Work Australia's (SWA's) 2018 report, *Taking Action: A best practice framework for the management of psychological claims in the Australian workers' compensation sector*, said best practice management of psychological injury claims focuses on 4 domains: person-centred processes, collaboration between all parties, supports and interventions tailored to the person using a biopsychosocial approach, and outcome-focused decision-making.[78]

The submission from Comcare in response to our issues paper aligns with these views:

> *'The claims manager relationship with an injured worker is integral to the experience of the injured worker through the claims process. Effective and proactive management of claims includes recognising the importance of the biopsychosocial approach and early intervention, and capabilities in the various "soft" skills (that is, empathy, resilience, sound judgement, effective stakeholder management) required by claims managers.'*

Safe Work Australia's *National Return to Work Strategy 2020–2030* also highlights the importance of this relationship and extends it to the employer and supervisor. The strategy recognises that prevention, early intervention, recovery and return to work are on a continuum, with lessons learnt in one part used to inform improvements in another.[79] National priorities and activities in the strategy include:

- adopting a tailored, person-centred and coordinated approach to meet individuals' needs
- encouraging early contact and support immediately following notification and on an ongoing basis
- implementing the best practice Taking Action framework, which recommends a biopsychosocial approach for managing psychological claims
- addressing delay in employer and insurer decision-making where it is hampering early intervention, including by identifying and improving the modifiable aspects of claims processing and determination practices.[80]

[78] SuperFriend, *Taking Action: A best practice framework for the management of psychological claims in the Australian workers' compensation sector*, 2018, SWA, 2018, pp 16–17.
[79] SWA, *National Return to Work Strategy 2020–2030*, 2019, SWA, p 16.
[80] SWA, *National Return to Work Strategy 2020–2030*, 2019, SWA, pp 23, 30, 35–36.

For maximum effect and greatest benefit for all scheme participants, we consider that a person-centred or biopsychosocial approach must be embedded in the Comcare scheme's legislative foundations, culture and operations. This will address many of the challenges vulnerable injured or ill workers face and improve services for all. A best practice scheme must be capable of meeting evolving worker, employer, government and public expectations. It also needs to empower all participants in the scheme to act with compassion and care to ensure making a claim does not cause additional or new trauma.

We have identified the features of the best practice scheme advocated in our review. We use the icons throughout Part C to indicate the principle underpinning our recommendations. See the Best practice principles key in Part A.

1.2.6 Panel recommendation

Recommendation 1

We recommend the following principles guide the reform to the Comcare scheme so the scheme aligns with current thinking on best practice to ensure future challenges can be met:

a. **Harm prevention**:
   i. Injured and ill workers achieve a sustainable return to health and a safe return to work

b. **Certainty**:
   i. Injured and ill workers can easily understand and access their entitlements
   ii. Clarity is provided on specific requirements of the legislation, so duties are discharged

c. **Support**:
   i. Supports are tailored to individual needs by adopting a person-centred approach
   ii. Injured and ill workers are provided with proactive rehabilitation, retraining, other supports and guidance to help them navigate the scheme and their recovery process
   iii. Injured and ill workers and their families are effectively supported and represented throughout the case management process

d. **Fairness and equity**:
   i. Injured and ill workers are treated fairly, with dignity and respect, and interactions with employers and determining bodies are positive
   ii. Decision-making is efficient, compassionate and transparent, and applies equitably to all injured and ill workers
   iii. Injured and ill workers and their families are quickly and adequately compensated
   iv. Disputes are resolved quickly, informally and fairly to minimise harm

e. **Collaboration**:
   i. Participants consult, cooperate and coordinate activities to improve outcomes
   ii. Claims management is active and responsive to achieve optimum outcomes

f. **Accountability and adaptability**:
   i. Compliance with duties is effectively enforced
   ii. Governance arrangements are robust, transparent, efficient and fit for purpose and scale
   iii. Scheme arrangements adapt to changes in workplace environments and technological developments

g. **Sustainability**:
   i. The scheme remains financially viable and premium and regulatory settings improve safety outcomes
   ii. Education, research and other initiatives are undertaken to improve services.

1.3 Best practice laws

1.3.1 Background

Legislative drafting practices have developed significantly since the SRC Act was initially developed. They typically include objects clauses, simplified summaries and other helpful features. None of these are found in the SRC Act. Nor does the SRC Act include principles to guide the actions of Comcare or the SRCC. The SRC Act has evolved through piecemeal amendments to provisions, affecting the logic of its structure. In combination, these make the SRC Act hard to navigate, understand and implement.

1.3.2 Previous reviews

Hanks Review

The Hanks Review examined the structure and content of the SRC Act. Hanks recommended 'that the SRC Act include a statement of the Act's objects and a purpose'. He proposed the objects articulate the outcomes expected from the legislative provisions, focusing on a worker's capacity for work, as well as the governance arrangements and long-term viability of the Comcare scheme.[81]

Hanks observed that the large number of amendments have resulted in workers covered by the SRC Act experiencing different outcomes because the changes operate prospectively from a specified commencement date, rather than retrospectively. He recommended rewriting the SRC Act using a logical and functional structure that prioritises rehabilitation, then follows the typical course of a claim, and finally addresses scheme governance.[82]

These recommendations have not been implemented.

Rozen Review

The Rozen Review looked at management of complex claims under the WIRC Act and suggested that an objective of the WIRC Act should be that injured workers are to be treated with dignity and respect.[83] Amendments to the WIRC Act, passed on 31 July 2025, implement these recommendations.

New Directions, British Columbia, 2019

A 2019 review of workers' compensation in British Columbia, Canada, which has a scheme similar to Comcare, recommended its Act include a preamble and statement of purpose to provide a statutory mandate and assist with a cultural shift to supporting all injured workers as an organisational goal. The preamble and statement were to be consistent with the biopsychosocial approach to integrating social and medical models of disability.[84]

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[81] Hanks Review, Recommendation 3.2.
[82] Hanks Review, Recommendation 3.3.
[83] Rozen Review, Recommendations 4, 7.
[84] J Patterson, *New Directions: Report of the Workers' Compensation Board Review 2019*, 2019, WorkSafeBC, pp 275–276.

A revised version of British Columbia's Workers Compensation Act took effect in 2020. The amendment reorganised the Act to make laws easier to find, and modernised the language to make it easier to read and understand. The Act has been amended 3 times since then.[85] The recommendation for a preamble and statement of purpose was not implemented. The recommendation for a preamble and statement of purpose was not implemented.

1.3.3 State and territory arrangements

A direct comparison of jurisdictional workers' compensation Acts is not useful given that different drafting protocols apply. As a general observation, however, the Acts most recently redrafted focus on rehabilitation and return to work, before addressing compensation and dispute resolution.

With the exception of those of Western Australia and the Australian Capital Territory, the state and territory Acts have objects. The objects are largely consistent, covering:

- rehabilitation and recovery
- early return to work
- fairness and efficiency
- provision of compensation
- insurer cost burden or affordability.

Some jurisdictions have additional objects that focus on specific areas, such as dispute resolution or injury management. For example, the South Australian Act includes an object to ensure 'workers who suffer injuries at work receive high-quality service, are treated with dignity, and are supported financially'.[86] As noted earlier, amendments to the WIRC Act in Victoria added an object ensuring workers are treated with dignity and respect.

The titles of the Acts also vary, reflecting the main focus of each. Their titles include one or more of the following terms:

- 'Workplace' or 'Workers'
- 'Injury' or 'Injury management'
- 'Rehabilitation'
- 'Return to work'
- 'Compensation'.

Some states and territories provide for periodic review of workers' compensation schemes to ensure the scheme and underpinning legislation remain relevant. For example, Queensland's Act requires 5-yearly views.[87] The Victorian Act was amended in August 2025 to provide for a statutory review of the

[85] WorkSafe British Columbia, *Amendments & revisions to the Act*, WorkSafeBC, accessed 2 July 2025. Available at www.worksafebc.com/en/law-policy/workers-compensation-law/amendments.
[86] *Return to Work Act 2014* (SA), s 3.
[87] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 584A.

compensation scheme on or by 31 December 2030 and at least once every 5 years after that date.[88] During the second reading of the Bill, a government member stated that the amendment:

> *'... recognises that regular, proactive reviews of the Victorian workers compensation scheme will enable trends and issues to be identified as they emerge rather than when they are already significant issues.'*[89]

1.3.4 What we heard

The issues paper sought views on the changes required to incorporate best practice and to address workforce challenges to maintain an effective and sustainable scheme.

Many submissions discussed claimants' difficulty in navigating the complexity of the Comcare scheme. They stressed the importance of streamlining processes and simplifying the language.[90] Some said that many claimants required legal representation to understand the scheme, and without this they could not make informed decisions.[91] Maurice Blackburn Lawyers wrote, 'Comcare is the most complex of all statutory compensation schemes in the country, and also the one that provides the least assistance to those in its care in navigating its legal complexities.'[92]

> Navigating the Comcare scheme, legislation, Case Officers, policies, etc. is extremely hard and often trying. For those with mental health issues, it is even more so. I speak from experience.
>
> **Individual submission No. 115, p 3.**

> ...the Comcare scheme creates a highly challenging scheme for an injured worker to navigate.
>
> **Pacific National submission, p 4.**

> Simplifying the language and structure of the legislation can make it more accessible.
>
> **Australian Taxation Office submission, p 2.**

Several submissions included recommendations to incorporate modern drafting practices into the SRC Act to improve clarity. There was widespread support for including an objects section in the SRC Act.[93] Submissions also stated that the legislation should be accessible[94] and written in plain

[88] *Workplace Injury Rehabilitation and Compensation Amendment Act 2025* (Vic), s 33 (new s 605A).
[89] Victoria, *Parliamentary Debates,* Legislative Assembly, 14 May 2025, p 1766 (Luba Grigorovitch MP).
[90] Australian Taxation Office submission, p 2; Comcare submission, p 5; Australian Education Union (ACT) submission, p 8; John Holland Licensees submission, p 2.
[91] Maurice Blackburn Lawyers submission, p 12; Pacific National submission, p 2; Grant Edwards submission, p 2; Australian Education Union (ACT) submission, p 9.
[92] Maurice Blackburn Lawyers submission, p 4.
[93] Comcare submission, p 4; Australian Association of Psychologists submission, p 2; Peter Sutherland submission, p 3; Australian Lawyers Alliance submission, p 6; Slater and Gordon submission, p 4.
[94] Australian Education Union (ACT) submission, p 8; Individual submission No. 5, p 3; Australian Association of Psychologists Inc submission, p 3; John Holland Licensees submission, p 2.

language,[95] and its structure should be logical and easy to follow.[96] It was also suggested that the legislative framework should be flexible – using regulations, directives and guidance material – to enable faster responses to changing work environments and other developments.[97]

1.3.5 What we considered

Earlier, we identified the best practice principles that should guide the reforms to the Comcare scheme. It is also necessary to ensure that the law giving effect to these principles is easy to understand so injured and ill workers are aware of their rights and obligations, and to facilitate access to justice. We considered that this aim could be achieved through:

- modern drafting practices
- principles-based regulation
- logical structure
- use of objects
- title
- regular review.

Modern drafting practices

> *'Legislation that is unintelligible, unclear, or difficult to navigate and understand, has significant practical implications. For one thing, such legislation is less likely to be complied with, and people may be unaware of whatever rights it affords them. Such legislation may even cause injustice, by requiring the observance of standards which are unreasonably difficult to know or comply with. More generally, such legislation is costly and burdensome to those who must use it.'*[98]

Submissions frequently raised issues about the ease of understanding, interpreting and applying the SRC Act. Many of these concerns can be addressed by using modern drafting practices.

Drafting practices have changed significantly over the past 4 decades. In the mid-1980s there was growing concern about the community's ability to understand the law.[99] Legislation that is difficult to read leads to reliance on those with legal expertise. Furthermore, unnecessarily complex legislation requires more time to interpret and increases cost to the individual and the community. Alongside access to justice issues and cost, there was a recognition that unnecessarily complex legislation

[95] Individual submission No. 5, p 3; Australian Taxation Office submission, p 2.
[96] John Holland Licensees submission, p 10; Australian Taxation Office submission, p 2.
[97] Australian Community Industry Alliance submission, pp 7–8; Comcare submission, p 6; Australian Taxation Office submission, p 2; Rehabilitation Case Manager submission 5; Comcare submission, p 8.
[98] W Isadale, S Simones da Silva, 'User-friendly legislation: Why we need it and how to achieve it', 2023, *Australian Law Reform Commission News*.
[99] R Creyke et al., *Laying down the law, 10th ed*, 2018, LexisNexis Butterworths, p 323; Office of Parliamentary Counsel (OPC), *Plain English Manual*, OPC, p 5.

creates public dissatisfaction with the legal system.[100] Critics championed a new type of legal drafting that could be easily understood.

Modern drafting principles espouse simplicity.[101] The Office of Parliamentary Counsel (OPC) states it is best practice to draft legislation using plain language. Plain language contains no unnecessary obscurity and complexity.[102] The language is precise, direct, familiar and avoids jargon.[103] Sentences are written in an active voice and framed in a positive rather than negative tone. Modern drafting also draws on evidence-based research and experts in document design to organise legislation in a clear and accessible manner. The sequencing of legislation is logical and easy to follow. The legislation uses mechanisms that make it easy to navigate, such as a table of contents, headings and subheadings. It also includes information to help the reader make sense of the legislation, such as purpose statements, explanatory notes and examples.[104] Comprehensive reviews of legislation are necessary for modern drafting because continual amendments of small sections of Acts can impair their clarity as a whole.[105]

We accept that in order to take advantage of modern drafting practices, the SRC Act would need to be rewritten. We appreciate this is not a minor undertaking. The OPC advises that, while a rewrite to improve the drafting may be quicker and easier than a rewrite involving a complete reconsideration of the legislation, the benefits may be correspondingly smaller.

The Bills Digest for the SRC Act Bill, 'Improving the Comcare scheme', noted:

> *'Despite the introduction of this Bill and the previous two Bills into the Parliament, the net result falls short of the rewrite of the SRC Act which the Hanks Report suggested … [A]ll parties are deserving of a plain English statement of their rights and obligations. The amendments to the SRC Act do not provide that.'*[106]

The amendments we propose will require a rewrite of the SRC Act not only to provide all parties with a plain language statement of their rights and obligations but also because they involve a complete reconsideration of legislation as described by OPC.[107]

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[100] OPC, *Plain English Manual*, OPC, p 5.
[101] OPC, *Plain English Manual*, OPC, p 5.
[102] OPC, *Plain English Manual*, OPC, p 6.
[103] R Creyke et al., *Laying down the law, 10th ed*., 2018, LexisNexis Butterworths, p 323; OPC, *Plain English Manual*, OPC website, p 17.
[104] R Creyke et al., *Laying down the law, 10th ed*.,2018, LexisNexis Butterworths, p 323; OPC, *Plain English Manual*, OPC, pp 323–324.
[105] Attorney-General's Department, *Causes of complex legislation and strategies to address these*, Attorney-General's Department. Available at www.ag.gov.au/sites/default/files/2020-03/causes-of-complex-legislation-and-strategies-to-address-these.pdf.
[106] See 'Reviews of the Comcare scheme', Bills Digest, Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth), August 2015, Parliamentary Library. Available at www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r5434.
[107] OPC, *OPC's drafting services: a guide for clients, 7th ed.*, 2022, OPC, p 12 'Rewriting existing legislation'.

We consider that the principles for clearer laws developed by the Attorney-General's Department should guide the development of the new Act. Consideration should be given to Australian Law Reform Commission guidance on how to reduce legal complexity to achieve user-friendly legislation.[108]

Principles-based regulation

Some submissions suggested principles-based regulation should be used in the SRC Act, akin to the model WHS laws. This is proposed as an alternative to rule-based regulation, which typically provides greater clarity and certainty for users.

Arguably, rule-based regulation is more appropriate in a workers' compensation context, where clarity on eligibility and entitlements is necessary to minimise disputes. It is also often easier to determine when rule-based legislation has been breached, making enforcement more straightforward.

Principles-based regulation is most applicable to situations where a defined result or standard must be met, but there are multiple ways of achieving that outcome. Purely principles-based regulation is rare. It is often accompanied by detailed rules to supplement principles and aid compliance – a hybrid approach. Principles-based legislation also tends to become more prescriptive over time to improve clarity and address issues that arise. The rules are often in subordinate instruments.

Principles-based legislation for claims management processes may enable a more person-centred approach to be incorporated in the SRC Act, while rules could be incorporated in regulation or other legislative instruments. This hybrid approach, combining elements of both rules and principles-based regulation, may be most effective in supporting best practice in claims management while retaining certainty around eligibility and entitlements. To that end, Chapter 3 looks at how duties for scheme participants may be introduced. Other improvements to claims management are in Chapter 4, which looks at introducing principles to guide actions. We also consider the optimal type of instrument to give effect to our recommendations.

Structure

Modern drafting practices also focus on the structure of legislation to improve clarity and navigation. The structure is informed by drafting protocols set out by the OPC. The OPC notes careful consideration is given to the structure, as this can significantly assist readers to understand and absorb information.[109] The OPC uses a common structure across Commonwealth laws that also aids navigation and comprehension. Rewriting the SRC Act would mean applying these drafting protocols and unlocking these benefits. The OPC uses a common structure across Commonwealth laws that also aids navigation and comprehension. Rewriting the SRC Act would mean applying these drafting protocols and unlocking these benefits.

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[108] Australian Law Reform Commission, 'User-friendly legislation: Why we need it, and how to achieve it', *ALRC News*, 19 January 2023, accessed 13 September 2025. Available at www.alrc.gov.au/news/user-friendly-legislation/; Attorney-General's Department, *Reducing the complexity of legislation*, Attorney General's Department, accessed 13 September 2025. Available at www.ag.gov.au/legal-system/access-justice/reducing-complexity-legislation.

[109] OPC, *OPC's drafting services: a guide for clients, 7th ed.*, 2022, OPC, p 33.

The SRC Act has 10 parts:

- Part 1 – Preliminary
- Part 2 – Compensation
- Part 3 – Rehabilitation
- Part 4 – Liabilities arising apart from this Act
- Part 5 – Claims for compensation
- Part 6 – Reconsideration and review of determinations
- Part 7 – Administration and finance
- Part 8 – Licences to enable Commonwealth authorities and certain corporations to accept liability for, and/or manage, claims
- Part 9 – Miscellaneous
- Part 10 – Transitional provisions.

As shown earlier, and discussed by Hanks in his 2013 report, the SRC Act structure could be optimised by aligning it with the typical process of a claim, starting with rehabilitation and concluding with governance arrangements.

Use of objects

When interpreting legislation, its purpose or objects must be considered, as well as the interpretation that best achieves the preferred purpose or objects.[110] The purpose or objects may be expressly stated in an Act but their inclusion, although common today, is not mandatory. Where they are included, objects do not have substantive legislative effect but may clarify the meaning of some elements of the legislation if unclear.[111] Articulating an Act's purpose informs accurate, expected and consistent interpretation of the law. Accordingly, we favour including an objects clause, as Hanks recommended.

Parts and chapters of Acts may also have object clauses or outlines, depending on jurisdictional drafting conventions and need. This is common for provisions dealing with workers' compensation authorities; for example, workers' compensation Acts of New South Wales, Victoria and Western Australia.[112]

The best practice principles we have recommended should be used to inform the development of objects for the new Act.

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[110] *Acts Interpretation Act 1901* (Cth), s 15AA; *Project Blue Sky Inc & Ors v Australian Broadcasting Authority* [1998] HCA 28.

[111] Australian Government, *House of Representatives Practice,* 7th ed., 2018, Department of the House of Representatives, Chapter 10 'Acts' in Chapter 10. Available at www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter10/Acts.

[112] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 22; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 492; *Workers Compensation and Injury Management Act 2023* (WA), s 447.

Title

Legislation has both a long and a short title. Ultimately, the title is a matter for Parliament. The OPC selects the long title and states that it must encompass all the matters included in it.[113] The title is selected carefully, as it can set the cultural and philosophical premise for the scheme it establishes.

We heard from South Australian officials about the titling of the *Return to Work Act 2014* (SA) and how it arose from a need to shift the narrative to achieving the desired outcome of a return to health achieved through return to work. However, they also said that changing the title did little without improvements to the Act itself. When prompted in a consultation meeting, the co-Chair of FIWAC said they considered the title of the South Australian Act to be exclusionary.

Including a reference to 'safety' in the short title of the SRC Act has been raised as a point of confusion, given it is not mentioned in the long title.[114] In addition, the safety of workers is comprehensively dealt with in the *Work Health and Safety Act 2011* (Cth) (WHS Act). The short title of the SRC Act evolved to reflect a change in 1992 when self-insurance licences were introduced, meaning the former title, which referred to 'Commonwealth employees', was no longer appropriate. 'Safety' was added to the title in its place, as the SRC Act established Comcare, which is also responsible for regulating safety in the Commonwealth jurisdiction under the WHS Act. Comcare also promotes safety through setting premium and regulatory fees. However, the SRC Act mainly focuses on rehabilitation and return to work.

We favour a title that reflects the changes in the Act, to emphasise the worker's recovery of health and return to work.

Regular review

The SRC Act does not include a requirement for regular or ad hoc review. The Australian Law Reform Commission recognises that:

> *'Good legislation isn't a set and forget exercise. The world changes, and legislation must change with it. To keep legislation in good order, it is necessary to have systems of periodic review. Unfortunately, such systems are currently lacking, and the result is that badly designed legislation often remains on the books for decades.'*[115]

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[113] OPC, *Drafting Direction No. 1.1 Long and short titles of Bills and references to proposed Acts*, 2019, OPC. See 'Parliamentary amendments of the long title'. Available at www.opc.gov.au/drafting-resources/drafting-directions.

[114] The long title of the SRC Act is: 'An Act relating to the rehabilitation of employees of the Commonwealth and certain corporations and to workers' compensation for those employees and certain other persons, and for related purposes.'

[115] W Isdale and S Simones da Silva, 'User-friendly legislation: Why we need it and how to achieve it', *ALRC News*, Australian Law Reform Commission, 19 January 2023, accessed 13 September 2025. Available at www.alrc.gov.au/news/user-friendly-legislation/.

The principles for workers' compensation schemes call for them to be stable, predictable and adaptable so they can respond to social and economic changes. The challenge is to balance predictability with ensuring the legislation remains fit for purpose.

The process for obtaining approval to undertake a review without an underpinning legislated requirement can be onerous, affecting planning and timely consideration of issues. In this review, we are recommending substantial changes to the Comcare scheme's legislative framework. It is prudent to plan from the outset for an evaluation of the reforms and identify any unintended adverse consequences after implementation.[116] We therefore recommend including a requirement in the new Act to conduct an initial review 5 years after its commencement. This allows sufficient time to implement reforms and drive change across the scheme.

However, a need for further reform or further measures to address emerging issues may become apparent within the first 5 years of the new Act's operation. Such needs may also become apparent after the initial 5-year review. We therefore also recommend that the governing board (see Chapter 7) be able to recommend to the responsible Minister changes to the legislation or a full review of the legislation or of specific sections at any time, including during the initial 5-year period.

Transitional arrangements

We have considered the need for transitional arrangements in light of our recommendation the SRC Act be repealed and replaced with a new Act. Even if our recommendation for a complete rewrite of the legislation is not implemented, transitional arrangements will be needed for matters addressed by other recommendations, to deal with, for example, injuries arising prior to the commencement of the new provisions, claims on foot at the time of commencement, and existing appointments or self-insurance licences.[117]

We consider there should be less complexity in making these transitional arrangements (whether or not the SRC Act is repealed or replaced) because of our recommendations on key provisions on eligibility (see Chapter 2). This will be a matter for the government to consider at the implementation stage. We also note the amendments made over the years to the SRC Act that have generated significant legal disputes, particularly on the application of the Act to pre-existing injuries.[118]

[116] Office of Impact Analysis, *Australian Government Guide to Policy Impact Analysis*, 2023, Department of Prime Minister and Cabinet, pp 41–42.
[117] See section 7 of the *Acts Interpretation Act 1901* (Cth), which deals with the repeal of an Act or part of an Act, and provides that the repeal does not revive the old Act or old part unless express provision is made for the revival.
[118] See P Sutherland, *Annotated Safety, Rehabilitation and Compensation Act 1988, 12th ed*, 2023, The Federation Press, pp 659–694 (Part X).

1.3.6 Panel recommendations

Recommendation 2

We recommend the SRC Act be redrafted using modern drafting practices and embedding trauma-informed language and principles, including by ensuring:

a. its title reflects the objectives the Act is to achieve and sets the tone for achieving those objectives

b. there is a logical structure that aids navigation and assists with ease of comprehension

c. there is an objects clause that focuses on what the Act should achieve and is consistent with the best practice principles

d. there are simplified outlines of chapters.

Recommendation 3

We recommend the new Act contains a requirement to conduct a review of the Act no later than 5 years after its commencement. We further recommend that Comcare's governing board is provided with the ability to recommend to the responsible Minister changes to the Act, or a full review of the Act or of specific parts (including during the initial 5-year period).

Chapter 2. Providing a fair no-fault entitlement to compensation

What this chapter considers

The terms of reference asked us to consider when an injury or illness should be compensable under the new Act.

This chapter considers:

- Who should be covered by the Comcare scheme?
- What injuries and illnesses should be covered by the Comcare scheme and in what circumstances?
- What diseases should be presumed to be covered by the Comcare scheme?
- What should be excluded from liability?

Links to other chapters

This chapter links to Chapter 7 in relation to gaps in coverage that may arise from workers and employers transitioning between Commonwealth and state or territory schemes, employer insolvency, or winding up of a self-insurer. It also has links to Chapter 6, as we make recommendations in this chapter to give greater certainty on when a worker is eligible for compensation, which should also assist in minimising disputes.

The current framework

Definition of employee

Subsection 14(1) of the current SRC Act provides the primary basis for liability to pay compensation for injuries:

> *'… Comcare is liable to pay compensation in accordance with this Act in respect of an injury suffered by **an employee** if the injury results in death, incapacity for work, or impairment' (added emphasis).*

As can be seen, liability arises in respect of injuries suffered by 'an employee'.

The term 'employee' is exhaustively defined by s 5 of the SRC Act. That section provides that an 'employee' is a 'person employed by the Commonwealth or by a Commonwealth authority' or a 'person who is employed by a licensed corporation'. The word 'employed' is not defined, and thus refers to the person being an 'employee' in the ordinary sense.[1]

However, the SRC Act also covers certain categories of people who, while not 'employees' in the ordinary sense, are deemed to be covered, including:

- persons holding certain statutory offices[2]
- persons declared by the Minister to be employees for the purposes of the SRC Act.[3] The Minister may specify persons who engage in activities at the request or direction (or for the benefit) of the Commonwealth, a Commonwealth authority or a licensed corporation, or under a requirement of a Commonwealth law, to be an employee for the purposes of the SRC Act while engaged in those activities. At present, a number of declarations are in force under s 5(6).[4] Examples include various volunteers, employees of independent Commonwealth entities that do not fall within the definition of the 'Commonwealth' or a 'Commonwealth authority', and persons who assist the police or are involved in carrying out search and rescue operations (in specified circumstances). This is a significant expansion to the ordinary meaning of the term 'employee'
- certain persons engaged by the ACT Government[5]
- persons contracted to licensee corporations who, had it not been for the SRC Act licence, would have been entitled to compensation under the workers' compensation legislation of the relevant state or territory in respect of injuries sustained in that work (and death resulting from such injuries).[6] This has the effect of aligning the SRC Act with the states and territories to a degree, in that if a deeming provision in the state or territory would have brought a worker into their scheme, that worker would also be captured by the SRC Act. This provision only applies to licensed corporations, and not Commonwealth authorities and licensed authorities.

To avoid doubt, the SRC Act works to the exclusion of state and territory workers' compensation legislation. That is, if a person's injury is covered by the SRC Act, the state and territory workers' compensation legislation ceases to apply to that injury.[7] In reverse, it also means that a person whose injury is not captured by the SRC Act is not necessarily left without workers' compensation coverage – they may still be covered under a state or territory scheme.

[1] See *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1; *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2.
[2] SRC Act, ss 5(2), 5(3).
[3] SRC Act, ss 5(6), 5(15).
[4] See P Sutherland, *Annotated Safety Rehabilitation and Compensation Act 1988, 12th ed*, 2023, The Federation Press, Appendix 5.
[5] SRC Act, ss 5(11)–5(15).
[6] SRC Act, s 5(1A), which also extends to loss or damage to property.
[7] SRC Act, s 108A(7).

Injury and disease definitions and tests

As noted earlier, s 14 of the SRC Act attaches liability to the suffering of an 'injury',[8] leading the High Court to say that '[t]he concept of "an injury" is a term of pivotal importance to the structure of the Act'.[9] The definition of injury provides the substantive liability provisions, with the SRC Act providing for 2 subsets of 'separate but related bases of liability': diseases and injuries (other than diseases).[10]

The term 'disease' refers to an 'ailment'[11] or an aggravation of an ailment that has been contributed to, to a significant degree,[12] by the employee's employment. Subsection 5B(2) lists certain matters that may be taken into account in determining whether the significant contribution test has been met. Subject to exclusions discussed later, meeting this definition will generally result in compensation being payable.

If the statutory requirements for a disease are not met, the legislation provides for an alternative approach in respect of an 'injury (other than a disease)', being an identifiable change in physiology (or psychology), which would normally be compensable if the injury was caused by work (arising out of employment) or suffered while working or while at work (in the course of employment). The phrase 'arising out of, or in the course of, the employee's employment' carries its ordinary meaning developed over a long history of judicial consideration, extended by s 6, which deems specified circumstances as falling within that phrase.

Disease presumptions

In specified circumstances, the SRC Act will presume that some ailments[13] suffered by workers have been contributed to, to a significant degree, by their employment. The provisions in s 7 operate subject to the 'contrary' being established. In practice, this generally means the ailment will be compensable unless there is compelling evidence that there was no such significant contribution by employment. To the extent that an onus of proof exists in administrative law schemes,[14] these provisions have the effect of reversing that onus.

The current SRC Act contains 4 such presumptive provisions in relation to ailments where:

1. the worker is suffering from a disease specified by the Minister in a legislative instrument related to employment of a kind also specified in the instrument (commonly referred to as the 'deemed diseases list')[15]

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[8] Being an 'injury [that] results in death, incapacity for work, or impairment': see s 14(1) of the SRC Act.
[9] *Canute v Comcare* [2006] HCA 47, [8].
[10] *Military Rehabilitation and Compensation Commission v May* [2016] HCA 19, [39], [42].
[11] Defined in s 4 to mean 'any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development)'.
[12] 'Significant degree' is defined in s 5B(3) to mean 'a degree that is substantially more than material'.
[13] Some of the provisions in s 7 use the term 'disease' in the ordinary (non-defined) sense instead of 'ailment': see *Re Dalton and Comcare* [2018] AATA 2923, [30].
[14] See the discussion in *Comcare v Power* [2015] FCA 1502 (Katzmann J), [56]–[71], including the cases referred to therein.
[15] SRC Act, s 7(1).

2. the worker is suffering from a disease, the incidence of which is significantly greater among workers in particular employment, compared to persons engaged in other employment at the same place[16]
3. the worker, being a firefighter, is suffering from a specified cancer.[17] These provisions provide minimum qualifying service as a firefighter to engage the presumption, depending on the type of cancer suffered
4. the worker is a specified first responder (or other specified worker) suffering post-traumatic stress disorder (PTSD).[18]

Exclusions

A number of exclusions in the SRC Act, if applied, exclude compensation for injuries or illnesses that would otherwise be compensable. These include:

- injuries suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment[19]
- self-inflicted injuries[20]
- injuries caused by the serious and wilful misconduct of an employee, unless that injury results in death, or serious and permanent impairment[21]
- diseases, or aggravations of such diseases, if the employee made a wilful and false representation for the purposes of employment (or proposed employment) that they did not suffer, or had not previously suffered, from that disease.[22]

There are additional exclusions for the operation of the extended definition of 'arising out of, or in the course of, the employee's employment', as found in s 6.[23] This includes journeys between the employee's residence and usual place of work,[24] and to and from selected places of education, medical treatment and rehabilitation.[25] A further provision excludes the operation of the extended definition of 'arising out of, or in the course of, the employee's employment' if the injury was sustained because the worker voluntarily and unreasonably submitted to an abnormal risk of injury.[26]

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[16] SRC Act, ss 7(2)–(3).
[17] SRC Act, ss 7(8)–(10).
[18] SRC Act, ss 7(11)–(14).
[19] SRC Act, s 5A(1).
[20] SRC Act, s 14(2).
[21] SRC Act, s 14(3).
[22] SRC Act, s 7(7).
[23] These provisions do not exclude such journeys from falling within the ordinary meaning of 'arising out of, or in the course of, the employee's employment' as found in s 5A. See *Linfox Australia v O'Loughlin* [2018] FCAFC 173, [28].
[24] SRC Act, s 6(1C).
[25] SRC Act, s 6(2).
[26] SRC Act, s 6(3).

Other matters relating to coverage

The SRC Act extends to all places outside Australia. This includes employees engaged and performing their duties outside Australia. Section 117 modifies the application of the SRC Act for such workers. It provides that compensation for locally engaged overseas employees may be provided through a locally available scheme in force in the foreign country (to the exclusion of the SRC Act). Where no such scheme applies, compensation is paid in accordance with the SRC Act (noting that s 117 may reduce that compensation for some locally engaged workers).

2.1 Who should be covered by the scheme?

2.1.1 Background

As noted earlier, compensation can only be paid in respect of injuries suffered by 'an employee'. That section outlines that an 'employee' is a 'person *employed* by the Commonwealth or by a Commonwealth authority' or a 'person who is *employed* by a licensed corporation' (added emphasis).

In Australia, there are a number of types of workers:

1. An *employee* works under a contract of services. Whether a person is an 'employee' is determined by reference to rights and obligations contained within the contract (written or oral) between them and their employer. A number of factors are relevant to this characterisation of the contract, including control of how and when the job is performed, and how the worker is paid. How the parties characterise the relationship is not relevant, nor is how the relationship works in practice.[27]
2. *Apprentices or trainees* are types of employees who combine work with study for a formal qualification. The specific definition of these terms varies from state to state. As employees, apprentices and trainees gain workers' compensation coverage while performing their duties. Whether injuries sustained in the education component are compensable will depend on the nature of the apprenticeship and the breadth of the relevant workers' compensation scheme's 'course of employment' tests.[28]
3. An *independent contractor* works under a contract for services. If a person is being paid for their services and they are not an employee, they will generally be considered an independent contractor.
    a. A gig worker (referred to in the *Fair Work Act 2009* (Cth) (FW Act) as a 'regulated worker') is a type of independent contractor who is engaged for short-duration jobs ('gigs') through a digital platform (such as Uber or Menulog).[29]

[27] *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1; *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2.
[28] For example, s 6(1)(e) of the SRC Act deems an injury to be in the course of employment where it was suffered 'while the employee was at a place of education, except while on leave without pay, in accordance with (i) a condition of the employee's employment … ; or (ii) a request or direction of the Commonwealth or a licensee; or (iii) the approval of the Commonwealth or a licensee.'
[29] See *Fair Work Act 2009* (Cth) (FW Act), Div 3A.

4. A *labour hire worker* is engaged by a host through a labour hire provider to perform work. Generally, labour hire workers are considered employees of the labour hire provider (who, in turn, is paid by the host).
5. A *volunteer* provides services without remuneration or charge (or with nominal remuneration or reimbursement for out-of-pocket expenses). Generally, a volunteer would not be contracted to provide those services, although they may work to the direction or control of an entity.
6. Some *officeholders* (including members of parliament, judges and some independent statutory officeholders) and *military personnel* fall into separate categories altogether because they generally do not have a contractual relationship with those for whom they perform services. Rather, their labour (and remuneration) is consequent upon their appointment, as provided for in statute or through the prerogative power of the Crown.[30]

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth) (Closing Loopholes No. 2 Act) introduced the concept of 'employee-like workers' into the FW Act. 'Employee-like workers' are independent contractors performing digital labour platform work.[31] The Closing Loopholes No. 2 Act also introduced an interpretative principle in the FW Act for national system employers (requiring a 'whole of relationship test') to determine whether a worker is an independent contractor or an employee.[32] However, at least insofar as they relate to the present issue, those provisions only apply to the FW Act, and do not affect the ordinary meaning of the term 'employee' (and its variants) as it appears in the SRC Act (or in other workers' compensation legislation).

The definition of 'worker' under the model work health and safety (WHS) laws is broad and encompasses various work arrangements. A worker is a person who carries out work in any capacity for a person conducting a business or undertaking.[33] This broad definition ensures a comprehensive scope of protection, extending to employees, contractors and subcontractors (and their employees), and volunteers.

2.1.2 Previous review

Hanks Review

Peter Hanks QC (now KC) considered the SRC Act's current settings to be appropriate in relation to labour hire workers and volunteers. With respect to labour hire workers, Hanks considered that 'workers' compensation coverage is more appropriately provided to labour hire workers by the labour hire company they are employed by, rather than by host agencies'.[34] This conclusion did not require any changes to the SRC Act. For volunteers, Hanks noted that there are appropriate powers in the SRC Act

[30] For example, *C v Commonwealth of Australia* [2015] FCAFC 113.
[31] See, in particular, the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth), Sch 1, Pt 16.
[32] See FW Act, s 15P.
[33] Safe Work Australia (SWA), Model Work Health and Safety Bill, Cl 7, SWA, accessed on 14 September 2025. Available at www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws.
[34] Peter Hanks QC, *Safety, Rehabilitation and Compensation Act Review: Report—February 2013* (Hanks Review), para 5.32.

to extend coverage to select volunteers via a Ministerial declaration made under s 5(6), or with respect to the Australian Capital Territory, under s 5(15).[35]

Hanks did recommend amendments to the SRC Act with respect to independent contractors.[36] He noted that while the states and territories had wider definitions of 'worker' (or analogous terms) than the SRC Act, many of those schemes dealt with categories of workers not relevant to the Comcare scheme (he gave the example of entertainers, licensed jockeys and clergy).[37]

Hanks considered that for the Comcare scheme to be exemplary in its scheme design, it should provide consistent treatment for contractors. His focus was on contractors who bear similarities to employees. His recommendations sought to standardise the definition of 'employee' so that contractors working for the Commonwealth or Commonwealth agencies are covered by the scheme in the same way as contractors working for licensees.[38]

2.1.3 State and territory arrangements

State and territory arrangements take into account specific circumstances for workers that are not currently relevant to the Comcare scheme, and for this reason are generally more complex.[39]

Each state and territory has provisions to deem certain independent contractors to be 'employees' or 'workers'. Like Hanks's recommendation, those state and territory provisions attempt to distinguish between independent contractors truly carrying out their own business, and those who bear similarities to employees. For example, the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) deems the following independent contractors to be workers covered by the Act where:

- an individual, alone or in partnership, performs work pursuant to a contract of service, subject to satisfying specific criteria, including that the provision of services is not ancillary to the provision of materials or equipment, and at least 80% of those services are (or are to be) performed by the individual
- independent contractors perform work under specifically defined relevant contracts.[40]

2.1.4 What we heard

Most submissions acknowledged the need for the workers' compensation system to cover some workers who do not meet the traditional definition of employee.[41] Many considered the current system sufficiently clear without the need for amendments.[42]

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[35] Hanks Review, paras 5.33–5.38.
[36] Hanks Review, paras 5.39–5.42, and Recommendation 5.1.
[37] Hanks Review, para 5.16.
[38] Hanks Review, Chapter 5.
[39] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Tables 4.1a–4.6.
[40] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), ss 9–10 of Sch 1.
[41] See, for example, Community and Public Sector Union (CPSU) submission, p 29.
[42] See, for example, Pacific National submission, p 8.

Employer and licensee stakeholders warned against unintended consequences that could arise from significantly extending the coverage provisions. They also said it was necessary to avoid potential confusion about whether a worker is covered under the Commonwealth or a state or territory scheme.[43]

Some unions, such as the Australian Council of Trade Unions (ACTU) and the Australian Manufacturing Workers' Union (AMWU), referred to a submission Professor Andrew Stewart made to the House of Representatives Standing Committee on Employment and Workplace Relations and Workforce Participation on Independent Contracting and Labour Hire Arrangements in 2005.[44] We note that there have been some significant changes to the law governing these arrangements since that time.[45]

The Community and Public Sector Union (CPSU) advocated for a definition of 'worker' that would 'future-proof' the legislation and better reflect modern employment relationships.[46]

2.1.5 What we considered

We considered whether the current definition of employee in the SRC Act appropriately reflects developments in employment relationships since the Act was introduced. We also considered further issues relating to coverage, including identifying the employing entity when deeming employment, deeming of workers engaged on a 'pick up' basis, and coverage of workers engaged and performing work outside Australia.

Contemporary working relationships

Not all workers who provide services to the Commonwealth, Commonwealth authorities or licensed authorities are 'employees' in either the ordinary or extended definition of the term. Examples of persons not captured by the definition may include, most notably, volunteers and independent contractors.[47] Labour hire workers, meanwhile, are normally employees of the entity that employs them – that is, the labour hire company and not the host.

The current Comcare scheme, and the scheme we envisage, extends beyond coverage merely for 'employees'. As a result, the term 'worker' should be used in the new Act to reflect this reality.

We also consider that for the Comcare scheme design to be exemplary, contractors should be treated consistently under the scheme. Therefore the term 'worker' should capture some independent contractors working for the Commonwealth and Commonwealth authorities. We consider the 'whole of relationship test' in the FW Act – used to determine if a worker is a contractor or an employee by

[43] See, for example, John Holland Licensees submission, p 9.
[44] A Stewart, Submission on Independent Contracting and Labour Hire, 18 April 2005, Australian Manufacturing Workers' Union. Available at www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=ewrwp/independentcontracting/subs.htm.
[45] See, *ZG Operations Australia Pty Ltd v Jamsek* [2002] HCA 2; *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*, Sch 1, Pt 15–16.
[46] CPSU submission, p 29.
[47] Unless they are the subject of a declaration made under ss 5(6) or 5(15) of the SRC Act.

considering the real substance, practical reality and true nature of the relationship – to be an appropriate test to include in the new Act.[48]

Concern was expressed that no worker should fall between the gap in coverage, such that they are covered by neither the Comcare scheme, nor a state or territory scheme. Conversely, concern was also expressed that an employer should not have to obtain insurance coverage under multiple schemes for its workers.

We considered, but do not recommend, standardisation of the coverage for contractors in the sense recommended by Hanks. This is because, in relation to licensed corporations, the deeming provision in s 5(1A) extends the definition of employee to include contractors and other workers who are deemed employees under a state or territory law in such a way that it ensures employers are not required to insure under multiple schemes. We recommend that section is replicated in the new Act.

We do not consider that other changes are required to the definition in s 5 (subject to the exceptions provided later). In particular, we consider that liability for labour hire workers should continue to rest with the labour hire company that employs those workers. This is because they are best placed to discharge rehabilitation activities, particularly in light of the changes we recommend in Chapter 3 in relation to these duties. We have also considered the situation for gig workers. As with labour hire workers, gig workers should ordinarily be employees of the digital labour hire platform. There are no such platforms currently covered by the Comcare scheme.

Other coverage issues

We also considered other issues relating to the coverage of workers.

The current legislation contains provisions deeming workers to be covered by the Comcare scheme. Where this occurs, we understand that it is administrative practice, and not a legislative requirement, to identify the deemed employer. Clearly identifying the deemed employer is important to determine premiums and to provide clarity on where duties in relation to rehabilitation and return to work fall. We therefore consider that where the legislation deems a person to be a worker, it should also clearly identify the deemed employer in the relevant circumstances, particularly in relation to Commonwealth employees, including where a Commonwealth entity has ceased to exist.

To our knowledge, the deeming provision in s 5(4) relating to workers engaged on a 'pick-up' basis has no current use. This provision appears to be a relic of the *Compensation (Commonwealth Government Employees) Act 1971* (Cth) (1971 Compensation Act) related to an outdated mode of worker engagement, and would be difficult to apply. No stakeholder made a submission to the contrary, and we consider that the provision should not be replicated in new legislation.

We have considered the application of the SRC Act to workers employed and performing duties outside Australia, and whether changes are required to the current approach to these workers in s 117. The question involves consideration of a number of complex issues on which we have not had the

[48] See FW Act, s 15AA. As the 'whole of relationship' test applies only to the FW Act (note the introductory words of s 15AA: 'For the purposes of this Act …'), it does not bear on the ordinary meaning of the term 'employee' as used in workers' compensation legislation.

benefit of submissions from agencies most likely to be affected. When drafting the new Act, we recommend that the Department of Employment and Workplace Relations give further consideration to this issue. It should also consult with the Department of Foreign Affairs and Trade, Austrade and other agencies that engage overseas workers. Consideration should be given to the interaction of the SRC Act with workers' compensation schemes and entitlements in other countries. In this context, it may also be useful to consider issues relating to 24/7 coverage of Australian Government workers deployed overseas.

2.1.6 Panel recommendations

Recommendation 4

We recommend the term 'worker' is used in the new Act and captures independent contractors working for the Commonwealth or Commonwealth authorities, using the 'whole of relationship test' in the *Fair Work Act 2009* (Cth).

Recommendation 5

We recommend that the coverage arrangements for independent contractors of self-insured licensees in s 5(1A) of the SRC Act are replicated in the new Act.

Recommendation 6

We recommend the ability for the Minister to declare a person be covered by the scheme is replicated in the new Act. We further recommend that the Act provides that when this occurs, there is the ability to declare the relevant employing entity.

Recommendation 7

We recommend that s 5(4) is not replicated in the new Act.

2.2 What injuries should be covered by the Comcare scheme and in what circumstances?

2.2.1 Background

This section explores the circumstances in which injuries and diseases are compensable under the SRC Act, focusing on the temporal and causal tests that underpin liability. It examines how the phrase 'arising out of, or in the course of, employment' has evolved in legislation and case law, and how it applies to complex scenarios such as psychological injuries, heart attacks and strokes, injuries sustained during intervals or recesses, and those occurring while working from home or entering or exiting the workplace. These issues reflect the changing nature of work and the challenges in defining the boundaries of employment for compensation purposes.

Arising out of, or in the course of, employment

The SRC Act provides for compensating employees who suffer an 'injury' as defined by the Act, arising out of or in the course of employment. 'Arising out of' means an injury causally related to employment, while 'in the course of' refers to a temporal relationship.[49] The phrase 'arising out of or in the course of employment' has a long history. The *Commonwealth Workmen's Compensation Act 1912*, the first Commonwealth workers' compensation legislation, adopted the phrasing then (and still) used in the United Kingdom: liability arose in respect of 'personal injury by accident arising out of **and** in the course of his employment' (added emphasis).[50] This meant that to obtain compensation, an injury must have had both a causative and a temporal connection to employment.

This construction was initially retained by the *Commonwealth Employees' Compensation Act 1930*. But in 1948, that Act was amended to 'arising out of **or** in the course of employment' (emphasis added). The effect of this amendment was to make 'arising out of' and 'in the course of' separate alternative bases of liability. The history of the change is discussed in detail by the High Court in *Kavanagh v The Commonwealth*.[51] With minor changes, the phrase adopted in 1948 has survived in today's SRC Act.

Today, it is common for the temporal test to be the sole determined basis for liability because it is generally easier to prove. For example, if a person is injured in the workplace, there is no need for the decision-maker to also consider whether employment caused the injury: the temporality of having been at work when the injury was suffered is sufficient. That is not to say, however, that an injury would not also have been compensable under the causation test had it been required.

[49] See *Comcare v PVYW* [2013] HCA 41, [94], (per Bell J in dissent, but not on this point).
[50] See Social Security Contributions and Benefits Act 1992 (UK), s 94(1).
[51] *Kavanagh v The Commonwealth* [1960] HCA 25.

However, a subset of injuries may bear only a temporal relationship with employment, with no contribution from work. Famously, this includes the manifestations of underlying (non–employment related) conditions such as some heart attacks and strokes.[52] We discuss such conditions later.

Significant contribution

Under the SRC Act, 'ailments' are 'diseases' where they have been contributed to, to a significant degree, by the employee's employment.[53] 'Diseases' fall within the definition of 'injury', and are thus ordinarily compensable if no exclusions apply.

The term 'significant degree' was first introduced in 2007, replacing the former test that employment contribute to the ailment in a 'material degree'.[54] Introduced at the same time was a non-exhaustive list of relevant matters for consideration in applying that test. The Explanatory Memorandum to the 2007 amendment said the change was made to 'ensure an effective test of work-relatedness, providing eligibility only for work-related diseases consistent with the intention of the SRC Act'.[55]

The test for psychological injury

While the 'injury (other than a disease)' limb of the definition of 'injury' refers to 'mental injur[ies]', generally claims for psychological conditions have been considered under the 'disease' limb. This is likely because most psychological conditions lack an ascertainable, or identifiable, change in physiology (or, potentially, psychology), as is required for an 'injury (other than a disease)'.[56]

That being so, the relevant test of an employment nexus to determine compensability is whether that psychological condition has been 'contributed to, to a significant degree, by the employee's employment'.[57]

In *Federal Broom Co Pty Ltd v Semlitch*, the High Court described the matters that may be considered to have 'contributed to' an ailment:

> *'Where it is possible to identify as a contributing factor to the aggravation, acceleration, exacerbation or deterioration of a disease some incident or state of affairs to which the worker was exposed in the performance of his duties and to which he would not otherwise have been exposed, I see no misuse of English in condensing the statement of the fact by saying simply that the employment was a contributing factor to the aggravation etc. It is in that sense that I should understand the language of the definition.'*[58]

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[52] For example, *Zickar v MGH Plastic Industries Pty Limited* [1996] HCA 31.
[53] SRC Act, ss 5A–5B. This extends to diseases deemed to have been contributed to, to a significant degree, by employment by operation of s 7.
[54] *Safety, Compensation and Rehabilitation and Other Legislation Amendment Act 2007* (Cth).
[55] Explanatory Memorandum to the Safety, Compensation and Rehabilitation and Other Legislation Amendment Bill 2007 (Cth).
[56] See *Military Rehabilitation and Compensation Commission v May* [2016] HCA 19.
[57] SRC Act, s 5B.
[58] *Federal Broom Co Pty Ltd v Semlitch* [1964] HCA 34, [4]–[5], per Kitto J.

Deriving from this is the now well-known decision in *Wiegand v Comcare*.[59] In *Wiegand*, having reviewed the case law, including *Semlitch*, von Doussa J concluded (emphasis added):

> *'In my opinion it was open on the evidence for the Tribunal to hold that one or more of the incidents or states of affairs about which Mr Wiegand raised complaint in the course of his evidence contributed in a material degree to an aggravation of the depressive disorder suffered by Mr Wiegand. For that to be the case there is no requirement at law that the interpretation placed on the incident or state of affairs by the employee, or the employee's perception of it, is one which passes some qualitative test based on an objective measure of reasonableness.* ***If the incident or state of affairs actually occurred, and created a perception in the mind of the employee (whether reasonable or unreasonable in the thinking of others) and the perception contributed in a material degree to an aggravation of the employee's ailment, the requirements of the definition of disease are fulfilled.*** *'*[60]

Interval or interlude

The concept of an 'interval' or 'interlude' within an overall period of employment has long been recognised in Australian workers' compensation law. It reflects that employment is not always continuous or confined to active task performance, and that injuries may occur during periods between the performance of core duties. Injuries sustained in these periods – for example, during an overnight stay on a work trip – may still be in the course of employment if that period forms part of a broader episode of employment.[61]

The High Court's decision in *Hatzimanolis v ANI Corporation Ltd* shaped the modern understanding of interval claims.[62] In that case, the High Court held that an injury sustained during an interval in an overall period of employment (as opposed to an interval between 2 discrete periods of work) will be more readily seen to be compensable if the employer had expressly or impliedly induced or encouraged the activity during which the injury occurred.[63] This 'inducement or encouragement' test has since become a cornerstone of interval claims.

In *Comcare v PVYW*, the High Court reaffirmed that an injury sustained during a break in an overall period of employment – such as while staying overnight on a work trip – could be compensable, but only if the injury arose as a consequence of an activity that was encouraged or induced by the employer, or because the worker was at a place they were encouraged or induced to be.[64] The decision clarified that not all injuries occurring during a work-related absence from the usual workplace are compensable, particularly where the activity during which the worker was injured bears no connection to employment.

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[59] *Wiegand v Comcare* [2002] FCA 1464.
[60] *Wiegand v Comcare* [2002] FCA 1464, [31].
[61] To avoid doubt, certain other breaks in an overall period of employment may be deemed in the course of employment by operation of s 6 of the SRC Act, such as 'ordinary recesses'.
[62] *Hatzimanolis v ANI Corporation Ltd* [1992] HCA 21.
[63] *Hatzimanolis v ANI Corporation Ltd* [1992] HCA 21, [15].
[64] *Comcare v PVYW* [2013] HCA 41.

The SRC Act also provides a statutory extension to 'arising out of, or in the course of, employment' to cover certain interludes, in that it provides deemed cover for workers 'temporarily absent from [the place of work] during an ordinary recess'.[65] The legislation does not state what an 'ordinary recess' is in this context, but it has been considered by tribunals and courts and is, perhaps, susceptible to changing notions of what is 'ordinary' in the modern workplace.[66]

Working from home

The issue of compensation for injuries sustained while working from home is not new, although it gained significant prominence during the COVID-19 pandemic. Historically, employers were hesitant to embrace remote work arrangements, largely due to concerns about control and liability. The pandemic, however, forced a rapid shift in working patterns, bringing longstanding legal questions into sharper focus.

Re Hargreaves and Telstra Corporation Limited involved an employee who sustained injuries while working from home.[67] The case highlighted the complexities of determining whether an injury 'arose out of or in the course of employment' when the workplace is also the employee's private residence. Although the case predates the pandemic by nearly a decade, it remains important in understanding the legal framework for remote work injuries.

More recent cases on working from home have reignited public and legal debate. In *State of NSW (Western NSW Local Health District) v Knight*, a worker was bitten by a dog when she intervened in an attack on her daughter's puppy outside her front door and received compensation.[68] In *Lauren Vercoe v Local Government Association Workers Compensation Scheme*, an employee tripped over her dog gate while working from home, and was awarded compensation.[69] The case drew widespread media attention, particularly among employers concerned about the expanding scope of liability.[70] We also heard those concerns from employer groups during face-to-face consultations.

Entry and exit claims

Entry and exit claims – those involving injuries sustained while entering or exiting a workplace – often raise complex factual and legal questions about where the workplace begins and ends, and whether

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[65] SRC Act, s 6(1)(b).

[66] For example, *Re Demasi and Comcare* [2016] AATA 644 and *Landers v Dawson* [1964] HCA 35. In *Drummond v Drummond* [1960] VR 462, the Full Court of the Supreme Court of Victoria referred to the notion of a 'smoko' as being an ordinary interruption in work. This may still be so; however, one can infer that modern practices may affect what is 'ordinary'.

[67] *Re Hargreaves and Telstra Corporation* [2011] AATA 417.

[68] *State of NSW (Western NSW Local Health District) v Knight* [2023] NSWPICPD 63.

[69] *Lauren Vercoe v Local Government Association Workers Compensation Scheme* [2024] SAET 91.

[70] For example, see J Harrison, 'South Australian council worker Lauren Vercoe wins compensation claim on injuries she suffered while working from home', 29 October 2024, Sky News, accessed 26 August 2025. Available at www.skynews.com.au/lifestyle/trending/south-australian-council-worker-lauren-vercoe-wins-compensation-claim-on-injuries-she-suffered-while-working-from-home/news-story/941fa36a6bf69eeb039dd4a514b3244a; M Aitchison, 'Adelaide council worker's breathtaking compensation win after she tripped and fell while working from HOME', 29 October 2024, Daily Mail, accessed 26 August 2025. Available at www.dailymail.co.uk/news/article-14013051/Adelaide-council-workers-compensation.html.

the injury occurred within the scope of employment. These claims often sit at the margins of the working day and require careful consideration of the physical and legal boundaries of the workplace, as well as the nature of the employee's presence at the location. Principally, these matters arise due to the exclusion of certain journey claims, thus focusing attention on the boundaries of the workplace.[71]

For boundary claims, this requires assessing whether the employee had reached their place of work or had started their journey home. The definition of 'place of work' extends beyond the immediate work area to include locations the employee is required to attend for work purposes. However, not all areas in proximity to the workplace will meet this definition – particularly where the employer lacks control or where public access is unrestricted.[72]

In *Telstra Corporation Limited v Bowden*, the Full Federal Court held that an injury sustained in a private car park – accessed with an employer-issued pass and used under an agreement with the employer – arose out of employment.[73] The Court emphasised that a causal connection to employment is not limited to activities required to perform duties, but may include situations where employment brings the employee to a particular place where the risk of injury arises.

By contrast, in *Re McKenzie and Comcare*, the Administrative Appeals Tribunal (AAT) found that an injury sustained in a car park across the road from the workplace was not compensable.[74] The employee had crossed public roads and spaces, and the employer did not control the area where the injury occurred. The AAT held that the employee had begun their journey home and was no longer at their place of work.

Heart attacks and strokes

Heart attacks, strokes and similar events present complex questions in no-fault workers' compensation schemes – particularly where the condition may be attributable to underlying health factors – because they have generally been characterised by tribunals and courts as falling within the ordinary meaning of 'injury'.

The High Court in *Kavanagh v The Commonwealth* determined that a temporal connection to employment may be sufficient for liability, even where the injury stems from a pre-existing condition.[75] However, where the condition is better characterised as a disease – such as high blood pressure or diabetes – it must meet the 'significant contribution' test under s 5B of the SRC Act. As illustrated in *Wuth v Comcare*, decision-makers must distinguish between the compensable injury and the non-compensable underlying condition, and assess whether employment significantly contributed to the development or aggravation of either.[76]

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[71] To determine when the 'journey' begins.
[72] Comcare, *Scheme Guidance - Claims for injuries sustained at the boundary of a place of work*, Comcare, accessed 18 August 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/scheme-guidance-claims-for-injuries-sustained-at-the-boundary-of-a-place-of-work.
[73] *Telstra Corporation Ltd v Bowden* [2012] FCA 576.
[74] *Re McKenzie and Comcare* [2011] AATA 924.
[75] *Kavanagh v The Commonwealth* [1960] HCA 25.
[76] *Wuth v Comcare* [2022] FCAFC 42.

2.2.2 Previous reviews

Productivity Commission inquiry, 2004

The Productivity Commission recommended that the 'arising out of or in the course of employment' test be retained, noting its near universal use in Australian workers' compensation legislation.[77] It considered the appropriate test for employment contribution to an ailment. The Productivity Commission said:

> *'The Commission considers that, in view of it being problematic to determine the contribution of work to some medical conditions, the definition of attribution included in workers' compensation legislation should be based on there being significant evidence of its contribution. The 'a significant contributing factor', which is used in a number of jurisdictions is a minimum acceptable test. Recognition that work should be the major contributing factor would give greatest clarity. The development of a uniform test of work-relatedness applying to both disease and injury across all jurisdictions would enable a significant body of case law to develop which would add to certainty of outcomes.'*[78]

With respect to recess and journey claims, discussed later, the Productivity Commission considered that the employer's ability to exert control was a relevant consideration. It noted that '[s]uch an approach would have the advantages of ease of understanding and administrative simplicity, thereby minimising delays in claims management and the scope for disputation'.[79] Specifically relating to journeys, the Productivity Commission recommended an exclusion for trips between home and work, noting that in addition to the lack of control was the 'availability of alternative cover in most instances and the ability to be dealt with under enterprise bargaining'.[80]

Hanks Review

Hanks considered psychological injuries under the SRC Act. He considered it was satisfactory to maintain the basic approach of psychological injuries being compensable in a manner similar to physical injuries. However, he suggested introducing a degree of rigour when it comes to paying compensation for psychological injuries.[81]

Hanks recommended that the SRC Act be amended to require only continuing compensation for psychological injuries beyond 12 weeks if a diagnosis of the psychological injury was made by a

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[77] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks: Productivity Commission Inquiry Report, No. 27*, 2004, Productivity Commission, p 187.
[78] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks Productivity Commission Inquiry Report, No. 27*, 2004, Productivity Commission, p 182.
[79] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks Productivity Commission Inquiry Report, No. 27*, 2004, Productivity Commission, p 185.
[80] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks Productivity Commission Inquiry Report, No. 27*, 2004, Productivity Commission, p 187.
[81] Hanks Review, para 5.62.

psychiatrist, psychologist or general practitioner who had completed training in psychological health and illness to a standard approved by Comcare.[82]

He also took issue with the subjectivity of psychological claims and the reliance on the employee's perception of events in determining a connection with employment. To that end, he recommended amending the Act to include a provision negating the effect of *Wiegand* v Comcare so that an employee's perception of a state of affairs will only provide a connection with employment where that perception has a reasonable basis.[83]

With respect to journey claims, Hanks considered that travel between home and work should not generally be covered, because:

> *'(a) employees should be personally responsible for decisions made about how safely they travel from home to work, and employers have little control over those decisions or over the factors that influence an employee's safety;*
>
> *(b) home to work travel is not always direct (for example, an employee may stop to do shopping, go to a restaurant or bar etc); and*
>
> *(c) employees are already covered in most cases by compulsory third party insurance schemes.'*[84]

However, he also considered that journeys to work should be covered for those 'on call', provided 'the journey must only include travel between home, or the place where the employee receives the message to attend work, and the place of work itself.[85]

With respect to entry and exit claims, discussed earlier, Hanks said:

> *'Disputes about where a place of work begins and ends (for example, whether a car park comprises part of the workplace) will always exist as long as home to work travel is not covered. As with many potentially disputed aspects of workers compensation entitlements, it is not practicable to exclude those disputes without enacting arbitrary distinctions that will exclude almost as many deserving cases as they allow. In my opinion, the current wording in the legislation, combined with the guidance provided by AAT and Federal Court cases, provides the best means for addressing those issues.'* [86]

Hanks considered liability in respect of heart attacks, strokes and similar incidents in Chapter 5. He critiqued the common law position that incidents of this nature constitute 'injuries' and not 'diseases' for the purposes of workers' compensation claims.[87] Hanks considered there to be little justification for

[82] Hanks Review, para 9.42.
[83] Hanks Review, paras 5.62–5.65, Recommendation 5.2.
[84] Hanks Review, para 5.140.
[85] Hanks Review, Recommendation 5.7.
[86] Hanks Review, para 5.142.
[87] Hanks Review, paras 5.66–5.83.

employers to fund the costs of heart attacks, strokes and other similar incidents that could be entirely non–work related and instead contributed to largely by genetic or lifestyle factors.[88]

He recommended amending the SRC Act to include a narrow exclusion for heart attacks, strokes and similar events so that incidents that are a 'manifestation of an underlying disease' will be covered on the same basis as a 'disease' – that is, where the incident was contributed to, to a significant degree, by the employee's employment.[89]

Review of the Northern Territory scheme, 2014

The 2014 review of the Northern Territory scheme recommended that manifestations of underlying diseases (such as a heart attack or stroke) be dealt with under the 'disease' limb (that is, by requiring an employment contribution).[90]

2.2.3 State and territory arrangements

All states treat diseases and injuries (other than diseases) separately.

Injuries (other than diseases) are generally compensated where the injury arose out of, or in the course of, the employee's employment. New South Wales additionally requires that employment be a substantial contributing factor to that injury.[91] In South Australia, employment must be a significant contributing cause.[92]

The connection between employment and a disease is generally a matter of prescribing a threshold level of contribution, such as 'main',[93] 'substantial',[94] 'significant'[95] and 'materially'.[96] As discussed later, those tests may be tempered by mandatory considerations, exclusions and deeming provisions.

Heart attacks and strokes

As noted earlier, heart attacks and strokes have been found to fall within the ordinary meaning of injury; that is, an injury (other than a disease). This means that in the ordinary course, such events would be compensable if they bear a mere temporal relationship with work, including in cases where the heart attack or stroke was the result of the manifestation of an underlying (and non-compensable) disease process. Victoria,[97] the Northern Territory[98] and Tasmania[99] have consequently modified their

[88] Hanks Review, para 5.76.
[89] Hanks Review, paras 5.80–5.82, Recommendation 5.3.
[90] Hanks Review, Recommendation 23.
[91] *Workers Compensation Act 1987* (NSW), s 9A.
[92] *Return to Work Act 2014* (SA), s 7.
[93] *Workers Compensation Act 1987* (NSW), s 4.
[94] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 25; *Workers Compensation Act 1951* (ACT), s 31.
[95] SRC Act, s 5B; *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 32; *Workers Compensation and Injury Management Act 2023* (WA), s 6; *Return to Work Act 2014* (SA), s 7; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 40.
[96] *Return to Work Act 1986* (NT), s 4.
[97] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 40(3).
[98] *Return to Work Act 1986* (NT), s 58.
[99] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 25(2).

legislation to treat such conditions as (or akin to) diseases, thus requiring employment to be a contributing factor. New South Wales takes a different approach, but to much the same effect: as noted earlier, employment must have substantially contributed to all injuries. Specifically for heart attacks and strokes, employment must have also given rise to a 'significantly greater risk' of suffering such an injury.[100] Similarly, South Australia requires that the 'injury arises out of or in the course of employment and the employment was a significant contributing cause of the injury'.[101]

Like the current SRC Act, Western Australia,[102] Queensland[103] and the Australian Capital Territory[104] maintain liability for heart attacks and strokes that are merely temporally related to employment.Psychological injury

Like in the SRC Act, psychological injuries are normally dealt with as diseases, meaning an employment contribution of a specified degree is required to be compensable. However, also like the SRC Act, each state and territory Act provides for exclusions from liability for psychological injury (see section 2.4).

Journeys and recesses

As discussed earlier, journeys and recesses are not automatically considered to be 'in the course of employment' at common law. This has led to a variety of mechanisms addressing such claims.

Work-related travel is generally compensable in each jurisdiction.[105] This normally includes travel between worksites, to places as required by the employer (such as training courses or obtaining a medical certificate) and work trips. However, the most significant differences are in the way the journey from home to work (and vice versa) is treated. Some jurisdictions explicitly exclude injuries sustained in such travel from the concept of 'arising out of or in the course of employment',[106] while others explicitly extend liability to cover such journeys.[107] Extensions of coverage for such journeys are, occasionally, tempered by restrictions, including if the journey involved significant non–employment related deviations or interruptions.[108] The Commonwealth itself is divided on such journeys, with the home–work journey covered under the *Military Rehabilitation and Compensation Act 2004* and the *Seafarers Rehabilitation and Compensation Act 1992*, but not the SRC Act.

Onsite recesses are covered by each state and territory, although different approaches arise with respect to offsite recesses. For example, New South Wales covers injuries sustained while the worker was 'temporarily absent from [the place of employment] during any ordinary recess'.[109] Tasmania

[100] *Workers Compensation Act 1987* (NSW), ss 9A, 9B.
[101] *Return to Work Act 2014* (SA), s 7.
[102] *Workers Compensation and Injury Management Act 2023* (WA), s 6.
[103] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 32.
[104] *Workers Compensation Act 1951* (ACT), s 31.
[105] New South Wales and South Australia additionally require an employment contribution to an injury such that a mere temporal connection to a work-related journey is insufficient.
[106] For example, *Workers Compensation and Injury Management Act 2023* (WA), s 9(2).
[107] For example, *Workers Compensation Act 1951* (ACT), s 36(2).
[108] For example, *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 46(2).
[109] *Workers Compensation Act 1987* (NSW), s 11.

excludes such coverage,[110] while some other jurisdictions do not explicitly refer to the situation (likely implying that such injuries would not be covered, absent a work-related cause).[111]

2.2.4 What we heard

Throughout the review, stakeholders from across the spectrum shared their perspectives on the core elements of the SRC Act's coverage and eligibility framework. There was broad consensus that the Comcare scheme must remain fair, accessible and responsive to the realities of contemporary work while also ensuring its long-term sustainability.

> The ABA submits that the phrase 'in the course of employment' is a settled area of law, and requires no legislative intervention or amendment.
>
> Similarly, the law is settled with respect to employees injured during an interval within an overall period of employment, and employees working away from their usual place of work. The High Court decision in *PVYW v Comcare* (2013) 250 CLR 246 is well understood, and regularly applied.
>
> **Australian Bar Association submission, p 1.**

> The Review Committee should be very cautious about proposing substantive legislative changes to the basic liability provisions of the SRC Act. Changes to the liability provisions can cause decades of litigation and administrative complexity, and in any case the best intentioned legislative drafting can go very astray.
>
> **Peter Sutherland submission, p 3.**

> This [complexity of the scheme] is in no small part contributed to by the distinction between 'injury' and 'disease' and the differing tests and exclusions which are then relevant. In our experience, state schemes which do not place such precise distinctions around defining these terms are easier for claimants to navigate and are less rigid.
>
> **Maurice Blackburn Lawyers submission, p 12.**

Stakeholders acknowledged that the nature of work has changed significantly, with flexible arrangements, working from home, and non-traditional employment relationships now commonplace. Many submissions highlighted the need for the new Act to provide clarity and certainty about who is covered, what constitutes a compensable injury or disease, and the boundaries of employer responsibility – particularly in the context of working from home and during intervals or travel for work.[112]

Unions and employee representatives strongly advocated for a framework that does not disadvantage workers based on where or how they perform their duties and called for equitable treatment of

[110] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 25(6).
[111] For example, South Australia and the Australian Capital Territory.
[112] See Comcare submission, p 27 and Pacific National submission, p 9.

psychological and physical injuries.[113] They emphasised the importance of maintaining a no-fault approach. Some employers, while supporting a fair and sustainable Comcare scheme, raised concerns about the potential for ambiguity and increased costs if eligibility criteria are broadened or insufficiently defined.[114] They called for clearer legislative or policy guidance to distinguish between work and non-work activities.[115]

> The RANZCP [recommends]...adjusting the criteria in Section 5A(1) and 6(1) of the Safety, Rehabilitation & Compensation Act 1988 to account for the unique nature of mental health. Mental health can be affected by several actions and events that have no direct equivalent in physical health, such as micro-aggressions, feelings of exclusion, bullying, systemic racism and discrimination. These factors may not be immediately visible to outside observers or assessors but can significantly impact mental health. The Scheme must consider the unique nature of mental health when determining whether injuries or harm are related to a claimant's employment.
>
> **RANZCP submission, p 4.**

There was strong support across all groups for simplifying and clarifying the SRC Act where possible, but also caution about making substantive changes to longstanding definitions or tests that could have unintended consequences for eligibility, scheme costs or administrative complexity.[116]

2.2.5 What we considered

Consistent with what we heard, we considered whether it was possible to have a single test to determine a real and identifiable relationship between employment and the injury or disease. At the same time, we considered concerns around:

- the 'in the course of employment' test
- working from home
- the rise in psychological claims
- coverage of heart attacks and strokes.

A single test for injury and disease

As detailed earlier, the SRC Act applies different tests for injuries and diseases. Some stakeholders criticised this dual approach as unnecessarily complex and a source of confusion and disputation. Unions and employee representatives advocated for a single, universal test – requiring that the injury or disease arise out of, or in the course of, employment – for both injuries and diseases.[117] Their argument

[113] See ACTU submission, pp 12, 35 and AMWU submission, p 31.
[114] Ramsay Health Care submission (unpublished), p 5.
[115] Pacific National submission, p 3.
[116] See John Holland Licensees submission, pp 9–10 and Australian Bar Association submission, pp 1–2.
[117] See, for example, Community and Public Sector Union submission, p 29.

was that a universal test would simplify the Comcare scheme, improve accessibility and better reflect the realities of modern work.

Comcare supported simplifying the framework and recommended shifting to a single 'employment connection' test for both injuries and diseases. This would remove the need to distinguish between the 2 and simplify administration. However, Comcare also emphasised the importance of ensuring that work is a significant contributor to the injury or disease, to maintain scheme integrity and sustainability.[118] We found this call for work-relatedness intriguing, given that this was the purported aim of amendments made in 2007 in relation to diseases.[119]

Conversely, employer groups and some legal representatives favoured separate tests to tighten eligibility and control scheme costs.[120] They noted that diseases often have multiple contributing factors, making it more difficult to establish a clear employment nexus. These stakeholders generally supported retaining a higher threshold for diseases, such as 'significant contribution' or 'main contributing factor', to ensure that only genuinely work-related conditions are covered. Some also advocated for maintaining separate tests for psychological injuries, given their complexity and the potential for subjective claims.

In principle, we have no objections to creating a single test for determining the employment connection. We can see its attraction in terms of simplicity, but for us it is also problematic. We had significant concerns that the approaches we considered (including those in submissions) would have the unintended consequence of either expanding eligibility beyond what is appropriate or unjustly excluding legitimate claims, and/or leading to an increase in disputes. Further, we did not consider that it formed part of our terms of reference to make recommendations that expanded or excluded eligibility. For these reasons, we recommend not changing the definitions of 'injury', 'disease' and 'ailment' and the employment nexus test. Instead, improvements should focus on clearer guidance and definitions within the existing framework. However, we do endorse drafting improvements or simplifications that do not substantively change the meaning.

As part of our deliberations, we also considered the implications for neurodivergent workers, particularly with respect to psychological ailments. As we discuss later, under the current SRC Act, a worker's perception of actual events in the workplace will be sufficient to ground a finding of employment contribution, notwithstanding the objective reasonableness of that perception.[121] A change in this approach, as was recommended by Hanks,[122] may affect the availability of compensation for psychological ailments for neurodivergent workers.

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[118] Comcare submission, p 26.
[119] Explanatory Memorandum to the Safety, Compensation and Rehabilitation and Other Legislation Amendment Bill 2007 (Cth).
[120] See, for example, Pacific National submission, para 36; McInnes Wilson Lawyers submission, para 4; and Australian Bar Association submission, p 2.
[121] See *Wiegand v Comcare* [2002] FCA 1464.
[122] Hanks Review, Recommendation 5.2.

In the course of employment

In considering the circumstances in which injuries are compensable 'in the course of employment', we focused on 3 scenarios: injuries occurring during an interval or interlude within an overall period of employment; injuries sustained during an ordinary recess; and injuries occurring while entering or exiting a place of work.

Injuries occurring during an interval or interlude within an overall period of employment

Stakeholder submissions supported retaining the current approach. The Australian Bar Association, for example, described this as a 'settled area of law' requiring no legislative intervention.[123] Employer groups emphasised the importance of legal certainty and the risk of increased disputation if the law were changed. Employee representatives and unions argued that the current settings provide essential protection for workers, particularly in the context of modern, flexible work arrangements.

Most state and territory schemes recognise interval injuries as compensable, particularly where the activity is induced or encouraged by the employer. For example, New South Wales and Victoria apply similar principles, though New South Wales requires that employment be a substantial contributing factor to the injury.[124]

We considered whether there was a need to clarify or narrow the scope of compensation for interval injuries, particularly given the rise of remote and flexible work. However, we concluded that the existing legal framework, supported by substantial judicial authority and practical experience, strikes an appropriate balance between worker protection and Comcare scheme sustainability. Any change would risk creating uncertainty, increasing litigation, and undermining established rights without clear evidence of benefit. We recommend not changing the current approach for injuries sustained during an interval or interlude within an overall period of employment.

Injuries sustained during an ordinary recess

Submissions from both employer and worker groups acknowledged the practical necessity of the current approach. Some employer representatives suggested that the boundaries of liability could be more clearly defined – particularly where workers engage in personal activities during a recess. For example, we heard recommendations that coverage for injuries during recess and unpaid breaks should require a clear connection to work, and suggestions that attending a gym or sporting activity during a break, or other activities over which the employer has little or no control, should be excluded from coverage. However, there was no consensus on any preferable alternative. Worker representatives strongly opposed any narrowing of coverage, arguing that it would create arbitrary distinctions and potential gaps in protection.

Concerns regarding injuries sustained during an ordinary recess when working from home were also raised with us. We deal with those concerns in more detail later.

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[123] Australian Bar Association submission, p 1.
[124] *Workers Compensation Act 1987* (NSW), s 9A.

We considered state and territory schemes, the general coverage for onsite recesses and the differences between some schemes – for example, New South Wales and Tasmania's respective approaches (detailed earlier). These differences highlight the value of the SRC Act's consistent and inclusive approach, which avoids arbitrary exclusions and aligns with most jurisdictions.

The current approach is supported by a substantial body of case law and administrative practice. There is no evidence that it has led to inappropriate or unsustainable outcomes. We recommend not changing the current approach for injuries sustained during an 'ordinary recess' within a discrete period of work.

Injuries occurring while entering or exiting a place of work

Hanks acknowledged that disputes about where a place of work begins and ends will persist as long as home-to-work travel is excluded. He concluded that the current legislative wording, supported by case law, provides the best means for addressing these issues and did not recommend legislative change.[125]

Stakeholder submissions generally supported the current approach. Some employer groups called for greater clarity on the definition of 'place of work', especially in relation to car parks, common areas, and remote or home-based work. However, there was no strong support for a fundamental change.

We considered whether to recommend legislative amendment to further define or limit coverage for entry and exit injuries. On balance, we concluded that the current approach provides sufficient clarity and flexibility, and that further change would risk creating new uncertainties and gaps in coverage. We recommend not changing the current approach for injuries sustained while entering or exiting a place of work.

Working from home

Stakeholders raised working from home arrangements as a key area of concern in relation to the definition of injury and the employment nexus test. While working from home arrangements have existed for some time, the COVID-19 pandemic accelerated their adoption across the country, prompting renewed scrutiny of how the SRC Act applies to injuries sustained in home-based work environments.

We heard that the current framework does not adequately reflect the realities of modern work, where the boundaries between home and the workplace are increasingly blurred.[126] Many submissions highlighted the need for the SRC Act to respond to these changes. Several submissions called for clearer definitions and guidance regarding what constitutes a 'workplace' and a 'work activity' in a home environment.[127]

Unions and employee representatives emphasised that injuries sustained while working from home should be covered by the Comcare scheme, provided there is a clear connection to work. They argued

[125] Hanks Review, para 5.142.
[126] For example, see Ai Group submission, pp 3–5.
[127] For example, see Pacific National submission, p 9. We also received private submissions on this issue.

that the location of work should not diminish a worker's entitlement to compensation, and that the scheme must ensure equitable treatment for all workers, regardless of where duties are performed.[128]

Employer groups and some government agencies, including the Australian Taxation Office,[129] expressed concerns about the boundaries of employer liability in working from home settings. They called for clearer legislative or policy guidance to distinguish between work and non-work activities in the home and suggested that coverage should be limited to injuries occurring in designated work areas or during clearly defined work activities.

Some submissions recommended excluding injuries sustained during personal tasks or breaks, such as school pick-up or domestic chores, from compensation.[130] There was also support for developing non-legislative guidelines, and an insistence that employers have clear working from home policies[131] to help employers and workers navigate these issues.

Overall, stakeholders agreed that the SRC Act must evolve to address the challenges and risks associated with working from home. This would ensure that both workers and employers have clarity about their rights and responsibilities in the context of flexible work.

We agree that the rise of working from home and flexible work arrangements has created an overlap between work and non-work activities.[132] It has also changed WHS risks and created new ones.[133]

A common theme in written submissions and face-to-face consultations was that employers lack control over working from home environments and the activities employees undertake while working from home.[134] We did not agree with this proposition, given that all employees must comply with any lawful and reasonable direction issued by their employer.[135] For most Commonwealth employees, this is a legislative requirement.[136]

Comcare has produced working from home guidance, including a checklist to help workers and employers meet their WHS duties and manage working from home risks.[137]

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[128] For example, see AMWU submission, p 17 and ACTU submission, p 12.
[129] Australian Taxation Office submission, p 3.
[130] Unpublished submission No 68.
[131] Peter Sutherland submission, p 5.
[132] ACTU, *Working from home*, ACTU, 2020.
[133] SWA, *Working from home - Managing risks*, SWA, accessed 31 August 2025. Available at www.safeworkaustralia.gov.au/safety-topic/managing-health-and-safety/working-home/managing-risks.
[134] Ai Group submission, pp 3–5.
[135] *R v Darling Island Stevedoring & Lighterage Co*; *Ex parte Halliday and Sullivan* [1938] HCA 44.
[136] *Public Service Act 1999* (Cth), s 13(5); *Parliamentary Service Act 1999* (Cth), s 13(5).
[137] Comcare, *Working from Home – checklist*, 2023, Comcare, accessed 25 August 2025. Available at www.comcare.gov.au/office-safety-tool/spaces/work-areas/working-from-home.

Comcare's scheme guidance on claims for injuries and diseases arising from home-based work also states that:

> *'Home-based work does not mean that employees are continually in the course of employment while at home, and decision makers will need to consider whether the employee was completing actual work duties or duties related to employment at the time of the injury.'*[138]

Ai Group submitted that the flexible nature of work makes the concept of 'ordinary recess' one that cannot be reasonably applied.[139] We disagree and consider that workers should be covered for injuries that occur during a break (that is, ordinary recess) or shorter breaks (for example, to go to their kitchen to get refreshments or to the bathroom), just like they would be if they are working in an office or onsite.[140]

Comcare's scheme guidance assists in this regard, as it states:

> *'… where an employee sustains an injury during an interval or interlude in an overall period of work, assessment of whether an employee was induced or encouraged by their employer to carry out an activity, or be at a place, should be made on a case-by-case basis. Evidence such as communication or agreement between the employer and employee may assist in determining liability in these circumstances, however inducement or encouragement may also be implied.'*[141]

Consistent with the Comcare scheme guidance, we recommend that the governing board develop non-legislative guidelines for employers to adopt that convey their expectations of what is a 'work activity' or 'non-work activity' during an interval (including while working from home), when travelling for work, and when working away from the usual place of work, including when on a recess. This approach offers flexibility, can be updated as work patterns change, and helps ensure fair and consistent treatment for all parties.

Notwithstanding that the guidelines are non-legislative, any guidelines developed by the governing board, and those adopted by the relevant employer, should be a mandatory consideration of the decision-maker (at all levels), in determining whether an injury sustained during an interval (including while working from home), when travelling for work, or when working away from the usual place of work, is in the course of employment.

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[138] Comcare, *Scheme guidance - Claims for injuries and diseases arising from home-based work*, 2023, Comcare, accessed 31 August 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/scheme-guidance-claims-for-injuries-and-diseases-arising-from-home-based-work.
[139] Ai Group submission, p 5.
[140] SWA, *Working from home – Workers' Compensation,* SWA, accessed 14 September 2025. Available at www.safeworkaustralia.gov.au/safety-topic/managing-health-and-safety/working-home/workers-compensation.
[141] Comcare*, Scheme guidance - Claims for injuries and diseases arising from home-based work*, 2023, Comcare, accessed 31 August 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/scheme-guidance-claims-for-injuries-and-diseases-arising-from-home-based-work.

The rise in psychological claims

As detailed throughout Chapter 1, psychological injury claims have become an increasingly prominent feature of the workers' compensation landscape. The Comcare scheme faces new challenges in ensuring fair, consistent and accessible support for workers suffering psychological injury, while also managing sustainability. This trend has prompted debate about whether the current legislative tests for psychological injury are fit for purpose, and whether additional requirements or separate thresholds are needed to manage the complexity and subjectivity often associated with these claims.

According to a report by SuperFriend, which analysed survey results of more than 75,000 Australian workers over 10 years, quantitative data, workers' compensation trends, and think tank qualitative insights, mental health awareness has increased, but stigma persists. SuperFriend found there was still considerable room to build a more sustainable approach to mental health literacy and education. It found that experiences of bullying, discrimination and harassment have declined over the past 10 years, and yet psychological injury workers' compensation claims have increased. SuperFriend suggested this may indicate a lag factor between the negative workplace experience and the making of a claim, but also noted that other factors may have a bearing.[142]

Stakeholders acknowledged that psychological injuries are often complex, involving both work-related and personal factors. Unions and employee representatives strongly emphasised the need to treat psychological injuries equitably with physical injuries, and for workers not to face additional barriers when seeking compensation for psychological injury. Turning specifically to the 'significant contribution' test, the AMWU recommended the use of 'substantial contribution', which it considered would better allow for other contributory factors.[143]

Some employer groups and legal stakeholders raised concerns about the subjectivity of psychological injury claims and the potential for increased Comcare scheme costs. They suggested that additional safeguards – such as requiring a diagnosis by a psychiatrist or psychologist (similar to Hanks's recommendation) or strengthening the test for psychological injuries – might be warranted to ensure only genuine claims are accepted. Several submissions were content with the 'significant contribution' requirement, including both worker and employer representatives, along with Comcare. Comcare's submission also advocated for the assessment of psychological injury claims by reference to evidence-based diagnostic principles, such as the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association.[144]

We also considered state and territory arrangements, including Victoria's changes to its workers' compensation legislation to exclude 'stress' and 'burnout' as a compensable psychological injury.[145] While the change is too recent to assess its effect, it is doubtful that a change of a similar nature to the SRC Act would have a significant effect as stress and burnout are symptoms, and not ailments in

[142] SuperFriend, *A decade of data: SuperFriend's insights into ten years of workplace mental health*, SuperFriend, accessed 31 August 2025. Available at www.superfriend.com.au/a-decade-of-data.
[143] AMWU submission, p 31.
[144] Comcare submission, p 27.
[145] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 40(1A). The exclusion relates to where the stress or burnout arose from events in the workplace considered normal or typical.

themselves.[146] The underlying psychological ailment, if any, would be the subject of any claim and, on the face of it, is not captured by Victoria's exclusion.

The *Wiegand v Comcare* decision

The decision in *Wiegand v Comcare* is a source of ongoing debate, but has not been seriously doubted by a superior court. It effectively follows prior case law that emphasised that a psychological condition may arise in employment in the absence of any kind of objectively unusual or special stressors.[147] Under *Wiegand*, a worker's perception of workplace events – whether or not that perception is reasonable – can be relevant, provided the events actually occurred and contributed in a material degree to the injury.[148]

Some employer groups and legal stakeholders expressed concern that the *Wiegand* approach may open the door to more subjective or less substantiated claims, potentially increasing Comcare scheme costs and disputation. They suggested applying a 'reasonableness' test to the worker's perception, or requiring a higher threshold for causation for psychological injuries.[149] This thinking echoes that of Hanks. He considered it an 'an unfair burden on employers to make them liable to pay compensation for a psychological injury that is caused by an employee's fantasising rather than by any aspect of employment'.[150]

Arguments in favour of the *Wiegand* approach centre on fairness, accessibility and the realities of psychological harm in the workplace. They acknowledge the complex ways in which workplace events can affect psychological health. Arguments against focus on concerns about subjectivity, potential for over-claiming, and Comcare scheme sustainability. We favour arguments in favour of the *Wiegand* approach.

On balance, we concluded that there is no need for a separate test for psychological injury or for additional requirements, diagnostic or otherwise, beyond those already in place. The current approach – requiring that psychological injuries meet the definition of 'ailment' and that employment contributed to their development to a significant degree – remains appropriate and fair. Introducing further requirements would risk creating unnecessary barriers to support, increase complexity, and undermine the principle of equitable treatment for all injured and ill workers. We therefore recommend not changing the test for psychological injury claims.

Coverage of heart attacks and strokes

Historically, the SRC Act has allowed for heart attacks, strokes and other similar manifestations of underlying disease processes to be compensable if they occur in the course of employment, even

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[146] Symptoms alone are generally not compensable: see generally *Military Rehabilitation and Compensation Commission v May* [2016] HCA 19, [57]–[62] and *Comcare v Stefaniak* [2010] FCA 560, [6].
[147] Such as *Westgate v Australian Telecommunications Commission* (1987) 17 FCR 235 and *O'Neill v Commonwealth Banking Corporation* (1987) 75 ALR 154.
[148] The decision in *Wiegand* concerned a claim for an illness sustained before the introduction of the 'contributed to a significant degree' test in 2007.
[149] See, for example, McInnes Wilson Lawyers submission, p 2 and Ai Group submission, p 6.
[150] Hanks Review, para 5.64.

where the underlying cause may be unrelated to work.[151] This means that a heart attack or stroke suffered at work may be compensable, regardless of whether employment was a significant contributing factor.

However, some employers, employer representatives and the Australian Bar Association did not agree with this approach. They wanted such injuries to be dealt with in the same way as diseases, or with an additional requirement that employment be the proximate cause of the injury. They argued that the present approach could result in claims for conditions primarily attributable to personal or lifestyle factors – rather than employment – and could increase Comcare scheme costs and undermine the principle that compensation should be reserved for injuries and diseases genuinely connected to work. Hanks's thinking on the issue was similar. He argued that there is little justification for employers to fund the costs of events that could be entirely non–work related, and that a higher threshold would better align with the underlying principles of workers' compensation.[152]

Comcare's submission recommended that the new Act provide clearer guidance on when such events should be considered compensable. It also said the current framework could be improved by requiring a significant contribution from employment. Comcare's position was that this would ensure fairness and scheme sustainability, while still supporting workers whose employment genuinely contributed to the onset of these conditions.[153]

Unions and employee representatives, on the other hand, generally supported maintaining the current approach, arguing that it provides important protection for workers who suffer serious medical events at work. The ACTU, for example, argued that heart attacks and strokes should be treated the same way as other injuries, with the test being whether the event occurred in the course of employment.[154]

We also considered the approach taken in state and territory schemes. We noted New South Wales, Victoria and the Northern Territory's stricter approach.[155] These models provide a higher threshold for coverage but also introduce additional complexity and may require more detailed medical and factual investigations.

On balance, we recognise the importance of ensuring that the Comcare scheme provides fair and reasonable support for workers who suffer serious medical events in the course of their employment, while also maintaining scheme integrity and sustainability. We think that the current approach remains appropriate. This strikes a balance between supporting workers and provides protection and support for workers who suffer serious life-altering events at work.

[151] At least since the decision in *Kavanagh v The Commonwealth* [1960] HCA 25.
[152] Hanks Review, para 5.76.
[153] Comcare submission, p 27.
[154] ACTU submission, p 35.
[155] *Workers Compensation Act 1987* (NSW), ss 9A–9B*; Return to Work Act 1986* (NT), s 58; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 40(3).

Significant contribution

The present SRC Act provides a non-exhaustive list of matters that may be taken into account in determining whether employment has contributed to an ailment to a significant degree.[156] This includes any predisposition of the worker to the ailment, and any other matter affecting the worker's health. The legislation is silent on how to take those matters into account. As such, it is unlikely that there was a move away from the application of the common law principle that a worker be taken as is – that is, irrespective of underlying vulnerability or injury. Particularly for psychological injury, such a vulnerability may arise with workers who are neurodivergent.[157] In that regard, there is no reason that the current settings should not remain, although the drafting could be assisted by reaffirming that the pre-existing common law concept of 'egg-shell skull' remains applicable.

2.2.6 Panel recommendations

Recommendation 8

We recommend no change to the definition of 'injury', 'disease', 'ailment' and the employment nexus test as this may impact eligibility. This means:

a. no separate test for psychological injury
b. no change with respect to workers injured during an 'interval' or 'interlude' during an overall period of work
c. no change with respect to an injury sustained while temporarily absent from employment during an 'ordinary recess' taken during a discrete period of work
d. no change with respect to injury sustained while entering or exiting a place of work.

This recommendation is subject to the making of drafting improvements or simplifying the definitions and tests without changing the substantive meaning.

Recommendation 9

We recommend partial restoration of journey claims for workers on call or travelling from an employer-provided workplace to a home workplace to resume work.

[156] SRC Act, s 5B(2).
[157] See, for example, *Truffet v Workers' Compensation Regulator* [2019] QIRC 201.

Recommendation 10

We recommend guidelines be developed by the governing board that decision-makers must have regard to in determining whether an injury sustained during an interval (including while working from home), when travelling for work, or when working away from the usual place of work, is in the course of employment.

2.3 What diseases should be presumed to be covered by the Comcare scheme?

2.3.1 Background

Recognising that certain occupations carry a heightened risk of disease or injury arising in the course of employment, Australian workers' compensation jurisdictions (including the SRC Act) have introduced presumptive legislation to ease the evidentiary burden on affected workers. These are conditions that are highly likely to be caused by work, based on scientific evidence. Accordingly, they are presumed in case law to be work-related in most workers' compensation schemes.

The current SRC Act contains 4 presumptive provisions in relation to diseases – that is, if the requisite circumstances are met, an ailment will be taken to have been contributed to, to a significant degree, by employment (such as to meet the definition of disease), unless the decision-maker is satisfied to the contrary.[158] In practice, this puts the onus on the decision-maker to find that a disease is not compensable.

The following section outlines the 4 provisions.

Occupational diseases

Under s 7(1) of the SRC Act, the Minister may specify certain diseases[159] as being related to employment of a kind specified by the Minister. The essential form of this instrument has remained unchanged through the history of the SRC Act. Indeed, the legislative instrument issued in response to an almost identical provision of the 1971 Compensation Act followed the same structure.

The Minister has specified diseases and employments for the purposes of this provision under the *Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017*. For example, the instrument provides that hepatitis A will be presumed to be compensable when it is related to 'employment involving work with human waste'.[160] Consequently, if a worker engages in 'employment involving work with human waste' and then suffers hepatitis A, the employment shall, for the purposes of the SRC Act, be taken to have contributed, to a significant degree, to contracting hepatitis A, unless the contrary is established.

Increased incidence of disease

Subsections 7(2) and (3) relate to an increased incidence of particular diseases within particular employment, compared to persons engaged in other employment at the same location. The effect of the provisions is to presume, if there is a significantly increased rate of an ailment among workers in the

[158] SRC Act, s 7.
[159] As noted above, 'disease' in this context is in the ordinary, non-defined sense.
[160] *Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017* (Cth), Sch 1, Item 3.

same occupation (using others in the same location as a baseline comparator), employment is a significant contributor to contracting that disease.

The provisions appear to be rarely used – at least, they were seldom raised before the AAT or the Administrative Review Tribunal.[161] In *Re Honchera and Comcare*, the AAT considered the application of the provisions in respect of hearing loss suffered by bus drivers, and observed difficulty in applying the provisions:

> *'Unfortunately, the subsection does not define two key concepts. The kind of employment in which the applicant was engaged (or, to use the language of the subsection, any employment in which he or she was engaged … at any time before the symptoms of the disease first became apparent) is not defined. Nor is the notion of the place where the employee is ordinarily employed. Moreover, there seems to be a paucity of decided cases dealing with these terms.'*[162]

Cancers suffered by firefighters

Subsections 7(8) to (10) provide for presumed liability for specified cancers suffered by firefighters. These provisions were introduced into the SRC Act in 2011 and amended in 2022.

The subsections provide a table of cancers with a corresponding 'qualifying period', being the amount of time a person must have been employed as a firefighter in order to gain access to the presumption for the respective cancer.[163] To be defined as a firefighter for the purposes of the provisions, firefighting or related duties must make up a not insubstantial portion of the worker's duties.

The subsection is capable of extending not only to professional firefighters, but also to volunteer firefighters in the Australian Capital Territory.

Post-traumatic stress disorder among first responders

The Senate Education and Employment References Committee conducted an inquiry into matters relating to the psychological health of first responders. In February 2019, the Committee produced *The people behind 000: mental health of our first responders*.

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[161] It may be that this provision is applied, but rarely litigated. For example, it would seem that Comcare accepted liability under these provisions in respect of breast cancer suffered at the ABC's Toowong offices: see Australian Associated Press (AAP), *ABC breast cancer compo claims approved*, 19 July 2007, news.com.au, accessed 28 May 2025. Available at www.news.com.au/national/breaking-news/abc-breast-cancer-compo-claims-approved/news-story/ee1ffdc41406a8784d58866f7192ae12; it appears the only reported decision in which s 7(2) was found to apply was *Re Dunn and Military Rehabilitation and Compensation Commission* [2012] AATA 672. The application of the provision was raised and rejected in *Re Honchera and Comcare* [2016] AATA 33.

[162] *Re Honchera and Comcare* [2016] AATA 33.

[163] The table may be supplemented by regulations: see SRC Act, s 7(8), Item 13, and the *Safety, Rehabilitation and Compensation Regulations 2019* (Cth), s 8A.

In that report, the Committee noted:

> *'Claiming workers' compensation can be a daunting process, particularly if the injury concerned relates to mental health. At present, in most states first responders suffering PTSD are required to navigate this complex and adversarial system at a time when their mental health may be impeding their ability to navigate even basic daily interactions. The committee received substantial evidence which demonstrates that the process to make a claim for compensation—where first responders are required to relive their traumatic experiences, often on multiple occasions—has a tendency to exacerbate their psychological injury. The committee is in principle persuaded by evidence supporting the introduction of presumptive legislation …*
>
> *The committee also notes that reversing the burden of proof from first responders to employers would not introduce new entitlements. Instead it would allow affected workers easier and more timely access to necessary assistance and compensation, whilst leaving the opportunity for evidence-based rebuttal open to employers to dispute claims.'*[164]

Following that report, ss 7(11) to (14) were introduced to the SRC Act by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth). Through those provisions, if:

- a person is diagnosed with PTSD by a legally qualified medical practitioner under the DSM, and
- before suffering the PTSD, that person was employed as a listed first responder (or a member of a class of employees – not necessarily being first responders – that the Minister has declared eligible for the presumption)

employment will be presumed to have contributed, to a significant degree, to the PTSD unless the contrary is established.

Subsection 7(13) of the SRC Act lists a number of occupations. They would not all necessarily fit within the lay concept of 'first responders'. However, they are taken to be first responders for the purposes of the legislation. The list includes:

- all Australian Federal Police employees, and its Commissioner
- firefighters
- ambulance and paramedic officers
- emergency services communications operators (for example, 000 call operators)
- Australian Capital Territory emergency service members (to the extent not mentioned elsewhere, this includes the ACT State Emergency Service)
- all Australian Public Service employees of the Australian Border Force, and its Commissioner.[165]

[164] Education and Employment References Committee, *The people behind 000: mental health of our first responders*, 2019, Australian Parliament House, p 90, [4.76]–[4.77].
[165] SRC Act, s 8(13).

2.3.2 Previous reviews

The Hanks Review did not cover 'deemed diseases' as part of its analysis of the SRC Act.

2.3.3 State and territory arrangements

Since 2015, Safe Work Australia (SWA) has maintained a list of diseases it considers should attract presumed liability. For this purpose, SWA engaged Professor Tim Driscoll, a specialist in occupational medicine and public health medicine, and an independent consultant in epidemiology, occupational health and public health. In his 2023 review of the list,[166] Professor Driscoll outlined 3 criteria for inclusion:

- a strong causal link between the disease and occupational exposure
- clear diagnostic criteria
- the occupation accounts for a considerable proportion of the cases of that disease in the overall population or in an identifiable subset of the population.

Each workers' compensation jurisdiction has some form of a list of occupational diseases for which liability is presumed. No list completely covers those in SWA's recommendations, although the differences may be minor.[167] The various jurisdictions also have specific provisions for diseases suffered by firefighters.[168]

The deeming of PTSD for first responders is a relatively new introduction to workers' compensation legislation. For example, the Northern Territory introduced such provisions in 2020,[169] Queensland in 2021,[170] and Western Australia in 2022 (before maintaining that coverage in the new 2023 legislation).[171] Tasmania's legislation contains a presumption of liability for PTSD that extends beyond first responders, covering all public servants.[172]

[166] Tim Driscoll, *Interim review of the Safe Work Australia 2021 Deemed Disease List*, 2023, Elmatom Pty Ltd, SWA, accessed 26 August 2025. Available at www.safeworkaustralia.gov.au/doc/2023-interim-review-list-deemed-disease-australia-report.
[167] See, generally, SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA.
[168] See SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Table 4.10.
[169] *Return to Work Regulations 1986* (NT), Sch 2, Item 9A.
[170] *Workers' Compensation and Rehabilitation Act 2003* (Qld), ss 36EA–36ED.
[171] *Workers Compensation and Injury Management Act 2023* (WA), s 10; *Workers Compensation and Injury Management Regulations 2024* (WA), reg 10.
[172] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 28A.

2.3.4 What we heard

A number of submissions noted the importance of presumptive liability provisions. However, it was emphasised that such presumptions needed to be supported.

> *'The UFUA's [United Firefighters Union of Australia's] primary position with respect to presumptive legislation, both in the case of first-responder mental health and cancer-causing workplaces, is that the integrity of any legislative scheme that seeks to streamline claims processing and reduce litigated outcomes by introducing a legal presumption, requires that the relevant legal presumption is supported by the evidence (including scientific research and findings).'*[173]

Post-traumatic stress disorder

Several submissions supported using presumptive legislation to streamline access to workers' compensation for psychological injuries such as PTSD. The United Firefighters Union of Australia (UFUA) emphasised that presumptive legislation can significantly reduce barriers to treatment, eliminate fault-based claims processes, reduce litigation and help destigmatise psychological injury claims. We discuss these submissions in more detail later.

Climate change

Some submissions suggested that the challenges presented by climate change (see Chapter 1) may require an expansion of the presumptive legislation. The AMWU cited a recent review that identified 10 major WHS risks associated with climate change. These include increased ambient temperatures, air pollution, ultraviolet exposure, extreme weather events, vector-borne diseases, industrial transitions, changes in the built environment, psychological health effects, economic burdens and geoengineering.[174]

> *'[T]here should be presumptive workers compensation in relation to injuries and illnesses that arise at work [as a result of these risks].'*[175]

2.3.5 What we considered

Most submissions supported the current arrangements. However, there were a number of specific submissions regarding the current presumptions, specifically relating to the PTSD presumption, and matters relating to exposure to risks associated with climate change.

The PTSD presumption

As noted earlier, we received a number of submissions regarding the PTSD presumption. At the outset, it should be noted that the PTSD presumption has only been in effect in the SRC Act since the end of

[173] United Firefighters Union of Australia (UFUA) submission, p 2.
[174] PA Schulte et al. 'Updated assessment of occupational safety and health hazards of climate change', 2023, 20(5–6), *Journal of Occupational and Environmental Hygiene*, pp 183–206.
[175] AMWU submission, pp 20–21.

2023.[176] This means that it is not yet possible to heavily scrutinise the operation of those provisions in practice.

In terms of coverage, the UFUA argued that the term 'first responder' in the PTSD presumption should be reserved for individuals repeatedly exposed to traumatic events. It suggested that a qualifying period based on cumulative trauma exposure may be appropriate.[177] The UFUA also supported expanding presumptive coverage to other psychological injuries arising from repeated trauma, provided there is sufficient evidence.

The CPSU highlighted that its members, when deployed to disaster-affected areas, face trauma similar to that experienced by first responders, and considered the presumption should be extended to such persons.[178]

As noted earlier, this presumption is a relatively recent introduction to the SRC Act. While the Act uses the term 'first responder', the presumption clearly operates beyond the boundaries of the common understanding of that term. For example, all Australian Public Service employees in the Australian Border Force are defined as 'first responders', irrespective of their actual duties. Further, the provisions allow for the Minister to declare other classes of employees to whom the presumption applies: there is no restriction in the legislation that such persons be 'first responders'.[179] Notably, the Minister's power to declare other persons for the purposes of this presumption is limited to where 'the Minister is satisfied that the incidence of PTSD among a class of employees is significantly greater than the incidence of post-traumatic stress among the general public'.[180] That is, the legislation effectively requires there to be an evidence base for extending the presumption to other workers.

In our view, while this approach is generally appropriate, the varied circumstances of workers deployed to disaster-affected areas (such as the type of role or the nature of the disaster) causes inherent difficulties in presenting such an evidence base. However, workers deployed into disaster-affected areas are inherently at risk of being exposed to circumstances that could give rise to PTSD. Under the *National Emergency Declaration Act 2020* (Cth),[181] a 'national emergency declaration' may only be made where the emergency has caused, is causing, or is likely to cause, nationally significant harm. Plainly such an emergency would put workers deployed into those areas at risk of sustaining PTSD. We recommend extending the deeming provision to all workers covered by the Comcare scheme who are deployed within disaster-affected areas of a national emergency declared under the National Emergency Declaration Act.

With respect to the UFUA's comments, PTSD may not be the only psychological condition to which a presumption should apply. For this reason, the Minister or governing board should have the power to extend the presumption to other psychological conditions, if it considers it appropriate to do so. Any

[176] The presumption was introduced by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* and commenced on 15 December 2023.
[177] UFUA submission, p 5.
[178] CPSU submission, p 8.
[179] SRC Act, s 7(11)(b)(ii), read with s 7(13A).
[180] SRC Act, s 7(13A).
[181] *National Emergency Declaration Act 2020* (Cth), s 11.

such extension should be supported by evidence of the nature described by Professor Driscoll for inclusion in SWA's list of deemed diseases (as discussed earlier).

We do not, however, think that a qualifying period would be appropriate. Unlike certain other diseases in which cumulative exposure increases risk, PTSD may be suffered through exposure to a single traumatic incident.[182]

The Australian Federal Police Association was among other stakeholders that commented on the PTSD presumption. It called for the presumption to be made retrospective.[183] We consider this would create significant challenges, not least because retrospective liability could have a significant financial effect on liable parties that have not had an opportunity to assist the person with treatment, rehabilitation and return to work. Such persons are not excluded from compensation for their PTSD; they may still claim through the ordinary process.

The Australian Psychological Society proposed that psychologists be permitted to diagnose PTSD for the purposes of the presumption.[184] Under s 7(11)(a) of the SRC Act, psychologists are able to make the diagnosis. We do not recommend any changes in this regard.

Other presumptions

We received a submission about a rejected claim for lung cancer the claimant considered was caused by exposure to asbestos from working in a workplace containing both friable and non-friable asbestos. The submission expressed concern that, in part, the current deemed disease list made for the purposes of s 7(1) of the SRC Act provides for a 'specified disease' of '[p]rimary malignant disease of the lung caused by asbestos' and for the disease to be related to employment involving work with asbestos or asbestos-containing materials.[185] Thus, to show that the worker has that disease, they have to prove that their cancer was caused by asbestos,[186] which is often difficult to do.[187] In addition, the worker is required to have undertaken 'hands-on' work with asbestos, as opposed to being exposed while working in a building with ageing asbestos-containing materials.[188] We consider that given that workers in workplaces with asbestos-containing materials, in particular those in sectors with a high prevalence of older government-owned buildings that are more likely to contain ageing asbestos, are recognised as an at-risk cohort,[189] the deeming provisions as they relate to asbestos should be closely examined.

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[182] American Psychiatric Society, *Diagnostic and Statistical Manual of Mental Disorders*, *5th Edn, Text Revision*, 2022, American Psychiatric Society, p 301.
[183] Australian Federal Police Association submission, p 12.
[184] Australian Psychological Society submission, p 6.
[185] *Safety, Rehabilitation and Compensation (Specified Diseases and Employment) Instrument 2017*, Sch 1, Item 18.
[186] See *Commonwealth v Bird* [1988] HCA 23.
[187] For example, *Amaca v Ellis* [2010] HCA 5.
[188] *Re Barber v Comcare* (unpublished decision, Administrative Review Tribunal, Senior Member Ward, 29 November 2024).
[189] SEC Newgate Research, *National Asbestos Awareness Survey*, prepared for Asbestos Safety and Eradication Agency, 2022, SEC Newgate Research; G Frangioudakis Khatib et al., 'Australia's Ongoing Challenge of Legacy Asbestos in the Built Environment: A Review of Contemporary Asbestos Exposure Risks', 2023, 15, 12074, *Sustainability (Switzerland),* 2023, 15, 12071, p 2.

The ability to make the deemed disease list should be a matter for the governing board, considering relevant and recent evidence. We leave the matter with them to consider. However, to avoid doubt, in our view a person exposed to asbestos in employment, and who later suffers from cancer of a type that can be caused by asbestos (as opposed to a cancer that was caused by asbestos), should meet the requirements for the deeming.

Beyond that submission in relation to asbestos, no other specific submission was made around the deemed diseases (s 7(1)), disease incidence (s 7(2)) or firefighter cancer (s 7(8)) provisions. We therefore decline to make any recommendations for the new legislation to depart from the current approach.

2.3.6 Panel recommendation

Recommendation 11

We recommend that the post-traumatic stress disorder presumption is extended to all workers covered by the Comcare scheme who are deployed in disaster-affected areas when a national emergency is declared under the *National Emergency Declaration Act 2020* (Cth).

2.4 What should be excluded from liability?

2.4.1 Background

This section examines the exclusions within the SRC Act that limit entitlement to compensation, even when an injury or disease would otherwise meet the statutory definitions. These exclusions serve to balance the integrity and sustainability of the Comcare scheme with fairness to workers and employers. Key exclusions include injuries resulting from reasonable administrative action, self-inflicted harm, serious and wilful misconduct, and certain journey-related incidents. The section also considers how these provisions have evolved, the challenges they present in practice, and whether they remain fit for purpose in the context of modern work arrangements and community expectations.

Reasonable administrative action

As originally enacted, the SRC Act excluded liability for conditions suffered 'as a result of reasonable disciplinary action taken against the employee or failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment'. This exclusion was directed at psychological conditions, even if this was not explicit.

In 2007, the SRC Act was amended to replace the above exclusion provision with a more general exclusion for conditions suffered 'as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment', with a non-exhaustive list of actions deemed to be administrative action.[190] In *Commonwealth Bank v Reeve* (*Reeve*), Rares and Tracey JJ said:

> *'[T]he purpose of s 5A was to broaden the exclusion of matters from the previous definition of "injury" so that an employer would not be unduly inhibited in taking reasonable administrative action in respect of an employee's employment. The Parliament sought to ensure that an employer would be freer to deal with an employee, by taking disciplinary action or deciding to deal with that employee as an individual in respect of his or her employment, than had been the case under what it considered were narrow judicial interpretations of the old exclusion in s 4(1).'*[191]

The exclusion has 3 elements:

1. whether the action was 'administrative action taken … in respect of the employee's employment'
2. whether that action was 'reasonable', and whether it was 'undertaken in a reasonable manner'
3. whether the condition was suffered 'as a result of' that action.

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[190] Comcare, *Considerations when applying the RAA taken in a reasonable manner exclusion*, 2023, Comcare, accessed 27 August 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/considerations-when-applying-the-raa-taken-in-a-reasonable-manner-exclusion.
[191] *Commonwealth Bank v Reeve* [2012] FCAFC 21.

Administrative action taken … in respect of the employee's employment

The insertion of the current form of the exclusionary provision[192] led to considerable litigation around the meaning of 'administrative action'. Initially, decision-makers (including the AAT) leant on decisions relating to a similarly worded provision in the *Workers Rehabilitation and Compensation Act 1986* (SA), in particular the decision of *Workcover Corporation of SA v Summers*, in which the Full Court of the South Australian Supreme Court noted:

> *'… the words chosen by Parliament – "administrative action" do not seem apt to embrace every instruction of and action by an employer. The expression chosen suggests that Parliament had in mind a particular type of action by an employer, and something other than a mere instruction or requirement that the worker perform her duties. In my opinion the appellant's submission fails to give any effect to the adjective "administrative".'*[193]

Summers was referred to in *Reeve*, a decision of the Full Court of the Federal Court, in the first significant decision to consider the meaning of the phrase as it existed in the SRC Act. In *Reeve*, Gray J made a distinction between 'administrative' action that was captured by the exclusion, and 'operational' action that was not. In Gray J's view, 'administrative' action referred to 'the administration of the relationship of the employer and employee', whereas 'operational' action related to 'the activities or business of the institution or enterprise in which the employee is employed'. By this measure, Gray J gave examples of actions not falling within the exclusion, such as an 'instruction to perform work at a particular location, to drive on a particular route, or to perform particular duties'.[194]

Justices Rares and Tracey also attempted to put limits around the term 'administrative', in a not dissimilar fashion to Gray J. But they also focused on the phrase 'in respect of the employee's employment', noting that those words indicated that 'Parliament intended that the exclusory action be specific to administrative action directed to the person's employment itself, as opposed to action forming part of the everyday duties or tasks that the employee performed in his or her employment or job'.[195]

Dispute around this phrase continues, with the Federal Court ruling on the interpretation of this phrase as recently as July 2024 in *Moradi v Comcare*.[196]

'Reasonable' and 'undertaken in a reasonable manner'

The legal principles around this double reasonable test have been guided by the extensive use of the term 'reasonable' in other legislation, albeit in different contexts. In *Comcare v Martinez (No. 2)*, the court concluded that the test allowed for the possibility of there being more than one way of doing things reasonably, and was to be assessed objectively.[197] However, fair minds can disagree on whether

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[192] SRC Act, s 5A, inserted by *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007*, Sch 1, s 11.
[193] *Workcover Corporation of South Australia v Summers* (1995) 65 SASR 243, [247].
[194] *Commonwealth Bank of Australia v Reeve* [2012] FCAFC 21.
[195] *Commonwealth Bank of Australia v Reeve* [2012] FCAFC 21, [60].
[196] *Moradi v Comcare* [2024] FCA 812.
[197] *Comcare v Martinez* [2013] FCA 439.

an action taken was reasonable, or whether it was taken in a reasonable manner. So a considerable number of disputes arise from this issue. Nevertheless, such a finding is generally a finding of fact, rather than an issue of legal interpretation (although the assessment of reasonableness may incorporate disputes about the application of other legislation and policies: see, for example, *Comcare v Banerji*).[198]

'As a result of'

The SRC Act is the lone jurisdiction that uses the 'as a result of' phrase to denote the requisite causal relationship between the excluded action and the injury. The term 'as a result of' (and the reverse formulation 'resulting in') is repeatedly used (more than 50 times) in the SRC Act in a number of different concepts, which may explain its use.

This component of the exclusionary provision has also resulted in considerable dispute (both legally and factually). In *Comcare v Hart*, a case under the pre-2007 SRC Act (which also used the phrasing 'as a result of'), the Federal Court said that the exclusionary action need not be the sole cause of the injury, but must have made a material contribution to that injury.[199]

While this was considered binding on the post-2007 SRC Act matters, there was considerable disagreement about what it meant.[200] Since the Hanks Review, the High Court has considered the issue. In *Comcare v Martin*, the Court described something akin to a 'but for' test, finding that an injury will have been suffered 'as a result of' reasonable administrative action if the injury would not have been suffered had the action not been taken.[201]

Journey claims

Injuries sustained on journeys that are within the ordinary meaning of 'in the course of employment' are generally compensable.[202] Section 6 of the SRC Act codifies and extends this approach. This includes journeys where the employee is:

- travelling for the purpose of that employment at the direction or request of the Commonwealth or a licensee[203]
- travelling between the employee's place of work and a place of education (being education related to employment)[204]
- travelling between the employee's place of work and another location for the purpose of obtaining a medical certificate, obtaining compensable medical treatment, undergoing a rehabilitation program provided under the SRC Act, or undergoing a medical examination made under the SRC Act.[205]

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[198] *Comcare v Banerji* [2019] HCA 23.
[199] *Comcare v Hart* [2005] FCAFC 16.
[200] Hanks Review, paras 5.116–5.120.
[201] *Comcare v Martin* [2016] HCA 43.
[202] SRC Act, s 5A.
[203] SRC Act, s 6(1)(d).
[204] In certain circumstances, see SRC Act, s 6(1)(ea).
[205] SRC Act, s 6(1)(g).

Originally, s 6 of the SRC Act also deemed journeys between home and work to be in the course of employment. However, in 2007, the SRC Act was amended to exclude such journeys from s 6. The explanatory memorandum to the amending Bill said:

> *'When an employee is undertaking a journey other than a purely work-related journey, for all practical purposes the employer has no control over the circumstances of the journey or the employee's behaviour. It is inappropriate that an employer could be liable for injuries sustained by an employee during these journeys notwithstanding that the employer fully complies with all occupational health and safety requirements in that employee's workplace.'*[206]

Other exclusions

Injuries caused by the serious and wilful misconduct of an employee are also excluded, unless that injury results in death or serious and permanent impairment.[207] Being under the influence of alcohol or a drug (other than a prescribed medication) is deemed by the SRC Act to be 'serious and wilful misconduct'.[208]

Subsection 14(2) of the SRC Act excludes from liability injuries 'that [are] intentionally self-inflicted'. Unlike the serious and wilful misconduct exclusion, there is no exception to this provision in the event of the injury resulting in death, or serious and permanent impairment. This has caused some complications around suicides, where employment significantly contributed to the underlying psychological illness.[209]

Subsection 7(7) of the SRC Act deals specifically with diseases. Under that provision, if a person previously suffered from the disease for which they are claiming compensation, compensation is effectively excluded if that employee made, at any time, a wilful and false representation that they had not previously suffered from that disease. That representation needs to have been made 'for purposes connected with … employment or proposed employment'. This includes representations made in pre-employment health questionnaires,[210] superannuation documentation[211] and the workers' compensation process.[212]

2.4.2 Previous reviews

Hanks Review

Hanks's assessment of the 'reasonable administrative action' provision was that it plays an important role in balancing the protection of managers in managing their staff, while imposing an appropriate

[206] Explanatory Memorandum to the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2007 (Cth).
[207] SRC Act, s 14(3).
[208] SRC Act, s 4(13).
[209] See, for example, *Re Sadlo and Comcare* [2005] AATA 1006.
[210] See, for example, *Re TRKG and Comcare* [2021] AATA 1923.
[211] See *Re Makin and Comcare* [2010] AATA 432.
[212] *Re Box and Comcare* [2019] AATA 5522.

standard of care. He did, however, consider that some aspects could be clarified in the interests of avoiding costly litigation and providing clarity.

Firstly, Hanks thought it important to clarify the degree of contribution required before the 'reasonable administrative action' would operate to exclude an injury. He recommended amending the final paragraph of s 5A(1) to exclude injuries 'contributed to, to a significant degree, by reasonable administrative action' rather than 'suffered as a result of', to provide a clearer trigger for the provision.[213]

Secondly, Hanks recommended changing the non-exhaustive list of actions considered to be 'reasonable administrative action' under s 5A(2) to an exhaustive list, so there is clarity and consistency in the interpretation of the phrase.[214]

Hanks formed the view that journey claims should continue to be excluded from the SRC Act for 3 main reasons. Firstly, he contended that employees should be personally responsible for decisions made about how safely they travel from home to work, and employers have little control over decisions or factors that influence that safety. Secondly, home-to-work travel is not always direct. Thirdly, employees are usually already covered by compulsory third-party insurance schemes.

He did recommend that journey claims be covered where an employee is 'on call', with the caveat that there should be a requirement that the journey must only include travel between home, or the place where the employee receives the message to attend work, and the place of work itself.[215]

Hanks, in the main, believed the other exclusions were working satisfactorily and did not recommend any changes.[216]

2.4.3 State and territory arrangements

In 2014, the Northern Territory reviewed its scheme and found that the 'broad formulation' of the then existing term 'reasonable administrative action' 'has been interpreted in a way that limits its utility'.[217] The review considered that the better formulation was 'management action' rather than 'administrative action'. The government supported that change, and the amendment was made.[218] Queensland and Victoria also use the 'management action' formulation.[219]

In contrast, at around the same time, WorkCover WA's review of the *Workers Compensation and Injury Management Act 1981* quoted the SRC Act's exclusionary provision and its use of 'administrative

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[213] Hanks Review, paras 5.125–5.127.
[214] Hanks Review, paras 5.125–5.127, Recommendations 5.5–5.6.
[215] Hanks Review, paras 5.140–5.142, Recommendation 5.7.
[216] Hanks Review, paras 5.99–5.102.
[217] G Roussos and M Crossin, *Review of (NT) Workers Rehabilitation and Compensation Act*, 2014, NT WorkSafe, p 50.
[218] Northern Territory Government, *Government Response: Review of (NT) Workers Rehabilitation and Compensation Act*, Northern Territory Government, p 7.
[219] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 40; *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 32(5).

action' and recommended adopting it.[220] This has been reflected in the *Workers Compensation and Injury Management Act 2023* (WA).

South Australia and Tasmania also use the 'reasonable administrative action taken in a reasonable manner' construction. But they include other more specific exclusions around the transfer, demotion, disciplining, counselling, retrenching or dismissal of a worker, and the decision not to award a promotion, benefit or transfer.[221]

Meanwhile, New South Wales and the Australian Capital Territory use neither version. They apply exclusions to a specific set of actions: 'transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers'.[222]

Victoria, New South Wales, South Australia and Western Australia all require that the injury be 'wholly or predominantly' caused by the exclusionary action,[223] while the Northern Territory uses the similarly worded 'wholly or primarily'.[224] Tasmania requires that the illness arose 'substantially from' the excluded action.[225]

Queensland, on the other hand, excludes injuries that 'arise out of or in the course of' reasonable 'management action'.[226]

In addition to the 'management action' exclusion operating in Victoria, Victoria recently implemented a further exclusion where 'the injury is a mental injury predominantly caused by work related stress or burnout that has arisen from events that may be considered usual or typical and reasonably expected to occur'.[227] The amendments also required that the 'mental injury' be diagnosed under the DSM.

Other exclusions

Each state and territory scheme contains a form of exclusion to liability for injuries sustained as a result of 'serious and wilful misconduct'. In New South Wales, the injury must be 'solely attributable' to the misconduct,[228] while in Victoria, Tasmania, Western Australia, the Northern Territory and the Australian Capital Territory the injury need only be 'attributable' to the misconduct.[229] For the exclusion

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[220] WorkCover WA, *Review of the Workers' Compensation and Injury Management Act 1981*, 2014, WorkCover WA, pp 65–66.
[221] *Return to Work Act 2014* (SA), s 7(4); *Workers Rehabilitation and Compensation Act 1988* (Tas), s 25(1A).
[222] *Workers Compensation Act 1987* (NSW), s 11A; *Workers Compensation Act 1951* (ACT), s 4.
[223] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 40; *Workers Compensation Act 1987* (NSW), s 11A; *Return to Work Act 2014* (SA), s 7; *Workers Compensation and Injury Management Act 2023* (WA), s 7.
[224] *Return to Work Act 1986* (NT), s 3A.
[225] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 25.
[226] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 32(5).
[227] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), 40(1A), inserted by the *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024* (Vic).
[228] *Workers Compensation Act 1987* (NSW), s 14(2).
[229] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 40(5); *Workers Rehabilitation and Compensation Act 1988* (Tas), s 25(2); *Workers Compensation and Injury Management Act 2023* (WA), s 20(2); *Return to Work Act 1986* (NT), s 57(b); *Workers Compensation Act 1951* (ACT), s 82.

to apply in Queensland, the injury must have been 'caused' by the misconduct,[230] and in South Australia the exclusion applies where it is established that the injury was 'wholly or predominantly attributable to' the misconduct.[231]

Exceptions to the misconduct exclusion apply in various jurisdictions where the injury has resulted in death, or a variously described form of a serious injury.[232]

Like the SRC Act,[233] some schemes deem the use of non-prescription drugs and alcohol to be misconduct for those purposes,[234] while others maintain separate exclusions for injuries caused by being under the influence of such substances.[235] In Victoria, compensation can be reduced for injuries caused by drink driving or drug driving if the worker was convicted of either offence. There is no entitlement for injuries suffered for certain serious road traffic offences.[236] Western Australia also has an exclusion relating the failure to use protective equipment and clothing.[237]

Some states and territories have an exclusion for intentionally (or words to that effect) self-inflicted injuries,[238] with South Australia and Western Australia being the exceptions. Like the SRC Act, this exclusion is not the subject of an exception for death and serious injuries.

The wilful misrepresentation of having not previously suffered from the claimed injury (or wording to that effect) is an exclusion in a number of jurisdictions, including Victoria, Queensland and Tasmania.[239]

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[230] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 130.
[231] *Return to Work Act 2014* (SA), s 8(2).
[232] 'Serious and permanent disablement' (*Workers Compensation Act 1987* (NSW), s 14(2), and *Workers Compensation Act 1951* (ACT), s 82(3)); 'severe injury' (*Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 40(6). Note that 'severe injury' is exhaustively, and quite specifically, defined in s 40(7)); that the injury 'could result in a [degree of permanent impairment] of 50% or more', unless that impairment relates (at least in part) to a psychological injury (*Workers' Compensation and Rehabilitation Act 2003* (Qld), s 130); 'has serious and permanent effects on the worker' (*Workers Compensation and Injury Management Act 2023* (WA), s 20(3)); 'permanent or long-term incapacity' (*Return to Work Act 1986* (NT), s 57(b)); 'serious and permanent injury' (*Return to Work Act 2014* (SA), s 8(3)).
[233] See SRC Act, s 4(13).
[234] For example, *Workers Compensation Act 1951* (ACT), s 82(4).
[235] For example, *Return to Work Act 2014* (SA), s 8(2)(b)(ii).
[236] See *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), ss 42–45.
[237] *Workers Compensation and Injury Management Act* 2023 (WA), s 20(2)(b).
[238] *Workers Compensation Act 1987* (NSW), s 14(3*); Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 40(4); *Workers' Compensation and Rehabilitation Act* 2003 (Qld), s 129; *Return to Work Act* 1986 (NT), s 57(a); *Workers Compensation Act 1951* (ACT), s 82(2); *Workers Rehabilitation and Compensation Act 1988* (Tas), s 25(2).
[239] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 41; *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 571C; *Workers Rehabilitation and Compensation Act 1988* (Tas), s 25(2).

2.4.4 What we heard

> [The Australian Bar Association] would be concerned with amending the 'reasonable administrative action' exclusion if it excluded more employees from accessing compensation. The ABA would also raise concerns about the ongoing viability of the scheme, should access be widened. It is submitted that the balance struck at present is reasonable.
>
> **Australian Bar Association submission, p 2.**

> The administrative action test results in physical injuries being treated differently from mental injuries, in a way that is discriminatory and reinforces stigma. That is, the 'no fault' system which applies to physical injuries is modified by this exemption for mental injuries... We therefore recommend that the administrative action test in s 5A(1)(c) be removed.
>
> **ACTU submission, p 35.**

> Ai Group supports a broad, non-exclusive list of actions that would be defined as administrative action...It is Ai Group's view that it is not possible to provide a complete list that would reflect all of the appropriate actions that should be defined as administrative action, particularly as they may relate to increasing obligations placed on employers over the last decade... If the concept of a complete list is adopted, the current list must be greatly extended.
>
> **Australian Industry Group submission, pp 7–8.**

> Employers must be able to make the necessary decisions to manage the business effectively, respond to poor performance and investigate concerns/complaints about an employee's behavior (sic) (including complaints about sexual harassment, harassment or bullying). If the action of the employer relates to complaints about sexual harassment, harassment or bullying, they not only have the right to manage the issue, they have a legal obligation to manage the issue. They must be able to do so in an appropriate manner, without the result of a successful workers compensation claim.
>
> **Australian Industry Group submission, p 7.**

> Currently, the threshold for fraud is too high, which creates a loophole where incorrect statements or deliberate withholding of information can hinder proper investigation and sound decision-making without any ramification for the worker. There should be clear and enforceable repercussions for claim form fraud to ensure that claims are genuine and that the investigation process is not undermined by dishonest behaviour. This would promote integrity in the claims process and reduce unnecessary delays and disputes.
>
> **McInnes Wilson Lawyers submission, p 3.**

> Consistent with the Hanks Review, the CPSU recommends that the Act be amended to heavily circumscribe the reasonable administrative action exclusionary provision in s 5A(1) of the Act. Likewise, the list of reasonable administrative actions in s 5A(2) should be amended so that the list is exhaustive.
>
> **CPSU submission, p 7.**

Most submissions focused on the exclusions in the SRC Act, particularly the reasonable administrative action provision. Employer groups generally supported the current approach, citing its importance for effective workforce management and Comcare scheme sustainability. Unions and worker representatives raised concerns that the reasonable administrative action exclusion unfairly limits access to compensation for psychological injuries and undermines the scheme's no-fault principles. They advocated for narrowing the exclusion and clarifying its scope.

Journey claims and self-inflicted injuries also drew comment. Some stakeholders supported maintaining the exclusions due to limited employer control, while others argued for reform to reflect modern work arrangements and reduce stigma around psychological harm.

2.4.5 What we considered

The bulk of our considerations went to the exclusion for reasonable administrative action. We also considered the exclusion for journeys to and from work and whether the other exclusions operated as intended or if they reflected community values and standards.

Reasonable administrative action

While some stakeholders considered that the present reasonable administrative action exclusion strikes an appropriate balance between the interests of workers in accessing compensation and Comcare scheme viability, others called for change, either to expand or narrow the exclusion.

Employer representatives considered that the current provision did not allow employers sufficient flexibility to make management decisions, address poor performance, or investigate concerns about a worker's behaviour. They typically proposed broadening the exclusion to include 'operational actions' or 'management action', which would be consistent with the anti-bullying provisions of the FW Act.

Pacific National suggested that we should adopt the approach taken in recent amendments to the Victorian workers' compensation legislation to exclude compensation for psychological injuries predominantly caused by work-related stress or burnout from events considered typical or reasonably expected to occur in the course of their duties.[240]

Worker representatives asked us to recommend removing the exclusion entirely, suggesting that maintaining the exclusion was inconsistent with the no-fault basis of the Comcare scheme. Alternatively, they suggested we should narrow and clarify the scope of the exclusion by recommending that the current non-exhaustive list of reasonable administrative actions become exhaustive.

At the time of our review, this exclusion was the subject of broader debate in the context of reform of the New South Wales workers' compensation scheme. Some have argued that workers are making psychological illness claims when they experience distress as a consequence of what should be

[240] Pacific National submission, p 9.

regarded as normal management action and that this is driving the rise in claims and claim costs.[241] Others have argued that 'heavy-handed' actions by governments will not work if underlying problems are not addressed within insurance systems and workplaces,[242] or if it is not recognised that psychological hazards are just as real and preventable as physical ones.[243]

Aspects of this debate overlook the effect of existing reasonable administrative action exclusions, as well as other factors driving the increase in psychological claims, which we discussed in Chapter 1. The rise has been driven by the destigmatisation of psychological illness, which we regard as a positive development, as well as by changes in the nature of work in Australia. More Australians now work in service industries where they are primarily exposed to psychological, rather than physical, hazards. Governments across Australia have recognised the increased need to address psychological risk in workplaces by adopting regulations on managing psychosocial hazards to support the general duties under WHS legislation. Several jurisdictions have sought to increase their regulatory capability to ensure compliance with the risk management approach outlined in the new regulations.

In this context, we are not inclined to recommend expanding the scope of the reasonable administrative action exclusion simply to reduce the number of accepted psychological claims. This would have the effect of leaving workers without the supports that enable recovery and return to work, which we regard as counterproductive. We support a more proactive and sustainable approach that supports psychological health and strengthens long-term outcomes for workers and employers.

Instead, we considered whether there is a need for greater clarity on the reasonable administrative action exclusion. We acknowledge that the existing provisions can give rise to disputes, particularly where the employee–employer relationship has broken down. We see 2 opportunities to provide greater clarity. First, we consider there should be an amendment to clarify the degree of contribution of the administrative action to the injury. At present, the exclusion applies where the injury is suffered 'as a result of' the reasonable administrative action. We consider that this should be changed to require that the injury be 'wholly or predominantly' caused by the reasonable administrative action, in line with the approach in Victoria, New South Wales, South Australia and Western Australia. This may have the effect of limiting the application of the exclusion in some circumstances.

Like Hanks, we also consider that greater clarity could be provided by making the current non-exhaustive list of actions considered to be reasonable administrative action (performance appraisal, counselling, suspension, disciplinary action, and decisions on promotions or benefits) an exhaustive list. Contrary to some submissions, we see no justification for adding to this list, which gives sufficient coverage for actions normally required of managers in the course of their role. Where this limits the exclusion's application, we consider this justified as it provides greater clarity to a contested area of the SRC Act.

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[241] For example, Business NSW, *Compensation claims threaten whole system*, 8 May 2025, Business NSW, accessed 27 August 2025. Available at www.businessnsw.com/media-centre/media-release/compensation-claims-threaten-whole-system.
[242] Anonymous, 'Stokes is half-right about mental health and workers' comp rorts', 31 July 2025, *Australian Financial Review*.
[243] Liam O'Brien, 'Ryan Stokes is wrong about workplace mental health', 5 August 2025, *Australian Financial Review*.

Journey claims

We have considered whether the current provisions on journey claims appropriately reflect modern working arrangements. Since coverage was removed for injuries during non–work related journeys in 2007, workers are not usually covered for journeys between their home and usual place of employment. But as we discussed in Chapter 1, there has been a significant shift to working from home or hybrid working arrangements. The effect of this is that workers may often travel between an employer-provided workplace, such as an office, to their home, with the intention of resuming work on their return.

We acknowledge the principle underpinning the exclusion of journey claims under the SRC Act. As Hanks explained, workers are responsible for their choices and the precautions they take when they travel between their home and work, and an employer is not in a position to control the degree of risk involved. However, as Hanks observed in relation to on-call workers, there are some situations in which work demands may affect the timing of a journey. In such cases, the worker may not always be able to control the degree of risk either.[244]

In recommending that travel between work and home continue to be excluded from coverage, Hanks also noted that most workers would already be covered under compulsory third-party insurance schemes. As Hanks acknowledged, this is not the case for all workers.[245] Further, compulsory third-party insurance does not offer the structured supports that promote return to work available under workers' compensation.

We consider that the Act should be amended to provide coverage for workers who are travelling from work in an employer-provided workplace to their home to resume work. For coverage to apply, it should not be necessary that a worker has been directed to resume work on their return home, as this does not reflect the reality of modern flexible working arrangements. Whether a worker intended to resume work should generally be discernible from the circumstances and their usual working hours and practices. This brings the Comcare scheme into closer alignment with state and territory schemes. While we acknowledge that this recommendation has the potential to affect scheme costs, some will be recoverable. We also understand that the extent of the effect of this recommendation may vary for the self-insured licensee cohort, some of whom may already take out separate journey cover insurance for their workers under enterprise agreements.

There is also the longstanding issue of workers who are on call. Like Hanks, we consider that it is appropriate that on-call workers be covered by workers' compensation when they travel from home, or the place where they receive the notification that they are required to work, to their workplace. This acknowledges that on-call notifications are often received out of work hours or involve travel from somewhere other than the worker's home, with the effect that the worker's ability to manage the risks of their journey is affected by their employer's business needs.

[244] Hanks Review, paras 5.128–5.138.
[245] Hanks Review, para 5.132.

Other exclusions

We also considered the existing exclusion for self-inflicted harm under s 14(2) of the Act in light of the guiding principle of our review that workers should be able to depend on the security of benefits, and access entitlements without stigma.

At present, workers are not compensated for injuries that are intentionally self-inflicted, although Comcare suggests that the effect of the AAT's decision in *Re Sadlo and Comcare*[246] is that the exclusion in s 14(2) does not apply to underlying psychological injuries significantly contributed to by employment that then result in 'death, or serious and permanent impairment'.

We consider that this must change and be clearly reflected in the legislation. Where a self-inflicted injury is a consequence of a compensable psychological illness or injury, the legislation should make clear that any resulting injury is also compensable. To do otherwise unjustly limits the employer's responsibility for the full consequences of the illness or injury sustained by the worker, and perpetuates the stigma attached to self-harm as a consequence of psychological illness. It is particularly concerning considering evidence that stress associated with the claims process may contribute to self-harming and suicidal behaviours.[247] We note that there is some evidence that female compensation claimants are at particular risk.[248]

We have particularly considered the application of the exclusion in cases of suicide. Concerns were raised with us that clarifying suicide as compensable under the Act may create a perverse incentive for some workers suffering from depression or other psychological injury or illness to take such an action in the belief it would benefit their family. No evidence was provided to our review to support this.

Death is compensable where it results from an injury: in the case of suicide, this would ordinarily be an injury other than a disease. Subject to the current exclusion, this means that death by suicide will generally be compensable if it bears a temporal relationship with employment: that is, it occurs while the worker is at work, or while the worker is working. It has been said that compensating for such deaths that occur at work without a contribution by employment is an excessive extension of workers' compensation: however, we do not see it that way. Like with heart attacks and strokes discussed earlier, we think it is the appropriate setting. A worker who goes to work, should come home from work. If they do not, compensation is the least that can be provided.

Concerns were also raised with us about the exclusions for serious and wilful misconduct or wilful and false representation under s 14(3). One stakeholder suggested that there should be lower thresholds for misconduct, with the extent of the worker's responsibility for the injury taken into account when determining eligibility for compensation.[249] The majority of stakeholders considered that the current provisions are appropriate. We see no basis for any change.

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[246] Comcare suggested that the AAT's decision in *Re Sadlo and Comcare* [2005] AATA 1006 was already to this effect, but suggested the change should be made for clarity and consistency: Comcare submission, p 29.
[247] Tania King et al., 'Associations between workers' compensation and self-harm: a retrospective case-series study of hospital admissions data', 2023, 30, *The Lancet Regional Health – Western Pacific*.
[248] Tania King et al, 'Associations between workers' compensation and self-harm: a retrospective case-series study of hospital admissions data', 2023, 30, *The Lancet Regional Health – Western Pacific*, p 6.
[249] McInnes Wilson Lawyers submission, p 3.

2.4.6 Panel recommendations

Recommendation 12

We recommend that the reasonable administrative action exclusion in s 5A is changed in the new Act to require that the injury be 'wholly or predominantly' caused by the exclusionary action. The list of reasonable actions in s 5A(2) is to be exhaustive.

Recommendation 13

We recommend the exclusion for submitting to an abnormal risk of injury is extended in the new Act to operate beyond the circumstances in s 6 and that it is made clear it applies to situations where the worker is reckless as to the risk.

Recommendation 14

We recommend no change to the exclusions for serious and wilful misconduct or wilful and false representation.

Recommendation 15

We recommend the exclusion in s 14(2) (excluding compensation for self-inflicted injury) is not replicated in the new Act.

Chapter 3. Intervening early in the workers' compensation process to support recovery and remove barriers to return to work

What this chapter considers

Our terms of reference did not include a discrete reference on recovery and removing barriers to return to work. But we were given the task of considering best practice approaches to return to work, rehabilitation, early intervention, vocational support, and supporting workers with psychological injuries and illnesses under other references. We were also asked to consider how the SRC Act can optimise return to work outcomes and support workers with diverse needs, and how the Comcare scheme can best support workers with long-term injuries, and the families of workers who die as a result of workplace injury or illness.

This chapter considers best practice approaches to early intervention, rehabilitation and return to work. We make recommendations for access to early support and to clarify rehabilitation and return to work duties. We start this chapter by considering best practice approaches to intervening early in the injury process to facilitate faster recovery (known as early intervention). This includes providing the injured or ill worker with financial assistance for loss of income and medical treatment while their claim liability is being determined. We then consider how to improve the rehabilitation and return to work framework in the SRC Act.

Links to other chapters

The factors that have been identified as contributing to sustainable recovery and return to work covered in other chapters are:

- claim determination and case management – Chapter 4
- benefits structure – Chapter 5
- dispute resolution structure – Chapter 6.

3.1 Intervening early in the workers' compensation process

3.1.1 The current framework

Under the SRC Act, employers do not have an explicit duty to provide injured workers with health, rehabilitation and financial assistance before a finding of liability for workers' compensation. Employers can provide this assistance to an injured worker pre-claim or while a claim is being decided, at their discretion.[1]

The SRC Act also does not provide for any form of 'provisional liability' or 'non-liability' support payments to assist with recovery before a decision is made on a claim.[2]

3.1.2 Background

Intervening early in the workers' compensation process has been shown to benefit both workers and employers. Providing timely support leads to earlier return to work, reduces repeated absences due to illness, benefits worker health and improves long-term employability.[3] Research on intervening early in the workers' compensation process shows that assisting a worker immediately after an injury is critical to achieving return to work goals, which in turn reduces the loss of productive working time and has broader positive economic impacts.[4]

An evaluation of a Comcare pilot of structured early intervention programs also showed actuarial savings for the scheme, with an expected reduction in premiums for employers.[5]

These findings are supported by Safe Work Australia (SWA), which advocates for early assistance as part of its national strategy to drive action to improve return to work outcomes for workers with work-related injuries or illness. The *National Return to Work Strategy 2020-2030* says:

> *'Workers have better return to work outcomes when workplaces engage early with them and provide support immediately following the notification of a workplace incident or at the first sign of injury or illness, irrespective of whether the worker makes a claim for compensation.'*[6]

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[1] Comcare, *Rehabilitation information for employers* (see 'Starting rehabilitation before there is an initial claim determination'), Comcare website, accessed 25 August 2025. Available at www.comcare.gov.au/claims/employer-information/rehabilitation-information.
[2] Safe Work Australia (SWA), *Comparison of workers' compensation arrangements in Australia and New Zealand, 29 Edition*, 2023, SWA, p 101.
[3] N Hoefsmit, I Houkes and FJ Nijhuis, 'Intervention characteristics that facilitate return to work after sickness absence: A systematic literature review', 2012, 22(471), *Journal of Occupational Rehabilitation*.
[4] Monash University, *Early intervention in the workers' compensation process – final report*, 2024, SWA, pp 8, 23.
[5] Deloitte, *Evaluation of Comcare: Early Intervention Service Pilot – Executive Summary*, 2020, Comcare, p 10.
[6] SWA, *National Return to Work Strategy 2020-2030*, 2019, SWA, p 30.

Early support can take the form of an informal early intervention program, which many employers provide, or formal statutory provisional or non-liability support (described in this report as early support), which insurers or determining bodies provide. Some workers in other Australian schemes have access to both forms of support.

Early support

Many employers, including large government agencies, have programs to support workers pre-claim or while a claim is being determined.[7] Supports offered include access to a rehabilitation case manager, treatment, allied health services or workplace rehabilitation services,[8] and may include income replacement. In the public sector, this support typically does not include income payments but can include the granting of leave such as miscellaneous leave. These forms of assistance are at the employer's discretion, and there is no legislative requirement under the SRC Act to provide them, nor is this early intervention regulated under the Act.

Providing early support is part of an employer's primary duty of care under work health and safety (WHS) laws – for example, s 19 of the *Work Health and Safety Act 2011* (Cth) (WHS Act) – to ensure the health and safety of their workers so far as is reasonably practicable. Evidence suggests early intervention programs show employer commitment to a positive WHS culture.[9]

In 2019–20, Comcare conducted a pilot with 3 Australian Government agencies to run a structured informal early intervention program. The program included a triage service and facilitated access to professionals.[10] An independent evaluation showed that the pilot group achieved twice the recovery rate of the control group. Of participants triaged to general practitioners, 93% were certified fit for work, and participants had less time off work than the control group.[11] Noting the success of the pilot, Comcare recommended that employers under the SRC Act put a structured early intervention program in place (on an informal basis).[12] Comcare confirmed this approach in its submission, noting that early intervention supports better return to health and return to work outcomes.[13]

During the review, we heard concerns that the level and type of early intervention provided varies on a case-by-case basis. In some instances, support was reportedly only offered if a claim was not lodged or was withdrawn once a claim was made. We heard that minor injuries and short-term loss of work time were compensated 'in-house' and may not be reported to Comcare. In both examples, this will lower claim numbers and result in reduced premiums.

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[7] 50% of workers reported that their employer supported their injury management prior to a claim. Comcare, *2021 National Return to Work Survey*, 2021, Comcare, p 1.
[8] Comcare, *Intervene early*, 2024, Comcare website, accessed 25 August 2025. Available at www.comcare.gov.au/safe-healthy-work/healthy-workplace/intervene-early.
[9] Deloitte, *Evaluation of Comcare: Early Intervention Service Pilot – Executive Summary*, 2020, Comcare, p 6.
[10] Comcare, *Early Intervention Service Pilot Factsheet*, 2024, Comcare, p 1.
[11] Deloitte, *Evaluation of Comcare: Early Intervention Service Pilot – Executive summary*, 2020, Comcare, pp 7–10.
[12] Comcare, *Better practice: Early intervention programs*, Comcare, p 2.
[13] Comcare submission, p 35.

Provisional liability and non-liability support – the statutory models

All Australian workers' compensation schemes other than Comcare and Seacare provide some form of support to injured and ill workers while a final decision on liability is pending. This support is designed to ensure that workers can access medical treatment and/or income support as soon as possible to aid recovery and facilitate a return to work.

3.1.3 Previous reviews

Previous statutory reviews of the SRC Act and state and territory acts have focused on how early intervention is incorporated into workers' compensation legislation.

Hanks Review

The Hanks Review recommended that the SRC Act include a system of provisional liability allowing workers access to a maximum of 12 weeks of incapacity payments and up to $3,000 for medical costs.[14] Provisional payments would start 7 days after injury notification.

The Hanks model allowed determining authorities to identify reasonable excuses for not paying non-liability support, including where a worker:

- failed to comply with rehabilitation obligations
- did not provide relevant information.

If payments had been made, the determining authority could recover them if there had been fraud, dishonesty or obstruction.[15]

Hanks chose this model as it supported 'all aspects of early intervention' and provided a defined benefit that was clear to those involved.[16]

Dore Report

The 2019 Dore Report on the Nominal Insurer of the New South Wales workers' compensation scheme identified concerns about the existing form of provisional payments. Some submissions said that acceptance of provisional liability had become routine, and that this was driven by workload and timeframes rather than a considered decision on the claim, with decisions not occurring until the end of the provisional liability period.[17] The concerns focused on administration of the provisions, rather than the legislative scheme itself.

[14] P Hanks QC, *Safety, Rehabilitation and Compensation Act Review: Report—February 2013*, (Hanks Review), 2013, Australian Government Department of Education, Employment and Workplace Relations, [6.2].
[15] Hanks Review, paras 6.50, 6.58 and 6.40.
[16] Hanks Review, para 6.39.
[17] J Dore, *Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme*, 2019, New South Wales State Insurance Regulatory Authority (SIRA), p 24.

Productivity Commission inquiry, 2020

The 2020 Productivity Commission inquiry into psychological health recommended that workers' compensation schemes provide and fund clinical treatment and rehabilitation for all mental-health related workers' compensation claims for up to 6 months, irrespective of liability.[18]

In support of this recommendation, the Productivity Commission noted the following:

- Australia's mental health system does not focus on prevention and early intervention. Too many people are treated too late.
- Early intervention – either early in life or soon after risk factors are detected that may lead to psychological illness – is important to prevent the onset of illness or stop a deterioration in mental health.
- It is difficult to prove that a psychological injury or illness was related to employment. This delays treatment, recovery and return to work.
- Claims for psychological injuries and illness are not treated consistently due to the reasonable management action provisions.
- Claims for psychological injury or illness have slower determination timeframes and higher rejection rates.
- There are both workplace stigma and challenges with suitable duties and return to work for those with a psychological injury.[19]

The Commission observed that some reforms, such as in early intervention and prevention, are investments that could be expected to reduce spending on more costly services in the future. The Commission accordingly recommended a treatment and rehabilitation-only model, observing that this model reduces the potential for wrongful claims, as there is limited incentive without financial compensation.[20]

The Australian Government invested in a National Mental Health and Suicide Prevention Plan in response to the findings. The plan included a focus on prevention and early intervention but did not address the recommendation related to workers' compensation.[21]

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[18] Productivity Commission, *Mental Health: Productivity Commission Inquiry* Report – *No 95, Vol 1*, 2020, Productivity Commission, p 66, Action 7.4.
[19] Productivity Commission, *Mental Health: Productivity Commission Inquiry* Report – *No 95 (2020) Vol 2*, Chapter 7. Available at http://www.pc.gov.au/inquiries-and-research/mental-health/.
[20] Productivity Commission, *Mental Health: Productivity Commission Inquiry Report – No 95, Vol 2*, 2020, Productivity Commission, pp 327–329.
[21] Former Minister for Health and Aged Care, *Historic $2.3 billion National Mental Health and Suicide Prevention Plan*, Department of Health, Disability and Ageing website, accessed 30 August 2025. Available at www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/historic-23-billion-national-mental-health-and-suicide-prevention-plan.

Productivity Commission inquiry, 2004

This 2004 inquiry recommended using provisional payments for a limited period to prevent disputes and support recovery. As the report noted:

> *'This approach … provides an incentive for assessors to determine claims expeditiously and allows extra time for claims to be assessed without passing an additional burden on to injured workers. In addition, provisional payments for medical expenses could assist faster rehabilitation.'*

The Commission cautioned that the approach arguably removed the employment connection if ultimately the claim was rejected. It observed that 'effective use of provisional liability requires the application of appropriate systems and processes to manage potential abuse'.[22]

3.1.4 State and territory schemes

The history of provisional liability or non-liability support in Australian workers' compensation schemes reflects a gradual shift towards prioritising early intervention and recovery. Related mechanisms were introduced in schemes at different times, often in response to growing evidence that early support improves return to work outcomes and reduces long-term costs.

Approaches to provisional liability and non-liability support in state and territory schemes vary, with different models for eligibility, coverage and capped amounts, as evident in Table 2.

New South Wales was the first state or territory to introduce a structured system of provisional liability support, with effect from 2002, with the duty to begin weekly payments following initial notification of injury.[23] The introduction of these payments was a significant reform aimed at reducing disputes, providing financial support to workers, encouraging early return to work,[24] and improving timely claims determinations.[25]

Western Australia is the most recent scheme to include mandatory early support for injured workers. It had long operated under a model that allowed insurers to delay liability decisions for up to 14 days without making early payments. But under the new Act, payments are made during the claim determination period if a decision on liability is deferred. The policy rationale for the change is to improve decision timeframes and ensure workers are financially supported for lost income and medical expenses while medical and factual investigations are continuing.[26]

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[22] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks: Productivity Commission Inquiry Report*, 2004, Productivity Commission, pp 378–379.
[23] *Workplace Injury Management and Workers Compensation Act 1998 No 86* (NSW), s 267.
[24] Independent Pricing and Regulatory Tribunal of New South Wales, *Review of 2001 Amendments to the Workers Compensation Legislation*, 2003, Parliament of New South Wales, p 45.
[25] WorkCover New South Wales, *WorkCover NSW Annual Report 2002/2003*, WorkCover New South Wales, p 5.
[26] Explanatory Memorandum to the Workers Compensation and Injury Management Bill 2023 (WA), pp 13–14.

Table 2: Comparison of provisional liability and non-liability support arrangements in Australia

Model	Injury type		Payment type			Payments	Payment trigger	Payment ceases	Recover ($)
	Psychological	Physical	Income (IP)	Rehab (RP)	Medical (MP)				
NSW[27]	✓	✓	✓	–	✓	IP: 12 weeks MP: $10,000 max.	Injury notification <7 days	Liability disputed or worker fails to provide evidence	–*
Vic[28]	✓	–	–	✓	✓	RP/MP: reasonable costs	Claim lodgement <5 days	13 weeks if claim not accepted	–*
Qld[29]	✓	–	✓	–	✓	IP: weekly payments MP: Support, (excl. hospital)	Claim lodgement with medical certificate	Claim denied	–
WA[30]	✓	✓	✓	–	✓	IP: Full income replacement MP: 5% of limit, currently $13,224	Decision deferral	Liability decision or has capacity for work (IP only)	–*
SA[31]	✓	✓	✓	✓	✓	All: 'Interim payments'	Claim lodgement if >10 days	Claim denied	✓#
Tas[32]	✓	✓	✓	–	✓	IP: Full income replacement MP: $5,000 max.	Claim lodgement	Claim denied	✓
ACT[33]	✓	✓	✓	✓	✓	IP: Full income replacement MP/RP: reasonable costs	Injury notification	Claim denied	–
NT[34]	✓	✓	✓	–	✓	IP: Full income replacement MP/RP: reasonable costs	Decision deferral	Claim settled or denied	–

[27] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), Pt 3, Div 1–3.
[28] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), Pt 5, Div 10.
[29] *Workers' Compensation and Rehabilitation Act 2003* (Qld), ss 232AA, 232AB.
[30] *Workers Compensation and Injury Management Act 2023* (WA), ss 28–29, 36–43.
[31] *Return to Work Act 2014* (SA), ss 31–32.
[32] *Workers Rehabilitation and Compensation Act 1988* (Tas), ss 77AB, 77AC, 81, 81A.
[33] *Workers Compensation Act 1951* (ACT), ss 38, 70, 128, 130, 134.
[34] *Return to Work Act 1986* (NT), ss 73, 85, 87.

Model	Injury type		Payment type			Payments	Payment trigger	Payment ceases	Recover ($)
	Psychological	Physical	Income (IP)	Rehab (RP)	Medical (MP)				
DVA[35]	✓	✓	✓	–	✓	MP: 'reasonable costs' (physical) and 'income and asset tested' (psychological)	Claim lodgement	Claim determined (plus 42 days for psychological injury). Appeal finalised.	–
Hanks [36]	✓	✓	✓	–	✓	IP: 12 weeks MP $3,000 max.	Claim lodgement	Claim determined or other grounds	–
IC Bill†,[37]	✓	✓	-	–	✓	MP: $5,000 max., indexed	Injury notification	Claim determined	–

Table notes: Victoria also covers death. Department of Veterans' Affairs covers 20 common conditions and 'reasonable costs' are subject to 'Treatment principles'.

*Funds may be recovered in cases of fraud in New South Wales, Victoria and Western Australia.

IP = income payment, RP = rehabilitation payment, MP = medical payment.

Recovery is discretionary in South Australia and is only permitted in certain circumstances in Tasmania.

† IC Bill = Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth).

3.1.5 What we heard

What we heard during consultations largely mirrored the findings of the research on early intervention programs.[38] There was universal consensus on the value of intervening early in the workers' compensation process to support and enhance recovery and work outcomes. In particular, submissions and those consulted strongly supported making payments for loss of income and/or medical treatment to injured or ill workers while claim liability is being determined.

We heard concerns that, as there are no minimum entitlements to employer-provided informal early intervention under the SRC Act, employers have discretion in establishing early intervention programs, what those programs consist of and who receives support under them. We also heard concerns about employers using early intervention to try to prevent workers from exercising their right to lodge a claim. This is also consistent with research.[39] Other concerns were about employers withdrawing early intervention support if a worker chose to lodge a workers' compensation claim. These issues underpin

[35] See Department of Veterans' Affairs (DVA), *Veterans' Provisional Access to Medical Treatment (PAMT) extended*, DVA website, accessed 21 September 2025. Available at www.dva.gov.au/providers/provider-news/veterans-provisional-access-medical-treatment-pamt-extended.

[36] Hanks Review, paras 6.40, 6.50, 6.58, and Recommendation 6.2.

[37] Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth) (Improving the Comcare Scheme Bill), Sch 4.

[38] Monash University, *Early Intervention in the Workers' Compensation Process,* 2024, SWA.

[39] Monash University, *Early Intervention in the Workers' Compensation Process*, 2024, SWA, p 5.

the strong support in submissions for providing a statutory mechanism for early intervention in the SRC Act.

> Early intervention should be viewed as a proactive approach that includes the timely provision of appropriate care, rehabilitation and support services to prevent injury aggravation and facilitate quicker return to work. It is not designed to avoid the making of a workers' compensation claim and should not be used as such.
>
> **SRCLA submission (unpublished), p 11.**

We also heard some criticism of provisional or non-liability payments. In particular, we were advised that:

- payments need to be scrutinised
- initial claims determination could be delayed if workers are already receiving support
- workers need to understand that receiving payments does not mean the claim would ultimately be accepted.

The Monash user-experience study strongly reinforced the value of intervening early to support recovery and reduce harm. Participants supported the introduction of a formal early intervention framework, noting that current employer-led programs are discretionary, inconsistently applied and often poorly understood.[40] While some workers reported benefits from early access to treatment, others described confusion about the purpose of early intervention programs and perceived them as a substitute for lodging a formal claim.[41] This inconsistency created inequities in access to support and, in some cases, led to mistrust of the process.

The user-experience research also identified that a lack of support and rehabilitation during claim determination was a major barrier to recovery, particularly for workers with psychological injuries.[42] Participants described the financial and emotional toll of waiting for decisions, including through loss of income, inability to access treatment and deterioration in psychological health.[43] The research also highlighted that the lack of early access to psychological care during this period contributed to poorer outcomes and increased distress. These findings show the importance of timely, equitable and clearly communicated early intervention processes that are accessible to all workers, regardless of employer or injury type. However, we also recognise that, in practice, timely access to psychological care can be affected by broader supply challenges in the mental health sector, which may further complicate recovery for some workers.

[40] Monash University, *User experiences of the Comcare workers' compensation scheme, Qualitative Research Study Findings – Final report* (Monash user-experience study), 27 June 2025, pp 27, 32.
[41] Monash user-experience study, p 20.
[42] Monash user-experience study, p 32.
[43] Monash user-experience study, p 22.

3.1.6 What we considered

We considered how best to integrate the best practice principles and practices of 'early intervention' into the new Act. We considered:

- whether a duty to intervene early in the recovery process should be included in the Act
- whether provisional or non-liability support payments should be included in the Act, how the system would work and what should be provided.

Duty to intervene early in the recovery process

As a threshold issue, we considered whether the new Act should require an employer, as soon as possible after an injury or incident or as symptoms emerge, to take reasonable steps to minimise the effect on the worker's health and their ability to return to health and work.

Such a duty would complement the employer's WHS duty to ensure, so far as is reasonably practicable, the health and safety of its workers. WHS laws aim to prevent injuries and illnesses at the source, while workers' compensation focuses on providing support and managing claims when injuries or illnesses do occur. Despite their interconnectedness, we received many comments from those we consulted about the need to bridge what is perceived as a gulf between WHS and workers' compensation to ensure a coordinated, seamless approach to prevention and early injury management. Closer interconnectedness could also assist with reducing the stigma around making a workers' compensation claim.

We were concerned to hear about the practice of employers encouraging workers to accept their early intervention support as an alternative to seeking compensation. We were unable to gauge how widespread this practice is and the degree to which it is intentional, given there is no legislative basis for providing early intervention or making it conditional on a worker not lodging a claim. Monash's user-experience researchers also learnt through interviews with workers that there was confusion around early intervention programs offered by employers. Some participants saw them as an alternative to lodging a formal workers' compensation claim.[44]

To protect a worker's right to make a compensation claim, we conclude that the new Act should include a provision like section 46A of the *Workers' Compensation and Rehabilitation Act 2003* (Qld), which makes it an offence for an employer to induce a worker to avoid the compensation process.

We favour adopting an equivalent provision, as in combination with the duty, it would narrow the opportunity open to employers to prevent workers from exercising their right to make a claim.

The duty to notify workers of their compensation rights, recommended in Chapter 4, would assist and operate alongside these duties.

[44] Monash user-experience study, p 5.

Early payments and support

It is striking that Comcare is the only Australian workers' compensation scheme that does not provide for provisional or non-liability payments and support. In contrast, every state and territory scheme includes provisions for early assistance to injured or ill workers, and no legislative reviews have recommended removing this entitlement.

We support the view that formal, statutory early payments and support are a critical component of an effective workers' compensation system. We have accepted the research, the findings and the submissions. They align with the objectives of this review to develop a workers' compensation scheme focused on the return to health and work of injured and ill workers. There is no good policy reason for not joining other Australian jurisdictions and providing for this form of support as a means to reach those goals.

While a small number of submissions raised concerns about introducing early support payments – such as potential delays in claim determinations, administrative burden, and scheme integrity or fairness issues – we believe the benefits to workers' health, recovery and return to work are substantial. With careful implementation, many of these concerns can be effectively managed.

Which model?

Broadly, there are 3 models operating in the states and territories:

1. On notification of an injury, payments begin within a certain period and liability is accepted on a provisional basis until a determination on the claim is made.
2. On notification of an injury, payments begin within a certain period, as the worker is assumed to be entitled to benefits unless a decision is made to reject the claim.
3. On the making of a claim, if a decision on liability is deferred, benefits begin within a certain period.

The Western Australian, South Australian and Northern Territory schemes have a deferred liability model. Benefits begin from a date linked to the deferred liability notice or the date of notification of injury, depending on the scheme. The process minimises administrative steps, as it avoids separate decisions on pre-liability (that is, the determining authority is not required to consider whether there is a reasonable excuse not to make payments) and on claim liability. The process has the advantage of incentivising early decisions on claims.

In the Australian Capital Territory, a worker becomes entitled to weekly compensation when they give notice of injury to the employer. The employer's liability to pay compensation ends 7 days after the date of injury if the worker has not made a claim for compensation.[45]

A worker being entitled to benefits until a decision is made to the contrary aligns with the themes of submissions to our review. The model ensures support in the crucial early stage following an injury, increasing the worker's chances of returning to health and work at the earliest opportunity. The model avoids loss of salary stressing the injured or ill worker and inhibiting efforts to restore them to health

[45] *Workers Compensation Act 1951* (ACT), s 38(2).

and work, which can lead to secondary health conditions. It also incentivises the determining body to be efficient and effective in its claim determination process.

What should be the trigger for payments and support?

In Chapter 4, we make recommendations regarding streamlining the notification and claim-making process. The initial actions taken in relation to making a claim should trigger the start of payments and support.

What type of injuries should be eligible?

Most jurisdictions provide provisional or non-liability support for all injury types. However, 2 larger schemes, in Victoria and Queensland,[46] have limited eligibility to psychological injury. WorkSafe Victoria noted that the reason for this decision was the additional time required to determine psychological injury claims and the longer period in which the worker cannot access medical and other services.[47] In Queensland, despite confining eligibility to psychological injury, the Act includes an obligation on an insurer who accepted liability for a physical condition to take reasonable steps to minimise the risk of a psychological condition arising from that condition.[48]

Compared to physical injuries and illness, psychological injuries are more likely to have poor outcomes and low levels of support from employers and determining bodies.[49] But strong arguments exist for also providing early intervention support for physical injuries. Of all accepted claims in the Comcare scheme, 87% are injuries or disease claims.[50] Providing early support and minimising delays in treatment for these claims supports these workers to recover and return to health and work, minimising the risk of developing secondary psychological injury. Comcare's early intervention pilot reflected this, showing that providing early support to participants with a physical injury reduced the likelihood of developing a chronic condition by 50%.[51]

While Hanks did not propose limiting eligibility by injury type, the current focus on psychological injuries was not as prevalent at the time of his review, and state and territory schemes did not then limit provisional liability to psychological injury. The Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth) (Improving the Comcare Scheme Bill) proposed eligibility for all injury types.[52]

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[46] WorkSafe Victoria, *Victoria's provisional payments - better support for mental injuries*, WorkSafe Victoria. Available at www.worksafe.vic.gov.au/victorias-provisional-payments-better-support-mental-injuries; WorkSafe Queensland, *Payments and support*, WorkSafe Queensland. Available at www.worksafe.qld.gov.au/claims-and-insurance/compensation-claims/payments-and-support; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), ss 75A, 263AA–263N; *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 232AB.

[47] WorkSafe Victoria, *Victoria's provisional payments - better support for mental injuries*, WorkSafe Victoria, accessed 26 August 2025. Available at www.worksafe.vic.gov.au/victorias-provisional-payments-better-support-mental-injuries.

[48] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 232AC.

[49] SWA, *Return to work: a comparison of psychological and physical injury claims*, 2020, SWA, pp 8–11.

[50] Comcare, *The Comcare Scheme – Scheme overview*, accessed 26 August 2025. Available at www.comcare.gov.au/scheme-legislation/scheme-performance/overview.

[51] Comcare, *Early Intervention Service Pilot Evaluation Factsheet*, Comcare, p 2.

[52] Improving the Comcare Scheme Bill, Sch 4.

The aim of early payments and support is to remove financial barriers that might prevent the injured or ill worker from getting the support they need to recover and return to health and work. So, apart from scheme costs (which do not take into account the benefits of early intervention and better outcomes after an injury), there appears no good policy reason to limit support by injury type.

What excuses permit denial of entitlement?

In New South Wales, there are 7 prescribed reasonable excuses that may provide a basis for not making provisional payments. These excuses cannot be applied to medical payments. Excuses include:

- insufficient medical information
- the person is unlikely to be a worker
- the injury is not work-related
- injury was notified 2 months after it occurred.[53]

Hanks favoured the New South Wales model but proposed fewer reasonable excuses. Four of his proposed excuses mirrored the New South Wales list. He added the injury not being significant (with less than 7 days incapacity for work).[54] Our preference is for entitlement only to be denied if there is insufficient evidence to determine that the worker sustained the injury or to determine that the person is a worker who can be entitled to compensation under the Act.

Types of compensation payable

Provisional or non-liability support under workers' compensation schemes is either limited to reasonable medical (and potentially rehabilitation) expenses only or includes these expenses and income support.

Medical and rehabilitation expense models typically include payment only for treatments such as general practitioner visits, physiotherapy, psychological services and other necessary interventions to support recovery. Income replacement benefits are not available until a formal claim is accepted. For the scheme, this model offers the advantage of cost control and streamlined administration, as it avoids the complexities of verifying income loss and eligibility for wage replacement. It also encourages early access to treatment, which can improve recovery outcomes. However, the lack of immediate income support can place injured or ill workers under financial pressure, especially if they are unable to work and must wait for their claim to be processed. As noted in the Monash user-experience study, this increases financial stress on workers. It may also lead to delayed recovery or premature return to work.[55]

In contrast, the treatment, rehabilitation, and income models that exist in most Australian schemes provide a more comprehensive form of pre-claim support. This approach offers greater financial

[53] SIRA, *Workers compensation guidelines: Workers compensation claims management guide*, SIRA, accessed 26 August 2025. Available at www.sira.nsw.gov.au/workers-compensation-claims-guide/legislation-and-regulatory-instruments/guidelines/workers-compensation-guidelines#part-2.
[54] Hanks Review, para 6.50(e).
[55] Monash user-experience study, p 7.

security for workers during the early stages of recovery, reducing stress and supporting better health and return to work outcomes. It also encourages prompt reporting of injuries and early engagement with the compensation system.

Submissions expressed divergent views on preferred types of compensation. Unions and worker representatives strongly supported including both medical costs and income replacement, citing reduced financial stress and better recovery outcomes. Legal submissions echoed this, highlighting the harm caused by delays in treatment.

Employers generally supported income replacement with limits – such as caps and safeguards to manage costs and prevent misuse – though some preferred restricting support to medical costs only, citing scheme sustainability and administrative complexity. These positions reflect a broader tension between comprehensive worker support and cost control.

The actuarial costings on this issue were uncertain. Taylor Fry noted early access to medical and rehabilitation costs could help improve return to work and therefore reduce the cost of claims. Taylor Fry also stated that early access to income support may reduce a claimant's incentive to return to work early but considers this outcome may be tempered by incapacity benefits supporting a worker's psychological health and recovery.[56] We consider these views do not provide any fresh insights into the advantages or disadvantages of introducing a comprehensive model.

In making our recommendation, we have accepted that payment of medical and rehabilitation expenses would not have a negative effect, and the addition of income payments, while possibly leading to increased costs, needs to be balanced against the benefits outlined earlier.

To improve outcomes for workers, income replacement, alongside medical and rehabilitation costs, should be included in early support. Early access to income support reduces financial stress, supports timely treatment and promotes recovery – particularly for those with psychological injuries. This approach aligns with best practice and reflects a person-centred framework that prioritises health and return to work.

Caps on entitlements

Some state and territory schemes cap medical expenses and income replacement payable for provisional liability to manage scheme costs and encourage timely decision-making. For example, New South Wales allows up to 12 weeks of income support and $10,000 in medical expenses.[57] Caps on medical treatment range from $13,224 (Western Australia) to $5,000 in Tasmania.[58] The alternative to caps is to allow for medical payments to be made on the basis of 'reasonable medical treatment' and income replacement to be based on normal weekly earnings.

Caps can serve a dual purpose. On one hand, they incentivise timely claim determination when a claim is approaching the cap. This creates a natural pressure point for claims managers to assess and decide

[56] Taylor Fry, *SRC Act reform options – Actuarial costings* (Taylor Fry report), 25 August 2025, p 34.
[57] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), ss 267, 274(2), 280.
[58] *Workers Compensation and Injury Management Act 2023* (WA), s 40; *Workers' Rehabilitation and Compensation Act 1988* (Tas), s 77AB.

on liability, reducing delays and uncertainty for the injured or ill worker but increasing the potential for rushed or inaccurate decision-making. Caps also provide financial limits, which may reduce costs for claims that are ultimately rejected. Some cap-based models allow for consideration to exceed the cap in 'special circumstances'. These exceptions allow more flexibility but increase administrative complexity and reduce the urgency to finalise claims.

In contrast, adopting a no-cap model can simplify the system and minimise administrative steps. A no-cap model ensures that the support provided to workers before and after claim acceptance is consistent. This reduces confusion and potential stress as workers near their caps, particularly for workers navigating the system during a vulnerable time. It also creates a pressure point for making a decision on liability.

Ultimately, while caps can be a useful tool for managing scheme behaviour, a no-cap approach better reflects the review's objectives of improving worker outcomes, adopting a person-centred approach, reducing administrative burden, and promotes a fair and accessible compensation system. In addition, in relation to medical expenses, the actuarial assessment we commissioned showed that those expenses will not be a significant cost to the scheme.

What should happen if liability is denied or in cases of fraud?

In most jurisdictions, payments stop when a claim is denied. However, since 2021, workers in Victoria have been able to continue receiving payments for 13 weeks even if the claim is rejected.[59] Recent inquiries into psychological health, including the Productivity Commission's report and the Royal Commission into Victoria's Mental Health System, were cited as reasons for this reform.[60] Additionally, Victoria noted the increase in psychological injury claims, longer determination timeframes, and poorer return to work outcomes as factors for the change.[61]

Continuing early payments and supports when a claim is denied raises fairness and responsibility concerns for determining bodies, as the link between employment and liability no longer exists and increases costs to the scheme. For workers, removing these supports may affect their treatment and recovery.

On balance, we consider the best approach is to ensure comprehensive support is provided at the early stages of an injury, which will cease when a claim is denied. This does not prevent employers from continuing to support workers with non-compensable psychological injuries. Having said that, a mechanism will be needed to cease payments when a worker has not completed the full claim process. In some cases, this situation will be uncontroversial because a worker may have returned to work and has no further medical expenses, so did not find it necessary to complete the process. Where

[59] WorkSafe Victoria, *Victoria's provisional payments - better support for mental injuries*, WorkSafe Victoria, accessed 26 August 2025. Available at www.worksafe.vic.gov.au/victorias-provisional-payments-better-support-mental-injuries; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), ss 75A, 263I.
[60] Second Reading Speech (Minister Stitt) to the Workplace Injury Rehabilitation and Compensation Amendment (Provisional Payments) Bill 2020 (Vic), 4 February 2021.
[61] WorkSafe Victoria, *Victoria's provisional payments - better support for mental injuries*, WorkSafe Victoria, accessed 26 August 2025. Available at www.worksafe.vic.gov.au/victorias-provisional-payments-better-support-mental-injuries.

this is not the case, as in New South Wales, payments should cease if a worker fails to provide a medical certificate within 7 days.

Rejecting a claim for fraud is uncontroversial. The seriousness of a fraudulent claim warrants that rejection. All state and territory schemes deny entitlement on this ground. In the Australian Capital Territory, rejection is tied to a finding of criminality, as determined by a court.[62] We recommend only recovering payments in cases of fraud.

Hanks recommended adding dishonesty and obstructive behaviour to the typical fraud exclusion, and the Northern Territory has included this in its legislation.[63]

We are attracted to that option, given that a successful finding of fraud involves meeting a high bar. However, we consider it unnecessary, as the SRC Act already provides the ability for a determining body to discontinue determining a claim if there is obstructive behaviour, such as a failure or unreasonable refusal to provide documents or respond to a reasonable request for information. We recommend replicating the equivalent provisions in the new Act.

What are the costs to the scheme?

> *'Early intervention has several benefits, including reducing the frequency, cost and severity of claims, and preventing the deterioration into secondary mental injuries.'*[64]

A system of early payments and supports will create additional costs to the scheme. But there is evidence from the Comcare early intervention pilot (see Background) that upfront investment in early intervention will increase return to work prospects and shorten the duration of time off work.[65] Ultimately, this will save scheme costs by preventing longer-term claims.

As part of the actuarial analysis for the review, we received costings of provisional and non-liability support models from all states and territories, the Department of Veterans' Affairs, the Hanks Review and the Improving the Comcare Scheme Bill.

We have settled on a model closest to that of the Australian Capital Territory, with wide eligibility, inclusion of medical, income and rehabilitation compensation, and no capping, to provide the strongest support for the recovery and return to work of workers.

[62] *Workers Compensation Act 1951* (ACT), s 135.
[63] Hanks Review, para 6.40.
[64] Australian Rehabilitation Providers Association (ARPA), *Return on Investment for Workplace Rehabilitation Position Paper*, 2021, ARPA.
[65] Deloitte, *Evaluation of Comcare: Early Intervention Service Pilot – Executive Summary*, 2020, Comcare, p 4.

Longer term, the actuarial study included in the Comcare early intervention pilot suggests there should be structural savings. Equally, the Monash user-experience study identified a reform opportunity, finding:

> *'Funding mental health care prior to claim acceptance for workers with psychological claims or psychological risks could prevent prolonged illness and potentially reduce claim duration.'*[66]

Crisis payments for dependants upon death

An issue not addressed by the Hanks Review was whether dependants of a deceased worker should receive immediate payments and supports. We consider this issue in this chapter. Providing compensation for injuries resulting in death is dealt with in Chapter 5.

When the worker is the sole income earner, the cessation of financial support on the worker's death is likely to have dire financial consequences for the worker's dependants. Support would be in the nature of a crisis payment, payable as soon as possible after death. We recommend a crisis payment system, based on the ACT's new legislative model, to provide urgent support to the worker's domestic partner and their families in these circumstances.[67]

Eligibility

Immediate payments are available to family members of a worker whose death arises out of, or in the course of, their employment. Family members eligible include a domestic partner, child, stepchild, parent, or step-parent who lived with the worker in the six months prior to death. Other persons may be prescribed by regulation.

Payment amounts and process:

- $10,000 (indexed to CPI) for the deceased worker's domestic partner.
- $5,000 (indexed to CPI) for any other eligible family member.
- The total amount paid to all family members is capped at $50,000 (indexed to CPI).
- A family member must apply for the payment within three months of the worker's death.
- The determining body is required to make the payment within 7 days of receiving the application.

Nature of payment:

- These payments are not an admission of liability by the employer or determining body.
- They are not recoverable from the recipient (unless the person was not entitled).
- The payments do not affect any subsequent compensation claims relating to the worker's death.

We accept there are compelling reasons – on the grounds of humanity and fairness – to make payments to dependants in the event of a worker's death from work-related causes.

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[66] Monash user-experience study, p 9.
[67] Workplace Legislation Amendment Bill 2025 (No 3) (ACT), cls 84A–84C.

Summarising our position on early support more generally, we consider that the status quo option is no longer sustainable. There is overwhelming evidence that early support for injured or ill workers is critical to assist workers to recover and return to work or to a sustainable level of daily functioning. The research and submissions strongly supported introducing a comprehensive scheme of early support. Placing a duty on employers to intervene early in the workers' compensation process, and implementing a system of early payments and supports, will ensure a continuum between the employer's earliest form of intervention and what the determining body provides.

We considered limiting early intervention to psychological injury. We acknowledge that the number of claims for psychological or psychiatric conditions are increasing and now comprise more than one in 10 of all accepted claims in the Comcare scheme. Nevertheless, the bulk of work-related claims (9 out of 10) relate to physical injuries and diseases. Evidence shows that unless early support is provided, physical injuries and diseases can worsen and may lead to the development of a secondary psychological injury.

Consequently, we favour a system of early payments and supports that would align the Comcare scheme with the legislation in 6 of the 8 states and territories, and permit a holistic approach to managing workers' supports following a work-related injury or disease.

3.1.7 Panel recommendations

Recommendation 16

We recommend that employers:

a. have a duty to intervene as soon as possible after an injury or incident or as symptoms emerge

b. are prohibited from making an offer of early support conditional on not making a claim for workers' compensation.

Recommendation 17

We recommend establishing a system of early payments and support for all injuries that includes compensation for incapacity, medical expenses and rehabilitation, with no caps on entitlements.

Recommendation 18

We recommend that early payments and supports cease when a claim is rejected or accepted.

Recommendation 19

We recommend the ability for a determining body to refuse to deal with a claim under s 58 of the SRC Act is replicated in the new Act.

Recommendation 20

We recommend that early payments and supports are only recovered in cases of fraud.

Recommendation 21

We recommend immediate crisis payment and support upon death to family members who lived with the worker in the 6 months prior to death:

a. domestic partner: $10,000 (indexed to the Consumer Price Index)
b. other eligible family member: $5,000 (indexed to the Consumer Price Index)
c. the total amount is capped at $50,000 (indexed to the Consumer Price Index)
d. payable in 7 days.

3.2 Rehabilitation and return to work

3.2.1 The current framework

Part III of the SRC Act sets out the rehabilitation process, with 2 main divisions, which cover:

1. approving rehabilitation providers
2. the provision of rehabilitation programs.

Consistent with recommendations for the structure of the new Act, we explore the rehabilitation program division first, as this division contains the key aspects of the rehabilitation framework.

3.2.2 Background

Workplace rehabilitation is an employer-led process to support a worker's recovery as they return to health and work.[68] The process should start at the first sign of injury or illness, irrespective of whether the worker makes a claim for compensation.

An effective rehabilitation framework not only facilitates a timely, safe and durable return to health and work, but supports recovery at work and reduces long-term incapacity.[69]

The SRC Act, as its title indicates, has emphasised the importance of rehabilitation since its inception. The Explanatory Memorandum to the Commonwealth Employees' Rehabilitation and Compensation Bill 1988 stated that the greater emphasis on rehabilitation is one of the most significant differences between the compensation system proposed in that Bill and the earlier legislation for workers' compensation.[70]

However, as Hanks pointed out in his review in 2013, the focus on vocational rehabilitation in the late 1980s differed significantly from the current best practice biopsychosocial approach we discuss in Chapter 1.[71] Today, we consider rehabilitation to be the means to achieve the outcome that was the focus of our review, namely, for worker recovery of health and return to work.

3.2.3 Previous reviews

Hanks Review

Hanks highlighted that the SRC Act's rehabilitation framework is focused on administrative decisions, process and legislative compliance over desirable outcomes.[72]

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[68] Comcare, *Rehabilitation case manager handbook*, 2024, Comcare, p 2.
[69] SWA, *National Return to Work Strategy 2020-2030,* 2019, SWA, pp 29– 32.
[70] Explanatory Memorandum to the Commonwealth Employees' Rehabilitation and Compensation Bill 1988 (Cth), p 8.
[71] Hanks Review, para 6.64.
[72] Hanks Review, para 6.71.

Hanks made several recommendations aimed at modernising the SRC Act's rehabilitation framework, including:

- replacing 'rehabilitation programs' with 'workplace rehabilitation plans' and removing references to medical and other related treatments to emphasise the vocational nature of rehabilitation (Recommendation 6.3)
- replacing the concept of the rehabilitation authority with that of the liable employer who will always have a right and the responsibility to arrange rehabilitation (Recommendation 6.5). Further recommendations were made to establish dual rehabilitation responsibilities for the liable and current employers if a worker moves between employers (Recommendation 6.7) and to provide for Comcare to begin or take over rehabilitation (Recommendation 6.8) if the liable employer does not meet their rehabilitation responsibilities or ceases to exist
- requiring rehabilitation case managers to undertake appropriate training (Recommendation 6.6)
- requiring determining bodies to develop injury management plans (IMPs) for workers with serious injuries (Recommendation 6.10) and review active claims at 12 and 52 weeks (Recommendation 6.12)
- providing for Comcare to issue an injury management and rehabilitation code of practice to employers (Recommendation 6.9)
- removing the rehabilitation assessment process (s 36 of the SRC Act) (Recommendation 6.13) and requiring the employer to take all reasonable steps to return the injured worker to work (Recommendation 6.14)
- widening the definition of 'suitable employment' so that employment with any employer be considered suitable (Recommendation 6.16) and applying penalty units when the employer does not provide suitable duties (Recommendation 6.17)
- establishing a Comcare scheme–wide job placement program, including preferencing placement with another scheme employer before looking outside the scheme (Recommendation 6.18)
- developing a return to work inspectorate within Comcare (Recommendation 6.20).

Hawke Review

The Hawke Review was commissioned by the Australian Government at the same time as the Hanks Review. Dr Allan Hawke AC was tasked with reporting on the review terms of reference on scheme governance and performance and the financial framework. Dr Hawke also made recommendations relating to the rehabilitation framework in his report. Hawke recommended that Comcare audit premium-paying agencies and work with agencies to improve their rehabilitation management systems and processes.[73]

Rozen Review

The Rozen Review found that WorkSafe Victoria should have a greater role in the return to work process. Rozen noted that WorkSafe's role was limited to ensuring that employers and workers follow the rules. Rozen recommended that WorkSafe actively manage all aspects of a worker's claim by

[73] A Hawke AC, *Safety, Rehabilitation and Compensation Act Review: Report of the Comcare Scheme's Performance, Governance and Financial Framework* (Hawke Review), 2013, report to the Australian Government Department of Education, Employment and Workplace Relations, p 4, and Recommendations 11, 13, 14.

ensuring that timely interventions, including rehabilitation, occur to improve recovery and return to work outcomes.[74]

3.2.4 State and territory arrangements

While specific arrangements for rehabilitation vary between jurisdictions, supporting timely, safe and durable return to work for workers is a central objective of all schemes.[75] Most jurisdictions require those involved in workers' compensation schemes (workers, employers, treating health practitioners, workplace rehabilitation providers (WRPs), insurers and claims managers) to work together to support recovery and return to work.[76]

In recent years, the emphasis has increasingly been on the importance of recovery and return to work. This has led to a range of legislative and scheme design changes, including early intervention and pre-liability support, targeted return to work services (such as South Australia's mobile claims management)[77] and bespoke programs (such as Comcare's Return to Work brokerage service[78]). These aim to support workers to focus on their recovery and return to work, and reduce scheme costs. There has also been a focus on more clearly articulating the rehabilitation rights, duties and obligations of workers, employers and other people involved in return to work.

Many of the changes have been driven by the rise in the number of psychological injury claims. These are costly due to the challenges involved in returning workers to health and work. For example, the key focus of the *Return to Work Act 2014* (SA) is targeted and tailored return to work services and clearly articulated rights and obligations for all parties. This is reflected in its title. Many states, including New South Wales, Victoria and South Australia,[79] have return to work inspectorates to ensure the enforcement of return to work duties.

The Commonwealth and all states and territories have signed up to SWA's *National Return to Work Strategy 2020–2030*. Its guiding principles, designed to support positive return to work outcomes, are to:

- tailor support and intervention to the needs of the injured worker, provide support as early as possible and effectively prepare for and manage work-related injury and illness
- assist workers to navigate the compensation claims process and ensure they know their rights and responsibilities so they can play a proactive role in their recovery and return to work

[74] P Rozen QC, *Improving the experience of injured workers: A review of WorkSafe Victoria's management of complex workers' compensation claims* (Rozen Review), 2021, WorkSafe Victoria, p xxxv and Recommendation 18.
[75] SWA, *National Return to Work Strategy 2020-2030*, 2019, SWA, p 8.
[76] SWA, *National Return to Work Strategy 2020-2030*, 2019, SWA, p 9.
[77] ReturnToWorkSA, *When an injury occurs*, RTWSA, accessed 27 August 2025. Available at www.rtwsa.com/claims/when-an-injury-occurs.
[78] Comcare, *Return to Work brokerage service,* Comcare. Available at www.comcare.gov.au/about/forms-pubs.
[79] *Return to Work Act 2014* (SA), s 184; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), ss 126–145*; Workplace Injury Management and Workers Compensation Act 1998* (NSW), ss 238–238C.

- encourage scheme providers to share relevant information and engage in a coordinated and collaborative approach to meet the needs of the injured worker.[80]

3.2.5 What we heard

> Supporting an injured worker with all necessary treatment and rehabilitation at the earliest opportunity in order to achieve maximum recovery and, if appropriate, also assisting that worker returning to work.
>
> **Australian Lawyers Alliance submission, p 6.**

> Providing holistic rehabilitation services that address both physical and psychological injuries is crucial. This includes access to mental health support and tailored rehabilitation plans to facilitate an early return to work.
>
> **Australian Taxation Office submission, p 2.**

> [The following changes could improve RTW]: remove limits on return to work options for workers … supporting the consistency of the skill base of rehabilitation case managers … providing a mechanism to allow Comcare, or another third party provider, to become the rehabilitation authority or to allocate rehabilitation authority powers.
>
> **Comcare submission, p 10–11.**

> Empower injured workers through the provision of genuine support from the Comcare workers' compensation scheme, employers and the healthcare professionals involved in their recovery. Incentivise employers to identify and address risks of psychological injury in the workplace and to provide mental health training for workers and managers.
>
> **Australian Psychological Society submission, p 4.**

> The Comcare scheme provides a flexible framework to support early intervention and return to work, education and guidance and a forum for scheme participants to share innovations and discuss best practice. This flexibility allows employers and rehabilitation authorities to tailor support to the individual needs of the employee and the circumstances of their workplace and industry.
>
> **John Holland Licensees submission, p 13–14.**

The Monash user-experience study highlighted the critical role of employer support and the negative consequences for workers when that support is absent. Injured or ill workers described a lack of suitable duties, limited consultation and, in some cases, pressure to medically retire. Participants reported that return to work arrangements were often inflexible, poorly matched to their skills or capacity, and perceived as 'career limiting'. These experiences contributed to a sense of disempowerment and disengagement from the return to work process.[81]

[80] SWA, *National Return to Work Strategy 2020-2030*, 2019, SWA, p 18.
[81] Monash user-experience study, p 22.

The research also identified systemic issues that hinder return to work, including high staff turnover among claims managers, poor communication, and a lack of coordination between those involved. Injured or ill workers described the scheme as complex and adversarial, with limited support to navigate processes and little transparency in decision-making.[82]

These challenges were particularly acute for workers with psychological injuries and those from diverse backgrounds, who reported that the scheme did not adequately accommodate their needs or circumstances.[83] The findings point to the need for a more person-centred, trauma-informed approach to rehabilitation and return to work, with improved training, clearer roles and responsibilities, and stronger mechanisms for accountability and support.

3.2.6 What we considered

Multiple elements are involved in ensuring worker recovery and return to work through rehabilitation. Broadly, we considered the duties of the main participants in the rehabilitation process and the tools and mechanisms available to them to support an injured or ill worker's recovery and return to work.

Specifically, we looked at:

- mechanisms to ensure duty holders comply with their rehabilitation and return to work duties
- the obstacles to agencies and employers providing suitable duties outside the department, agency or employer
- whether to tighten the regulation of WRPs operating in the scheme and whether workers should be able to choose their WRP or request a change.

Rehabilitation and return to work duties

Responsibility for rehabilitation

Threshold issues for premium-paying agencies were related to who should be responsible for rehabilitation – the employer, determining body or both. Currently, employers (as the rehabilitation authority) have significant rehabilitation obligations, including coordinating the process and determining rehabilitation programs. In this context, the 'employer' is the head of the agency employing the worker. This may not be the same agency or entity that was employing the worker when their injury occurred. The problem this raises is that the later employer may be reluctant to take on rehabilitation responsibility when their agency was not involved when the injury arose.

Comcare's role in rehabilitation is limited to stepping in for 'exempt authorities'. In all other situations, Comcare cannot direct rehabilitation or take over where an injured or ill worker's recovery and return to work is not being actively managed.

The argument for an employer-led model of rehabilitation is that it enhances coordination of rehabilitation, and a safe and durable return to work, with the employer well positioned to understand and identify suitable duties. This model may also be appropriate in a scheme like Comcare with a high

[82] Monash user-experience study, p 6.
[83] Monash user-experience study, pp 38–39.

proportion of larger employers (some with delegated claims management responsibilities) and self-insurers that have adequate resources for this function. An employer-led model may also be effective in non-complex cases where the worker is likely to return to the same employer and there is no conflict between the worker and employer.

Conversely, determining bodies typically have greater expertise and access to resources, and are more cost-efficient than individual employers. Workers are more likely to receive support from experienced professionals, such as allied health specialists, who have a comprehensive understanding of rehabilitation and return to work pathways across the Comcare scheme. Determining bodies also have better access to clinical and injury management panels and customised rehabilitation services. Additionally, this model can enhance the continuity between claims and rehabilitation management, with determining bodies having more integrated oversight of a worker's entire claim and recovery process. It also increases the separation from the employer, benefiting workers with psychological injuries and those in conflict with their supervisors.

User-experience research highlighted concerns about independence.[84] Some workers considered that the organisation that contributed to their injury should not be responsible for making decisions about their claim and recovery.

Submissions clearly supported the need to change the current model. Preference emerged for a hybrid model that leverages the employer's understanding of job-specific requirements and return to work opportunities and the determining body's case management expertise, greater resources and economies of scale. Complementary rehabilitation and return to work duties should also improve communication between the people involved in rehabilitation and consistency in the support provided to workers.

Hybrid model

A hybrid model allows for rehabilitation case management to sit with the determining body while return to work coordination is the responsibility of the employer, as the body which can better leverage the opportunities to discharge suitable duty obligations.

The determining body would be responsible for coordinating the worker's claim to improve recovery and return to work, including:

- explaining and providing information on the rehabilitation and return to work process to the worker and employer
- approving and funding necessary rehabilitation services and assessments
- working with treating practitioners to understand the worker's injury or illness and recovery
- developing the IMP (see later)
- engaging and managing the WRP, if needed
- addressing any disputes or concerns raised about rehabilitation or return to work.

[84] Monash user-experience study, p 34.

The employer would be responsible for:

- identifying and providing suitable work that aligns with the worker's capacity
- supporting the worker to implement the return to work plan (including any necessary adjustments to work or the workplace)
- monitoring the worker's progress and providing feedback to their support team
- maintaining regular contact with the worker (where appropriate) and collaborating with the worker's support team.

The determining body and employer would share responsibility for worker engagement, monitoring progress and reviews.

Due to their combined role as determining body and employer, self-insured licensees would retain the overarching responsibility for rehabilitation and return to work.

The hybrid model would address some of the issues and complexities that arise from the SRC Act in relation to the respective roles of Australian Government agencies and Comcare. These include the potential for a request for alterations, aids and appliances to be determined by both the rehabilitation authority and Comcare.[85] The model also allows claims managers to coordinate and oversee the rehabilitation assessment process, reducing potential duplication as well as confusion for workers.

We favour adopting a hybrid model to avoid the issues identified in the current competing models.

Scenarios – the hybrid model of rehabilitation

The following scenarios are designed to illustrate how the hybrid model of rehabilitation operates across a range of injury types and severities. Each example demonstrates the practical application of the model's core principles: early support tailored to the worker, and clear collaboration between the return to work coordinator and the claims manager. The scenarios are structured to show how the model responds flexibly to different circumstances, whether the injury results in no time off work, a brief absence, or a more complex psychological injury, while ensuring that the worker's needs remain central and that best practice requirements are met.

[85] Comcare, *Rehabilitation Case Manager Handbook*, 2024, Comcare, p 43.

Scenario 1: Simple injury with no time off work

A warehouse worker strains their wrist while lifting a box but can continue working with modifications and support.

Hybrid model response:

- The return to work coordinator consults with the worker and their supervisor, and a short return to work plan is developed, outlining temporary modifications such as avoiding heavy lifting for a few days and taking regular breaks.
- The claims manager approves and coordinates early support for the worker (for example, physiotherapy treatment) while the claim is being determined and checks in with the worker and return to work coordinator on recovery progress. No formal injury management plan is required.
- The worker recovers fully within a week, with no disruption to work or need for external rehabilitation services.

Scenario 2: Minor injury with short absence (less than 7 days)

An office worker develops mild shoulder pain and is certified unfit for work for 3 days.

Hybrid model response:

- The return to work coordinator contacts the worker, identifies a need for an ergonomic assessment, and develops a short-term return to work plan in consultation with the worker and treating practitioner.
- The claims manager engages a WRP (of the worker's choosing) and ensures medical treatment and required ergonomic equipment is approved and funded promptly. No IMP is needed, as the absence is expected to last less than 7 days.
- However, after returning to work, the worker's shoulder pain worsens and they are certified unfit to work for a longer period.
- The claims manager and return to work coordinator review the situation together. An IMP is initiated to ensure a coordinated approach to rehabilitation, and the return to work plan is updated in consultation with the worker and treating practitioner to support a safe and sustainable return to work. The return to work plan is attached to the IMP.

Scenario 3: Significant injury with extended absence

A customer service representative develops a work-related psychological injury (for example, anxiety and depression following workplace bullying) and is certified unfit for work for several weeks.

Hybrid model response:

- The return to work coordinator maintains regular, supportive contact with the worker, ensuring communication is trauma-informed and sensitive to the worker's needs. The coordinator also liaises with the treating practitioner to understand restrictions and preferences. A return to work plan is developed to support a gradual re-entry into the workplace.
- Recognising that the worker is likely to have an extended incapacity for work, the claims manager develops a comprehensive IMP, coordinating treatment, engaging a WRP with expertise in mental health (chosen by the worker), and facilitating regular case conferences with all stakeholders (worker, employer, treating practitioner, WRP). The return to work plan is attached to the IMP.
- The worker returns to work in a new work area on a graduated plan, starting with reduced hours and duties, with ongoing psychological support and regular check-ins from both the return to work coordinator and claims manager to monitor wellbeing and address any emerging issues.
- The IMP and return to work plan are regularly reviewed and updated to reflect the worker's progress, with adjustments made as needed.

When the worker moves from the agency where the injury occurred – 'liable employer' concept

The Hanks Review noted the challenges in return to work for workers moving between employers. Hanks proposed removing the role of the rehabilitation authority and replacing it with the concept of the 'liable employer' (the employer that is liable for the claim costs). Hanks recommended that the liable employer has the right and duty to arrange rehabilitation.[86]

When a worker moves from one Comcare scheme employer to another, the new employer becomes the rehabilitation authority, but the former employer remains liable for the claim costs. The liable employer may wish to continue rehabilitating the worker (due to the claim costs), but the rehabilitation authority (the new employer) may not have the same motivation to exercise that power. This situation also introduces an additional body into an already complex rehabilitation process.

Hanks recommended establishing dual rehabilitation responsibilities for both the liable and current employers.[87] The Improving the Comcare Scheme Bill partially sought to implement this

[86] Hanks Review, Recommendation 6.5.
[87] Hanks Review, Recommendation 6.7.

recommendation. It proposed the liable employer would be the employer where the worker was injured or the employer that contributed to the injury for a disease or a psychological injury.[88]

When a worker moves to an employer outside the scheme, Hanks recommended that sole rehabilitation responsibility should sit with the liable employer.[89]

Submissions supported Hanks's recommendations in this area, including the need to clarify who is the responsible employer and ensure a financial incentive for employers to properly discharge their return to work duty (see later). We too favour Hanks's liable employer model. We recommend introducing the requirement for the 'liable employer' and the 'new employer', as far as is reasonably practicable, to consult, cooperate and coordinate regarding the worker's return to work.

When the liable employer is unknown or is unable or unwilling to meet their return to work obligations

Hanks's concept of liable employer would ensure that liability and responsibility for rehabilitation sit with the employer where the injury or illness occurred. However, there is a risk of workers falling through the cracks and not being able to access rehabilitation because it is difficult or impossible to identify their liable employer. Additionally, Comcare or another body cannot take over rehabilitation when an employer does not meet their rehabilitation obligations.

Hanks noted both issues and recommended that Comcare be given ultimate power to begin and/or take over rehabilitation.[90] The Improving the Comcare Scheme Bill sought to partially implement this recommendation by allowing Comcare or another entity to take over rehabilitation if the liable employer ceases to exist (cl 35A) or perform a function (cl 35B). The Bill also gave Comcare the ability to deem an employer liable (cl 35C) or to take over rehabilitation where the liable employer did not fulfill its duties (cl 35F).[91]

Submissions supported Comcare's ability to take over rehabilitation in these situations.

Clearly, there is a need to support a worker's recovery when their employer is unknown, unable or unwilling to assist with rehabilitation. The hybrid model of rehabilitation should also assist Comcare in performing this role due to its expanded duties in injury management and return to work.

Duties of employers

As explained earlier, under the SRC Act, when a worker is injured, their employer is responsible for managing both their recovery and return to work.[92] Under the hybrid model, these responsibilities would be split between the employer and determining body.

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[88] Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth), s 35.
[89] Hanks Review, Recommendation 6.7.
[90] Hanks Review, Recommendation 6.8.
[91] Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth), Sch 2, Item 50.
[92] In general, the definition of 'rehabilitation authority' means the employer for both public sector entities and licensed corporations, apart from when a worker is employed by an authority exempted under the SRC Act, s 35.

At present, under Division 3 of the Act, the employer's key functions and duties include:

- arranging a rehabilitation assessment of the worker's capability to undertake a rehabilitation program (s 36)
- making a determination and arranging a rehabilitation program (s 37)
- taking all reasonable steps to provide the worker with suitable employment (s 40)
- complying with Comcare's rehabilitation guidelines (s 41(2)).

Under the hybrid model, we propose that the employer's key functions and duties would be to:

- have a return to work program and policy
- identify, assess and control the risks to recovery from injury or illness
- so far as is reasonably practicable, consult, cooperate and coordinate with the worker and their representative, determining body, WRP and, subject to consent, treating practitioner
- develop an individual return to work plan in agreement with the worker and their representative
- maintain contact with the injured or ill worker
- appoint and train return to work coordinators
- maintain employment until all rehabilitation options had been exhausted, the worker agrees to a commutation, or a lawful termination unrelated to the injury applies
- provide suitable work.

Duty to have a return to work program and policy

Return to work planning benefits both workers and employers, leading to improved health outcomes, reduced costs and increased productivity. Comcare is one of the few schemes not to have a legislated requirement for employers to have a return to work program or policy. Typically, these programs and policies cover workplace leadership and commitment, rights and obligations, and supports available for workers. For example, in Western Australia a template is provided to employers to assist them with implementing such a policy. It sets out the employer's commitment to return to work, and the steps they must take when an injury occurs in the workplace, and details who has day-to-day responsibility for rehabilitation and return to work.[93] Likewise, Australian Capital Territory employers must have a return to work program that provides policies and procedures for rehabilitation.[94]

Hanks recommended the SRC Act's rehabilitation provisions should be supported by an injury management and rehabilitation code of practice, which would operate in the same way as codes of practice under WHS legislation.[95] That is, it would set out the expected standards for injury management and vocational rehabilitation and should be followed unless a higher standard can be achieved. Among other things, the code would guide the establishment of injury management and rehabilitation management systems, which typically include a requirement for a rehabilitation program or policy. Hanks also recommended that a penalty apply for failing to comply with the code.

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[93] WorkCover WA, *Injury Management System Template*, WorkCover WA, accessed 30 August 2025. Available at www.workcover.wa.gov.au/employers/understanding-your-rights-obligations/injury-management-systems/.
[94] *Workers Compensation Act 1951* (ACT), s 109 (3)(a).
[95] Hanks Review, para 6.103.

The Safety, Rehabilitation and Compensation Commission's (SRCC's) performance indicators for licensees include a requirement that they have an established rehabilitation management system supporting health outcomes and return to work for injured workers.[96] It is expected that a rehabilitation policy (or equivalent) is part of this system and is regularly audited.[97] Under the *Guidelines for Rehabilitation Authorities 2012* (the previous Guidelines), all employers (including Australian Government agencies) were required to develop and implement a rehabilitation management system. The requirement was removed for Australian Government agencies when the guidelines were updated in 2019 due to concerns about whether it was supported by a head of power.

This means the guidelines no longer reflect best practice. As Hanks found, the requirement for employers to resource and oversee the delivery of effective rehabilitation to workers through a management system is such an integral element of rehabilitation that it should form part of the Act itself. The *National Return to Work Strategy 2020–2030* also sees having a rehabilitation and return to work program or policy as representing an employer's commitment to health, safety and recovery of its workers in the event of an injury or illness.[98]

A best practice return to work program or policy includes a leadership commitment to support injured or ill workers, details on the organisation's approach to return to work, roles and responsibilities of all those involved, their rights and obligations, support available to workers, dispute prevention and resolution, and key policies and procedures, including for suitable work.[99] The program must involve, so far as is reasonably practicable, consultation with workers and their representatives and align with the injury management program of the determining body (where relevant).

Rehabilitation duty – identify, assess and control the risks to recovery from injury or illness

Hanks recommended that under the Act, it be a core requirement for employers to take all reasonable steps to return the injured worker to work as soon as possible. He also recommended consulting as far as practicable with the injured worker and nominated treating practitioner about the worker's return to work.[100] The Improving the Comcare Scheme Bill proposed changes reflect this recommendation. The proposed changes require an employer to take all reasonably practicable steps to ensure the rehabilitation of the worker and to consult, as far as practicable, when establishing a workplace rehabilitation plan and progressing suitable employment.[101]

A duty could be imposed on employers and determining bodies to identify, assess and, so far as is reasonably practicable, eliminate or minimise the biological, psychological and socio-economic risk factors to recovery to restore an injured or ill worker to their fullest physical, psychological, social and vocational capabilities. This duty would be consistent with best practice, align with the biopsychosocial approach and the dual obligations on employers and determining bodies. The duty

[96] Safety, Rehabilitation and Compensation Commission (SRCC), *Licence Compliance and Performance Model*, 2025, SRCC, p 16.
[97] Comcare, *Rehabilitation Management System Audit workbook*, 2021, Comcare.
[98] SWA, *National Return to Work Strategy 2020-2030*, 2019, SWA, p 9.
[99] For example, see SIRA, *Guidelines for workplace return to work programs*, 2025, SIRA.
[100] Hanks Review, Recommendation 6.14.
[101] Improving the Comcare Scheme Bill 2015 (Cth), Sch 2, ss 35J, 35K(3).

would also complement duties under WHS laws to ensure health and safety, so far as is reasonably practicable, and form part of the continuum.

Duty to consult

The primary duty could include the duty for employers and determining bodies to consult, so far as is reasonably practicable, with each other and the worker throughout the recovery and return to work process, as recommended by Hanks.[102] Under the *Guidelines for Rehabilitation Authorities 2019*,[103] the rehabilitation authority must consult the worker on their proposed rehabilitation program. However, at other stages, such as altering or closing the rehabilitation program, there is no duty to consult.[104]

In South Australia, the worker, employer and any host employer must be consulted when developing the return to work plan. Consultation should also occur with the treating practitioner and can occur with any other body or person.[105] In Victoria, the employer has an overarching duty to consult with the worker, WRP and, subject to consent, treating practitioner.[106]

The duty could also include a duty to consult, so far as is reasonably practicable, with an injured or ill worker's representatives. In Victoria, a worker can be supported by a representative when being consulted about return to work.[107]

Duty to plan for return to work – individual plans to support return to work

All workers' compensation schemes have a stated or implied duty on employers to ensure an individual plan is in place to support a worker's return to work. Typically, these plans are called 'recover at work plan', 'rehabilitation plan' or 'return to work plan'.[108] They focus on the health benefits of work and aim to support workers to recover while they are working. A return to work plan is typically a brief, practical document focused on the support needed to help a worker resume their work duties.

The Comcare scheme is unique in that an individual return to work plan is typically created as part of the process of determining the need for and providing rehabilitation under s 37 of the SRC Act.[109] The *Guidelines for Rehabilitation Authorities 2019* require rehabilitation authorities to include information typically contained in an individual return to work plan, such as details of providers and relevant others, review dates and steps to find suitable employment, when making a determination under s 37.[110]

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[102] Hanks Review, Recommendation 6.11.
[103] *Guidelines for Rehabilitation Authorities Instrument 2019*, s 9(3).
[104] Comcare, *Rehabilitation case manager handbook* (see 'Can I determine that reasonable adjustments are required under the rehabilitation program?'), 2024, Comcare, p 43.
[105] *Return to Work Act 2014* (SA), s 25(5).
[106] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 105, see 'Consult about the return to work of a worker'.
[107] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 105(4).
[108] SWA, *Comparison of workers' compensation arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, pp 259–263.
[109] Comcare, *Rehabilitation program – information for employees*, 2025, Comcare, accessed 17 September 2025. Available at www.comcare.gov.au/about/forms-pubs/docs/forms/rehabilitation/rehabilitation-program-form.pdf.
[110] *Safety, Rehabilitation and Compensation (Guidelines for Rehabilitation Authorities) Instrument 2019* (Cth), s 9(5).

Additionally, under s 36 of the SRC Act, there is a distinct legislative process relating to rehabilitation assessments. This section allows employers to arrange an assessment or examination of the worker to determine their ability to undertake rehabilitation.

As detailed earlier, Hanks made several recommendations relating to rehabilitation planning, assessments and programs. Hanks's proposed model removed the requirement in s 36 for assessment of capability and provided for developing a workplace rehabilitation plan to confirm that rehabilitation is aimed at the worker's return to work. The employer would develop the workplace rehabilitation plan, which would focus on providing services to support the worker to stay at or return to work. This included assessments of capability, modifications to support return to work and vocational support.[111]

Again, current scheme arrangements do not reflect best practice. Many of Hanks's recommendations in this area are still relevant. They generally align with arrangements in the states and territories, and reflect recommended practices in the *National Return to Work Strategy 2020 –2030*. Creating a clear duty for the employer to develop a return to work plan means the employer has a role in supporting return to work. It also means they can focus on the aspects of return to work (such as duties, hours and adjustments) they are best placed to manage.

The return to work plan should also be developed in agreement with the worker and their representative to ensure it is effective and sustainable. Collaborative planning fosters trust and promotes a smoother transition to work. When the worker and their representative are actively involved, the plan is more likely to reflect realistic duties and a pace that supports recovery rather than risking re-injury. Mutual agreement also helps to minimise disputes.

This duty will apply when a worker has sustained a workplace injury or illness and is either unable to perform their pre-injury duties or requires support to return to work. Concern is often raised that such documentation inherently involves a vast amount of paperwork. However, we see the plan could be as straightforward as the circumstances dictate. The plan should contain enough detail to ensure that all potential risks to return to work have been identified and addressed, including identifying the supports the worker requires to stay at or return to work. The level of detail would also depend on the specific circumstances of the worker and their injury or illness. The templates developed to facilitate this should shorten the time for completion of the paperwork.

Duty to maintain contact

The role and attitude of the employer is critical to positive return to work outcomes. A worker who is supported by their employer is up to 5 times more likely to return to work than a worker with a neutral or negative experience.[112] In providing support, it is important that the employer, most likely through the worker's supervisor, maintain appropriate contact with the worker, or their union or legal representative, throughout their recovery and return to work.

[111] Hanks Review, para 6.81.
[112] SWA, *National Return to Work Strategy 2020-2030*, 2019, SWA, p 14.

While most jurisdictions have duties related to consulting with and providing information to the worker, and encourage contact with the worker, there is a lack of specific duties on maintaining that contact. The SRC Act and *Guidelines for Rehabilitation Authorities 2019* do not contain duties relating to worker contact. Similarly, the Hanks Review was silent on ongoing worker contact.

The Monash user-experience study noted the complexities of maintaining contact when there is a breakdown in the worker's relationship with their employer and/or supervisor.[113] Any duty to maintain contact must consider the individual circumstances of the worker and seek not to cause further harm. The research also highlighted that contact needs to be trauma-informed and contribute to a worker's recovery.

Submissions also recognised the importance of ongoing contact and, where safe and appropriate, the benefit of this contact being with the supervisor. The frequency of contact was raised as an issue, as well as the need to ensure the worker feels the contact provides support and connection to the workplace rather than the employer is intruding on or monitoring them. This can be particularly important when the worker has had a prolonged absence from the workplace. Evidence suggests workers are more likely to recover with regular contact and tailored and flexible support.[114]

Duty to appoint and train a return to work coordinator

While the employer's responsibilities would change under a hybrid model, their representative for rehabilitation would retain an important role in coordinating and managing return to work.

Under the current SRC Act, rehabilitation case managers are responsible for coordinating and managing the rehabilitation process, including determining the need for rehabilitation, determining and coordinating rehabilitation programs, approving rehabilitation supports and managing return to work. In comparison, return to work coordinators are focused on implementing and monitoring return to work. While they have a role in identifying the supports available to assist the worker to recover and return to work, the approval and coordination aspects are managed by the claims manager.

Most jurisdictions, excluding Western Australia and the Northern Territory, require employers of a certain size to appoint a person to act as the return to work coordinator.[115] To align Comcare with other schemes and aid employers in fulfilling their return to work obligations, an equivalent duty should be imposed, and the role should be designated return to work coordinator.

[113] Monash user-experience study, p 34.
[114] Department of the Prime Minister and Cabinet, *Returning to work after illness or injury*, 2022, Department of Prime Minister and Cabinet, p 7.
[115] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, pp 286–290.

Duties and functions of return to work coordinators

Return to work coordinators have similar functions across schemes.[116] Depending on the scheme, these functions are included in the relevant Act, in supporting guidelines or in scheme guidance. The functions typically include:

- developing a return to work plan in consultation with the injured or ill worker and the employer
- assisting with planning and implementing a return to work program
- identifying suitable duties for the injured or ill worker to enable return to work as soon as possible
- managing the return to work process by liaising with treating doctors, WRPs and the employer
- monitoring the injured or ill worker's progress towards successful return to work
- working with the determining body when an IMP is required.

Embedding these duties in workers' compensation legislation ensures clarity, accountability and consistency in practice. It elevates the role to a mandated standard, reinforcing the importance of structured support and collaboration in the return to work process.

Duty to train return to work coordinators

There are valid arguments for specifying training requirements in the new Act for return to work coordinators. Training assists coordinators in their complex role, including supporting workers during vulnerable times, fulfilling employer rehabilitation obligations and collaborating with those involved in the return to work process. We received submissions that favoured implementing training duties, and user-experience research highlighted a need for enhanced training.

The Victorian Government recently announced proposed changes to strengthen employer obligations in appointing a return to work coordinator. Under the Workplace Injury Rehabilitation and Compensation Amendment Bill 2025 (Vic), employers must ensure coordinators are paid to complete approved training or have appropriate qualifications. Penalties apply to individuals and corporations who do not meet these obligations.[117] While concerns were raised about the cost to employers of training, and how this could affect smaller businesses,[118] we consider training is necessary to best support the worker and maximise return to work outcomes. We consider this training a worthwhile investment, particularly noting the Comcare scheme's profile of larger private sector and Australian Government employers.

Most schemes have general capability and experience requirements in their legislation, usually contained in scheme guidance. However, South Australia, Tasmania and the Australian Capital Territory require return to work coordinators to complete specific training.[119] Other schemes also typically have greater regulation of return to work coordinators. For example, in New South Wales,

[116] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, p 285.
[117] Workplace Injury Rehabilitation and Compensation Amendment Bill 2025 (Vic).
[118] Victoria, *Parliamentary Debates*, Legislative Council, 31 July 2025, p 2747, (David Davis MP).
[119] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, pp 286–290.

employers face a penalty for failing to appoint a return to work coordinator and keeping evidence of the coordinator's qualifications.[120]

Referring to the current employer-led rehabilitation model, Hanks recommended prescribing specific training requirements in regulations.[121] We too prefer specific training requirements to encourage consistency and quality across the Comcare scheme. But we do not favour prescribing specific courses within the regulations. Instead, to maintain currency, we recommend the new Act provides for the governing board to approve the training of return to work coordinators, and when that training is required, and recognise prior experience and training. This will ensure the training framework is flexible and scalable, allowing for tailored approaches based on employer type, size and existing rehabilitation processes.

As detailed in Chapter 4, this training should include cultural competency and trauma-informed practices to ensure the support provided to the worker is tailored to their needs and recognises the potential for psychological injury and distress.

Duty to maintain employment

The current SRC Act places a duty on the employer to provide an injured worker with suitable duties (or assist the worker to find such duties) where the injured worker is undertaking, or has completed, a rehabilitation program[122] but termination of employment is not, of itself, barred.[123] Workers who receive compensation under the SRC Act maintain the protections provided by the *Fair Work Act 2009* (Cth) (FW Act).[124] However, the protection against termination applies only to those on personal or sick leave, and not on workers' compensation.[125] Unlike many state and territory schemes,[126] the SRC Act does not prescribe a period of protected employment during which the employer's right to terminate employment is restricted.

During the protected period in other schemes:

- the employer has to keep the pre-injury position open, so they can reinstate the worker to that position, or another position that is not less advantageous, if they regain capacity
- the employer has an obligation to assist the worker to find suitable duties
- the worker's employment cannot be terminated, except via resignation or because of serious and wilful misconduct.

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[120] *Workers Compensation Regulation 2016* (NSW), reg 19(1).
[121] Hanks Review, Recommendation 6.6.
[122] SRC Act, s 40.
[123] SRC Act, s 4 (see definition of 'suitable employment').
[124] For example, protections against adverse action (*Fair Work Act 2009* (FW Act), ss 340–342); protection from discrimination (s 351); unfair dismissal protections (s 385); and protection against termination on certain grounds (s 772).
[125] FW Act, s 253; *Fair Work Regulations 2009*, reg 3.01.
[126] For example, *Workers Compensation Act 1987* (NSW), s 248; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), ss 103, 575; *Workers Compensation and Rehabilitation Act 2003* (Qld), s 232B; *Workers Rehabilitation and Compensation Act 1988* (Tas), s 143L; *Workers' Compensation Act 1951* (ACT), s 105; *Workers Compensation and Injury Management Act 2023* (WA), s 166.

Protected periods typically vary in length from 6 months to 12 months. Outside this protected period, a worker can generally be terminated (subject to the FW Act), including for the reason that they are unfit to work due to their compensable injury.

The approach to termination is different in South Australia. The employer is required to give ReturnToWorkSA and the worker at least 28 days notice of the proposed termination.[127] There are exceptions to this requirement if the worker is terminated due to serious and wilful misconduct, if the worker is not receiving compensation or participating in rehabilitation, or the time for making a claim for compensation has expired.[128]

In 2024, British Columbia introduced new employer duties to maintain employment. These duties apply when the worker cannot earn full wages due to injury and has been continuously employed for at least 12 months, and the employer has 20 or more workers on staff.[129] If a worker can return to their pre-injury role, the employer must offer that role or a comparable alternative. If the worker cannot perform the pre-injury role, the employer must offer the first suitable work available. The duty to maintain employment generally ends on the second anniversary of the worker's injury, whether the worker has or has not returned to work by that date. An employer cannot terminate employment within 6 months after the worker returns to work, unless they can establish that the termination was not related to the worker's injury.[130]

Submissions favoured a model in which an employer must maintain employment until all rehabilitation options have been exhausted, a worker has agreed to a commutation or the worker's employment has been lawfully terminated for a reason unrelated to the injury. This more closely aligns with the South Australian model – under which an employer cannot terminate employment unless notice has been provided or an exclusion applies – rather than the time-based approaches of other schemes. The benefit of this model is that it is outcome-focused and avoids the potential for lengthy rehabilitation processes that are unlikely to support the worker to recover or return to work.

Duty to provide suitable work

Suitable employment is an important component of the rehabilitation framework, ensuring that injured or ill workers are offered work aligned with their current capacity, and that the health benefits of work are realised. The Monash user-experience study confirmed the importance of suitable employment. Both injured and ill workers and other participants in the rehabilitation process noted the need for employer support for good work and stated that the current SRC Act does not assist with effective return to work.[131]

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[127] *Return to Work Act 2014* (SA), s 20(1).
[128] *Return to Work Act 2014* (SA), s 20(2).
[129] WorkSafeBC, *Employers: Duty to cooperate and duty to maintain employment*, WorkSafeBC, accessed 28 August 2025. Available at www.worksafebc.com/en/law-policy/workers-compensation-law/amendments/bill-41-amendments-to-the-workers-compensation-act/employers-duty-to-cooperate-duty-to-maintain-employment.
[130] WorkSafeBC, *Rehabilitation Services and Claims Manual* (see Chapter 5, 35.20), WorkSafeBC, accessed 28 August 2025. Available at www.worksafebc.com/en/resources/law-policy/rehabilitation-services-and-claims-manual-volume-ii/rehabilitation-services-and-claims-manual-volume-ii/chapter-5.
[131] Monash user-experience study, pp 22, 28.

Section 40(1) of the SRC Act places a duty on employers to take all reasonable steps to provide suitable employment to workers engaged in or having completed a rehabilitation program, or to assist them in finding employment. However, there are no consequences for the employer not meeting this duty. We also heard that in some instances, failure or refusal to provide suitable duties has led to situations in which employment is terminated, or workers are forced to resign or to apply for medical retirement.

Submissions clearly supported the existence of the duty, but there was debate on how it should operate. An absolute duty would operate with a reverse onus of proof requiring the employer to demonstrate they took all reasonable steps to fulfil the duty. A qualified duty, using the 'reasonably practicable' qualifier, would also require the duty holder to demonstrate that they took all reasonable steps to fulfil the duty. We prefer the latter, to align with the formulation of duties under WHS laws.

In 2024, South Australia introduced changes to strengthen the employer's suitable employment obligations. These changes aim to provide a more supportive and fairer environment for workers and more clarity for employers. The changes include:

- requiring employers to provide suitable employment if a worker has some capacity to return to work
- allowing workers to submit written requests for suitable employment, with medical evidence, and giving employers one month to respond to the request
- allowing the South Australian Employment Tribunal to make an order in relation to working conditions and compensation if suitable employment is not provided
- allowing the worker to request ReturnToWorkSA investigate and take action for a failure to provide suitable employment
- providing that an employer's duty to provide suitable employment ceases if the worker's employment has been properly terminated on the basis of serious and wilful misconduct.[132]

In addition, South Australia has requirements for the worker to agree to any proposed new employment options as part of the recovery or return to work plan.[133]

We recommend that the new Act contain similar provisions, as this would assist with enforcing the employer's duty. In particular, the new Act should give workers the ability to request suitable employment.

The SRC Act introduces additional constraints by tying suitable employment to the worker's existing employment status. Currently, the duty to provide the injured worker with suitable employment rests with the 'relevant employer' which in the case of a worker employed by a Commonwealth authority, is that authority.[134] This creates practical challenges. While work may exist elsewhere within the Commonwealth, the current framework makes it difficult for workers to access opportunities outside their immediate agency.

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[132] *Return to Work Act 2014 (SA)*, s 18; ReturnToWorkSA, *Changes to legislation*, ReturnToWorkSA, accessed 28 August 2025. Available at www.rtwsa.com/about-us/return-to-work-scheme/changes-to-legislation.
[133] *Return to Work Act 2014* (SA), s 25.
[134] SRC Act, s 40.

By contrast, in South Australia, the Crown has direct responsibility for managing its injured workers' return to work under the *Return to Work Act 2014* (SA) and ensuring that injured workers are offered appropriate employment opportunities when they have some capacity to return to work.[135] We heard several instances of workers being unable to return to work within their agency because it was re-traumatising. We also heard how in such circumstances, both the injured worker and the rehabilitation case manager were forced to rely on their informal network across the Australian Public Service (APS) to facilitate redeployment. This was rarely successful.

Potential issues with widening the duty were also raised. These include challenges to redeployment in the APS arising from the merit-based approach to recruitment and administrative complexity. We do not regard these issues as being insurmountable. We favour an approach that widens the duty and addresses the concerns raised.

Placing a broader obligation on the Australian Government would encourage agency heads to facilitate employment opportunities within their agencies and support a more joined-up approach. It would be consistent with the APS Mobility Framework and the collaborative One APS mindset. This would improve cooperation within and between agencies and encourage agencies to work together more effectively.[136]

For the workers of self-insured licensees, providing them with employment opportunities outside their immediate employer requires expanding the definition of suitable employment, which we discuss later.

Exceptions to the duty

Limiting the requirement to provide suitable employment in cases of misconduct

Submissions typically did not support limiting the duty to provide suitable employment, except in extreme cases, such as for serious misconduct. In South Australia, exceptions to the duty include when:

- it is not reasonably practicable to do so (as detailed earlier in 'Duty to provide suitable work')
- the worker left employment before or after the incapacity for work
- the worker has returned to work with the pre-injury employer or another employer
- new or other employment options have been agreed by the worker
- the worker's employment was properly terminated on the grounds of serious and wilful misconduct (and the onus of establishing that lies on the employer).[137]

We do not consider it necessary for the new Act to specify exceptions to the duty, because such exceptions are inherent in the concept of 'reasonably practicable' and this could be explained in guidance.

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[135] *Return to Work Act 2014* (SA), ss 18, 130, Sch 1.
[136] Australian Public Service Commission (APSC), *The APS Mobility Framework*, APSC, accessed 21 August 2025. Available at www.apsc.gov.au/initiatives-and-programs/aps-mobility-framework.
[137] *Return to Work Act 2014* (SA), ss 18(2)(a), 18(2)(b), 18(2)(e), 20.

Providing for the Administrative Review Tribunal to make orders regarding suitable employment, including the nature and range of duties

Submissions generally did not support expanding the Administrative Review Tribunal (ART) role to make orders regarding suitable employment. Concerns included potential delays, an adversarial process and increased stress for the worker. Another reason was the unsuitability of the ART to make orders on medical issues.

As an alternative to an increased ART role, some submissions, particularly from union representatives, advocated establishing a return to work inspectorate. This issue is discussed in the 'Enforcement' section at the end of this chapter.

Definition of suitable employment

Under the SRC Act, suitable employment is defined as work for which an employee is suited, considering factors such as age, experience, training, language and other skills, location and other relevant matters.[138] This definition aligns broadly with the definition in other jurisdictions.

The Improving the Comcare Scheme Bill sought to widen the definition of suitable employment to 'any employment'. This expansion would have increased flexibility in the case of a worker of a licensee by allowing injured workers to access roles beyond their immediate employer. For permanent employees of the Commonwealth, it would have expanded those opportunities to the private sector.

Submissions universally noted the challenges with the current arrangements and the need to increase suitable employment opportunities for workers to enable their timely return to work. Most supported widening the definition to 'any employment'. They noted the need to consult the worker and their representatives and to support the worker in relation to the implications and practicalities of changing employer. Concerns were also raised about the potential for loss of entitlements if a Commonwealth agency worker moved to a private sector employer, and the potential for employers to offer unrealistic suitable employment options (for example, work far from their home).

We do not consider it is necessary to broaden the definition in the case of workers engaged by the Australian Government because employment opportunities should exist within the sizeable pool of Australian Government jobs. For self-insured licensees, the definition of 'suitable employment' restricts suitable employment to the same employer. Restricting suitable employment to the same employer offers some advantages. It promotes continuity and stability for injured or ill workers, allowing employers who are familiar with the worker's capabilities and limitations to provide tailored duties and support. This can lead to more effective rehabilitation and a smoother return to work. It also reinforces the employer's responsibility for managing workplace injuries and encourages proactive engagement in recovery planning. However, this restriction can be limiting when the original employer cannot offer appropriate duties or is unable to accommodate the worker's needs. In such cases, the narrow definition may delay reintegration into the workforce, reduce flexibility, and negatively affect health and financial outcomes.

[138] SRC Act, s 4.

To address these limitations, we recommend a tiered approach to defining suitable employment. This hierarchy would prioritise employment with the same employer, followed by opportunities with other self-insured licensees within the Comcare scheme, and finally, any suitable employment outside the scheme. This model maintains the benefits of employer continuity while introducing flexibility to ensure injured or ill workers are not left without viable options.

We also recommend changing the suitable employment definition to include a consideration of a worker's pre-injury remuneration. This change will ensure that proposed arrangements are functionally appropriate and also financially fair.

Duties of determining bodies

Duty to have an injury management policy

The benefits of requiring the determining body to have an injury management policy are similar to those of requiring the employer to have a return to work policy. The injury management policy outlines the framework for supporting injured or ill workers through early intervention, coordinated care, and recovery and return to work planning. It defines roles and responsibilities, ensures timely communication among those involved and promotes compliance with legal requirements. The policy includes developing IMPs and continuously monitoring outcomes to improve recovery and reduce claim costs.

Duty to develop injury management plans

As detailed earlier, Hanks recommended that the SRC Act contain a requirement to develop an IMP for each worker who is incapacitated for 28 days or more, in addition to any workplace rehabilitation plan. This IMP would include additional details about the employer and worker, the injury, the rehabilitation goal, and the actions required by all those involved in the worker's recovery.[139]

In New South Wales, IMPs are required when a worker sustains a 'significant injury' and is unable to return to their pre-injury role. The plan is developed by the insurer in consultation with the injured worker and their treating doctor. The goal is to assist the worker to return to work, and the plan outlines the steps needed to achieve this goal. An IMP is required when a worker has been unable to perform their pre-injury role for more than 7 days.[140]

The Improving the Comcare Scheme Bill did not propose changes to require IMPs, seemingly preferring an employer-led model.

Creating an IMP should be a duty of the determining body. This plan is needed to ensure a holistic view of the worker's recovery and coordination to best support return to work, aspects that the determining body is best placed to manage. The plan should consider the risk factors to recovery and align with the determining body's duty to triage claims (see Chapter 4). Noting the evidence behind the biopsychosocial approach, the increased complexity of claims, and the complementary duties of those involved, a well-implemented IMP is likely to improve outcomes for injured and ill workers.

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[139] Hanks Review, paras 6.131–6.132.

[140] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), see ss 42, 45, for definition of significant injury.

We consider 28 days or more is too long an incapacity period before an IMP is required. We consider 7 working days is more appropriate, and the nature and complexity of the plan should be commensurate with the seriousness of the injury. Using a triage approach, if it is likely a worker will be off work for more than 7 days, the IMP can be developed at that point. As in our earlier discussion on return to work plans, there is the concern that such plans could result in the creation of unnecessary paperwork particularly for less severe injuries. However, even for these injuries the IMP can and should be streamlined – focusing on essential actions, clear communication, and coordination between the worker, employer and treating doctor. Even a streamlined IMP remains a critical tool. It ensures that all parties are aligned in supporting the worker's recovery and return to work, and serves as a record of agreed actions and timelines, which is especially important if the worker's condition changes or if disputes arise.

The plan should, so far as is reasonably practicable, be developed in consultation with the injured or ill worker and their nominated treating doctor.

The new Act should not replicate the issues in the current SRC Act, which arise from separating the rehabilitation assessment process from compensation payments while undertaking rehabilitation. When a worker is undertaking an s 37 rehabilitation program, compensation by way of income replacement is paid under s 37(5). In practice, this does not occur and should not be replicated in the new Act.

Reasonable compensation for the costs of alterations, aids, and appliances and modifications incurred in the rehabilitation process are paid under s 39 of the SRC Act. This should not be the case. Rehabilitation support should form part of medical treatment. In addition, what constitutes 'reasonable' in s 39 has been disputed. While court and tribunal decisions have provided some guidance about what is reasonable, including support that alleviates pain, and what is not reasonable, such as assisting the worker in a leisure or recreational activity, there is an opportunity to provide more clarity in this area.[141]

Duty to consult with those involved and coordinate with the employer

A clearly defined duty for determining bodies, so far as is reasonably practicable, to consult, cooperate and coordinate with the worker and their representative, the employer, WRP and, subject to consent, the treating practitioner is essential to ensure a cohesive and effective return to work process. This obligation promotes transparency, facilitates timely information sharing, and helps align rehabilitation efforts with the worker's needs and the employer's operational capacity. By fostering collaboration, it reduces delays, prevents miscommunication and supports better outcomes for injured or ill workers.

Duty to train injury management staff

Just as return to work coordinators are entrusted with critical responsibilities that directly affect an injured or ill worker's recovery, claims managers and other specialist staff working for the determining

[141] See generally: *Heffernan v Comcare* [2014] FCAFC 2 on the relationship between aids and appliances; *Penrose v Australian Postal Corporation* [1995] AATA 643 on a gym membership reasonably required for an employee having regard to the impairment; *Re Steins and Comcare* [2019] AATA 803 on approval of a recliner chair as an aid or appliance; and Comcare, 'Scheme guidance: Compensation for certain alterations, modifications or aids and appliances, 2019, Comcare.

authority play a vital role in guiding and supporting this process. To ensure consistency, competence and high-quality outcomes across schemes, it is essential that these staff undergo mandatory training on injury management, rehabilitation and return to work. This equips them with the necessary skills to navigate complex cases, collaborate effectively with those involved, and apply best practice principles. Mandatory training enhances professional accountability and strengthens the integrity and effectiveness of the injury management system as a whole. It can also be made an element of professional advancement.

The duty to train these staff members aligns with our recommendation in Chapter 4 to make training claims managers mandatory.

Duties of workers

The worker's recovery and return to work is the central focus of any effective rehabilitation framework or activity. Evidence shows that better return to work outcomes result from a tailored, person-centred approach that responds to the worker's needs.[142] The worker's own expectations about their ability to cope with returning to work are also an important enabler for return to work.[143] For positive recovery and return to work outcomes, the worker must actively participate in the rehabilitation.

The SRC Act obliges workers to participate in rehabilitation assessments and examinations (s 36), undertake the rehabilitation program provided by their employer (s 37) and report any changes in their circumstances (ss 114 and 120). Failing to attend and participate in an assessment or rehabilitation program can lead to suspension of the worker's incapacity payments.[144]

These obligations are similar across most jurisdictions, with workers typically being required to participate in return to work planning, rehabilitation activities and assessments, and include:[145]

- cooperating with their employer to meet return to work obligations and advising of any difficulties with return to work as soon as possible (New South Wales)
- communicating with parties in an open and honest manner and replying to reasonable levels of communication (Western Australia)
- making reasonable efforts to return to work (Victoria)
- if on reduced hours, taking reasonable steps to attend a medical practitioner outside employment hours (Tasmania)
- contacting the employer following an injury and working with the employer to identify suitable work (British Columbia).[146]

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[142] SWA, *National Return to Work Strategy 2020-2030*, 2019, SWA, p 23.
[143] Monash University, *Barriers and Enablers for Return to Work: Findings from a Survey of RTW Professionals*, 2020, Monash University, p 7.
[144] SRC Act, ss 36(4), 37(7).
[145] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, pp 274–276.
[146] M McKinnon, 'BC Employers Subject to New Duties to Cooperate and Maintain Employment After Workplace Injuries Effective January 1, 2024', Cassels, accessed 21 August 2025. Available at https://cassels.com/insights/bc-employers-subject-to-new-duties-to-cooperate-and-maintain-employment-after-workplace-injuries-effective-january-1-2024/.

Hanks considered the obligation on employees to participate in rehabilitation and did not recommend any changes.[147] The Improving the Comcare Scheme Bill outlined proposed obligations of mutuality. These could be breached if, among other things, a worker failed to accept an offer of suitable employment, failed to continue to engage in suitable employment, or failed without reasonable excuse to fulfil their responsibilities under a workplace rehabilitation plan. The sanction regime included suspension and cancellation of compensation.[148]

Submissions supported including duties for workers, noting that having clear requirements helped workers understand the process and what they need to do. There was support for workers continuing to have a duty to actively participate in the rehabilitation process.

To facilitate the duties of employers and determining bodies, workers should have duties to:

- cooperate in the preparation and implementation of return to work plans and IMPs
- communicate with parties in an open and honest manner
- make reasonable efforts to return to work
- if on reduced hours, take reasonable steps to attend a medical practitioner outside employment hours.

We also recommend that if a worker fails to discharge their duties, without a reasonable excuse, compensation rights in relation to the injury subject to the plans are suspended, aside from compensation for medical treatment.

Duty of scheme manager/authority

As a scheme manager, Comcare's rehabilitation functions and powers are focused on supporting employers to rehabilitate workers, monitoring compliance and promoting effective rehabilitation, including:

- conducting and promoting research into the rehabilitation of workers
- promoting the adoption of effective strategies for the rehabilitation of workers
- publishing material relating to the rehabilitation of workers
- issuing guidelines in relation to an employer's rehabilitation functions or powers
- developing a guide for rehabilitation assessments and examinations
- maintaining contact with rehabilitation authorities to ensure compliance with rehabilitation guidelines.[149]

Most Australian schemes have similar broad rehabilitation and return to work functions and powers that focus on promoting and supporting return to work, providing research and training, developing policies and guidelines, and monitoring compliance and performance.

[147] Hanks Review, paras 6.153–6.159.
[148] Improving the Comcare Scheme Bill 2015 (Cth), Sch 15, ss 29L, 29Y–29ZA.
[149] SRC Act, ss 57A, 69.

New South Wales and Victoria have more detailed obligations relating to both the rehabilitation process and supporting people with diverse needs. Examples of specific functions and powers include:

- developing programs to meet the needs of target groups, including women, non–English speakers, workers with severe injuries, people who live in remote areas and people with disability (New South Wales and Victoria)
- facilitating and promoting return to work programs or plans (New South Wales and Victoria)
- providing advisory services to workers, employers, insurers and the community (New South Wales)
- providing interpreter services to assist injured workers (New South Wales and Victoria)
- creating vocational re-education and rehabilitation schemes for injured workers and a 'second injury scheme' to encourage the employment of injured workers (including financial incentives for employers) (New South Wales)
- encouraging liaison between employers, WRPs and medical practitioners in the interests of early and effective rehabilitation of injured workers (Victoria).[150]

Broader rehabilitation duties (or functions) may increase Comcare's flexibility in supporting and improving return to work processes for injured workers. Conversely, more detailed functions place a clearer obligation on Comcare to deliver rehabilitation services and give greater clarity to those involved about the support they can expect. We favour clearly setting out functions in the revised Act and including functions related to accessibility and diversity to support people with unique needs.

The role of treating practitioners in recovery and return to work

Treating practitioners have a significant influence on recovery and return to work through treatment and messaging on the health benefits of work, certification and the level of coordination between the treating practitioner and others.[151] Treatment with a return to work focus is associated with a higher rate of return to work.[152] This effect was supported by the Monash user-experience study, with workers highlighting the practitioner's support as benefiting their recovery.[153]

The Australasian Faculty of Occupational and Environmental Medicine's *It Pays to Care* notes several challenges with supporting treating practitioners in rehabilitation and return to work. These include limited training in occupational rehabilitation and return to work, difficulties in communicating with the various bodies and people involved, lack of clear information on return to work and the treating practitioner's role, and inadequate remuneration for return to work support. In addition to enhanced training, collaboration, guidance and improved remuneration, *It Pays to Care* recommends improving

[150] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 493 and *Workplace Injury Management and Workers Compensation Act 1998* (NSW), ss 23, 54.
[151] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – Bringing evidence-informed practice to work injury schemes helps workers and their workplaces* (*It Pays to Care*), 2022, Royal Australasian College of Physicians.
[152] SWA, *National Return to Work Strategy 2020-2030*, 2019, SWA, p 14.
[153] Monash user-experience study, p 5.

the tools for screening for psychosocial barriers and better access to psychological health and allied health services.[154]

We received submissions that highlighted similar issues. They particularly noted the increasing psychosocial complexity of claims and the limited pathways to address these issues.

Actuarial analysis

In its actuarial analysis for our review, Taylor Fry notes the potential effect the package of return to work recommendations may have on scheme costs. It considers the effect of recommendations aimed at improving rehabilitation outcomes, including the hybrid rehabilitation model, expanding employer duties, and broadening the definition and obligations around suitable employment.

Due to the interdependent nature of the recommendations, the actuarial analysis does not isolate the effect of the individual cost of each reform. Instead, it models a collective effect by assuming a 10% shift in return to work timing – specifically, that 10% of workers who currently return between one year and 5 years post-injury would instead return within one year. This shift results in an estimated reduction in annual incurred costs of 2.1% for Australian Government agencies, with a similar effect for Australian Capital Territory public sector agencies (2.1%) and other self-insured licensees (1.7%), totalling a projected scheme-wide saving of $10.4 million (1.9%). While the estimate is illustrative and not based on observed experience, it reflects the potential for earlier return to work to reduce incapacity payments.[155]

Workplace rehabilitation providers

In the Comcare scheme, the employer engages a WRP to provide expert services when additional assistance is needed to support return to work. WRP services include assessing a worker to determine their capability to undertake rehabilitation, and developing and delivering services in individual return to work plans and IMPs.[156]

Comcare is responsible for approving and renewing WRPs to operate in the scheme in accordance with the SRC Act.[157] WRPs are required to comply with operational standards, criteria for approval and renewal, and conditions of approval (conditions). These are set by Comcare, with the WRP paying a fee for approval and renewal.[158] Around 70 WRPs (including an in-house WRP) are currently operating under the Comcare scheme.[159]

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[154] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – Bringing evidence-informed practice to work injury schemes helps workers and their workplaces*, 2022, Royal Australasian College of Physicians.
[155] Taylor Fry report, p 93.
[156] Comcare, *Rehabilitation case manager handbook*, 2024, Comcare, p 14.
[157] The Department of Veterans' Affairs (DVA), Australian Defence Force Joint Health Command and employers under the Seacare scheme also use Comcare-approved WRPs for workplace rehabilitation services.
[158] Comcare, *Workplace Rehabilitation Provider: Performance Monitoring Framework*, 2024, Comcare, p 2.
[159] Comcare, *Find a workplace rehabilitation provider*, Comcare, accessed 26 August 2025. Available at www.comcare.gov.au/service-providers/workplace-rehabilitation-providers/directory.

The Heads of Workers' Compensation Authorities have endorsed a principles-based framework for delivering WRP services.[160] While this framework operates across Australia (including Comcare), individual jurisdictions have their own standards and approaches to approval, renewal and regulation that drive WRP service delivery and performance. These standards and approaches sit in service-level agreements or performance frameworks, subject to scheme and legislative design.

WRP consultants must have appropriate qualifications, experience and expertise to work in the Comcare scheme. Comcare recognises consultants with suitable qualifications in allied health and expertise in occupational rehabilitation, including rehabilitation counsellors, physiotherapists, psychologists, medical practitioners and social workers.

Comcare has a framework for managing WRPs[161] and provides fee guidance to support rehabilitation authorities to engage and manage WRPs (the 2025–26 hourly rate is $225.58 plus GST).[162] Comcare has a range of regulatory powers for WRPs, including the ability to revoke and place conditions on approval.[163]

Previous reviews

Hanks Review

In recommending the establishment of a return to work inspectorate, Hanks noted that inspectors could also ensure that approved WRPs comply with an outcome and service delivery standard.[164]

A 2023 review of Queensland's workers' compensation scheme recommended the development of an enforceable standard or code of practice to ensure WRP quality. It recommended consulting with relevant professional bodies to set out the qualifications and types of services that each profession could provide and giving injured workers the right to choose an alternative WRP when dissatisfied with the WRP selected by the insurer.[165]

State and territory arrangements

WRP management arrangements across Australian jurisdictions are largely similar, despite procedural differences. Most states and territories require WRPs to be formally approved or accredited, typically for a fixed term such as 3 years, with some offering indefinite approval based on performance. Fee structures vary. While some jurisdictions, like Victoria and Queensland, have published fee schedules, others, such as New South Wales, rely on negotiated rates.[166]

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[160] Heads of Workers' Compensation Authorities, *Principles of Practice for Workplace Rehabilitation Providers*, 2019, SIRA, p 4.
[161] Comcare, *Workplace Rehabilitation Provider: Performance Monitoring Framework*, 2021, Comcare, p 2.
[162] Comcare, *Fee information for rehabilitation providers*, Comcare, accessed 21 August 2025. Available at www.comcare.gov.au/service-providers/workplace-rehabilitation-providers/fees.
[163] SRC Act, ss 34P, 34Q.
[164] Hanks Review, Recommendation 6.20.
[165] G Fisher and D Peetz, *2023 Review of the operation of the Queensland workers' compensation scheme – Final report*, 2023, WorkSafe Qld, pp 44–46.
[166] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Table 6.7b.

There is a variety of arrangements on choice of WRP. While the decision often rests with the insurer or employer, most schemes ensure the worker has a right to be consulted or to request a change. In Victoria and Western Australia, workers can choose their WRP directly.[167]

Worker choice of workplace rehabilitation provider

Recent research on the effect on outcomes of worker treatment and WRP choice notes that 'greater worker engagement in their rehabilitation could potentially reduce costs as well as improve psychosocial outcomes'.[168] Similarly, a study on worker experiences of insurance claim processes and return to work found that perceptions of the fairness of procedures can influence health and work outcomes. It also found that features of just procedures include the affected worker having a 'voice' in decision-making.[169]

Arrangements in state and territory jurisdictions range from allowing the worker to choose their WRP (Victoria and Western Australia),[170] allowing the worker to request to change WRP (New South Wales and Queensland),[171] or the employer or insurer choosing the WRP, with varied requirements around consultation.[172]

Most submissions supported worker choice of WRP, noting that being actively involved in the process benefits the worker's recovery and relationship with the provider. They highlighted the importance of choice when workers have specific needs (for example, gender, racial or cultural considerations) and that choice must be supported with information on WRP performance. This position is similar to the recommendation of the Royal Commission into Defence and Veteran Suicide,[173] which allows veterans to choose their own provider, with the support of clear information on the provider's quality and services.

Some concerns were noted about implementing worker choice and the need to ensure that the process of providing choice does not delay timely access to support. We heard that unrestricted worker choice could increase administrative burden, and affect service quality and rehabilitation

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[167] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 230; WorkCover WA, *Workplace rehabilitation providers*, WorkCover WA, accessed 26 August 2025. Available at www.workcover.wa.gov.au/workers/returning-to-work/workplace-rehabilitation-providers/.
[168] O Anderson, V McLennan and C Randall, 'Treatment and provider choice in worker injury rehabilitation: A systematic literature review', 2021, 56(1), *Journal of Vocational Rehabilitation*, p 1.
[169] A Collie et al., 'Injured worker experiences of insurance claim processes and return to work: a national, cross-sectional study', 2019, 19, *BMC Public Health,* p 8.
[170] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 230; WorkCover WA, *Workplace rehabilitation providers*, WorkCover WA, accessed 26 August 2025. Available at www.workcover.wa.gov.au/workers/returning-to-work/workplace-rehabilitation-providers/.
[171] SIRA, *Appendix 2: Practice guidance - rehabilitation services during case management*, SIRA, accessed 26 August 2025. Available at www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/standards-of-practice/appendix-2-practice-guidance-rehabilitation-services-during-case-management; *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 221AA.
[172] For example, *Workers Rehabilitation and Compensation Act 1988* (Tas), ss 143C(2), 143O(2).
[173] Royal Commission into Defence and Veteran Suicide, *Executive summary, recommendations and the fundamentals – Final Report – Volume 1*, 2024, Royal Commission into Defence and Veteran Suicide, Recommendation 101(a)(i).

outcomes. We also heard about the value in employers having relationships with WRPs and that establishing service agreements with a smaller set of providers often ensures accountability and performance.

On balance, we recommend that the worker can choose their Comcare-approved WRP and that they have at least 3 options, where available (mirroring the Victorian model). The worker should be able to request additional options in exceptional circumstances if they are not satisfied with their WRP. While we appreciate this increases administrative complexity, such exceptions are important when considering workers with specific needs. We also considered the implications of choice for in-house WRP arrangements. We believe this model can be effective and will ensure the worker is clearly informed about in-house WRP arrangements and potential to consider external services.

To ensure timely access to services, if a worker does not make a selection within a reasonable timeframe (being a reasonable time in all the circumstances), the determining body should appoint a WRP on their behalf. This approach balances worker autonomy with the need to prevent delays in rehabilitation, supporting both choice and efficient service delivery.

Approval and renewal framework

As in most jurisdictions, Comcare is authorised to approve and renew WRPs under the legislation.[174] Underpinned by the Heads of Workers' Compensation Association's principles of practice, there is considerable overlap in the approval and renewal processes of the jurisdictions. One area of variation is the approach to renewals, with some jurisdictions (Western Australia and Tasmania) offering indefinite approval periods or not requiring renewal.[175] This is likely to reduce the administrative burden but may remove the benefits of conducting a point-in-time assessment of WRP performance.

The SRC Act does not limit the number of WRPs that can operate in the Comcare scheme. If an applicant provides the required information and meets the required standards, Comcare must approve the WRP. Noting Comcare's large geographic footprint, there are arguments for a wide pool of approved WRPs that meet the required conditions and standards. Conversely, a smaller pool of providers may support a stronger relationship between WRPs and the scheme, and drive performance.

Submissions supported maintaining the open WRP application process, recognising the Comcare scheme's national coverage and a preference for services to be delivered in person (where possible). The current settings appear appropriate, and we make no recommendations for improvement.

[174] SRC Act, ss 34B, 34J.
[175] *Workers Compensation and Injury Management Act 2023* (WA), s 569; WorkCover Tasmania, *Workplace Rehabilitation Providers: Tasmanian Requirements – Accreditation Requirements for Workplace Rehabilitation Providers in Tasmania*, 2025, WorkCover Tasmania, p 11.

Fee setting

The states and territories have different methods for determining fees for WRP services, such as prescribing fees, offering fee guidance or not addressing fees at all. In some jurisdictions, fee schedules or tables of costs are established by legislation, which can cover payment for services, outcomes, report writing and travel.[176]

The main argument for setting fee schedules is that it can improve transparency, cost control and predictability. Conversely, prescribed fees may focus on outputs rather than outcomes, lack flexibility and stifle innovation.

Submissions did not provide strong feedback on the model for fee setting, but some concerns were raised about fees in the industry and the potential for fee-for-service leading to overservicing and inefficiencies. They noted the need for the fee model to focus on performance and return to work outcomes. We also heard of staffing challenges in the industry and competition for services due to the National Disability Insurance Scheme and other insurance schemes.

Under our proposed model, determining bodies should be well placed to engage cost-effective provider services (where the worker does not exercise their right to choose) due to the larger case portfolio and established relationships. Where a worker chooses the WRP, costs should not be the focus of their decision, as this can distract from their recovery and return to work.

Monitoring, regulation and performance data

Comcare has a strong suite of regulatory powers to manage the approval of WRPs, including the ability to revoke approval, impose conditions and direct the WRP to take action.[177] Unlike some other jurisdictions, Comcare does not have a return to work inspectorate to investigate concerns with provider or consultant performance, or service delivery (see later).

Comcare captures a range of WRP performance information, including return to work outcomes, cost and duration. This information is only available for WRPs, Comcare (as the scheme manager) and employers in a limited capacity. There is potential to publish this information to drive performance and support choice of WRPs. As noted earlier, submissions supported providing performance information and focusing on return to work outcomes and efficiency. This recommendation also aligns with the recommendation on provider choice from the Royal Commission into Defence and Veteran Suicide.[178]

We recommend that data concerning the performance of WRPs operating in the Comcare scheme is made publicly available. There should also be a mechanism for workers to raise concerns and complain about their WRP as part of the service standards we discuss in Chapter 4.

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[176] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, pp 295–296, Table 6.7b.
[177] SRC Act, ss 34P, 34Q.
[178] Royal Commission into Defence and Veteran Suicide, *Executive summary, recommendations and the fundamentals – Final Report – Volume 1*, 2024, Royal Commission into Defence and Veteran Suicide, Recommendation 101(a)(i).

Enforcement

> *'Penalties should be imposed for non-compliance with an employer's [return to work] RTW obligations, such as failing to plan for RTW or failure to consult with the injured worker regarding the RTW plan. Additionally, the failure to provide suitable duties should be a reviewable decision and subject to penalty units under the SRC Act.'*[179]

The SRC Act generally does not establish a coercive scheme. Perhaps the reason for this is that originally all its participants were Australian Government bodies. It was not until 2004 that the shield of the Crown was removed for Commonwealth employees and civil penalty provisions were introduced under the then *Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Act 2004*.[180]

As the regulator of rehabilitation under the SRC Act, Comcare has limited regulatory powers in relation to rehabilitation and return to work. The regulatory tools available to Comcare are providing better practice guidance, education and the ability to maintain contact to ensure compliance with rehabilitation guidelines.

Hanks noted that the regulatory provisions in the SRC Act were ineffective and there was little incentive for premium payers to provide rehabilitation or ability for Comcare to intervene.[181] He noted several regulatory tools used in other Acts to improve rehabilitation outcomes. These included education, audits, inspections, enforceable undertakings, fines and other financial sanctions.[182]

To improve regulation, Hanks recommended establishing an inspectorate. It would have a supervisory function and information-gathering and sanctioning powers to ensure compliance with employer rehabilitation obligations. These included suitable employment, compliance with duties and a proposed injury management code of practice.[183] The inspectorate could also ensure compliance of WRPs. Hanks also proposed giving Comcare the power to issue improvement notices and to accept undertakings from employers where they failed to meet their rehabilitation obligations.[184] Neither recommendation was included in the Improving the Comcare Scheme Bill.

Submissions generally supported strengthening Comcare's regulatory powers in rehabilitation and Hanks's recommendations in the area. They cautioned that sanctions, fines and penalties must be structured in a way that influences behaviour and provides real consequences for failing to meet duties.

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[179] ACTU submission, p 43.
[180] *Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Act 2004* (Cth).
[181] Hanks Review, para 6.188.
[182] Hanks Review, para 6.195.
[183] Hanks Review, Recommendation 6.20.
[184] Hanks Review, Recommendation 6.21.

There was general support for establishing a return to work inspectorate in Comcare, with powers to investigate employer return to work duties, including the provision of suitable duties and to take action for failing to meet the duties. Unions saw an inspectorate as a quicker and less adversarial approach, with the potential to resolve 'suitable duties' issues though conversation, increase return to work rates and provide finality on return to work issues.

Employer representatives were not as supportive of an inspectorate, noting that inspections can take considerable time and resources (for regulators and employers), can be ineffective when investigating cases involving human resources and industrial relations issues, and may not lead to changed behaviour or improved rates of return to work.

Introducing return to work inspectors to the scheme would enhance oversight and support compliance with return to work obligations. While their role differs from WHS inspectors, their enforcement powers would be largely the same. This is because the powers that Comcare inspectors have under the WHS Act are similar to those contained in the *Regulatory Powers (Standard Provisions) Act 2014*.

That Act provides a standardised framework for regulatory powers across various pieces of legislation. It aims to streamline the process of monitoring, investigation and enforcement of compliance with legal obligations. Given this aim and Comcare's size and structure, it would be impractical to have separate WHS and return to work inspectorates, as opposed to separate WHS and return to work inspectors. Having both inspectors within one inspectorate is likely to improve coordination and reinforce the connection between the duty to ensure a worker's safety, so far as is reasonably practicable, and the duty to provide suitable employment.

Return to work inspectors would also have the ability to investigate concerns with provider or consultant performance or service delivery.

Similarly, introducing civil penalties for breaches of return to work duties sends a clear signal that compliance is not optional – it is a core obligation. Penalties provide a strong incentive for employers to meet their responsibilities, ensuring timely and effective support for injured or ill workers.

Most state and territory Acts provide for the imposing of civil and/or criminal penalties for contraventions of certain provisions.[185] New South Wales sets penalty notices as a quicker option for dealing with offences under the workers' compensation legislation.[186] The rehabilitation and return to work penalty amounts differ significantly between jurisdictions, with New South Wales having the lowest ($2,200)[187] and Victoria the highest ($183,159).[188]

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[185] For example, *Return to Work Act 2014* (SA), s 26(3); *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 49.

[186] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 246.

[187] *Workers Compensation Regulation 2016* (NSW), reg 12; see SIRA, *Summary table: Workers Compensation Regulation 2016, Schedule 5 Penalty Notice Offences for current penalty amounts*, SIRA, accessed 25 August 2025. Available at www.sira.nsw.gov.au/__data/assets/pdf_file/0018/1121337/Summary-table-Current-and-proposed-penalty-notice-amounts.pdf.

[188] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 103; Victorian Government, Department of Treasury and Finance, *Indexation of fees and penalties* (regarding the value of a penalty unit), DTF, accessed 28 August 2025. Available at www.dtf.vic.gov.au/indexation-fees-and-penalties.

Examples of return to work civil penalty provisions include failure to:

- provide workers with information regarding their rights and responsibilities under the relevant Act
- appoint a return to work coordinator
- provide suitable employment or a position during incapacity
- plan a return to work or establish a return to work program[189]
- establish a return to work program and injury management system[190]
- minimise the risk of a worker sustaining a psychiatric or psychological injury, including by providing reasonable services.[191]

We recommend aligning civil penalties with the employer's rehabilitation and return to work duties (listed earlier in this chapter). Aligning these penalties with the employer's duties reinforces the importance of these responsibilities and ensures that non-compliance has meaningful consequences.

The detailed design and administration of civil penalty provisions falls outside the remit of this review. However, our expectation is that any penalty regime developed in this context should be consistent with the principles and benchmarks set out in the Attorney-General's Department's *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.[192] This guide provides direction on the appropriate structuring of offences, penalties and enforcement powers, including the need for proportionality, clarity and procedural fairness. While we do not prescribe the precise penalty amounts, we expect that any scheme implemented would be comparable to those outlined in the guide and would be similar to WHS penalty provisions, particularly in relation to structuring civil penalties and the safeguards that accompany the exercise of regulatory powers. Adhering to these standards will ensure that any new provisions are robust, transparent and consistent with best practice across the Commonwealth.

Providing for incentives and penalties relating to the suitable employment duty and good return to work performance

Several state and territory schemes provide incentives for employers to encourage them to support return to work with a new employer or provide for the imposing of penalties for not fulfilling suitable employment obligations. Approaches to incentives differ across the schemes and can include wage subsidies, premium exemptions, limiting liability for second injury costs, and providing for workplace modifications, work trials and training.[193]

The Improving the Comcare Scheme Bill also sought to establish a 'Comcare incentive scheme', allowing Comcare to make payments to employers as an incentive to provide suitable employment.[194]

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[189] For example, *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), ss 103, 104, 106, 107.
[190] For example, *Workers Compensation Regulation 2016* (NSW), reg 12.
[191] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 232AC.
[192] Attorney-General's Department, *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers,* Attorney-General's Department. Available at www.ag.gov.au/legal-system/publications/guide-framing-commonwealth-offences-infringement-notices-and-enforcement-powers.
[193] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, pp 279–281.
[194] Improving the Comcare Scheme Bill 2025 (Cth), Sch 2, Item 84, s 70D.

The Bill did not propose penalties for employers that fail to meet their suitable employment obligations. Submissions strongly supported incentives to improve suitable employment and noted the need for innovative approaches in this area to improve outcomes. There was more mixed support for introducing broader (non–duty related) penalties, with a need to ensure that any penalties change behaviour.

Potential options we considered include premium reductions/penalties, removing 'step downs' when suitable employment is not provided (see Chapter 5), publishing performance data or disclosure of non-compliance, and providing recognition or awards (for example, employer of choice). An additional penalty for self-insurers includes the regulatory options connected to their licence.

We recommend implementing a structured framework of incentives and accountability measures designed to promote positive behaviours and performance, discourage practices that hinder recovery, and enhance return to work outcomes for injured and ill workers. We discuss this further in Chapter 7.

We also considered the role of unions in enforcing compliance with rehabilitation and return to work obligations. Unions play a vital role in ensuring employers comply with their duties under workers' compensation laws. They represent members in workers' compensation claims, educate members about their rights and responsibilities, and advocate for improvements to workplace safety and injury management systems.

We note that it may be appropriate for unions to have right of entry powers to investigate suspected contraventions of 'suitable duties' obligations under the SRC Act, similar to their powers under the WHS and FW Acts. Given that WHS duties and workers' compensation are interconnected and form a continuum, it makes sense to extend union entry rights and, in turn, health and safety representative rights. However, given the complexity of this area, we leave this matter for further government consideration.

3.2.7 Panel recommendations

Recommendation 22

We recommend a hybrid model of rehabilitation is introduced, with the determining body responsible for injury management and the employer responsible for return to work.

Recommendation 23

We recommend introducing the concept of a 'liable employer' for return to work obligations (to address a lack of incentives for new employers to support return to work).

Recommendation 24

We recommend introducing the requirement for the 'liable employer' and the 'new employer', so far as is reasonably practicable, to consult, cooperate and coordinate regarding the worker's return to work.

Recommendation 25

We recommend that for premium payers, Comcare has the ability to take over rehabilitation where the employer is not known or able to support return to work.

Recommendation 26

We recommend employer duties in relation to return to work are to:

a. develop a return to work program and policy
b. identify and assess the biological, psychological and socio-economic risk factors to recovery and, so far as is reasonably practicable, eliminate or minimise them in order to restore an injured or ill worker to their fullest physical, psychological, social and vocational capabilities
c. so far as is reasonably practicable, consult, cooperate and coordinate with the worker and their representative, insurer, rehabilitation provider and, subject to consent, their treating practitioner
d. develop an individual return to work plan by agreement with the worker and their representative
e. maintain contact with the injured or ill worker
f. appoint and train return to work coordinators
g. maintain employment until all rehabilitation options have been exhausted and the worker agrees to a commutation or a lawful termination unrelated to the injury applies
h. provide suitable work.

Recommendation 27

We recommend the governing board has the ability to approve courses and training for return to work coordinators, when that training is required to be provided and taking into account recognition of prior experience and training.

Recommendation 28

We recommend mandatory training for return to work coordinators include:

a. training approved by the governing board
b. cultural competency training
c. training in trauma-informed practices.

Recommendation 29

We recommend that if a worker wishes to return to work and has capacity, they can submit a request for suitable employment to which an employer must respond.

Recommendation 30

We recommend the duty to provide suitable employment in relation to a worker employed by:

a. a Commonwealth authority should fall on the Commonwealth
b. a licensed corporation should fall on that corporation.

Recommendation 31

We recommend widening the suitable employment definition to include:

a. consideration of pre-injury remuneration

b. in the case of employment in a licensed corporation:

   i. employment by that corporation, or

   ii. other self-insured licensee corporations if there is no suitable employment within that licensee, or

   iii. any employment if there is no suitable employment with other self-insured licensee corporations.

Recommendation 32

We recommend duties of determining bodies in relation to injury management are to:

a. develop an injury management policy

b. develop an injury management plan for a worker who sustains an injury and is unable to return to their pre-injury role for more than 7 working days. The plan should be developed in consultation with the injured or ill worker and their nominated treating doctor (with consent) and specify the risk factors to recovery

c. so far as is reasonably practicable, consult, cooperate and coordinate with the worker and their representative, the employer, rehabilitation provider and, subject to consent, the treating practitioner.

d. train injury management staff.

Recommendation 33

We recommend worker duties in relation to return to work are to:

a. cooperate in the preparation and implementation of return to work and injury management plans

b. communicate with parties in an open and honest manner

c. make reasonable efforts to return to work

d. if on reduced hours, take reasonable steps to attend a medical practitioner outside employment hours.

Recommendation 34

We recommend that if a worker fails to discharge their duties without a reasonable excuse, compensation rights in relation to the injury subject to the plans are suspended, aside from compensation for medical treatment.

Recommendation 35

We recommend allowing a worker to choose their Comcare-approved workplace rehabilitation provider and that they are provided with at least 3 options, where available.

We further recommend there is the ability for a worker to request additional options in exceptional circumstances if they are not satisfied with the provider. If a worker fails to select within a reasonable timeframe (being a reasonable time in all the circumstances), we recommend that the determining body appoints a provider on their behalf.

Recommendation 36

We recommend data concerning the performance of workplace rehabilitation providers operating in the scheme is made publicly available.

Recommendation 37

We recommend the introduction of return to work inspectors with enforcement powers.

Recommendation 38

We recommend providing penalties for breaches of employer and determining bodies' return to work duties and introducing incentives to facilitate return to work.

Recommendation 39

We recommend consideration is given to providing union officials with the right to enter a workplace to investigate suspected contraventions in relation to employer return to work duties.

Chapter 4. Effectively and proactively determining and managing claims to prevent further harm

What this chapter considers

The review's terms of reference asked us to consider how to improve claims administration to achieve better outcomes for injured workers and other Comcare scheme participants. In this chapter, we examine how to make claim, determination and management processes more effective, equitable and supportive, particularly in the critical early stages following a workplace injury or illness.

We explored how to improve the experience of making a workers' compensation claim, particularly for workers from diverse backgrounds. We considered improvements to:

- streamline the process of making a claim
- speed up the decision-making process
- make claims management more efficient.

Finally, we assessed whether delegated claims management (DCM) arrangements were delivering consistent, high-quality outcomes across the Comcare scheme, and workers' experiences of these arrangements.

Links to other chapters

The factors identified as contributing to the effective determination and management of claims covered in other chapters and parts are:

- providing a fair, no-fault entitlement to compensation – Chapter 2
- intervening early to support recovery and removing return-to-work barriers – Chapter 3
- having an effective benefits structure – Chapter 5
- having an effective dispute resolution structure – Chapter 6
- caring and costs – Part D.

The current framework

Providing a notification of injury and making a claim

Part V of the SRC Act sets out the following process for claiming compensation.

- **Notification:** For the SRC Act to apply in relation to an injury, the injured worker must provide a notice of injury to the relevant authority as soon as is practicable after they become aware of the injury (s 53).[1] A similar notification is required in relation to death (with a legal representative, the employer or a family member providing the notice) and loss or damage to property used by a worker.[2]
- **Claim:** Compensation is not payable unless a written claim is made (s 54). Claims for compensation for injuries must be accompanied by a medical certificate (unless the claim is for medical treatment only or in respect of the death of an employee – ss 16 and 17).

Three-tiered decision-making process

The SRC Act establishes a three-tiered decision-making process.

Tier 1: Initial determination of claim

A determining authority (Comcare, licensees or a delegate of Comcare in a DCM agency) must consider and determine claims for compensation within the period prescribed by the regulations. No express penalties apply if a claim is not determined in the timeframe, and a claim is not deemed to have been accepted or denied if the timeframe is not met. The determining authority must provide the claimant, in writing, the terms and reasons for a determination.

Tier 2: Internal review or reconsideration of claim

A worker or premium-paying employer can request reconsideration of a determination. The worker or employer has 30 days from the day they receive the determination to request a reconsideration. They can also apply for an extension.

The reviewing claims delegate (not the original delegate) has 30 calendar days to reconsider a determination. There is no statutory timeframe stipulated for employer requests.

A determining authority can, of its own motion, reconsider a determination even if the determination has previously been affirmed or varied.[3]

[1] SRC Act, ss 53(1), 53(3). This requirement is subject to an exception where notice is provided late and the relevant authority is not prejudiced, or the failure resulted from death, a person's absence from Australia, ignorance, a mistake or any other reasonable cause.
[2] SRC Act, ss 53(1), 53(2).
[3] SRC Act, s 62. See also *Comcare v DSLB* [2025] FCAFC 13.

Tier 3: Administrative Review Tribunal

The worker, employer or determining authority (that is, the person making the decision) has 60 calendar days from a reviewable decision to request merits review by the Administrative Review Tribunal (ART). Only reviewable decisions (that is, those that have been reconsidered) can be heard by the ART.[4] The Federal Court of Australia can hear appeals from ART decisions on questions of law. Our recommendations on this tier of the process are outlined in Chapter 6.

Timeframes

Subsection 61(1A) provides that a 'determining authority' must consider and determine a claim under s 14 of the SRC Act within the period prescribed by the regulations. Subsection 62(6) of the SRC Act provides that a determining authority or person must also decide a request made by a claimant to reconsider a determination within the period prescribed by the regulations. We have set out further detail on the legislative timeframes in the background section of 4.2 on 'Determining claims timeframes'.

Costs for reasonable medical treatment

Where an employee suffers an injury, Comcare or a licensee is liable to pay the cost of medical treatment obtained (in relation to the injury) if that treatment was reasonable for the employee to obtain in the circumstances.5 The Comcare scheme does not have statutory rates for medical treatment. See our discussion on this topic in Chapter 5.

Legal costs

Subsection 67(8) of the SRC Act provides that where a claimant has applied for merits review and the ART varies the decision in a manner favourable to the claimant, or sets aside the decision and makes a decision more favourable to the claimant, it may order the responsible authority (that is, Comcare or the licensee) to pay all or part of the claimant's costs.

Power to request information

The SRC Act contains information-gathering powers. These include:

- s 58, which allows Comcare or a licensee to request that a claimant provide information or documents relevant to their claim. This applies to information the claimant already has or is able to obtain without unreasonable expense or inconvenience.
- s 71, which allows Comcare to seek relevant information or material from the employer.

Failure to comply with s 58 can have significant implications for a worker. Under s 58(3), if a worker fails to comply with a notice under that section without a reasonable excuse, Comcare or the licensee (as applicable) can refuse to deal with the claim until the claimant complies.[6]

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[4] For the purposes of the *Administrative Review Tribunal Act 2024* (Cth), s 17, decisions made under ss 38(4) and 62 of the SRC Act are 'reviewable decisions' that can be reviewed by the Administrative Review Tribunal (ART): see SRC Act s 60(1).

[5] SRC Act, s 16.

[6] A similar power applies for failing to attend an independent medical examination under SRC Act ss 36 and 57, although such suspensions are reviewable by the ART.

Independent medical examinations

A claims delegate can arrange an independent medical examination (IME) under s 57 of the SRC Act if additional medical information or specialist opinion is required to support decision-making and management of the claim. A claims delegate may arrange an IME as part of the initial determination process, reconsideration process or while managing an accepted claim.[7] However, a claims delegate can only arrange an IME if they have first complied with the Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024 (IME Guide).[8]

Delegated claims management

Comcare and licensees can delegate their claims management powers and functions to appropriate claims managers.[9] Comcare can delegate decision-making powers under the SRC Act to officers of Australian Government agencies to manage their own claims under a DCM arrangement. Agencies can then engage a claims agent to manage claims. The claims manager fulfils several key roles under the Act, including determining liability, and making payments for medical treatment and income support.

What we heard

The Monash user-experience study findings align with the themes identified in submissions on claims experiences. Both highlight significant concerns about the psychological and administrative burden placed on injured workers navigating the Comcare scheme. The research confirms that many workers find the claims process more distressing than the injury itself, citing repeated retelling of traumatic events, lack of continuity in claims management and poor communication as key stressors.[10]

> “... members frequently report that the process of pursuing a claim is more harmful than the original incident that caused their injury. The process demands repeated retelling of traumatic incidents to various people who are evaluating the validity of the claim, which occurs in parallel to therapeutic treatment.”
>
> **Australian Education Union submission, p 6.**

Overall, the Monash user-experience study, and feedback to the review, present a consistent narrative: while the current Comcare scheme has supportive elements, the claims experience can undermine recovery and return to work outcomes. The research report, the people we consulted, and those who provided submissions advocated for systemic reform, including trauma-informed practices, simplified

[7] Comcare, *Scheme guidance – Section 57 power to require a medical examination under the SRC Act*, Comcare, accessed 19 August 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/scheme-guidance-section-57-power-to-require-a-medical-examination-under-the-src-act.
[8] SRC Act, s 57(1A).
[9] SRC Act, ss 73B, 108H.
[10] Monash University, *User experiences of the Comcare workers' compensation scheme, Qualitative Research Study Findings – Final report* (Monash user-experience study), 27 June 2025, pp 24, 31, 33.

processes, improved training for claims managers, and a more worker-centred approach to compensation.

> Comprehensive training programs. Provide claims managers with extensive training programs to enhance their skills and knowledge, particularly in managing psychological claims and complex cases. Continuous education and professional development should be mandatory to keep claims managers updated on best practices and legislative changes.
>
> **ACTU submission, p 21.**

> Claims managers are workers too. They must have appropriate training and support to fulfil their role. The nature of their role is difficult and exposes them to risk of injury, through exposure to traumatic material and emotional fatigue.
>
> **Australian Education Union submission, p 11.**

> ... we encourage the introduction of resources and supports for claims managers to build their competencies in managing the psychosocial factors at play during recovery from injury and to better understand and identify risk factors that may cause complications for a worker.
>
> **Australian Association of Psychologists Inc submission, p 7.**

4.1 Improving and streamlining claim-making

4.1.1 Background

A key challenge facing workers across workers' compensation schemes is a lack of awareness of their right to lodge a workers' compensation claim.[11] This lack of awareness was evident in the responses to our short survey on the SRC Act, with nearly 10% of workers identifying 'understanding eligibility and entitlements' as a key challenge in their claim experience.

Employers are not legally required to proactively provide workers with information about their entitlements under the SRC Act, as they are required to do for other workplace rights such as those under the *Fair Work Act 2009* (Cth). This gap in awareness can delay or discourage workers from initiating a claim, particularly in cases involving psychological injury. This particularly disadvantages those with cultural or linguistic difficulties, and those working in remote areas.

The notification and claim lodgement processes are also unnecessarily complex. The legislative provisions governing these processes were designed in an era when claims were manually processed and typically submitted directly to the employer. Even now, workers are required under the SRC Act to provide a formal notification of injury and a separate claim form, often involving multiple confusing

[11] The Behaviour Change Collaborative, *Australian workers' understanding of workers' compensation systems and their communication preferences – Final report*, 2022, Safe Work Australia (SWA).

steps and parties. While this structure may have been appropriate in a paper-based system, it does not align with the digital-first environment in which most claims are now made.

Today, many workers provide notification of their injury and submit their claim in what is essentially a one-step online process done directly through the Comcare website, bypassing traditional employer-led processes. This shift reflects a broader trend towards self-service and online accessibility, with which the legislation has not kept pace. As a result, what the law prescribes and how the system operates are disconnected.

The SRC Act clearly needs to be modernised to reflect current practices and simplify the claim-making process. This includes revising the notification and claim-making provisions to reduce duplication and streamline the user experience.

4.1.2 Previous reviews

Productivity Commission inquiry, 2004

The 2004 Productivity Commission inquiry into national workers' compensation and occupational health and safety frameworks identified opportunities to improve the notification of injuries and the lodgement of claims. The inquiry found that delays in reporting workplace injuries often led to poorer recovery and return to work outcomes. To address this, it recommended early notification of injury to facilitate a durable return to work and providing workers with information explaining their benefits and rights under the Comcare scheme.[12]

Hanks Review

Peter Hanks QC (now KC) identified inefficiencies in the existing claims lodgement and injury notification processes under the SRC Act. His report recommended modernising the system by enabling electronic injury notification and claims lodgement (see Recommendation 9.1). This would replace the outdated requirement for written information and support more timely communication.

Hanks also proposed a structured and timely notification process. He supported workers, employers or treating practitioners being able to lodge claims on behalf of workers. Hanks recommended that where a worker notified their employer of an incident, the employer should be obliged to forward an injury notification to the determining authority within 48 hours.[13] Notifications should be in an approved form or include minimal essential information such as the worker's and treating practitioner's details, employer information and a description of the injury.[14]

[12] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks: Productivity Commission Inquiry Report No. 27*, 2004, Productivity Commission, pp 212, 377.
[13] P Hanks QC, *Safety, Rehabilitation and Compensation Act Review: Report—February 2013* (Hanks Review), 2013, report to the Australian Government Department of Education, Employment and Workplace Relations, Recommendation 6.48.
[14] Hanks Review, Recommendation 6.49.

4.1.3 State and territory arrangements

State and territory workers' compensation schemes have differing approaches to informing workers of their rights and the claims notification process.

Some states, including New South Wales and Victoria, have legislative requirements for employers to display summaries of workers' compensation legislation in the workplace.[15] These summaries outline how workers can report injuries and lodge claims. Regardless of legislative requirements, all schemes have initiatives to help workers understand their workers' compensation rights, including information and media campaigns, employer guidance and multilingual resources.

Claims notification processes follow either a one- or two-step model. Queensland uses a one-step process, allowing workers to lodge claims directly with WorkCover Queensland. All other jurisdictions use a two-step process, with workers notifying their employer before lodging a formal claim with an insurer or authority. Timeframes for employers to report workers' injuries to the insurer vary from 48 hours in New South Wales and the Australian Capital Territory to 8 days in Queensland.[16]

There are also differing requirements and timeframes for workers to notify of an injury or illness and lodge a claim. In Victoria, notice must be given to the employer within 30 days (unless it was not reasonably practicable to do so).[17] In NSW, the worker must give notice to the employer 'as soon as possible after the injury'. Failure to meet this requirement can be a bar to compensation in certain circumstances.[18] The timeframe for the worker to make a workers' compensation claim is typically 6 months (with exceptions permitted)[19] and extends to 3 years.[20] The SRC Act does not specify a timeframe.[21]

In Australia, schemes typically require the worker to lodge the claim themselves. In New Zealand, registered providers can lodge claims on a worker's behalf.[22]

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[15] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 52; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 16.
[16] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, p 95.
[17] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 18.
[18] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 61.
[19] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, p 97, Table 3.5.
[20] *Workers Compensation Act 1951* (ACT), s 120.
[21] SRC Act, s 54.
[22] Accident Compensation Corporation, *Lodging a claim for a patient*, 2 December 2024, ACC, accessed 19 August 2025. Available at www.acc.co.nz/for-providers/lodging-claims/lodging-a-claim-for-a-patient.

4.1.4 What we considered

We considered:

- how to increase workers' awareness of their workers' compensation rights
- how to make the claim-making process easier and more accessible, and ensure that mistakes with lodgement cannot be used to bar compensation
- the evidence needed to support a properly made claim
- the degree of consent a worker should provide at claim-making.

Making workers aware of their compensation rights

Workers face persistent challenges in understanding their rights under workers' compensation schemes. Safe Work Australia's *Australian workers' understanding of workers' compensation systems and their communication preferences* identifies a significant gap in awareness, particularly among casual, part-time and precariously employed workers. It also found that workers who were heavily medicated had a diminished capacity to understand complex aspects of the workers' compensation process. Interestingly, the report found that most culturally and linguistically diverse workers would trust and rely on their employer for advice. Other worker cohorts were less trusting, and were concerned that their employer may not have their best interests at heart.[23]

These significant knowledge gaps about what to do if injured at work can result in workers not claiming workers' compensation or, if they do, having difficulties accessing and navigating the system. This, in turn, can delay access to entitlements and hinder recovery to health and return to work.[24]

What we heard during consultations reinforces these findings. Stakeholders emphasised the need for clearer, more accessible information. Workers responding to our survey identified understanding eligibility and entitlements as a key challenge in navigating their claims. Some stakeholders advocated for stronger employer obligations to ensure that workers receive information in a timely manner and are supported.

Workers' and stakeholders' responses raised questions about what, when and how information should be provided. Safe Work Australia's research found that workers tend not to think about, or look for information on, workers' compensation until they or someone close to them experiences an injury or illness at work. It also found that while workers know workers' compensation exists as a safety net for them, they have low awareness of exactly what it covers, what it offers and how to apply for it.[25]

We think the Victorian Act provides a useful model of information dissemination because it requires the display of an 'If you are injured at work' poster in every workplace. The poster provides details

[23] The Behaviour Change Collaborative, *Australian workers' understanding of workers' compensation systems and their communication preferences*, 2022, SWA.
[24] The Behaviour Change Collaborative, *Australian workers' understanding of workers' compensation systems and their communication preferences*, 2022, SWA.
[25] The Behaviour Change Collaborative, *Australian workers' understanding of workers' compensation systems and their communication preferences*, 2022, SWA.

about the notification and claim process, and the benefits available.[26] With flexible workplaces now the norm, the information needs to be disseminated through various channels. It should also be a requirement that the information is provided in a form and language workers can understand. In New South Wales, the State Insurance Regulatory Authority (SIRA) produces a simple standard poster in a range of languages that employers can use.[27]

Making the workers' compensation process easier and more accessible

For some workers – particularly those from culturally and linguistically diverse and First Nations backgrounds – the notification and claim-making process can be complex and difficult to navigate. Factors such as language barriers, unfamiliarity with formal systems, cultural sensitivities and fear of reprisal can all contribute to reporting delays or prevent injuries from being reported. In our survey, 8% of workers identified a lack of support in lodging a claim as a key challenge, while nearly 11% pointed to stigma associated with making a claim as a significant barrier. We clearly heard that outdated bureaucratic processes need to be removed to make the process easy, accessible and safe. While this may help remove stigma, attitudinal change can be slower and harder to achieve.

Notifying a determining body of an injury is a critical first step in the workers' compensation process. It triggers access to entitlements and initiates the employer's and insurer's obligations under the Comcare scheme. In this regard, it is important that even if the worker contacts the workers' compensation scheme directly, there is a process to inform the employer.

Under work health and safety (WHS) laws, employers are required to have systems in place to identify, report and, in cases of notifiable incidents, let relevant authorities know that the incident has occurred. To assist employers with this, injured workers have a complementary duty to inform their employer that they have sustained a workplace injury, unless it is not reasonable or possible for them to do so because they are seriously ill in hospital or on medication affecting their capacity.

Under our recommended model for early intervention (see Chapter 3), this notification will trigger the duty employers have to intervene early in the recovery process and make the necessary workplace adjustments. These will include starting return-to-work planning. Such steps are required to improve the overall outcomes for the worker. This support should be provided regardless of whether a claim for compensation is made in relation to the injury or illness.

The current SRC Act envisages giving notice of injury and claiming compensation as separate and subsequent processes. However, we think injury notification and claim lodgement should not be regarded as separate events. They should be part of a process that begins with the worker providing sufficient details of the injury to enable early payments and supports, and ends with the worker completing their claim once they have gathered evidence.

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[26] WorkSafe Victoria, *If you are injured at work posters*, 28 November 2022, WorkSafe Victoria, accessed 25 August 2025. Available at www.worksafe.vic.gov.au/if-you-are-injured-work-posters.
[27] State Insurance Regulatory Authority (SIRA), *If you get injured at work poster*, 21 January 2025, SIRA, accessed 25 August 2025. Available at www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/if-you-get-injured-at-work-poster.

One scheme employer suggested implementing an integrated online system to support workers to lodge and track their claim and provide triaging and workload management support for determining bodies. The system would provide a checklist of the information required to apply for early payments and then to complete a proper claim.[28]

We considered a process like the current one in which the worker notifies the employer of the injury (including prescribed information), and the employer has 48 hours to report the injury to the claims manager and, where required, lodge a claim. This model more closely aligns with the notification requirements for WHS duties. Submissions expressed concern with this approach, including the potential for claims suppression and administrative complexity. They noted that many workers report injuries to their supervisors rather than to the human resources or rehabilitation teams responsible for claims support.

We think this process is cumbersome and unnecessary given the benefits of digital technology. We recommend a streamlined approach in which claims are submitted directly to the determining body, with a notification sent to the employer, so they can submit their statement. A one-step model that allows workers to lodge a claim directly with the determining body simplifies access and reduces reliance on the employer to facilitate a claim. It is also in line with a person-centred approach. This process could also be used by families to access the early crisis support payments recommended in Chapter 3.

Workers should still notify their employer of their injury first, as part of their WHS duties and in accordance with established workplace procedures. But providing the ability to lodge claims directly with the determining body offers an important separation between workers and employers. This is especially relevant in cases involving psychological injuries or workplace conflict. This flexibility empowers workers to seek timely support without fear of confrontation or delay, ensuring their wellbeing is prioritised. In cases where a worker is unable to access the system, the employer or a person acting on the worker's behalf should be able to start the process so they receive early payments and supports.

If the minimum information has been provided (see the next section on 'evidence to be provided'), lodgement should trigger the employer's obligation to provide early support (if the employer has not been notified by other means) and the determining body's obligation to start support and incapacity payments within the current or next pay cycle. If early support processes are to be meaningful, the worker's income stream must not be disrupted. If an injury occurs just before a payroll cut-off, the system should still guarantee continuity of pay. The intent of early support is to provide immediate financial and practical assistance, to avoid delays that undermine that purpose and may cause unnecessary hardship.

Section 54 of the SRC Act does not impose a timeframe for making a claim, but the notice of injury provisions impose time limits. The timeframe for starting the compensation process for an injury should remain as soon as is practicable after the worker becomes aware of their injury or illness. In the

[28] Unpublished submission No. 68.

case of death, it should start as soon as practicable after the worker's death.[29] Consideration could be given to whether to include the element of reasonableness. Taking account of what is reasonable in the circumstances could remove the need to deem notice to be given under s 53(3).

We do not recommend any changes relating to the survival of claims after a worker's death; s 55 should be replicated in the new Act. Likewise, s 56, which prevents 'other' dependants making claims after compensation has been paid to a dependant of a deceased worker, should be retained.

This process could also help eliminate defects in procedural steps and prevent them from being used to defeat claims. At present, a broad, generous and practical approach is taken to construing a document purporting to be a notice of injury under the SRC Act.[30] Likewise, strict compliance with the requirements of the prescribed claim form is not required and substantial compliance is sufficient.[31]

We believe these positions should be reflected in the new Act. While a system of early support is intended to assist workers in navigating these requirements, it is important to ensure that procedural missteps do not become barriers to workers accessing legitimate entitlements.

Further, even with the aid of simple digital systems, workers may fail to meet procedural requirements for various reasons, including lack of awareness, psychological distress, language barriers, or workplace dynamics that discourage reporting. In some cases, injuries are reported informally to supervisors but not escalated appropriately, or claim forms are submitted with minor errors. If these defects are used to bar compensation, workers can be unfairly penalised despite having an otherwise valid claim. This issue is particularly pronounced in cases involving psychological injury, where delays in reporting are common due to stigma, fear of retaliation or uncertainty about eligibility.

Evidence to be provided

Workers' compensation claims generally require consistent evidence to establish the occurrence of a work-related injury or illness and the worker's entitlement to benefits. This typically includes:

- **injury details**: a detailed account of the incident, including the date, time, location and circumstances surrounding the injury
- **employment details**: confirmation of the worker's employment status and role
- **medical certification**: a certificate of capacity or a medical report from a treating practitioner outlining the nature of the injury, treatment recommendations and the worker's capacity to perform duties
- **claim form**: a completed and signed claim form, including consent to collect, use and disclose personal and medical information.

In considering a move to a one-step process, we heard concerns that some workers may not be able to provide the required information in the early stage, which could delay their access to early payments

[29] SRC Act, s 53.
[30] *Ellison v Comcare* [2022] FCA 95, [141].
[31] *Ellison v Comcare* [2022] FCA 95, [141]. See also SRC Act, s 54(5).

and supports. Examples include workers in remote areas, workers whose access to treating practitioners is delayed, or those who are seriously injured.

If evidence or information other than a certificate of capacity is not provided (for example, a detailed account of the injury), early payments and support should still commence. We recognise that some circumstances – such as remote location or serious injury – may delay its production. In such cases, the system must allow flexibility to ensure workers are not disadvantaged, and the claims manager should have discretion to start early support payments while a certificate is being produced.

While concern about the risk of unmeritorious claims is legitimate, strict evidence requirements at this stage could unintentionally delay access to support for workers in genuine need. However, to balance integrity with fairness, all relevant information, including a certificate of capacity, must be required to complete a claim.

A certificate of capacity plays a central role in the workers' compensation claim process. The certificate provides formal medical evidence of the injury and helps the employer and the claims manager to understand the support and accommodations required. While it is a key document, concerns were raised about workers' ability to get timely medical certification, noting that the SRC Act requires that a legally qualified medical practitioner (LQMP) – that is, a general practitioner or a specialist such as a surgeon or psychiatrist – must issue the certificate.[32]

Broadening the range of health practitioners who can issue a certificate of capacity would improve the responsiveness and accessibility of the claims process. As the Australian Health Practitioner Regulation Agency (AHPRA) explains, writing a medical certificate (including a certificate of capacity) is a medical service that requires a doctor to assess the patient and provide necessary treatment, before deciding whether to issue a certificate.[33] Sick certificates or absence certificates can be issued by other health practitioners such as nurse practitioners.

We consider that it should remain the case that only medical practitioners – that is, those registered with the Medical Board of Australia – can diagnose and issue certificates of capacity. However, the governing board (see Chapter 7) should be able to determine whether other health practitioners registered under the Health Practitioner Regulation National Law, such as psychologists and nurse practitioners, should be able to issue certificates of capacity. These practitioners often play a central role in assessing and managing work-related conditions. Involving them in certifying injury or illness would speed up the process for workers and reduce administrative burden.

Such a change would align the initial certification process with contemporary clinical practice, improve access to care, and support more timely and effective claims management. Assigning this function to the governing board ensures that only health practitioners with appropriate training can issue certificates, and that appropriate rigour is applied to the issuing of certificates of capacity. It also allows monitoring of outcomes to maintain scheme integrity.

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[32] SRC Act, s 54(2)(b).

[33] Medical Board of Australia, *July 2024: News for medical practitioners*, 10 July 2024, Medical Board of Australia, accessed 20 August 2025. Available at www.medicalboard.gov.au/News/Newsletters/July-2024.aspx.

Issue of consent

Consent plays an important role in the claims process, both in initiating a claim and in sharing personal information. If the determining body is unable to collect, use and disclose personal information, this may hamper claims assessment or management. The complexity of claim forms and the use of technical language can obscure the implications of consent, which can be problematic for vulnerable workers, including those with limited literacy, language barriers or psychological injuries.

Concerns arise from sharing personal and sensitive information. Consent typically allows claims managers to exchange medical, employment and personal data with employers, healthcare providers and legal representatives. Workers may not fully understand how broadly their information is shared, or the potential consequences of sharing it, particularly in cases involving psychological injuries or workplace conflict.

This was identified as an issue in the Monash user-experience study. Injured workers raised concerns about insurers accessing detailed historical medical records. This was perceived as a loss of privacy, with the potential to disseminate medical information not related to the claim to employers or claims managers, and was reported to have an adverse effect on mental health.[34]

Additionally, workers are often unaware that they can limit or revoke consent for certain types of information sharing. The ability to control consent is not always clearly communicated, and some may fear that restricting access could negatively affect their claim.

To address these issues, consent processes should be made clearer and more accessible. Potential improvements include using plain language in consent forms and making them available in multiple languages. Consent processes should offer separate options for sharing sensitive information, allowing workers to opt in or out, as appropriate. Additionally, digital consent management systems could empower workers to view, manage and update their preferences throughout the life of their claim. Worker consent should also form part of the service standard principles discussed in section 4.3.

4.1.5 Panel recommendations

Recommendation 40

We recommend employers have a duty to make workers aware of their workers' compensation rights in a form and language they can understand.

[34] Monash user-experience study, p 31.

Recommendation 41

We recommend streamlining the injury notification and claim-making process to make it a one-step model:

a. injury notified and claim lodged online with determining body, with notice provided to the employer

b. lodgement triggers both employer's obligation to provide early support (if not previously notified by other means) and determining body's obligation to begin support and incapacity payments in the current or next pay cycle if the minimum information required has been provided, including certificate of capacity (unless exceptional circumstances exist)

c. minimum information can constitute a properly made claim or further information can be requested for proper constitution of the claim. A new claim is required for a new injury.

Recommendation 42

We recommend that ss 55 and 56 are replicated in the new Act.

Recommendation 43

We recommend that a health practitioner under the Health Practitioner Regulation National Law or health practitioner recognised by the governing board (including psychologists and nurses) are able to issue medical certificates for the purposes of certificate of capacity at the notification/claim lodgement stage or at other stages the governing board has determined.

4.2 How to improve the decision-making process

4.2.1 Background

The SRC Act requires all determining authorities to process claims accurately and quickly.[35] However, in practice, the Act does not facilitate this.

Determining claims process

Once a worker has submitted a claim, the determining authority is responsible for determining initial liability for the injury or illness. When liability is accepted, subsequent claims can be made for entitlements (for example, for medical treatment or relating to permanent impairment) and time off work (see Chapter 5). Section 61 of the SRC Act requires the determining authority to consider and determine 'each claim for compensation' under s 14 of the SRC Act. This means that entitlements must be individually assessed and determined. Each determination can also be reconsidered.[36]

In practice, a compensation claim can consist of many smaller claims, and determination at Tier 1 can occur multiple times for the same injury. In relation to each determination, a claimant or employer can request a reconsideration under Tier 2 and, if unsuccessful, a review under Tier 3.

Once a determination on a claim is made, it remains open for the determining authority to revisit those findings in relation to any prospective future determinations on liability or entitlements on the basis of new information, such as showing that the injury is no longer being suffered. The determining authority can also revoke a past decision to accept liability on the basis that it should never have been accepted. In this way, it is said that the SRC Act allows for 'progressive and evolving' decision-making processes so determining authorities are not forever bound to a decision after initial acceptance of liability.[37]

The 3-tier decision-making process – Tiers 1 and 2

In recent years, the Federal Court has made several strong criticisms of the 3-tier decision-making process in the SRC Act, and called for an urgent, detailed review, with the objective of producing reforms that 'simplify and make more efficient substantive, procedural and review aspects' of the Comcare scheme.[38]

The Federal Court has also found that the statutory scheme is flexible.[39] It is not necessarily a linear progression through the 3 tiers of determination, reviewable decision and review by the ART.

[35] See SRC Act, s 69(a) for Comcare, and s 108E(b) as it relates to licensees.
[36] SRC Act, s 62.
[37] *Telstra Corporation v Hannaford* [2006] FCAFC 87, [57].
[38] *Wuth v Comcare* [2022] FCAFC 42, [4]; *Comcare v DSLB* [2025] FCAFC 13, [19], [21].
[39] *DSLB v Comcare* [2025] FCAFC 13; *Wuth v Comcare* [2022] FCAFC 42.

Determining claims timeframes

The *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023* (Cth) introduced statutory timeframes for decision-making in relation to initial claims for workers' compensation and requests for reconsideration made by a claimant.[40]

The regulations prescribe the following periods for decision-making:

- 20 calendar days for claims made in respect of an injury (other than a disease) or an aggravation of an injury (other than a disease)
- 60 calendar days for claims made in respect of a disease
- 30 calendar days to decide a request by a claimant to reconsider a determination.[41]

For initial liability determinations, the statutory timeframes also allow for periods in which calendar days are not counted towards the timeframes (known as 'stop clock' provisions). This allows time to seek further information or material in relation to a claim, including where a claimant is required to undergo an IME.

The statutory timeframes for decision-making commenced on 1 April 2024.[42] These timeframes codified into law what had been largely occurring in practice for determining authorities, with Comcare and licensees providing information on timeliness through annual reporting and Safety, Rehabilitation and Compensation Commission monitoring, respectively.

Costs for reasonable medical treatment

Unlike some other schemes, the Comcare scheme does not have statutory rates for medical treatment.

Guidance on the upper limit for fees for medical and allied health treatment is provided to support claims managers, but they have discretion to approve treatments above the upper fee limit. The upper limit for medical treatment provided by medical practitioners is set by reference to the Australian Medical Association (AMA) List of Medical Services and Fees. The upper limit recommended for medical treatment provided by other health practitioners is set by reference to the existing payment scales in state and territory schemes. This ensures costs for medical treatments match the costs for treatment in the state or territory where the worker lives. For states and territories without set rates, claims managers may refer to Comcare rates or scheme guidance.[43]

As at 30 June 2025, medical costs represented 20% of the Comcare scheme's claim costs.[44]

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[40] The timeframes were suggested in the Hanks Review: Recommendations 9.3 and 9.6.
[41] *Safety, Rehabilitation and Compensation Regulations 2019* (Cth), reg 11A.
[42] *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023* (Cth), reg 2.
[43] Comcare, *Scheme guidance - Appropriate cost of medical treatment - SRC301,* 15 November 2024, Comcare, accessed 20 August 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/appropriate-cost-medical-treatment.
[44] Comcare, *Scheme performance – Overview*, 25 July 2025, Comcare, accessed 20 August 2025. Available at www.comcare.gov.au/scheme-legislation/scheme-performance/overview.

Independent medical examination guide

A claims delegate can only arrange an IME if they have first complied with the IME Guide made on 5 September 2024. The guide was introduced to address concerns that workers were being required to attend multiple or unnecessary medical examinations and to prioritise information from a worker's treating medical practitioner in the decision-making process.[45]

Legal costs

Costs incurred in relation to Tier 1 and Tier 2 decision-making are generally not recoverable. But costs incurred in advance of an ART review, for the purposes of the review, could be recovered as costs of the proceedings if the claimant is successful.[46]

Use of artificial intelligence and automation

Growing use of artificial intelligence (AI) and automation in claims management has been a significant development, particularly in New South Wales. Reviews of the New South Wales scheme conducted by EY and Janet Dore provide detailed examinations of how these technologies have been implemented and the consequences of their use.[47] For example, in 2018, Insurance and Care NSW devised a new claims operating model. This platform was designed to automate aspects of claims processing, including triage, treatment approvals and invoice payments. Claims were automatically sorted, with the expectation that low-risk claims would be resolved quickly and require minimal intervention. However, the EY review found that this automation often misclassified claims, leading to delays in treatment and poor return to work outcomes.[48]

Comcare has said, with some qualifications, 'at present it does not use AI for any of its core functions or responsibilities'.[49]

In July 2025, the Australian Government launched GovAI, a new platform to empower public servants to safely and ethically develop AI skills. It is part of the government's effort to integrate more AI solutions into everyday work, an option that could be explored for the Comcare scheme.[50]

Claims assistance

During the claims process, workers accessing the Comcare scheme are supported by claims managers, rehabilitation providers, employers and online resources. Some other schemes provide support for both legal and non-legal services to help interpret decisions, prepare appeals and ensure claimants understand their rights and options.

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[45] *Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024* (Cth).
[46] *Comcare v Labathas* [1995] FCA 1702.
[47] J Dore, *Independent reviewer report on the Nominal Insurer of the NSW workers compensation scheme,* 2019, SIRA.
[48] J Dore, *Compliance and Performance Review of the Nominal Insurer: State Insurance Regulatory Authority: Part 1: Claims Management*, 2019, SIRA.
[49] Comcare, *AI Transparency Statement*, 4 September 2025, Comcare, accessed 20 August 2025. Available at www.comcare.gov.au/about/forms-pubs/docs/pubs/corporate-publications/ai-transparency-statement.
[50] K Gallagher, *GovAI launch marks major milestone for AI in APS,* 2025, Department of Finance.

4.2.2 Previous reviews

Productivity Commission inquiry, 2004

The Productivity Commission considered improvements to initial determination (Tier 1) and internal reconsideration or review (Tier 2) as ways to avoid disputes (Tier 3).

The Productivity Commission recommended:

- providing stakeholders with scheme information explaining their benefits and rights
- basing initial claims decisions on an early exchange of all available information
- requiring claims managers to provide for, and injured workers to first use, internal review procedures
- identifying and, as appropriate, rectifying informational and power imbalances.[51]

Hanks Review

The Hanks Review identified issues in the claims decision-making process and proposed reforms to improve its efficiency, fairness and transparency.[52] Hanks noted that delays in determining claims were detrimental to workers and recommended the statutory timeframes for decision-making discussed at section 4.2.1. Hanks argued that if these timeframes were not met, the claim should be deemed to have been rejected, providing certainty and allowing access to the next stage of the review process.

Additionally, he advocated for stronger information-gathering powers for determining authorities. This included the ability to request relevant information from third parties, such as medical practitioners and previous employers, and to impose penalties for non-compliance.

Hanks recommended paying a worker's costs at the reconsideration stage – including for one medical report and legal costs capped at $1,500 – to encourage better-prepared reconsideration requests and reduce the number of disputes. He also recommended a 60-day timeframe to ensure timely decision-making.

Hanks also recommended changes to IMEs under the SRC Act, including expanding the definition of who can conduct an IME (from solely LQMPs) to include 'a suitably qualified person' and allowing for a panel assessment. He noted these changes would assist with assessing workers with complex conditions. He considered, but ultimately did not recommend, changing the 3-tier decision-making framework to include alternative dispute resolution (ADR). Instead, he recommended improving Tier 1 and Tier 2. He also recommended amending the SRC Act to permit the then Administrative Appeals Tribunal (now the ART) to hear matters not subject to a reviewable decision, with the consent of the parties, where there was an existing matter before it.[53]

[51] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks: Productivity Commission Inquiry Report, No. 27*, 2004, Productivity Commission, p 385.
[52] Hanks Review, Chapter 9.
[53] Hanks Review, Recommendation 9.13.

4.2.3 State and territory arrangements

Decision-making and timeframes

There is significant variation in state and territory frameworks governing claims decision-making, particularly in relation to matters such as timeframes, deeming of decisions and internal review processes. These differences reflect diverse policy approaches to balancing administrative efficiency with claimant rights and procedural fairness.

Most schemes prescribe statutory timeframes for determining initial liability. These range from 10 business days in South Australia and the Northern Territory to 28 days in Victoria and the Australian Capital Territory.[54] These timeframes are intended to promote timely decision-making and reduce delays in accessing compensation and treatment. Some jurisdictions, such as Western Australia, include provisions that 'stop the clock' during specific processes such as referral to a medical panel, which can extend the decision period but are designed to ensure a thorough assessment.[55]

Some jurisdictions have implemented deemed decision provisions to enforce compliance with decision-making timeframes. For example, in New South Wales, failure by the insurer to reject a claim within the prescribed timeframe results in the claim being deemed to be accepted.[56] These mechanisms serve as a safeguard against administrative inaction and give claimants a clear pathway to escalate their claim if a decision is not made promptly.

Internal review arrangements also vary significantly, with Queensland standing out for its proactive approach. Certain contentious decisions – such as claim rejections – are automatically reviewed internally before the initial decision is communicated to the claimant.[57] This model aims to reduce disputes and improve decision quality by ensuring that potentially adverse decisions undergo additional scrutiny before finalisation.

Other jurisdictions, such as South Australia, encourage claimants who are dissatisfied with a decision to talk to their case manager before applying for informal review through the South Australian Employment Tribunal.[58] By contrast, claimants in New South Wales are encouraged to apply for reconsideration as soon as practicable.[59] These provisions are designed to ensure the timely resolution of disputes while preserving the claimant's right to challenge decisions.

Fees for medical treatment and other services

New South Wales, Queensland, South Australia, Victoria and Western Australia all maintain formal fee schedules for medical treatment and other services related to workers' compensation claims. These

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[54] *Return to Work Act 2014* (SA), s 31(4); *Return to Work Act 1986* (NT), s 85(1); *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 75; *Workers Compensation Act 1951* (ACT), s 128.
[55] *Workers Compensation and Injury Management Act 2023* (WA), s 28(4).
[56] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 274.
[57] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 538.
[58] ReturntoWorkSA, *Apply for review of a decision*, ReturntoWorkSA, accessed 23 August 2025. Available at www.rtwsa.com/about-us/how-can-we-help-you/apply-for-review-of-a-decision; *Return to Work Act 2014* (SA), s 100.
[59] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 287A.

schedules are generally comprehensive and cover a wide range of services, including general medical treatment, allied health services and IMEs. For example, New South Wales publishes detailed fee orders that specify maximum fees for various services such as general practitioner consultations, IMEs, issuing certificates of capacity, providing medical records and performing surgeries. Some services have fixed rates, while others refer to the AMA rates.[60] South Australia's fee schedules include dedicated provisions for psychological health support, such as counselling, occupational therapy and social work, reflecting a broader scope of psychosocial care.[61]

In contrast, the Australian Capital Territory, Northern Territory and Tasmania do not publish formal fee schedules. Fees in those jurisdictions are typically negotiated between providers and insurers or are based on AMA guidelines.

Most states and territories require pre-approval for medical treatment. However, there are exceptions for treatment for early and low-risk interventions. For example, in New South Wales, approval is not required within 48 hours of the injury, during early engagements with a general practitioner or medical specialists (within 1 month and 3 months, respectively) and for a set number of allied health services.[62]

Legal costs for reconsideration

Most states and territories do not routinely provide for legal costs at the reconsideration stage, reflecting a policy preference for informal review processes. New South Wales stands out with its Independent Review Office, which offers grants to approved lawyers for reconsideration matters, subject to a regulated fee schedule. This provides a more structured and accessible pathway for legal support at the reconsideration stage. The costs range from $1,200 for a 'simple request for review' to $3,000 for a work capacity or threshold impairment dispute.[63]

Independent medical examinations

While the use of IMEs is common in all jurisdictions, some schemes have unique features for managing the process. WorkSafe Victoria has a structured IME system under which providers must be approved and trained to conduct assessments. To become approved, a provider must meet discipline-specific selection criteria and service standards, including availability and timeliness requirements, fee schedules and quality assurance activities.[64] For schemes without approval processes, IMEs are typically sourced through specialist medical service providers.

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[60] SIRA, *Fees paid for workers compensation health services*, 8 July 2025, SIRA, accessed 21 August 2025. Available at www.sira.nsw.gov.au/health-providers/fees-paid-for-workers-compensation-health-services.
[61] ReturntoWorkSA, *Fee schedules*, ReturntoWorkSA, accessed 25 August 2025. Available at www.rtwsa.com/service-providers/provider-registration-and-payments/fee-schedules.
[62] SIRA, *Appendix 2: Practice guidance - Pre-approval of treatment*, 28 October 2021, SIRA, accessed 21 August 2025. Available at www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/standards-of-practice/appendix-2-practice-guidance-pre-approval-of-treatment.
[63] Independent Review Office, *Independent Legal Assistance and Review Service Funding Guidelines*, 2020, IRO, pp 40–41.
[64] WorkSafe Victoria, *Independent medical examiners (IME) recruitment*, 9 April 2025, WorkSafe Victoria, accessed 21 August 2025. Available at www.worksafe.vic.gov.au/independent-medical-examiners-recruitment.

Schemes also have differing requirements for the frequency of IMEs. In Western Australia, a worker cannot be required to attend a medical examination more than once every 2 weeks or during unreasonable hours, and cannot be examined by more than 3 specialists in the same medical field.[65] In Victoria, a claims agent, that is an organisation authorised to manage claims on behalf of an employer, can require a worker to attend an IME at 'reasonable intervals'.[66] In New South Wales, a worker has the right to refuse to attend unnecessary appointments.[67] Other schemes provide guidance that seeks to limit the frequency of IMEs to ensure their appropriate use.

Claims assistance

Across Australia, claims assistance for injured workers is provided through a mix of government agencies, insurers, unions and advisory services, with each jurisdiction adopting its own model. In New South Wales, the Independent Legal Assistance and Review Service provides access to free, independent legal advice for injured workers when there is a disagreement regarding entitlements.[68]

Several other schemes provide advisory services to assist workers with their claims. In the Australian Capital Territory, the 'Injured Workers Service Canberra' provides free non-legal advice, assistance and support to injured workers. It is funded by Employers Mutual Limited and is operated by the Trades and Labour Council of the ACT (UnionsACT).[69] Queensland's Workers' Compensation Information and Advisory Service is a not-for-profit organisation providing advice to workers to help navigate the workers' compensation system.[70]

Other schemes provide advisory services in-house, including WorkSafe Victoria's advisory service and the Workers Compensation Independent Review Service, which offers an impartial review of certain disputed 'reviewable decisions' and can affirm certain decisions or give directions to the agent to do so.[71] ReturntoWorkSA offers a variety of supports. These include assistance from an experienced coach to facilitate returning to work, a 'financial preparation service', 'surgery assist' and a 'mental health support service' to help injured workers with recovery and rehabilitation.[72] WorkCover WA has

[65] *Workers Compensation and Injury Management Regulations 2024* (WA), reg 88.
[66] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 27.
[67] SIRA, *Independent medical examinations fact sheet*, 2024, SIRA.
[68] SIRA, *Resolving complaints and disputes*, 11 June 2024, SIRA, accessed 21 August 2025. Available at www.sira.nsw.gov.au/workers-compensation-claims-guide/understanding-the-claims-journey/resolving-complaints-and-disputes/independent-review-office.
[69] WorkSafe ACT, *Compensation*, WorkSafe ACT, accessed 21 August 2025. Available at www.worksafe.act.gov.au/workers-compensation/injured-workers-service-canberra.
[70] WorkSafe.qld.gov.au, *Support services for employers and workers*, 4 June 2025, WorkSafe.qld.gov.au, accessed 21 August 2025. Available at www.worksafe.qld.gov.au/claims-and-insurance/support-services-for-employers-and-workers.
[71] WorkSafe Victoria, *Contact WorkSafe,* 12 February 2025, WorkSafe Victoria, accessed 22 August 2025. Available at www.worksafe.vic.gov.au/contact-worksafe; WorkSafe Victoria, *Workers Compensation Independent Review Service (WCIRS)*, 12 January 2024, WorkSafe Victoria, accessed 22 August 2025. Available at www.worksafe.vic.gov.au/workers-compensation-independent-review-service-wcirs.
[72] ReturntoWorkSA, *Support programs*, ReturntoWorkSA, accessed 22 August 2025. Available at www.rtwsa.com/claims/recovery/scheme-supports.

an Advice and Assistance team that provides assistance and guidance to all parties on their rights and obligations under the legislation.[73]

4.2.4 What we considered

We considered how to improve Tier 1 and Tier 2 decision-making. Connected to this, we considered issues related to timeframes, information gathering, costs and fees, IMEs, the worker's relationship with their treating practitioner, use of AI and the provision of claims assistance.

Tier 1 decision-making

A threshold question is whether the claims management onus should be reversed – that is, whether once liability is accepted, compensation payments should continue unless and until a decision is made that liability no longer exists. This approach would represent a shift from the current model, under which payments may be paused or terminated pending further determinations.

There are strong arguments in support of reversing the onus. Once a worker has met the threshold for liability, it is reasonable to expect continuity of support. We heard how interruptions to payments, particularly where they result from administrative delays or disputes, can cause financial stress and undermine recovery.

However, there are also practical considerations. There is a risk that continuing payments could reduce incentives for timely reassessment, resulting in payments being made where liability is not present or the claimant is able to return to work. That said, robust review mechanisms and safeguards could mitigate risks, ensuring payments are only made where incapacity continues.

We heard from organisations that determining and notifying 'each claim' for compensation is an administrative burden and can result in delays and disputes. Likewise, individuals provided feedback that it was stressful and re-triggering to continually be required to provide information and evidence about their injury. Workers also did not understand how an accepted claim can later be 'rejected'.

On balance, we recommend that once a claimant has established liability, payments should continue unless and until a decision is made that liability no longer exists. This approach supports continuity of care and reduces unnecessary disruption. Specific provisions should be developed to guide reassessment processes, including timeframes for review and criteria for ceasing payments, to ensure fairness and financial sustainability. This should also include certification requirements and ensure that, where possible, only one certificate of capacity is required when making further claims for compensation in relation to the same injury.

Timeframes

Introducing statutory timeframes for decision-making represented a step forward by emphasising the importance of timely claims determination. This theme also emerged from user experience research conducted as part of this review, with participants noting that delays and uncertainty increased

[73] WorkCover WA, *Resources and support*, 11 June 2025, WorkCover WA, accessed 22 August 2025. Available at www.workcover.wa.gov.au/workers/resources-support-2/.

distress. Additionally, the survey we conducted highlighted delays in receiving decisions on claims as a key issue for workers, with 13% of respondents identifying it as a challenge related to their claim.

We heard arguments that the timeframes should be shorter to prioritise timely treatment and support for workers and to enliven review rights more promptly. Conversely, we heard from determining bodies and claims managers that the current timeframes were too tight, particularly in complex cases, and this had the potential to reduce the accuracy of decision-making.

However, overall submissions supported retaining timeframes and recognised their role in reducing uncertainty and allowing workers to focus on recovery. Comcare data supports this, with 99% of all scheme claims determined in 2024–25 meeting statutory timeframes.

As such, we do not recommend changes to the prescribed period for decision-making for a claim for compensation under s 14 of the SRC Act.

In contrast, support for the stop clock provisions was mixed. Some stakeholders supported the flexibility to pause decision-making to gather additional evidence, while others raised concerns about unintended consequences, including further delays and uncertainty. Removing stop clock provisions could lead to instances of determining bodies rejecting claims to meet timeframes if further information is required from the worker. This could increase disputation.

We considered the periods in which calendar days are currently not counted (stopping the clock). These include:

- a determining authority requiring a claimant to undergo an IME (s 57)
- a determining authority requiring the claimant (s 58) or the employer (s 71) to provide information or documentation
- a claimant advising that they will be providing further evidence
- a determining authority considering it reasonable and necessary to obtain further medical evidence.[74]

We recommend refining the stop clock provisions to better support fair and efficient decision-making. Specifically, we propose that the ability to pause the decision-making timeframe be retained only when a claimant has advised they will be submitting further evidence. This targeted approach addresses stakeholder concerns about delays and complexity, while reducing the risk of premature claim determinations due to incomplete information. It ensures that workers are given a fair opportunity to contribute relevant material while maintaining momentum in the claims process.

While we considered retaining the provision for IMEs, we heard feedback that IMEs for initial liability are not appropriate because, at this phase, it is a fact-finding process rather than determining a medical diagnosis. We heard that IMEs are best used after liability has been accepted and the recovery is not progressing, as they can help clarify treatment needs and support better return to work outcomes for both the worker and the employer.

[74] See *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023* (Cth).

Timeframes for medical treatment

Currently, no timeframes for determining claims in relation to medical treatment are prescribed under s 16 of the SRC Act. While most stakeholders supported timeframes for liability decisions, extending these to medical treatment determinations introduces additional complexity.

There is a case for not applying rigid timeframes to medical treatment decisions. Many forms of treatment, particularly routine or low-cost interventions, are quickly approved and paid for under existing arrangements. Those making submissions noted that introducing statutory timeframes could add unnecessary administrative burden without improving outcomes in straightforward cases. Moreover, as the nature of medical treatment varies widely and data on this area is limited, a one-size-fits-all timeframe may not be appropriate across the spectrum of treatment types.

However, arguments for attaching timeframes to medical treatment decisions were compelling. Several stakeholders raised concerns about delays in accessing treatment, particularly for more complex interventions such as surgery. These delays can have significant consequences for recovery and return to work, and, in some cases, may exacerbate the injury or condition. The user experience research also highlighted that uncertainty around treatment approvals contributes to psychological distress and undermines trust in the Comcare scheme. Furthermore, 11% of the workers we surveyed highlighted payment delays as a key challenge with their claim.

While data is lacking on determination timeframes, Comcare data shows that once it receives an invoice, it takes an average of 15 days to process it. Comcare also noted that treating practitioners typically respond to requests for further information to support payment in an average of 28 days.

We recommend introducing timeframes for medical treatment decisions and payment to ensure consistency, reduce delays for workers and reimbursement of providers, and improve transparency. A 10-day timeframe should apply to the determination of medical treatment, while a 30-day timeframe should apply for the payment to be processed. We also recommend monitoring this timeframe, as we expect that continuous improvements to IT system will shorten the time taken to process invoices and reimbursements.

We also recognise that more complex treatments (such as surgery or exploratory procedures) may require more information or time to ensure an accurate decision. In these cases, the determining body should be able to stop the clock on the 10-day determination to allow for referral to a clinical panel or for an IME, or to request additional information from the treating practitioner. This stop clock would apply until the claims manager receives the necessary information to make a decision.

Clinical panels, composed of independent and experienced medical and allied health professionals, provide expert advice and conduct reviews to ensure workers with claims receive appropriate treatment. They aim to improve claim decisions and support better return-to-work and health outcomes. Currently, Comcare and some larger licensees have clinical panels or the equivalent. This service should be extended across the Comcare scheme. See our recommendation on clinical panel composition in Chapter 6.

Deemed acceptance or rejection

We also considered whether a failure to meet legislated timeframes should automatically trigger deemed acceptance or rejection of a claim to enliven review mechanisms. Each approach – deeming acceptance, deeming rejection, or no deeming – has different implications for workers, determining bodies, the integrity of the review process and scheme sustainability.

Not having any deeming provision may preserve flexibility, allowing determining bodies to make decisions based on the full merits of a claim, regardless of timing. However, stakeholders noted that this prolongs uncertainty for workers, delays access to entitlements and potentially harms health and recovery outcomes. Deemed rejection is procedurally efficient in that it triggers a review, but it relies on the worker contesting the decision at a time when they may be vulnerable. It could also incentivise determining bodies to allow timeframes to lapse, knowing the claim will be rejected by default.

While workers will receive early payments and supports under the proposed framework, these measures – though beneficial – do not fully mitigate the risks associated with delayed liability decisions. In contrast, deemed acceptance offers a more person-centred safeguard. It ensures that delays do not disadvantage the worker and that access to support is not contingent on the determining body's procedural compliance. By establishing a clear point at which liability is presumed in the absence of timely decision-making, deemed acceptance reinforces accountability and provides injured workers with greater certainty and stability during recovery.

We conclude there should be consequences for failing to meet prescribed timeframes.

Ultimately, we find that deemed acceptance best supports the health and recovery of workers while maintaining the integrity of the review process. It encourages timely decision-making, protects claimants from unnecessary delay, and reinforces the principle that access to entitlements should not be undermined by administrative issues.

We recommend that deemed acceptance applies to the initial determination of claims and also in respect of claims for medical expenses, where the clock is not stopped by referral for an IME or to a clinical panel.

Importantly, deemed acceptance should be understood as a determination of liability – not merely a procedural trigger. This means that once deemed acceptance occurs, the determining body must treat the claim as accepted. As with all claims, compensation will continue to be payable unless the determining body makes a decision that it is no longer liable, or revokes the acceptance of liability. With respect to revocations of liability, we later recommend that determining bodies should only be able to revoke liability on the basis of significant or new evidence (see Recommendation 53). This ensures that deemed acceptance does not inadvertently prevent the proper assessment of claims, while also protecting workers from uncertainty.

We also considered civil penalties for failing to meet legislated timeframes in claim determination. While penalties could, in theory, drive more consistent compliance with legislated timeframes and encourage timely decision-making, we do not recommend their inclusion.

Our recommendations for deemed acceptance and early payments and supports (see Chapter 3) already strongly incentivise determining bodies to act promptly. This approach prioritises the worker's interests without introducing the adversarial or punitive dynamics inherent in penalties. It also avoids the risk of determining bodies making rushed or overly conservative decisions simply to avoid financial consequences, which could compromise the accuracy of claim outcomes and affect scheme sustainability.

We also note that enhanced reporting of claims management data can achieve broader systemic oversight of determining bodies (see 'Claims administration accountability and transparency' below).

Tier 2 decision-making

Currently, workers who disagree with a determination can request that it be internally reviewed before escalating, if necessary, to external review by the ART. Reconsideration is an accessible form of review and a useful quality control mechanism.[75]

Concerns about the reconsideration process that Hanks encountered were repeated to us during our consultations. These concerns include that:

- workers do not see value in engaging fully in the process
- determining bodies may default to an adversarial approach to reconsiderations
- because very few primary determinations are changed on reconsideration, the process serves no purpose other than to delay access to the ART.[76]

We also heard that at the reconsideration stage, few workers provide additional medical support for their claims, possibly because they do not have the funds to obtain up-to-date medical opinions. Further, applicants for reconsideration are rarely supported by lawyers. If they are, that representation is best described as token.

Consistent with the finding of the Hanks Review, the lawyers who spoke to us acknowledged that the current system encourages workers and their lawyers to defer investing time or energy in a case until it reaches the ART and workers can recoup their legal costs.[77]

This is reflected in the data, with 81% of reconsiderations across the Comcare scheme in 2024–25 affirming the original decision.[78]

Hanks weighed up, but did not recommend, changing the reconsideration process to include ADR or mediation before lodging an application for review. He urged determining authorities to voluntarily use ADR at this stage. We consider this issue further in Chapter 6.

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[75] Attorney-General's Department, *Administrative Review Council: Report to the Minister for Justice: Better Decisions: Review of Commonwealth Merits Review Tribunals: Report No. 39*, 1995, Attorney-General's Department, [6.49].
[76] Hanks Review, para 9.56.
[77] Hanks Review, para 9.58.
[78] Comcare, *The Comcare scheme – Overview*, 25 July 2025, Comcare, accessed 22 August 2025. Available at www.comcare.gov.au/scheme-legislation/scheme-performance/overview.

Hanks recommended paying workers' costs at the reconsideration stage, including for medical evidence (capped at the cost of obtaining one report, and covering incidental diagnostic costs) and legal costs (capped at $1,500, indexed).

In the following section, we make several recommendations to enhance the effectiveness of the reconsideration stage to achieve early dispute and claim resolution, reducing harm and cost.

Timeframe for reconsideration

We heard strong in-principle support for the 30-day statutory timeframe for determining a reconsideration request. However, practical challenges remain. Workers with complex or psychological injuries may struggle to gather supporting evidence in time. While the framework allows for extensions, the process for obtaining these can be unclear and inconsistently applied. Additionally, decision-makers are expected to act quickly and accurately, but may face challenges doing so if critical information is delayed or incomplete.

To address these issues, we recommend refining the reconsideration process to preserve the 30-day statutory decision-making period but introducing the following clearer, fairer structure:

- workers have 30 days from receiving a decision to request a reconsideration and 60 days to provide supporting evidence and the reasons in support of the reconsideration
- workers retain the ability to request an extension of time. A decision by the determining body not to grant an extension is a reviewable decision
- the independent review officer has 30 days from receiving the request for reconsideration, or 30 days from receiving the evidence and reasons, to make a decision
- where the matter is scheduled for ADR, allow a 30-day extension to the timeframe for the decision to be reconsidered.

Covering the costs of reconsideration could significantly improve access to justice for injured workers. We have heard that workers face complex and adversarial claims processes. Without financial support, they may be unable to obtain the medical documentation or legal advice necessary to challenge decisions effectively. This can lead to inequitable outcomes and may undermine confidence in the Comcare scheme's fairness.

However, there are concerns about cost containment and the potential for misuse. Providing blanket coverage for all reconsideration-related expenses could incentivise unnecessary disputes or lead to submission of poorly substantiated claims. Some stakeholders cautioned that it may increase administrative burden and scheme costs, particularly if there is no mechanism to filter out frivolous claims.

Balancing these considerations, we recommend meeting workers' costs for obtaining medical evidence and legal advice at the reconsideration stage. These could cover the reasonable cost of obtaining one medical expert report per injury at the set rate, and fair and reasonable legal costs at set rates. Comcare should publish guidelines for legal costs – akin to schedules 6 and 7 of the *Workers Compensation Regulation 2016* (NSW) – setting out the costs that can be recovered in relation to the

processes involved. The guidelines should also set out what disbursements would be available, including for obtaining a medical report.

Importantly, the recommendation includes safeguards to ensure the provision is used appropriately. Costs would not be covered where:

- the claim is frivolous, vexatious, misconceived or an abuse of process
- the matter has already been determined or reviewed
- the worker fails to participate in good faith throughout the process.

The refusal to pay costs would be a reviewable decision.

These conditions strike a balance between fairness and fiscal responsibility, and would help ensure that the Comcare scheme remains accessible, efficient and focused on resolving genuine disputes.

Requests for reconsideration by the Commonwealth or a Commonwealth authority

There are valid reasons to allow the Commonwealth or a Commonwealth authority to request a determining authority to reconsider a determination. As an employer, it may hold relevant information that was not available at the time of the original decision or identify factual or legal inconsistencies that warrant review. In these cases, the ability to request reconsideration can support more accurate decision-making and scheme integrity.

However, the SRC Act does not contain any grounds for making this request. The lack of grounds risks undermining the independence of Comcare's decision-making and could lead to unnecessary delays or perceived bias. If employers routinely request reconsideration without new or material evidence, it could erode trust in the Comcare scheme and place undue administrative burden on decision-makers, particularly where the original decision was made in good faith and aligned with policy at the time.[79]

Requests for reconsideration made without genuine grounds also leave workers feeling unsupported and can affect their recovery. We heard anecdotal, isolated examples of these types of requests occurring. As highlighted in Chapter 3, employer support plays a critical role in recovery.

On balance, we recommend that the Commonwealth be able to request that Comcare reconsider a determination more than once, but only when there is significant or new evidence that would materially affect the outcome. This approach preserves the integrity of the Comcare scheme, ensures fairness to workers, and maintains the independence of Comcare's decision-making while allowing for correction of genuine errors or oversights. Further, we recommend that when a decision is changed, the new determination does not operate retrospectively, so previous payments are not recovered, other than in cases of fraud.

[79] Comcare, *Scheme guidance - Considerations in the reconsideration process*, 12 December 2024, Comcare, accessed 22 August 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/considerations-in-reconsideration-process.

Revoking liability

The question of when the determining body should be able to revoke liability under the SRC Act drew feedback in submissions that reflected the need to balance scheme integrity with fairness and stability for injured workers.

Many, including those from the legal profession, worker representatives and people with lived experience, expressed concern about liability being revoked after acceptance. They highlighted the distress and disruption this can cause, especially when payments are paused or withdrawn without what they consider to be clear justification. There was strong support for ensuring that workers are not penalised for administrative errors or delays, and for compensation to continue unless there is a compelling reason to stop it.

At the same time, submissions acknowledged if the determining body receives evidence it did not have at the time of the primary determination or reconsideration, it must retain the ability to determine that a claim should or should not have been accepted, or payment of compensation should not continue.

Submissions also raised concerns about fairness and scheme sustainability in cases where it is clear liability should be revoked, for example, in cases of fraud.

To balance these considerations, we recommend that determining bodies should only be able to revoke liability when there is significant or new evidence that liability should not have been accepted.

To ensure fairness and protect workers, we recommend:

- the onus is on the determining body to justify the revocation
- the worker continues to receive compensation until the reconsideration period expires or until the outcome of any stay application at the ART; if the decision is stayed, payments should continue
- the worker's fair and reasonable legal costs are covered irrespective of the outcome at the ART, with the amount determined against prescribed capped maximum hourly rates.

We heard concerns about the potential for delays at the ART. However, applications for stay orders are usually dealt with expeditiously at the ART and revocation occurs infrequently. For these reasons, we consider the concerns to be overstated.

Repeated requests for reconsideration of decisions

As stated in 'the 3-tier decision-making process – Tiers 1 and 2' above, the Federal Court has found that the structured decision-making process established by the SRC Act does not necessarily require a one-way linear progression through the tiers.[80] It found the process allows reconsideration decisions to act as both a new determination and a reviewable decision. This means a claim can be reconsidered multiple times without ever reaching the ART, and new reconsiderations can override earlier ones, potentially making ART proceedings irrelevant.

Reconsideration is intended to correct errors or reassess decisions efficiently. Restricting workers to a single request can be a barrier to achieving this outcome, particularly in complex cases or when further

[80] *DSLB v Comcare* [2025] FCAFC 13, [140].

evidence becomes available. Allowing multiple reconsideration requests before proceeding to ART review could improve flexibility and responsiveness. It would give workers and determining bodies more chances to resolve issues, avoiding the need for formal proceedings.

Information-gathering powers

The current SRC Act gives limited powers to decision-makers to obtain relevant information. However, there is no general obligation on claimants to provide relevant information, and no power to compel third parties to produce documents.

This gap creates practical challenges. While claimants are incentivised to provide supporting evidence to satisfy statutory requirements, they may not understand what is relevant or may struggle to obtain it, especially when unwell. Moreover, the absence of a power to request third-party information can hinder decision-making and delay claims. The Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth) attempted to introduce provisions for Comcare to request (but not compel) third-party information.[81] The Bill was also designed to align with privacy laws by authorising the sharing of information. Although the Bill lapsed, the rationale remains sound.

Balancing privacy, fairness and administrative efficiency, we recommend enhancing the new Act's information-gathering framework by:

- requiring claimants to provide relevant information to the decision-maker, recognising their practical role in substantiating claims
- empowering determining bodies to make reasonable requests for information from third parties, without compelling production thus authorising the provision of information under the *Privacy Act 1988* (Cth).

This recommendation will require careful drafting to ensure that provisions meet the requirement for disclosure under the Australian Privacy Principles. Specifically, it should include 'the use or disclosure of the information is required or authorised by or under an Australian law' for the purposes of 6.2(b) of these principles.

Medical treatment and examinations

Independent medical examination guide

The IME Guide was designed to support ethical, transparent and accountable decision-making. It includes provisions to ensure appropriate consideration of a worker's personal circumstances and to limit the frequency of examinations, and a requirement to seek and rely on information from treating practitioners wherever possible.

Feedback in submissions on the IME process and IME Guide was mixed. As reflected in the user-experience research and submissions, some injured workers reported that IMEs were retraumatising and adversarial, and contributed to delays in claim determination. Concerns were raised about perceived 'doctor shopping' and the use of IMEs to justify cessation of compensation. However,

[81] Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth), Sch 3, cl 26.

workers' compensation professionals acknowledged the importance of IMEs in complex cases and supported the guide's goal of improving transparency and consistency.

Feedback was particularly critical of the guide in relation to arranging rehabilitation assessments and requiring examinations. We believe the changes proposed to the rehabilitation framework in Chapter 3 will address the issues raised in consultations and submissions about rehabilitation examinations. We have not recommended replicating ss 36 or 37 in the new Act.

Given the IME Guide's relatively recent implementation, it is too early to fully assess its effect. While some submissions called for changes to reduce administrative burden and delays, others emphasised the need for consistent application and better communication. At this stage, there is insufficient evidence to justify recommending change.

However, we understand that the Department of Employment and Workplace Relations is reviewing the effectiveness of the IME Guide as part of a broader review of the operation of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*. Following this review, the IME Guide may require amendment to improve its effectiveness and the worker experience, and in light of effects on claim timeliness and outcomes.

Worker's right to choose their treating practitioner and who attends consultations

The right of a worker to choose their treating practitioner and control who attends medical consultations is fundamental to ethical and person-centred care. This right supports trust in the therapeutic relationship, protects privacy and cultural norms, and ensures that treatment decisions are made in the best interests of the worker. Feedback, including from the user-experience research, highlighted concerns about employers or claims managers interfering in these choices.

While claims managers and employers have legitimate roles in supporting rehabilitation and return to work, these roles must not extend to influencing or directing medical treatment. Workers should feel safe and respected in their healthcare interactions, and any perception of coercion or surveillance can undermine recovery and trust in the system.

We recommend that the SRC Act explicitly state that the claims manager and the worker's employer must not interfere in, or act in a manner inconsistent with, the worker's right to choose:

- the registered person who will provide medical treatment for the injury
- who is present during medical treatment for the injury.

Further to this, we recommend a penalty for contravening a worker's rights in this important area.

Artificial intelligence technology

Generative AI (Gen AI) is rapidly redefining claims management in the insurance industry. A recent Jobs and Skills Australia report on Gen AI says that Gen AI encompasses a set of technologies that can be applied across a range of activities in society and the economy. It also says that the potential for a broad range of applications presents both opportunities and challenges, and that while AI offers the promise of improved productivity and innovation, it also brings risks from disruption and the need to

develop skills at pace. It further states that workers will need to develop new competencies, including digital literacy and critical thinking, and the ability to oversee and validate AI-generated outputs.[82]

According to the private sector claims manager firm Gallagher Bassett, Gen AI has potential uses across the claims life cycle.[83] From claim intake and triage to fraud detection and customer communication, Gen AI has the potential to improve accuracy, efficiency and customer satisfaction. This is because AI systems are capable of analysing complex medical documentation, predicting claim outcomes and detecting patterns in historical records, with speed impossible for human reviewers.[84] According to Gallagher Bassett's 2025 Claims Insights survey, 88% of Australian insurers use generative AI for claims resolution, and 58% of global and 62% of Australian survey respondents use generative AI to identify fraudulent activities.[85]

Gallagher Bassett also observed that '[g]lobally, insurers are also emphasising generative AI's role in enhancing customer communication and support, ensuring timely and efficient resolution of claims… In Australia, the focus shifts slightly, with 64% of insurers identifying enhanced data-driven decision-making as the most significant application of Gen AI.'[86]

The Digital Transformation Agency (DTA) says the benefits for government of adopting Gen AI include more efficient and accurate agency operations, better data analysis and evidence-based decisions, and improved service delivery for people and business.[87] Many areas of the Australian Public Service (APS) already use AI to improve their work and engagement with the public.

For Comcare, this presents both a challenge and an opportunity. While Comcare has human oversight of all decision-making processes, the evolving nature of work suggests a need to proactively support staff in acquiring Gen AI–related skills. This includes introducing technical training and fostering adaptive capacity to manage changing workflows and expectations. Other determining bodies will also face these challenges, providing an opportunity for shared learning.

[82]Jobs and Skills Australia, *Our Gen AI Transition: Implications for Work and Skills: Final Overarching Report*, 2025, Jobs and Skills Australia.
[82] Jobs and Skills Australia, *Our Gen AI Transition: Implications for Work and Skills: Final Overarching Report*, 2025, Jobs and Skills Australia.
[83] Gallagher Bassett, *Accelerating customer service through generative AI*, Gallagher Bassett, accessed 22 August 2025. Available at www.gallagherbassett.com/uk/news-and-insights/2024/jul/accelerating-customer-service-through-generative-ai/.
[84] Gallagher Bassett, *Accelerating customer service through generative AI*, Gallagher Bassett, accessed 22 August 2025. Available at www.gallagherbassett.com/uk/news-and-insights/2024/jul/accelerating-customer-service-through-generative-ai/.
[85] Gallagher Bassett, *The Carrier Perspective: 2025*, 2025, Gallagher Bassett, pp 1–3.
[86] Gallagher Bassett, *The Carrier Perspective: 2025*, 2025, Gallagher Bassett, pp 1, 3.
[87] Digital Transformation Agency, *Policy for the responsible use of AI in government*, 2024, Digital Transformation Agency, p 4.

Comcare sees benefits from using Gen AI to improve the analysis and communication of information flows, and workplace productivity. It says it is 'committed to safe, ethical, and responsible AI use, guided by:

- existing information security, privacy, and risk management frameworks
- alignment with Australia's Voluntary AI Safety Standard and AI Ethics Principles
- mandatory staff training on AI fundamentals, privacy, data analytics, and cybersecurity
- additional training for employees involved in AI procurement, development, and deployment
- strict compliance with relevant legislation, frameworks, and policies
- active monitoring of AI usage to ensure continued security and compliance.'[88]

Comcare's commitment to ethical and responsible AI use should extend to ensuring equitable access to training and support for all staff and those involved in the Comcare scheme, particularly as Gen AI reshapes entry-level roles and career pathways.[89]

Currently, Comcare does not use AI for any core functions or responsibilities. It specifies that 'AI is not used in compliance, auditing, or decision-making processes without human oversight'.[90] This means that while AI technologies may be used to assist in various tasks, a human undertakes final decisions and actions.

Comcare acknowledges the DTA's Policy for the responsible use of AI in government, which sets out the approach for its use.[91] This policy is not a mandatory requirement for Comcare, as it is a corporate Commonwealth entity, but the agency has broadly adopted it.

Given the rapid evolution and adoption of Gen AI across the insurance and workers' compensation sectors, we recommend that it be made mandatory for Comcare to follow the DTA policy (see Chapter 7 for further discussion on the implications of Comcare being a corporate Commonwealth entity).

The DTA policy provides a robust framework for ethical, secure and transparent AI use, aligning with Comcare's existing commitments to privacy, accountability and responsible innovation. With most Australian insurers already using Gen AI to enhance claims resolution, fraud detection and data-driven decision-making, Comcare risks falling behind sector standards if it does not proactively align with national policy and best practice. Application of the DTA policy should extend to licensees, with the imposition of conditions, particularly around automated decision-making.

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[88] Comcare, *AI Transparency Statement*, 4 September 2025, Comcare, accessed 22 August 2025. Available at www.comcare.gov.au/about/forms-pubs/docs/pubs/corporate-publications/ai-transparency-statement.
[89] Jobs and Skills Australia, *Our Gen AI Transition: Implications for Work and Skills: Final Overarching Report*, 2025, Jobs and Skills Australia, p 9.
[90] Comcare, *AI Transparency Statement*, 4 September 2025, Comcare, accessed 22 August 2025. Available at www.comcare.gov.au/about/forms-pubs/docs/pubs/corporate-publications/ai-transparency-statement.
[91] Digital Transformation Agency, *Policy for the responsible use of AI in government*, 2024, Digital Transformation Agency.

Claims assistance

Navigating workers' compensation schemes is not easy, given the comprehensive legislation and large body of relevant case law from tribunals and courts. Often, workers are trying to understand a compensation scheme when they are facing psychological and other stressors, increasing the difficulty of navigating novel institutional arrangements. It is not surprising that most states and territories have developed schemes for supporting workers through the process.

While legal advice is available in some circumstances, many workers do not require or seek legal representation. They simply need clear, impartial and empathetic assistance to understand the process and make informed decisions. This is especially true for vulnerable groups, including those with psychological injuries, language or cultural barriers, or limited support networks. We note that union members can access advice from their union.

Providing free, confidential, non-legal claim assistance would help level the playing field, reduce procedural errors, and improve engagement with the Comcare scheme. It would also address concerns about independence that we heard from people with lived experience and saw in the user-experience research.

We recommend arrangements are made to fund free, confidential, non-legal advice or assistance for workers, similar to the Injured Workers Service in the ACT.[92] This service could offer guidance on claim lodgement, evidence requirements, communication with claims managers, and navigating reconsideration or review processes. It would empower workers to participate more effectively in the Comcare scheme, build trust and reduce reliance on legal escalation.

While we heard suggestions to limit access to complex cases or workers with a serious injury, we favour a broader service. This ensures that all workers can access timely support and advice, preventing issues from escalating, promoting fairness and contributing to greater trust in the Comcare scheme.

4.2.5 Panel recommendations

Recommendation 44

We recommend that once a claimant has proved their incapacity and liability is accepted, incapacity payments continue until the determining body decides that it is no longer liable, or revokes the acceptance of liability.

[92] Injured Workers Service, Canberra, *Have you been injured at work?,* Injured Workers Service, Canberra, accessed 22 August 2025. Available at www.injuredworkerscbr.org.au.

Recommendation 45

We recommend current timeframes are replicated in the new Act for the initial determining of claims but the ability to pause the decision-making timeframe is only retained when a claimant has advised that they will be submitting further evidence.

Recommendation 46

We recommend that if timeframes are not met, there is a deemed acceptance of the claim, but no civil penalties imposed for failure to meet the timeframes.

Recommendation 47

We recommend a timeframe of 10 days attaches to determining benefits for medical treatment.

Recommendation 48

We recommend that if the timeframe referred to in Recommendation 47 is not met, there is a deemed acceptance of the claim for medical expenses unless certain exceptions apply, including decisions related to surgery, and in such circumstances, the clock is stopped.

Recommendation 49

We recommend a slight change to the timeframe and process for requesting a reconsideration:

a. Workers have 30 days from receiving a decision to request a reconsideration and 60 days to provide supporting evidence and the reasons in support of the reconsideration.
b. Workers retain the ability to request an extension of time. A decision by the determining body not to grant an extension is a reviewable decision.
c. The independent review officer has 30 days from receiving the request for reconsideration, or 30 days from receiving the evidence and reasons, to make a decision.
d. Where the matter is scheduled for alternative dispute resolution, allow a 30-day extension to the timeframe for the decision to be reconsidered.

Recommendation 50

We recommend that worker costs are covered at the reconsideration stage. Costs to be covered are the reasonable cost of obtaining one medical expert report per injury at the set rate and fair and reasonable legal costs at the rate set, except where the determining body has determined:

a. the claim is frivolous, vexatious, misconceived or an abuse of process
b. the claim or subject has already been determined, redetermined or reviewed, or
c. there has been a failure to participate in good faith throughout the process.

We further recommend the refusal to pay is a reviewable decision.

Recommendation 51

We recommend that the 'Commonwealth' only be able to request Comcare reconsider a determination if there is significant or new evidence that would materially affect the outcome of the determination.

Recommendation 52

Further to Recommendation 51, we recommend that if the reconsideration produces a different result, the new determination does not operate retrospectively except in the case of fraud.

Recommendation 53

We recommend that a determining body can only revoke liability in circumstances where there is significant or new evidence that liability should not have been accepted, and:

a. the onus is on the determining body to justify, and the worker remains in receipt of compensation entitlements until the reconsideration period expires or until the outcome of any stay application at the Administrative Review Tribunal (if the decision is stayed, payments necessarily continue)

b. the worker's fair and reasonable legal costs are covered irrespective of the outcome at the Administrative Review Tribunal, and capped at maximum hourly rates that are prescribed.

Recommendation 54

We recommend claimants be able to request a reconsideration and/or apply for a review by the Administrative Review Tribunal (that is, *Comcare v DSLB* is not overturned).

Recommendation 55

We recommend an enhancement of information-gathering powers:

a. a requirement that the claimant provide relevant information to the decision-maker, and

b. a power for the determining body to reasonably request information from a third party, but not compel production.

Recommendation 56

We recommend no change to the *Guide for Arranging Rehabilitation Assessments and Requiring Examinations*, pending the outcome of its review.

Recommendation 57

We recommend that the governing body and the worker's employer must not interfere in, or act in a manner inconsistent with, the worker's right to choose:

a. the registered person who will provide medical treatment for the injury

b. who is present during medical treatment for the injury.

We further recommend a penalty attaches to a contravention of worker's rights.

4.3 How to improve claims management

4.3.1 Background

Best practice in claims management is grounded in a person-centred approach that prioritises recovery, dignity and meaningful engagement. As detailed in Chapter 1, evidence from both academic research and lived experience shows that outcomes improve significantly when claims processes are designed around the needs of the individual rather than administrative considerations.

Effective claims management involves proactive and responsive service delivery. Respecting the diverse needs of claimants – including their cultural identity, caring responsibilities and personal values – is essential. This means recognising, for example, the importance of cultural safety and family-orientated care for First Nations workers,[93] or the effect of gender-based trauma and family roles on engagement and recovery.

In psychological injury claims, best practice is particularly critical. These claims are associated with longer periods of incapacity and poorer return to work outcomes than those for other types of claims. Safe Work Australia has developed a best practice framework for managing psychological claims, which emphasises the need for early intervention, trauma-informed care and respectful communication.[94] Embedding these principles into claims management practices helps to reduce harm and supports recovery.

Skilled claims managers are central to this model. They require not only technical knowledge of the legislation but also strong interpersonal skills, cultural competence and the ability to navigate complex situations with sensitivity. When claims managers are well trained, supported and empowered to act with compassion and competence, they can build trust, reduce conflict and facilitate better outcomes for workers and their families. They are also more likely to feel satisfied and safe, and to stay in their job and the industry.

Literature review

We engaged Monash University to complete a literature review on themes and developments in Australian workers' compensation. The review highlighted that the workers' compensation claims process often negatively affects health and recovery outcomes. Key issues in claims management include delays, lack of continuity in case management and poor decision-making.[95]

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[93] Royal Australian College of Physicians, *Medical Specialist Access Framework: A guide to Equitable Access to Specialist Care for Aboriginal and Torres Strait Islander people*, 2018, Royal Australian College of Physicians, p 12.

[94] SWA, *Taking Action: A best practice framework for the management of psychological claims in the Australian workers compensation sector*, 2021, SWA.

[95] P Bragge et al., *Key trends and developments in Australian workers' compensation schemes from 2014 – 2024: A literature review*, 2024, Monash Sustainable Development Institute Evidence Review Service, BehaviourWorks Australia, Monash University, p 4.

Several proactive strategies were identified to address these challenges. These include better training and career advancement for claims managers, establishing dedicated teams to manage complex cases, ensuring caseloads are manageable and streamlining case management. Building rapport between claims managers and workers, fostering resilience and enhancing staff competencies were considered essential to effective claims management.

Triage and early screening were consistently recommended to identify complex cases and rehabilitation needs promptly. Research revealed the value of decision-support tools to aid in this process.[96]

4.3.2 Previous reviews

Productivity Commission inquiry, 2004

The Productivity Commission identified several opportunities to improve claims management in workers' compensation schemes. It found that delays in claims processing and inconsistent communication can significantly affect workers' access to timely support and treatment. To address these issues, the Productivity Commission recommended reforms that promote early engagement and simplified, transparent claims processes.

To support these improvements, the Productivity Commission emphasised the need to build the capability of claims managers through structured training in injury management and communication. It recommended claims managers establish internal review procedures to resolve issues early and efficiently, and that performance monitoring be used to identify best practices and drive continuous improvement.[97]

Hawke Review

Dr Allan Hawke AC, in his 2012 review of the Comcare scheme's performance, governance and financial framework, made several recommendations to improve claims management. They focused on boosting the capability of claims managers, improving transparency and oversight, and enhancing the experience of injured and ill workers.

Hawke's recommendations included Comcare implementing a comprehensive training program for its claims managers to ensure they are equipped with the necessary skills and tools to manage claims effectively.[98] He also called for regular audits of Comcare's claims systems.[99] Comcare has implemented these recommendations.

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[96] P Bragge et al., *Key trends and developments in Australian workers' compensation schemes from 2014 – 2024: A literature review*, 2024, Monash Sustainable Development Institute Evidence Review Service, BehaviourWorks Australia, Monash University, p 5.
[97] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks: Productivity Commission Inquiry Report No. 27*, 2004, Productivity Commission.
[98] A Hawke AC, *Safety, Rehabilitation and Compensation Act Review: Report of the Comcare Scheme's Performance, Governance and Financial Framework* (Hawke Review), 2013, report to the Australian Government Department of Education, Employment and Workplace Relations, Recommendation 18b.
[99] Hawke Review, [2.201]; Recommendation 23a.

Rozen Review

In 2021, Peter Rozen QC reviewed WorkSafe Victoria's management of complex workers' compensation claims.[100] The review noted the need to put the injured worker at the centre of the scheme and make their recovery the central focus. Specific concerns included miscommunication, delays with decision-making, process-driven practices, the need for claimants to continually prove the legitimacy of their injury, and a lack of capability and frequent changes in case managers. The Rozen Review report recommended improving claims identification, dedicating resources to support complex claims, enhancing feedback procedures and providing better training for claims managers.

The Victorian Government's initial response to the Rozen Review committed to structural changes to improve complex claims management,[101] including establishing a Complex Claims Unit with dedicated staff and improving transparency by establishing advisory committees. While further work occurred to address the review's findings, most recommendations were not implemented. The *Workplace Injury Rehabilitation and Compensation Amendment Act 2025* (Vic) addresses some of the findings, including improving the experience of claimants by introducing a Code of Claimants' Rights and mandatory training for case managers.[102] The changes came into effect 6 August 2025.

4.3.3 State and territory arrangements

Schemes are actively working to improve claims management through a combination of targeted training, regulatory reform, and service delivery enhancements. The initiatives vary in scope and delivery but collectively reflect a nationwide focus on professionalising claims management and ensuring consistent service quality.

Most states and territories require or provide training covering technical elements and competency standards. There has also been a greater focus on training in 'soft skills' such as empathy and resilience. The content of the training is typically left to the insurer or organisation employing claims managers. Additionally, while the need for formal qualifications is often recommended by schemes or preferred by insurers, it is typically not a requirement for becoming a claims manager. However, in Tasmania, appointed injury management coordinators are required to undertake a course approved by WorkCover Tasmania – currently a Certificate IV in Personal Injury Management (FNS42120) or a Diploma of Personal Injury and Disability Insurance Management (FNS51920).[103]

At the national level, the Personal Injury Education Foundation (PIEF) is working to develop national standards 'to uplift capability and create consistent, high-performing practices across the personal injury industry'.[104] The PIEF supports workers' compensation bodies by offering accredited

[100] P Rozen QC, *Victorian workers compensation system - independent review*, 2021, WorkSafe Victoria; P Rozen QC, *Improving the experience of injured workers: A review of WorkSafe Victoria's management of complex workers' compensation claims* (Rozen Review), 2021, report to WorkSafe Victoria, WorkSafe Victoria.
[101] Victorian Government, *Independent Review into Complex Workers' Compensation Claims Management Victorian Government Response*, 2022, Victorian Government.
[102] Workplace Injury Rehabilitation and Compensation Amendment Bill 2025 (Vic).
[103] WorkSafe Tasmania, *Injury management co-ordinators*, 2025, WorkSafe Tasmania.
[104] Personal Injury Education Foundation, *National Standards*, 2025, Personal Injury Education Foundation.

qualifications and promoting continuous learning across jurisdictions. We understand that PIEF is currently working on national competencies for claims managers.

Triaging workers' compensation claims in Australia is generally not mandated by legislation, but it is commonly embedded in policy and guidance issued by scheme regulators. While some legislation requires timely and efficient claims management, detailed triage processes are typically outlined in operational frameworks, guidance documents and insurer protocols. These vary by state and territory, with models often focusing on early intervention and prioritising complex or psychological injury claims. A range of triage tools are used across workers' compensation schemes, including biopsychosocial screening tools, automated modelling, and data-led assessment and human assessment.[105] The Dore Report, Rozen Review and the experience of WorkSafeBC, the workers' compensation authority for British Columbia in Canada, highlight the need for human involvement in the triaging process and caution against over-reliance on data-driven models.[106]

In terms of service standards and performance monitoring, Victoria has operating principles in its claims manual for use by its staff and authorised agents who manage WorkCover claims.[107] It also publishes data on agent performance and financial incentives.[108] The performance data includes results against targets for return to work, client satisfaction measured via survey of injured workers and employers and complaint outcomes, quality of decisions measured via audits, and timeframes for decisions and payments. The *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) has also recently been amended to provide for a code of rights for claimants under the Act. It outlines what the code should cover, including the rights of claimants, the obligations of the authority and its agents, and how complaints are made and dealt with.[109]

In New South Wales, SIRA sets standards and guidelines to hold insurers accountable for the quality of services delivery to workers and their families, employers and other stakeholders.[110] This includes overarching claims management principles and standards of practice that provide direction for handling and administering claims.[111] Schemes also use claimant and employer surveys to inform service improvements.

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[105] Rozen Review, [6.74]–[6.85].
[106] Rozen Review, p 114.
[107] WorkSafe Victoria, *Claims Manual - 1.4 Agent operating principles*, WorkSafe Victoria, accessed 22 August 2025. Available at https://www1.worksafe.vic.gov.au/vwa/claimsmanual/Claims%20Manual/1-the-scheme/1-4-Agent-operating-principles/1-4-agent-operating-principles.htm.
[108] WorkSafe Victoria, *Annual reports - Agent performance results 2023/24*, 2025, WorkSafe Victoria.
[109] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 12C.
[110] SIRA, *Standards of practice*, 2022, SIRA, accessed 22 August 2025. Available at www.sira.nsw.gov.au/workers-compensation-claims-guide/legislation-and-regulatory-instruments/other-instruments/standards-of-practice; SIRA, *Workers' compensation guidelines,* March 2021, SIRA, accessed 23 August 2025. Available at www.sira.nsw.gov.au/workers-compensation-claims-guide/legislation-and-regulatory-instruments/guidelines/workers-compensation-guidelines.
[111] SIRA, *Overarching claims management principles: Workers' compensation claims management guide*, 2019, SIRA, accessed 25 August 2025. Available at www.sira.nsw.gov.au/workers-compensation-claims-guide/legislation-and-regulatory-instruments/other-instruments/standards-of-practice/overarching-claims-management-principles.

In South Australia, a legislative requirement is imposed on ReturntoWorkSA to adopt and apply the service standards set out in a schedule to the *Return to Work Act 2014* (SA).[112]

4.3.4 What we considered

Consistent with what we heard, we considered:

- the skills, training and qualifications of claims managers, including their cultural competency and capability to support people experiencing trauma
- the process for triaging and reviewing claims
- whether public reporting of claims data would enhance transparency and performance
- whether the new Act should contain principles of claims management
- whether service standards need to be enhanced.

Training and development of claims managers

Effective claims management hinges on the capability and professionalism of claims managers whose decisions directly affect the recovery and wellbeing of injured workers. Stakeholder feedback and user-experience research consistently highlighted the need to improve training and professional development for claims managers. This reflects the view that optimal outcomes are due to good scheme design and good scheme administration.

Comcare provides an online training program for its claims managers. It covers key concepts to assist claims managers to understand their obligations under the SRC Act and includes modules on decision-making, determining liability, incapacity, medical treatment, permanent impairment and reconsiderations.

Comcare also provides capability standards for the claims manager position.[113] Each determining body or claims agent will also supplement this broad training with specific training relevant to their organisation and environment. This includes training in claims management systems, communications and customer service, and technical areas of focus such as normal weekly earnings calculations for industries with inconsistent work patterns or additional allowances.

The Certificate IV in Personal Injury Management is a nationally recognised qualification designed to build the technical and interpersonal capabilities required for roles in personal injury, including claims management and return to work.[114] While not legislated as mandatory for claims managers in any jurisdiction, it is widely regarded as a benchmark qualification across the industry. Organisations often prefer it for claims management roles.

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[112] *Return to Work Act 2014* (SA), s 14, Sch 5.
[113] Comcare, *Claims manager core capabilities*, Comcare, accessed 22 August 2025. Available at www.comcare.gov.au/roles/claims-managers.
[114] Training.gov.au, *National Training Register - FNS42120 Certificate IV in Personal Injury Management*, Training.gov.au, accessed 25 August 2025. Available at https://training.gov.au/Training/Details/FNS42120/qualdetails.

The training includes units that develop foundational knowledge of the personal injury sector and relationship management. The training also covers managing caseloads, managing claims, using medical knowledge in claims management, delivering and monitoring customer service, and communicating to build relationships.[115] Claims managers can go on and complete a Diploma of Personal Injury and Disability Insurance Management. This training covers advanced case management and leadership concepts such as complex case management, supervisions and injury management strategies.[116]

Comcare's training and capability standards, along with nationally recognised qualifications, such as the Certificate IV in Personal Injury Management and Diploma of Personal Injury and Disability Insurance Management, provide a strong base – but they are not universally mandated or standardised. This inconsistency can lead to uneven outcomes and missed opportunities for best practice. In particular, there appears to be an absence of focus on the soft skills critical to person-centred, culturally aware approaches to communicating with users of the system.

We recommend the new Act imposes obligations on determining bodies to ensure a person who is in a claims manager position completes approved training within a required period or holds an approved qualification.

To ensure flexibility, consistency and quality, we recommend that the governing board be given authority to approve training courses, mandate when training must be completed, and recognise prior experience and learning. The governing board should also approve the steps for professional development pathways. This oversight would support best practice, encourage innovation, enable continuous improvement across the Comcare scheme, and reduce further harm to workers from regular changes of case managers.

Training must cover technical, legislative and administrative aspects of the role. However, to meet the needs of a diverse and evolving workforce, it must also include soft skills such as empathy, resilience and effective communication.

Cultural competency training is essential in a multicultural society, where workers may face language barriers, cultural stigma or systemic disadvantage. Similarly, trauma-informed practice is critical for managing claims involving psychological injury or distress.

[115] Training.gov.au, *National Training Register - FNS42120 Certificate IV in Personal Injury Management*, training.gov.au, accessed 22 August 2025. Available at https://training.gov.au/training/details/FNS42120/qualdetails.
[116] Training.gov.au, *National Training Register - FNS51920 Diploma of Personal Injury and Disability Insurance Management*, training.gov.au, accessed 22 August 2025. Available at https://training.gov.au/training/details/FNS51920/qualdetails.

Claims administration accountability and transparency

Transparency is a powerful driver of accountability and improvement. Currently, there is limited public visibility of how claims management is resourced and delivered.

The *It Pays to Care* report advocates for improved reporting and notes its benefits in enhancing claims management systems, and cooperation and trust between stakeholders.[117] Reporting on claims management would provide valuable insights for regulators, policymakers and the public. It would also help identify systemic issues such as under-resourcing, burnout and inefficiencies.

Some may argue that such reporting could expose insurers to reputational risk or create administrative burden. However, these concerns can be mitigated through standardised reporting formats and contextual interpretation. The benefits – greater accountability, better-informed oversight and improved trust in the system – make a compelling case for transparency.

We recommend that the governing board develop indicators for Comcare scheme and claim performance, and determine the information it requires to assess outcomes and what should be made publicly available. The governing board can consider a range of metrics (such as case numbers per claims manager, annual rates of staff turnover and the full costs of claims management) and determine the most effective way to drive performance. This could be through governing board oversight or broader publication. This approach ensures appropriate oversight and transparency of claims administration, while allowing flexibility to adapt and evolve reporting over time.

Claim triage and risk assessment

Not all claims are equal in complexity or risk. Some can be resolved quickly with minimal intervention while others are likely to become prolonged and are resource intensive. We acknowledge that most, if not all, determining bodies already have frameworks in place for identifying high-risk claims and triaging them. However, we recognise a need to embed risk management principles in the claims management process. We see that imposing triage as a legislative function would elevate its significance, ensuring it remains a central focus for determining bodies and that funding is available to support it.

We therefore recommend that insurers are required to triage claims and assess the risk of a claim becoming complex to minimise the duration and severity of the injury or illness. This recommendation is captured in the claims management principles in the following section.

Principles of claims management

The current Comcare scheme lacks a clearly articulated set of principles to guide claims management. Stakeholder feedback, user-experience research, and comparative analysis of other schemes reveal that the absence of such principles contributes to inconsistent practices, procedural complexity and diminished trust in the system. These experiences underscore the need for a principled, person-centred approach to claims management that promotes fairness, transparency and recovery.

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[117] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – Bringing evidence-informed practice to work injury schemes helps workers and their workplaces* (*It Pays to Care*), 2022, Royal Australasian College of Physicians.

Introducing overarching claims management principles would provide clarity and consistency across the Comcare scheme. These principles would complement the standards of practice we recommend in the next paragraph by establishing the values and objectives that underpin claims management.

The recent decision of *SRGF v Comcare (No 2)* considered s 72 of the SRC Act and the requirement that claims determinations be guided by 'equity, good conscience and the substantial merits of the case'.[118] The Federal Court confirmed that this provision authorises Comcare 'to proceed without technicality' and 'instead to focus on merits'.[119] We take the same approach to the claims management principles. Including them encourages taking a fair, just and equitable approach, rather than meeting binding legal standards.

The principles should be embedded in legislation and apply to all determining bodies and claims managers. They should cover the following:

- **Person-centred approach**: Claims management must prioritise the health, dignity and recovery of the injured worker.
- **Fairness and respect**: All claimants must be treated fairly, respectfully and with cultural sensitivity.
- **Accuracy, fairness and consistency**: Decision-making must be accurate, fair and consistent, without regard to technicalities.
- **Transparency and timeliness**: Decision-making must be timely and clearly communicated.
- **Proactive, compassionate and responsive service**: Claims managers must act promptly and adaptively to support recovery, and compassionately to assist seriously injured workers and bereaved families.
- **Trauma-informed practice**: Processes must identify and minimise harm and distress, in particular for psychological injury claims.
- **Use of AI and automation**: AI must be used ethically, transparently and with human oversight.
- **Specialist support for psychological injury**: Claims managers must have access to specialist advice and training.
- **Triage and complexity assessment**: Notified claims must be assessed promptly for complexity to identify risks to recovery and return to work.
- **The right to choose and have control**: Workers should have the right to choose and control their recovery, where possible, to encourage their commitment to achieving that goal.
- **Information gathering and consent**: Workers must be supported to provide relevant information, with clear and accessible consent processes.

These principles should be distinct from service standards, which set operational expectations. Together, they would form a comprehensive framework for ethical and effective claims management.

We recommend the new Act contains a set of claims management principles to guide decision-making and actions throughout the claims process. The governing board should be empowered to oversee implementation, monitor compliance, and recommend any changes to the principles to ensure they

[118] *SRGF v Comcare (No 2)* [2025] FCA 752.
[119] *SRGF v Comcare (No 2)* [2025] FCA 752, [29].

reflect contemporary practices and community expectations (see Chapter 1 regarding the governing board's ability to recommend changes to the Act).

Service standards

Service standards are essential for ensuring that injured workers receive timely, respectful and effective support. While many determining bodies have internal benchmarks, these are not always transparent or enforceable. Requiring determining bodies to adopt service standards approved by the governing board would establish a clear, consistent baseline for performance across the system.

To be meaningful, these standards must include mechanisms for complaints and consequences for breaches. Without these mechanisms, standards risk becoming aspirational rather than operational. While some determining bodies may be concerned about increased oversight, this approach would ultimately support better outcomes, reduce disputes and enhance public confidence.

We recommend that the new Act require determining bodies to adopt and apply service standards approved by the governing board, including procedures for handling complaints and consequences for breaches. Examples of legislated standards in other schemes include South Australia's Statement of service standards[120] and Victoria's Code of Claimants' Rights.[121]

It is likely that determining bodies will use AI and automation to meet these standards. As detailed in Chapter 1, retaining the human element is vital to ensuring that workers receive proper support.

Including service standards and publicly reporting claims management data would address the concerns we saw in submissions and the user-experience research more generally about issues with transparency in the Comcare scheme.

4.3.5 Panel recommendations

Recommendation 58

We recommend that Comcare is required to comply with the Digital Transformation Agency's *Policy for the responsible use of AI in government*.

[120] *Return to Work Act 2014* (SA), Sch 5.
[121] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 12A.

Recommendation 59

We recommend arrangements are made to fund free, confidential non-legal advice or assistance to claimants; for example, similar to services provided by the Injured Workers Service in the Australian Capital Territory.

Recommendation 60

We recommend the governing board has the ability to approve courses and training for claims managers, when that training is required to be provided and taking into account recognition of prior experience and training.

We recommend the governing board also approves steps for professional development.

Recommendation 61

We recommend mandatory training for claims managers include:

a. training approved by the governing board
b. cultural competency training
c. training in trauma-informed practices.

Recommendation 62

We recommend that the governing board develops indicators for scheme and claim performance and determines the information it requires to assess outcomes and what should be made publicly available.

Recommendation 63

We recommend determining bodies are required to triage claims and assess the risk of a claim becoming complex, to minimise the duration and severity of the injury or illness.

Recommendation 64

We recommend the new Act contains a set of principles to guide claims management. We further recommend that these principles do not impose legally enforceable obligations.

Recommendation 65

We recommend that the new Act requires determining bodies to adopt and apply service standards that are approved by the governing board. These should include:

a. procedures for dealing with complaints that service standards are not being followed

b. consequences for a breach of a service standard.

4.4 Delegated claims management arrangements

4.4.1 Background

Since early 2016, under s 73B of the SRC Act, Comcare has delegated claims decision-making to officers of Services Australia and the Australian Taxation Office (ATO). These entities are the 2 largest Australian Government employers.

These arrangements have their genesis in the Efficiency through Contestability Program led by the Department of Finance. This was introduced in 2014–15 by the Abbott government.[122]

The program aimed to apply the most efficient way of designing and delivering government policies, programs and services. It was part of the Contestability Framework, which first considered whether government should deliver a function and whether a function should be open to competition.[123]

As part of this program, Comcare trialled outsourcing claims management for selected entities. A pilot of these arrangements began in February 2016. The pilot involved delegating workers' compensation decision-making authority from Comcare to officers of the ATO and Services Australia (then the Department of Human Services).[124] Subsequently, third-party service providers were contracted to manage new claims and claims up to 24 months old for the respective agencies.

Following an Australian National Audit Office (ANAO) audit of the Efficiency through Contestability Program, DCM options for entities were established as a feature of the Comcare scheme.[125] Since this time, both the ATO and Services Australia have continued using these arrangements, with the support of third-party claims managers.

To be eligible for a DCM arrangement, Comcare requires an organisation to:

- be a non-corporate Commonwealth entity
- provide evidence that it has consulted appropriately with employees about the intended change
- demonstrate its capacity and capability to manage claims effectively.

The arrangement must also be cost-effective for Comcare.

Three types of DCM arrangements are available, with claims management being undertaken by Comcare, a third-party service provider or internal claims managers. In all 3, participating agency staff are delegates who make determinations on workers' compensation claims for the agency.

[122] Department of Finance, *Contestability in the Public Sector*, Department of Finance, accessed 23 August 2025. Available at www.finance.gov.au/publications/policy/contestability-public-sector.
[123] Australian National Audit Office (ANAO), *Efficiency through Contestability Programme*, 2018, ANAO, p 7.
[124] Comcare, *Annual report 2016–17*, 2017, Comcare, p 52.
[125] ANAO, *Efficiency through Contestability Programme*, 2018, ANAO, p 81.

Comcare is responsible for managing the DCM arrangements and monitoring the performance of participating agencies and service providers.[126]

4.4.2 Previous reviews

Australian National Audit Office, Comcare performance audit, 2023

In 2023, the ANAO conducted a performance audit of Comcare's administration of its workers' compensation scheme claims.[127] It found that DCM arrangements achieved positive results for Services Australia and the ATO, leading to fewer claims, improved return to work rates and lower premiums compared to the Comcare scheme overall. Data showed higher reconsideration affirmation rates and claim determination timeliness compared to claims managed by Comcare.

The ANAO audit recommended that Comcare periodically review the DCM arrangements to identify areas of efficiency and lessons learnt that could apply to Comcare's management of claims or inform the application of DCM to other non-corporate Commonwealth entities. The scope of the audit only included Comcare's oversight of the DCM arrangements. It did not analyse the ATO and Services Australia's management of claims or the performance of third-party claims management providers.

4.4.3 State and territory arrangements

The DCM arrangements under the Comcare scheme are somewhat similar to state-based private sector and some public sector workers' compensation system operations, particularly their use of claims agents.

In the public sector, workers' compensation claims arrangements vary.[128]

- New South Wales has several different types of cover for public sector employers, including being self-insurers.
- In Victoria, WorkSafe Victoria manages public sector claims through selected agents.
- In Queensland, WorkCover Queensland handles all claims.
- In South Australia, the state public sector is self-insured, and agencies assume responsibility for managing claims.
- Tasmania has a whole-of-government self-insurance arrangement, and claims management is undertaken through third-party claims agents.
- The majority of Northern Territory public servants are covered by government self-insurance arrangements, with claims management contracted to Gallagher Bassett.

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[126] Comcare, *Delegated Claims Management Arrangements: Overview*, Comcare, accessed 22 August 2025. Available at www.comcare.gov.au/claims/employer-information/delegated-claims.
[127] ANAO, *Comcare's Administration of its Workers' Compensation Scheme Claims*, June 2023, ANAO. Available at www.anao.gov.au/work/performance-audit/comcares-administration-its-workers-compensation-scheme-claims.
[128] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, pp 132–133.

These arrangements are distinct from the Comcare model, as they do not delegate claims management authority to the employer itself. Instead, they rely on external agents or internal government insurers to manage claims and make claims determinations, maintaining a clearer separation between employer and insurer functions.

4.4.4 What we heard

Employers and claims managers participating in DCM arrangements offered insights into the practical operation of these arrangements and advocated for their continuation.

The ATO and Services Australia supported retaining their current arrangements and noted improved premium performance and return to work outcomes. This is supported by more effective decision-making and higher affirmation rates on appeal. The ATO highlighted the benefits of integrating claims and rehabilitation functions, enabling tailored support, early intervention and better evidence gathering. For the ATO, managing ART matters in-house was seen as a key strength, allowing holistic dispute resolution. Gallagher Bassett, a third-party claims manager for the ATO, also supported the arrangements and noted the improved outcomes.

Unions, however, opposed outsourcing claims management generally. They argued that scheme agents' profit motive adds costs, undermines investment in claims managers, and leads to poor outcomes for workers.[129] Some unions also opposed DCM arrangements specifically.[130]

The Community and Public Sector Union (CPSU) argued that DCM arrangements should be expressly prohibited in the SRC Act, and raised concerns about the level of oversight, a lack of independence and potential for bias. The CPSU also noted an increase in complaints it has received from members since the introduction of the arrangements.[131] Plaintiff law firms typically shared the union view, highlighting independence concerns and their belief that using third-party claims managers can lead to unethical practices and incentivise claim denial for cost reasons.[132]

Despite the ANAO's apparently good report card for the Commonwealth's DCM arrangements, we heard a variety of strong views that contradicted the finding.

Concerns were raised about third-party claims managers, including that scheme agent models often incentivise poor behaviour leading to poor outcomes for workers. Submissions showed support for bringing claims management back into Comcare.

[129] See ACTU submission, p 28; Australian Manufacturing Workers' Union (AMWU) submission, pp 42–44; and Australian Services Union Taxation Officers' Branch submission, p 2.
[130] Australian Services Union Taxation Officers' Branch submission, pp 1–2; Community and Public Sector Union (CPSU) submission, pp 41–42.
[131] CPSU submission, p 41.
[132] For example, see Maurice Blackburn Lawyers submission, pp 21–22.

> Since commencement of the DCMA the ATO have reduced premium costs by 90%, with a premium rate reduction of 1.26% (falling from 1.37 to 0.11% of payroll). This has been accompanied by an increase in sustainable return to work rates, and in effective decision making, validated with an increased affirmation rate upon appeal.
>
> **Australian Taxation Office submission, p 23-24.**

> ... handing responsibility of claims management directly to employers does not align with best practice principles relating to a fair and equitable system. Regardless of oversight, a reasonable perception of biased decision-making leads workers to not explore their compensation rights when injured at work.
>
> **CPSU submission, p 40.**

These views broadly aligned with the perceptions of user-experience participants who expressed concerns about the fairness and transparency of DCM. A recurring theme was the perceived lack of independence when the employer also acted as the determining body. Some participants suggested employers with delegated authority acted as gatekeepers, suppressing or obstructing claims and influencing outcomes in ways that did not prioritise the injured worker's wellbeing. To address these issues, participants recommended stronger regulation and oversight of DCM arrangements. They called for independent decision-making processes to ensure fairness and reduce employers' influence over claims outcomes.

We are grateful for a submission we received from an injured worker that we consider encapsulated the concerns we heard from current and former claimants about the confusion and inefficiency created by these arrangements.

Case study
Delegated claims

'I submitted a Comcare application in 2023, on the advice of my treating psychologist. I had been diagnosed with Complex Post-Traumatic Stress Disorder linked to a series of incidents in my APS role.

I was assigned a support worker to assist me to prepare my claim. Identifying a date of injury was challenging, because the experiences that caused my psychological injury occurred over several years in my role. Ultimately, my support worker advised me to submit the date of injury in 2023, which was, in reality, years after I had first experienced symptoms and sought treatment from the workplace incidents I experienced.

My claim was accepted 6 weeks after I submitted the application. A DCM provider was managing my claim, and they told me I needed to see an independent psychiatrist. My support worker told me this was unnecessary, and she would speak with the claims manager about it; I was later told I did not need to see a psychiatrist.

Six months after submitting my claim, I had reached a point where I was experiencing suicidal ideation. My psychologist recommended a treatment program for my symptoms. The claims manager denied this request, advising the reason was because I had not seen a psychiatrist. I was extremely distressed at this and explained that I was willing to see a psychiatrist when I first submitted my claim, but was told it was not required. The claims manager responded that they would look into it, but I did not hear back.

I contacted them a couple of months later when I was again experiencing suicidal ideation. They informed me that my claim was being transferred to a different provider, and I would have to wait for a response. Two months later, the new claims manager advised they were still processing the transferred cases, and I should call emergency services or Beyond Blue if I needed help.

My mental health continued to deteriorate to a point of severe crisis. The claims manager informed my psychologist that the treatment program would be rejected because I had not undergone a psychiatric assessment. My psychologist arranged a psychiatrist appointment, who confirmed the diagnosis of Complex Post-Traumatic Stress Disorder and recommended the same treatment program. At this stage, it had been approximately five months since the initial recommendation for the program – which was intended to be for intensive crisis support. The claims manager again rejected this request, citing symptoms pre-dating the (incorrect) date of injury on my Comcare claim.

My employer then made contact to inform me that they would make a one-off payment for the treatment program, without admitting liability. I was finally able to access the treatment program 12 months after it was initially recommended – not through the Comcare program, but by steps being taken to work around it.

I later discovered that the claims manager had ceased funding my psychologist sessions without informing me. Fortunately, my psychologist continued to see me without billing, knowing that I was on reduced income from Comcare. My psychologist's commitment to my health carried me through a period where Comcare and my employer left me feeling abandoned, dehumanised and at times as though they were waiting for my death to resolve my case.'

4.4.5 What we considered

In considering whether DCM arrangements should continue under the Comcare scheme, we examined several critical issues:

- the effect on workers
- actuarial analysis and reasons for 'improvements'
- greater regulatory oversight and alternatives to DCM arrangements, including self-insurance.

Effect on workers

While we received favourable submissions about DCM arrangements from organisations involved in them, the weight of submissions from unions, individuals and user-experience participants raised serious concerns about the effect of these arrangements on workers. As detailed above, workers reported feeling discouraged from making claims, particularly when the employer was also the

decision-maker. In such cases, the dual role of employer and claims manager creates a conflict of interest that can erode trust, exacerbate harm and hinder recovery.

If workers are less inclined to report injuries or illnesses, this could result in the under-reporting of workplace injuries and have adverse implications for workplace safety.

The appeals process under the SRC Act can be complex in a delegated environment. Workers may struggle to understand who made a decision and how to challenge it, especially when both the employer and Comcare are involved. Simplifying and streamlining review pathways in the legislation could improve access to justice and reduce the administrative burden.

In its submission, the Australian Services Union (ASU) said it opposed Comcare continuing the arrangement of delegating its decision-making powers to the ATO. It claimed 'the ATO has taken advantage of this delegation to artificially contrive the refusal of a very high proportion of the workers compensation claims made by its employees'. The ASU submission urged us to 'reject the ATO's administration of the Comcare scheme, return the delegation to Comcare, reject the use of "administrators" such as Gallagher Bassett, and instead use properly trained and supported Comcare employees to administer the Comcare scheme fairly and compassionately'.[133]

Actuarial analysis and reasons for improvements

As part of actuarial analysis for the review, we asked Taylor Fry to assess the effect of removing DCM arrangements. The analysis shows that the cost of removing these arrangements is driven by differences in claims experience between delegated agencies and other premium payers. The DCM arrangements have resulted in significantly lower claim acceptance ratios and reduced claim payments. We explore this further in Part D of this report.

As stated above, the ANAO 2023 report said DCM arrangements achieved 'positive results' in terms of lower claim numbers, improved return to work rates and lower premiums for the ATO and Services Australia.[134]

The ANAO also said Comcare had advised it that some of the positive results stemmed from claims management, early intervention and rehabilitation functions being within one agency, rather than split between Comcare as the claims manager and the employer as rehabilitation manager.[135] We note that bringing together these functions is at the heart of most complaints about DCM. A recurring concern is the perceived lack of impartiality when the employer is the determining body.

The CPSU's submission argued that DCM arrangements 'deter injured workers from making genuine claims and seeking support for recovery'. The CPSU said anecdotal evidence indicated 'workers within Services Australia will not make a claim and seek support until after multiple workplace incidents in relation to psychological injury'.[136]

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[133] ASU submission, p 4.
[134] ANAO, *Comcare's Administration of its Workers' Compensation Scheme Claims*, 2023, ANAO, p 11.
[135] ANAO, *Comcare's Administration of its Workers' Compensation Scheme Claims*, 2023, ANAO, p 50.
[136] CPSU submission, p 40.

The ATO's own submission also provided details on its early treatment program. It said identifying alternative pathways to claim has contributed to 'ATO success', with many new claimants choosing to pursue its program as an alternative to compensation. The ATO said about 8% of claims lodged are withdrawn in favour of this program and that many more choose this pathway before lodging a claim for compensation.[137] The ATO submission said this was 'especially useful for minor injuries, or early onset disease claims, where quick access to reimbursement can assist with return to or recovery at work'.[138]

While acknowledging the benefits of appropriate early treatment, the noticeable reduction (to roughly 68% or one-third) in claims received after DCM suggests that other factors are at play.

Greater regulatory oversight and alternatives to DCM arrangements

Injured workers interviewed for the Monash user-experience study also wanted stronger regulation of delegated claims organisations and self-insured licensees.[139]

Some workers wanted Comcare, or an independent third party, to have greater oversight and input into claims determinations made by their employer. This was due to them considering their employer as lacking independence, given their injury occurred in the workplace. This lack of independence from the workplace was considered unfair. They reported a lack of transparency during the claims process and suggested that Comcare needed to improve quality control.

While the SRC Act permits delegating claims management functions to employers, it does not clearly define the boundaries of those powers or the outcomes it is seeking to achieve. This has the potential to lead to inconsistent interpretations across the Comcare scheme, creating variability in how claims are assessed and managed. A more prescriptive legislative approach could help standardise practices and reduce ambiguity.

The framework also lacks robust legislated oversight and accountability mechanisms. While Comcare retains regulatory authority, the SRC Act does not provide strong tools for intervention when delegated agencies fall short.

We heard suggestions to increase regulatory oversight of DCM arrangements to more closely align them with self-insurance arrangements. This would provide an extra layer of oversight, with a governing board monitoring arrangements and having the ability to impose conditions or suspend DCM arrangements. Self-insurers are also required to undergo audits to demonstrate performance and continuous improvement. DCM arrangements could also be subject to audits.

DCM shares some operational similarities with self-insurance, particularly in terms of employer control over claims and the potential for integrated case management. However, a fundamental difference lies in financial accountability. Self-insured licensees in the Comcare scheme (including Commonwealth authorities) bear the direct financial risk of their claims and are subject to stringent oversight and performance requirements.

[137] Australian Taxation Office submission, p 24.
[138] Australian Taxation Office submission, p 24.
[139] Monash user-experience study, p 34.

In contrast, DCM agencies manage claims without assuming direct financial liability, as costs are absorbed through the broader premium model. The disconnect can weaken incentives for cost control and efficient claims resolution, raising questions about whether public agencies should exercise such control without the accountability mechanisms that apply to self-insurers.

There are examples of the public sector using self-insurance arrangements in Comcare and other workers' compensation schemes. As detailed above, a number of states and territories also allow or require their public sector workers to be covered by self-insurance arrangements.

The ACT Government is the most recent example of a public sector organisation moving from premium-paying arrangements to self-insurance.[140] From 1994 to 2019, the ACT Government was a premium-paying employer in the Comcare scheme. Over time, rising premium costs became a significant concern – reaching approximately $81 million in 2015–16. In response, the ACT Government applied to become a self-insurer in 2018, and its licence commenced on 1 March 2019.[141] The shift to self-insurance was expected to deliver several benefits, including faster decision-making, quicker access to medical support, better integration of rehabilitation and safety services, and a more direct role in supporting injured workers. Additionally, the move aimed to reduce overall costs and allow savings to be reinvested in injury prevention and workplace health programs.[142]

A 2020 audit of the transfer of arrangements from Comcare noted some issues, particularly the assessment of liabilities and assets.[143] However, we have heard the move to self-insurance has largely been favourable and that many of the anticipated benefits, including improved return to work outcomes, have been realised. The ACT Government also provided us with evidence that worker satisfaction improved with the move to self-insurance. The balance of increased oversight, greater control and administrative efficiency may make self-insurance a more appropriate option for workers and public sector organisations with the size, capability and claim volume to explore alternative claims arrangements.

The actuarial advice we commissioned noted that allowing premium payers to become self-insured would likely have a proportional effect on Comcare scheme costs. Because premiums are experience-rated, agencies transitioning to self-insurance would not be expected to materially affect the financial position of the remaining premium payers. The actuarial modelling indicates negligible change in annual incurred costs or outstanding claims liability for the broader scheme.

However, for agencies that opt to self-insure, the cost implications may be more significant. Self-insurance introduces stronger incentives to improve return to work outcomes, particularly for

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[140] Currently, there are 4 declared Commonwealth authorities in the Comcare scheme: the ACT Government, Australian National University, Australian Postal Corporation and the Reserve Bank of Australia. See Comcare, *Comcare Annual Report 2023–24*, 2024, Comcare, p 201, Table 27. Available at www.comcare.gov.au/about/governance/annual-report.

[141] ACT Auditor-General, *Transfer of Workers' Compensation Arrangements from Comcare: Report No. 6*, 2020, ACT Auditor-General, p 10.

[142] ACT Auditor-General, *Transfer of Workers' Compensation Arrangements from Comcare: Report No. 6*, 2020, ACT Auditor-General, p 13.

[143] ACT Auditor-General, *Transfer of Workers' Compensation Arrangements from Comcare: Report No. 6*, 2020, ACT Auditor-General, p 1.

long-duration claims, and enables more tailored claims management strategies. These behavioural shifts could materially influence financial outcomes. The extent of these effects is uncertain and would depend on how agencies use their new responsibilities.

We understand there would be practical issues around the requirement for financial guarantees – typically a cornerstone of self-insurance – which may be redundant or symbolic when the Commonwealth ultimately underwrites its own liabilities.

While DCM has delivered strong performance outcomes for participating agencies – particularly in terms of reduced premiums, improved return to work rates, and more timely decision-making – these gains must be weighed against the broader implications for the integrity and fairness of the Comcare scheme. The evidence suggests that a significant component of the cost efficiency achieved under DCM is linked to lower claim acceptance rates and claims costs, and diversion of workers to alternative forms of support. This raises concern that financial savings may come at the expense of injured workers' access to statutory entitlements. Importantly, the practices that underpin these efficiencies, such as early intervention and integrated rehabilitation, can be adopted across the Comcare scheme without the need for delegation.

Significantly, the weight of feedback from those we consulted or who made submissions points to a consistent and troubling pattern. Workers feel discouraged from making claims, perceive a lack of independent decision-making, and experience a diminished sense of procedural fairness under DCM arrangements.

Compounding these issues is the absence of a clear legislative framework to support DCM. The SRC Act does not define the scope, standards or oversight mechanisms necessary to ensure consistency and accountability. While it might be possible to address this gap, it begs the question as to why this is needed when self-insurance could be an alternative.

For these reasons, we recommend DCM arrangements not continue.

We acknowledge there is a strong case for exploring alternative arrangements that incorporate the efficiency and lessons learnt from DCM arrangements. These arrangements could provide for clear financial accountability, worker involvement in decision-making regarding the arrangement, greater regulatory oversight, and transparency to ensure there is responsibility and accountability to the injured worker. However, because we have not fully explored these arrangements, we refrain from making further recommendations on this issue.

4.4.6 Panel recommendation

Recommendation 66

We recommend that Comcare's ability to delegate its claims management functions and powers to premium-paying agencies is not replicated in the new Act.

Chapter 5. Providing equitable benefits to effectively support injured and ill workers and their families

What this chapter considers

The terms of reference for the review asked us to consider how entitlements could be structured better to support injured and ill workers and the families of workers who suffer injuries and illnesses resulting in death, including the use of lump sum payments. This chapter covers benefits for:

- permanent impairment
- incapacity
- treatment and care expenses
- death and funeral benefits
- common law
- entitlements from other sources.

The failure of the SRC Act to keep pace with changes made over the years to state and territory workers' compensation laws means that several categories of entitlements require fundamental updates to reflect contemporary settings to ensure fairness, and to provide best practice and proper support.

Links to other chapters

This chapter links to Chapter 6, which deals with our recommendation on the commutation of entitlements. It also links to Chapter 4, which deals with evidence to establish the occurrence of a work-related injury or illness. The best practice principles outlined in Chapter 1 have also informed our work here.

The current framework

Part II of the SRC Act sets out the circumstances in which compensation and benefits are payable under the Act. The following entitlements may be payable once liability is established for an injury or illness, and subject to certain eligibility criteria:

- medical expenses, including the provision of certain aids or appliances (s 16)
- death payments and funeral expenses (Part II, Division 2)

- incapacity payments (income replacement) (Part II, Division 3)
- permanent impairment and non-economic loss lump sum payments (Part II, Division 4)
- household and attendant care services (Part II, Division 5).

The SRC Act also provides for payment of rehabilitation costs, including certain alterations, modifications and other aids and appliances in Part III (s 39).

The Comcare scheme is generally referred to as a 'long-tail scheme' in that incapacity entitlements may continue to retirement age, and medical expenses for life.

What we heard

> The calculation of Normal Weekly Earnings (NWE) does not allow for a calculation that reflects the reality of many workers' remuneration. The current calculation for assessing income needs to change.
>
> **CPSU submission, p 6.**

> Consideration be given to step down in incapacity payments earlier than the current 45 weeks to incentivise return to work and to align with other schemes.
>
> **Unpublished submission No. 68, p 12.**

> Payments should be realistic and also take into consideration loss of career, superannuation contributions.
>
> **Individual submission No. 7, p 9.**

> Simpler calculations which accommodate and better reflect different earning arrangements (e.g. variations in overtime, rosters or pay cycles which are not 'weekly') would be easier for employees to understand and employers to administer.
>
> **John Holland Licensees submission, p 3.**

5.1 Permanent impairment

5.1.1 Background

Under the SRC Act, a claimant is paid compensation in certain circumstances where injuries result in permanent impairment and non-economic loss. As with other areas of entitlements, this area has given rise to disputation.

To be entitled to compensation for permanent impairment, the impairment must:

1. result from an injury
2. be permanent, and
3. with limited exceptions, be assessed at a degree of 10% or higher in accordance with the *Safety, Rehabilitation and Compensation Act 1988 – Guide to the Assessment of the Degree of Permanent Impairment Edition 3.0.* (Cth) (Comcare Permanent Impairment Guide).[1]

If a person is entitled to compensation for permanent impairment, they will also be entitled to an additional payment for non-economic loss resulting from the impairment.

5.1.2 Previous reviews

Hanks Review

In 2013, Peter Hanks QC (now KC) considered the permanent impairment provisions of the SRC Act in detail.[2] Where appropriate, Hanks's considerations are discussed in detail later. Hanks recommended:

- Safe Work Australia's (SWA's) template national guide be adopted as the approved guide for determining permanent impairment (Recommendation 8.1)
- separate impairments arising from a single injury occurrence be combined to achieve a combined impairment value (Recommendation 8.2)
- an algorithmic model be adopted to calculate the level of benefits (Recommendation 8.5)
- the threshold for worsening of impairment be reduced to 5% (Recommendation 8.3)
- the maximum amount for permanent impairment be the same as the lump sum for death benefit (Recommendation 8.4).

Since the Hanks Review, other Australian reviews have touched on aspects of permanent impairment relevant to our considerations.

[1] SRC Act, s 24.
[2] P Hanks QC, *Safety, Rehabilitation and Compensation Act Review: Report—February 2013* (Hanks Review), report to the Australian Government Department of Education, Employment and Workplace Relations, 2013, Chapter 8.

Review of the Workers' Compensation and Injury Management Act 1981 (WA)

In the 2014 review of *the Workers' Compensation and Injury Management Act 1981* (WA), WorkCover WA reviewed the requirement that compensation for permanent impairment only be payable through the settlement of the commutation process.[3] The reviewers said most of those involved in the Western Australian scheme agreed with that approach because permanent impairment can only be considered at the point of maximum medical improvement, which they considered to also be the ideal time to consider commuting future entitlements. The reviewers recommended maintaining this approach in the new legislation, and this was accepted.[4]

Review of the Northern Territory Scheme, 2014

Also in 2014, Roussos Legal Advisory and CrossInnovate Consulting conducted a review of the Northern Territory legislation. That review focused on the assessment method, noting problems with the approach of using the American Medical Association's (AMA's) Guides to the Evaluation of Permanent Impairment, Fourth Edition (AMA-4) approach. They recommended adopting SWA's template national guide.[5] The Northern Territory adopted a guide based on the template national guide in 2018.[6]

Review of the Operation of the Queensland Workers' Compensation Scheme, 2023

Queensland's 2023 statutory review, conducted by Glenys Fisher and David Peetz, considered the requirement that only a medical assessment tribunal could assess permanent impairment for psychological injuries. The reviewers referred to the benefits and challenges of moving to a model where psychiatric impairments are assessed through the independent medical examination process (in the same manner as for physical injuries), including consideration of the availability of appropriately trained psychiatrists. The reviewers decided not to recommend any changes to the process for assessing psychiatric impairments 'at this time'. But they suggested revisiting this after their other recommendations were implemented.[7]

5.1.3 State and territory arrangements

Each state and territory has different arrangements relating to compensation for permanent impairment. Some arise in the context of the broader approach to workers' compensation, such as whether the scheme is 'short-tail' or 'long-tail' – short-tail schemes tend to provide easier access to lump sum entitlements than long-tail schemes. Some schemes also take a dual-purpose approach to

[3] WorkCover WA, *Review of the Workers' Compensation and Injury Management Act 1981*, 2014, WorkCover WA, p 130, [532–538].
[4] *Workers Compensation and Injury Management Act 2023* (WA), s 97(3).
[5] Roussos Legal Advisory and Cross Innovate Consulting, *Review of NT Workers Rehabilitation and Compensation Act: Final Report*, 2014, NT WorkSafe, p 44.
[6] NT WorkSafe, *Guidelines for the Evaluation of Permanent Impairment,* 2018, 1(1), NT WorkSafe.
[7] G Fisher and D Peetz, *2023 review of the operation of the Queensland workers' compensation scheme*, 2013, WorkSafe Queensland, pp 90–91.

assessing permanent impairment in that the assessment is not only relevant for the payment of a lump sum but also affects the availability and extent of entitlements under other heads of compensation.[8]

In terms of access to lump sum compensation for permanent impairment, eligibility is ordinarily determined (at least in part) by reference to a minimum threshold degree of impairment.

As noted earlier, however, due to the context in which those payments are made, Table 3 does not provide for direct comparisons. For example, a person in Queensland with any level of permanent impairment can seek a lump sum, but receiving the lump sum generally results in an end to most other types of compensation for that injury.[9] Similarly, Western Australia only permits the payment of a permanent impairment lump sum when the employer's liability is commuted by a settlement agreement.[10]

Table 3: State and territory thresholds for permanent impairment

Jurisdiction	Physical (ex hearing loss)	Psychological
Comcare[11]	10%	10%
Australian Capital Territory[12]	Nil	N/A[13]
New South Wales[14]	11%	15%[15]
Northern Territory[16]	5%	5%
Queensland[17]	1%	1%
South Australia[18]	5%	N/A[19]
Tasmania[20]	5%	10%
Victoria[21]	10%	30%
Western Australia[22]	1%	1%

[8] For example, in New South Wales, incapacity payments cease after 5 years unless the injury results in a permanent impairment of 21% or greater: see *Workers Compensation Act 1987* (NSW), s 39.
[9] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 190.
[10] *Workers Compensation and Injury Management Act 2023* (WA), s 97(3).
[11] SRC Act, s 24(7). The SRC Act also does not have a permanent impairment threshold for the loss of, or the loss of the use of, a finger or toe, or the loss of the sense of taste or smell.
[12] *Workers Compensation Act 1951* (ACT), s 51.
[13] The Australian Capital Territory does not provide for a lump sum permanent impairment payment for psychological injury.
[14] *Workers Compensation Act 1987* (NSW), ss 65A, 66.
[15] New South Wales does not provide for a lump sum permanent impairment payment for secondary psychological injuries.
[16] *Return to Work Act 1986* (NT), s 70.
[17] *Workers' Compensation and Rehabilitation Act 2003* (Qld), Pt 10.
[18] *Return to Work Act 2014* (SA), s 56.
[19] South Australia does not provide for a lump sum permanent impairment payment for psychological injury.
[20] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 71.
[21] *Workplace Injury and Rehabilitation and Compensation Act 2013* (Vic), ss 211, 212.
[22] *Workers Compensation and Injury Management Act 2023* (WA), Div 7.

As to how the degree of permanent impairment is assessed, SWA began investigating options for a nationally consistent approach in 2010. In 2013, SWA made recommendations to the then Ministerial Council on nationally consistent arrangements to assess permanent impairment. The majority of jurisdictions agreed to these in early 2014.[23] As a result of the agreement, SWA developed template national permanent impairment guidelines (SWA template national guide). SWA also developed a training package for medical practitioners who want to become permanent impairment assessors.

The SWA template national guide was based on those used in the New South Wales workers' compensation system. The national approach operates by adopting the American Medical Association's *Guides to the Evaluation of Permanent Impairment, Fifth Edition* (AMA-5). It is up to each jurisdiction to decide whether to adopt or adapt the SWA template national guide to reflect the legislative arrangements in their scheme. Currently, most states and territories use this approach, including adopting a guide based on the template national permanent impairment guidelines, while Tasmania and Victoria adopt and modify AMA-4 as a guide.[24] Only the Comcare scheme uses a standalone document.

5.1.4 What we heard

Many submissions observed that injured or ill workers with permanent impairment are significantly disadvantaged under the Comcare scheme compared to those covered by state or territory schemes.[25] The Community and Public Sector Union (CPSU) stated that the 10% threshold for permanent impairment in the Comcare scheme is higher than most state and territory schemes. It said a best practice scheme should have a threshold equal, if not superior, to other schemes.[26] Both the Australian Manufacturing Workers' Union (AMWU) and the Australian Council of Trade Unions (ACTU) suggested abolishing the threshold, with the CPSU stating it should be reduced to a 5% threshold .[27] The ACTU and John Holland Licensees submitted that the Comcare scheme should combine multiple injuries when assessing impairments.[28]

Both unions and employers made submissions about reviewing the amount of compensation payable for permanent impairment.[29] The Australian Taxation Office expressed concerns about workers experiencing financial difficulty and suggested that payment caps be reviewed to ensure they are in line with cost-of-living pressures.[30] The CPSU stated that impairments arising from separate injuries

[23] Safe Work Australia (SWA), *Permanent impairment*, SWA, accessed 24 August 2025. Available at www.safeworkaustralia.gov.au/workers-compensation/permanent-impairment.
[24] States currently using SWA's template include New South Wales, Queensland, Western Australia, South Australia and the Northern Territory.
[25] Slater and Gordon submission, p 10; Maurice Blackburn Lawyers submission, pp 14–15; Community and Public Sector Union (CPSU) submission, p 33.
[26] CPSU submission, p 33.
[27] Australian Manufacturing Workers' Union (AMWU) submission, p 33; ACTU submission, p 19.
[28] ACTU submission, p 38; John Holland Licensees submission, p 12.
[29] CPSU submission, p 13; ACTU submission, p 6; Australian Taxation Office submission, p 7; John Holland Licensees submission, p 2.
[30] Australian Taxation Office submission, p 7.

sustained in the same incident should be combined, and that the maximum entitlement should be equal to the lump sum death benefit.[31]

> [Adjust] compensation rates to better reflect the financial impact of permanent impairments, ensuring workers receive adequate support, with maximum rate payable increased in line with cost-of-living expenses.
>
> **Australian Taxation Office submission, p 18.**

> [The Comcare scheme is] more difficult than any other Australian workers' compensation scheme to obtain a lump sum payment for permanent impairment.
>
> **Slater and Gordon submission, p 11.**

> Comcare is still operating with a second-rate permanent impairment assessment process.
>
> **Maurice Blackburn Lawyers submission, p 15.**

5.1.5 What we considered

Consistent with what we heard, we considered:

- combining impairments from multiple injuries arising from the same incident
- a method for assessing the degree of impairment
- permanent impairment thresholds
- worsening of impairment
- deductions for pre-existing impairment
- lump sum compensation amounts
- specific issues relating to hearing loss.

Combining impairments from multiple injuries arising from the same incident

Before the High Court's decision in *Canute v Comcare*,[32] notwithstanding the number of injuries suffered in a single incident, decision-makers generally determined the 'whole person impairment' (WPI) resulting from that incident (by reference to a 'combined values chart').[33] This resulted in a single compensation payment for impairment, and a consequential single payment for non-economic loss.

[31] CPSU submission, p 13.
[32] *Canute v Comcare* [2006] HCA 47.
[33] Combined Values Chart, American Medical Association (AMA), *Guides to the Evaluation of Permanent Impairment, Fifth Edition*, pp 604–606; Safety, *Rehabilitation and Compensation Act 1988 – Guide to the Assessment of the Degree of Permanent Impairment Edition 3.0*. (Cth) (Comcare Permanent Impairment Guide), Appendix 1.

In *Canute*, the High Court considered the circumstances in which the worker suffered a back injury leading to a psychological injury. The High Court observed of the SRC Act's provision in s 25(4):

> *'First, the Act does not oblige Comcare to pay compensation in respect of an employee's impairment; it is liable to pay compensation in respect of "the injury". Secondly, the term "injury" is not used in the Act in the sense of "workplace accident". The definition of "injury" is expressed in terms of the resultant effect of an incident or ailment upon the employee's body. Thirdly, the term "injury" is not used in a global sense to describe the general condition of the employee following an incident. The Act refers disjunctively to "disease" or "physical or mental" injuries and, at least to that extent, it assumes that an employee may sustain more than one "injury".'*[34]

The High Court cast doubt on the notion of WPI as used in part 1 of the first edition of the *Guide to the Assessment of the Degree of Permanent Impairment* (Cth) (Comcare Permanent Impairment Guide (1st ed)). It did so on the basis that 'impairment' in the Act was not whole person based. Each injury, even if arising out of the same workplace incident, had to be separately assessed under the Comcare Permanent Impairment Guide (1st ed) for the level of impairment, and not aggregated. Separate injuries, even if arising from the same work-related incident, cannot be aggregated. The decision has been controversial and given rise to much jurisprudence. A subsequent decision of the High Court in *Fellowes v Military Rehabilitation and Compensation Commission* applied the same principles to part 2 of the Comcare Permanent Impairment Guide (1st ed).[35]

The construction of the SRC Act, as explained in *Canute*, can be double-edged. For some workers, *Canute* resulted in an increased entitlement. For others, *Canute* reduced their compensation entitlement. A person with 2 injuries, each resulting in compensable impairments (that is, impairments of a degree of 10% or greater), receives 2 lump sums (without a reduction under the combined values table) and 2 separate payments for non-economic loss. But a worker with an injury resulting in an impairment of less than 10% would not be able to have that impairment included in the overall assessment of their loss. Indeed, such a worker with 2 injuries, each resulting in an 8% impairment, does not receive a lump sum compensation for the impairment arising from their injuries, despite being assessed at 15% WPI under the combined tables.

As discussed later, much of the current Comcare Permanent Impairment Guide is based on the AMA Permanent Impairment Guides. However, the AMA guides themselves are not necessarily consistent with the approach in *Canute*.

[34] *Canute v Comcare* [2006] HCA 47, [10].
[35] *Fellowes v Military Rehabilitation and Compensation Commission* [2009] HCA 38, [19].

The authors of the fifth edition of the AMA Permanent Impairment Guides wrote:

> *'The Combined Values Chart … was designed to enable the physician to account for the effects of multiple impairments with a summary value. A standard formula was used to ensure that regardless of the number of impairments, the summary value could not exceed 100% of the whole person.'*[36]

However, the construction of the SRC Act in *Canute* is that the assessment of the degree of impairment does not necessarily represent the impairment to the whole person. A person suffering multiple severe injuries resulting from a single incident could, conceivably, be assessed as suffering a degree of impairment greater than 100%.

We consider that the compensation paid for permanent impairment and non-economic loss should represent the loss, or the loss of use, of a bodily part or function, compared to the overall functioning of the healthy whole person. To achieve this change, the new Act should permit the combination of impairments arising from multiple injuries sustained in the same incident. This would include injuries suffered secondary to the initial injury, even if sustained later, including secondary psychological injuries. Such secondary injuries would still be subject to the usual claims determination process; that is, liability would need to be accepted for such injuries to be included in the overall assessment of loss.

This would also permit the adoption of the SWA template national guide, which is written on the basis that non-psychiatric impairments arising from multiple injuries suffered in the same incident can be combined. Despite the SWA template national guide explicitly preventing the combination of psychological impairments in these circumstances, we consider there is no logical basis to separate the psychological impairment from an assessment of the overall functioning of the whole person. In adopting the SWA template national guide, the template can be amended to be consistent with this approach.

Assessing the degree of impairment

Currently, the degree of impairment is assessed in accordance with the Comcare Permanent Impairment Guide, a legislative instrument prepared by Comcare, and approved by the Minister.[37] The current approved edition of the guide is the third edition. It bases many of its tables on the fifth edition of the AMA Permanent Impairment Guides.[38] At times, the Comcare Permanent Impairment Guide incorporates the AMA Permanent Impairment Guides by referencing the purposes of assessing certain types of impairment, and where an impairment cannot be assessed using the Comcare Permanent Impairment Guide. The AMA Permanent Impairment Guides are generally not publicly available except by buying a copy, although we understand Comcare makes copies available at its offices.[39]

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[36] See AMA, *Guides to the Evaluation of Permanent Impairment, Fifth Edition*, p 9, [1.4].
[37] See SRC Act, s 28.
[38] Chapter 6 of the Comcare Permanent Impairment Guide is based on the fourth edition of the AMA's *Guides to the Evaluation of Permanent Impairment*. See Explanatory Statement to Comcare Permanent Impairment Guide, p 3.
[39] See the Explanatory Statement to Comcare Permanent Impairment Guide, p 3.

As discussed earlier, the SWA template national guide was developed based on those used in the New South Wales workers' compensation system. There is considerable benefit in having a nationally consistent method for assessing the degree of impairment, particularly for the Comcare scheme, which operates across the country.

In each jurisdiction, Comcare workers' compensation claimants are in the minority, compared to their state and territory counterparts. This means doctors are more likely to be trained in applying and interpreting the state and territory methods of assessment, rather than the method adopted for the purposes of the SRC Act. This reduces the availability of experienced medical experts to assess permanent impairment claims under the SRC Act, leading to delays and increasing costs. Concerns were expressed about the SWA template national guide's reliance on the AMA Permanent Impairment Guides, given the need to buy them. However, this concern also arises in relation to the current Comcare Permanent Impairment Guide due to its reliance on the AMA Permanent Impairment Guides.

Permanent impairment thresholds

With a few exceptions, the SRC Act limits permanent impairment compensation to those with at least a 10% degree of impairment. The exceptions are the loss, or loss of use, of a finger or toe (no limit), the loss of the sense of smell or taste (no limit), and hearing loss (5% binaural hearing loss, which translates to a 2.5% degree of impairment, under the Comcare Permanent Impairment Guide).

We have recommended combining impairments arising from different injuries sustained in a single incident. As a consequence, an impairment rating of 10% or greater is more likely to be achieved. We consider that this retains the correct setting, ensuring that minor impairments do not result in a lump sum payment, while compensating workers with impairments that genuinely affect their lives. To the extent that submissions referred to lower eligibility thresholds in some states and territories, we note our comments throughout this report that direct comparisons can be misleading, given the specific legislative contexts for entitlements in other schemes.

Impairments to the use of fingers or toes, and loss of smell, taste or hearing, tend to result in a comparatively low degree of WPI. Nonetheless, they can genuinely affect a person's life. A lower threshold for those impairments would, accordingly, be reasonable.

The lower threshold should apply when one of these impairments is combined with an impairment that requires a 10% degree of impairment. For example, a person suffering from an 8% bilateral hearing loss (a 4% degree of impairment), and a related 5% degree of impairment for tinnitus, would be able to be compensated for a 9% loss, notwithstanding that tinnitus-related impairments would otherwise require a minimum 10% impairment.

Worsening of impairment

Impairments, even if assessed as stable, may nevertheless permanently worsen. Where significant, that loss should also be compensated.

Under our recommended approach to permanent impairment, a 'worsening' of the WPI may also arise where the person suffers a secondary injury. For example, a person compensated for a 20% impairment to the back may later suffer from a 10% psychological impairment owing to the effect

of the physical injury on their mental health. Combining those impairments would result in an overall 28% WPI: an 8% increase on the original compensation amount.[40]

The SRC Act requires a minimum 10% increase in the degree of impairment for further compensation to be payable.[41] We consider a permanent increase of 5% is sufficient, noting that these impairments would have been compensable had they been experienced at the time of the original claim.

It is unlikely that lowering the threshold for the worsening of an impairment would result in serial claims. The worsening would still need to be permanent and measurable.

Deduction for pre-existing impairment

A further issue relating to whether the impairment 'results from' an injury is how the SRC Act deals with pre-existing impairment. The Act itself contains no specific provision on how to treat such impairments. The Federal Court decided the Act requires the decision-maker to attempt to 'isolate' the compensable component of the impairment and assess that loss.[42] However, in circumstances where the impairment cannot be isolated from the pre-existing loss, the entirety of the impairment is measured and compensated.[43] The court has found that it is impermissible to 'deduct' on account of pre-existing impairment.[44]

Many tables in the current Comcare Permanent Impairment Guide are assessed by reference to functionality, and measure impairment by comparison to normal healthy human function.[45] 'Isolating' the compensable impairment (or disregarding the pre-existing impairment), for the purposes of assigning an impairment value, is fundamentally illusory where the person has not started with normal healthy human function.

The SWA template national guide provides a method for handling pre-existing impairment, as reflected in, for example, the NT WorkSafe *Guidelines for the Evaluation of Permanent Impairment*, which state:

> *'1.27 The degree of permanent impairment resulting from pre-existing impairments should not be included in the final calculation of permanent impairment if those impairments are not related to the compensable injury. The assessor needs to take account of all available evidence to calculate the degree of permanent impairment that pre-existed the injury.*
>
> *1.28 In assessing the degree of permanent impairment resulting from an injury, there is to be a deduction for any proportion of the permanent impairment that is due to any previous related injury or to any related pre-existing condition or abnormality (that is, a deduction of x% of the current impairment level).'*[46]

[40] Using the Combined Values Chart, AMA, *Guides to the Evaluation of Permanent Impairment, Fifth Edition*, pp 604–606; Comcare Permanent Impairment Guide, Appendix 1.
[41] SRC Act, s 24(7).
[42] See, for example, *Jordan v Australian Postal Corporation* [2007] FCA 2028.
[43] *Jordan v Australian Postal Corporation* [2007] FCA 2028, [14].
[44] *Jordan v Australian Postal Corporation* [2007] FCA 2028, [44].
[45] See Comcare Permanent Impairment Guide, [11], [26], [41].
[46] NT WorkSafe, *Guidelines for the Evaluation of Permanent Impairment,* 2018, 1(1), NT WorkSafe.

The SWA template national guide permits adding words at the end of [1.28] to allow for a '1/10th deduction rule' if desired.[47] For example, the *Workplace Injury Management and Workers Compensation Act 1998* (NSW), contains the words:

> *'... where '[i]f the extent of a deduction ... will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding disputation) that the deduction (or the relevant part of it) is 10% of the impairment, unless this assumption is at odds with the available evidence.'*[48]

While it is perfectly reasonable that a person is only compensated for the workplace injury, a fair and practical mechanism for measuring that work-related impairment is required. In our view, the process in practice in the current legislation – that is, that the work-related impairment is isolated and measured – is appropriate. Where the work-related impairment cannot be isolated, compensation should be paid for the full extent of the impairment. This process supports the fundamental concept in personal injury law that a worker suffering more severe injuries than an average person would have, due to a pre-existing vulnerability or condition, is still fully compensated.

Therefore, we do not support the '1/10th deduction rule', which deems a deduction notwithstanding that the pre-existing loss cannot be measured.

Lump sum compensation amounts

Under the SRC Act, compensation for permanent impairment is based on a simple linear formula. The legislation provides for an indexed maximum amount payable for permanent impairment (representing the entitlement for a 100% degree of impairment), currently $235,434.71 (as of 1 July 2025). The degree of impairment is applied to the maximum to arrive at a percentile level of entitlement. That is, a 10% degree of impairment will receive 10% of the maximum amount. If compensation for permanent impairment is payable, an additional amount of up to $88,288.06 is payable for non-economic loss (calculated in 2 parts: one being directly related to the degree of impairment, and the other by reference to an assessment made under division 2 of the Comcare Permanent Impairment Guide, measuring the impact of the impairment on the worker's life).

The Hanks Review recommended applying an algorithmic model, weighted more heavily towards compensating those with more severe impairments.[49] Combined with a recommendation to increase the maximum benefit payable for permanent impairment to that payable for death, this would result in those with the lowest levels of compensable impairment still receiving the same compensation amount as they would under the current SRC Act. The rationale for an algorithmic approach is that it increases the maximum payable for those living with permanent impairments, and is more heavily weighted towards those with severe impairments whose lives are heavily affected by their loss.

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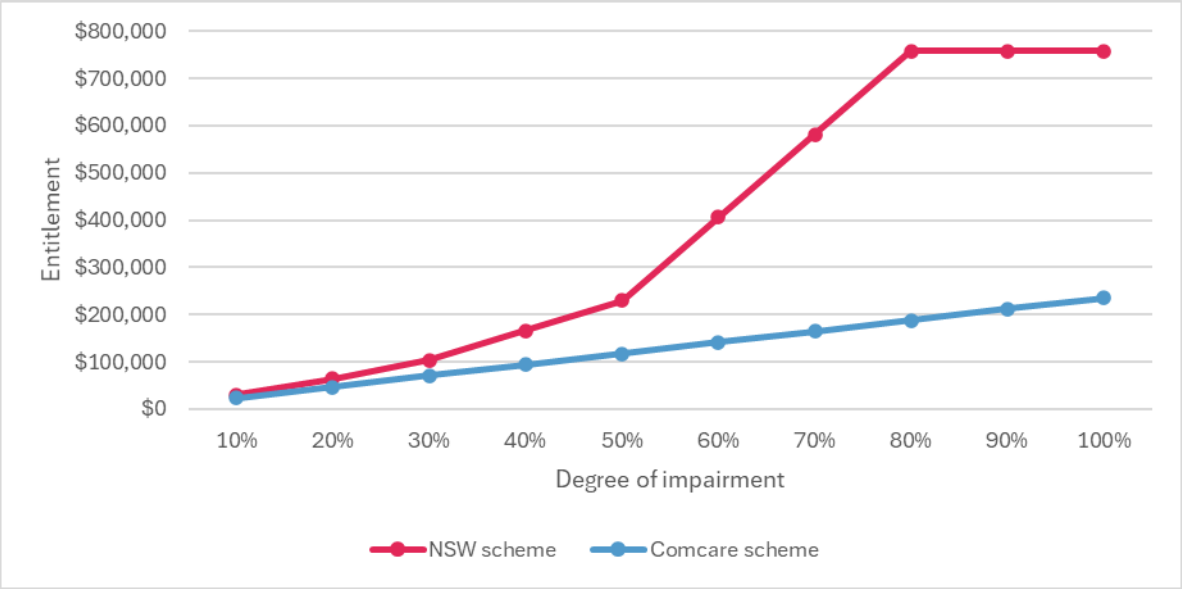
[47] State Insurance Regulatory Authority (SIRA), *NSW workers compensation guidelines for the evaluation of permanent impairment*, 2021, SIRA, [1.28].
[48] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 323(2).
[49] Hanks Review, Recommendation 7.23.

Hanks's recommendation relied on the model used in New South Wales.[50] Using current statutory rates[51] for both schemes, the New South Wales and Comcare schemes provide for the amounts shown in Figure 20.

As is apparent from Figure 20, severely impaired workers in New South Wales are significantly better compensated for permanent impairment than their counterparts in the Comcare scheme.

Figure 20: Current statutory compensation amounts in the New South Wales and Comcare schemes[52]



Most permanent impairment claims relate to persons with impairments on the lower end of the scale. Those claims would not be significantly affected by the algorithmic approach. However, for those with severe impairments, a greater lump sum entitlement would have a considerable effect on their ability to manage the disability arising from the injury and would provide appropriate compensation for the work-related loss. Overall, we consider this to be the preferred approach.

If the algorithm is to operate effectively, the maximum amount payable for permanent impairment must be increased. This would maintain a reasonable level of compensation at the lower end, which is no less than the amount currently payable. We consider that the amount payable for a 100% degree of

[50] See *Workers Compensation Act 1987* (NSW), s 66.
[51] Data sourced from SIRA *Workers compensation benefits guide – July 2025*, SIRA, Table 37, accessed 29 July 2025. Available at www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-and-claims/workers-compensation-benefits-guide; Comcare, *Statutory rates for compensation*, Comcare, accessed 29 July 2025. Available at www.comcare.gov.au/claims/statutory-rates.
[52] SIRA, *Workers compensation benefits guide – July 2025*, SIRA, accessed 29 July 2025. Available at www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-and-claims/Workers-compensation-benefits-guide.pdf; Comcare, *Statutory rates for compensation*, Comcare, 2025, accessed 29 July 2025. Available at www.comcare.gov.au/claims/statutory-rates.

WPI (including non-economic loss) should, appropriately, be the same as the maximum amount payable for death.[53]

Hearing loss

Hearing loss claims, particularly for permanent impairment, have proved a challenging area under the SRC Act. Noise-induced hearing loss is generally immediate and permanent upon exposure to the noise, incrementally increasing as the exposure continues. However, because this deterioration with further exposure is gradual, a worker may not immediately be aware of the loss, even though testing could pick it up.[54] Further, factors other than noise may contribute to the hearing loss, such as age-related degeneration.

In the context of the SRC Act, this has caused difficulties as to whether the loss is a 'disease', a series of non-disease injuries, or a combination of both. In *Re Sandercock and Comcare*, Senior Member Creyke (of this review) noted (citations removed):

> *'There is no consistent view in the cases as to whether hearing loss is an 'injury' or a 'disease' for the purposes of the 1988 Act. However, the distinction between an 'injury' in its primary sense and a 'disease' was described by the High Court as the difference between 'a sudden and ascertainable or dramatic physiological change or disturbance of the normal physiological state' as compared with the 'underlying pathology' that constitutes a 'disease'.*
>
> *Applying that distinction, acoustic trauma, if it results in sudden damage to sensitive hair cells of the inner ear as well as the hearing nerve would amount to an 'injury'; while presbycusis, being a slowly degenerative process associated with ageing, would amount to a 'disease'. Mr Sandercock's mild tinnitus could be either an injury or a disease depending on whether it was provoked by a loud noise, or by a disease of the ear.'*[55]

If permanent loss occurs at the time of exposure, different legislative tests for liability and entitlement may apply across the claim.[56] It may also mean some loss occurred in other employment, or in employment prior to a licence being granted under the SRC Act, and without a contribution from current employment. Quantifying what loss occurred at what time, and as a result of what cause, is generally further complicated by a lack of definitive evidence. This has led to varying approaches to decision-making on such claims. One such approach involving the equal apportioning of the impairment across periods of time, and between causes, was described by one Administrative

[53] Note that we have also recommended changing the maximum amount payable for death: see Recommendation 94a. In this recommendation, we refer to linking the maximum amount payable for permanent impairment to the death entitlement, rather than to a specific amount.
[54] See, for example, *O'Kane v Comcare* [2014] FCA 341, [29].
[55] *Re Sandercock and Comcare* [2013] AATA 517, [27]–[28].
[56] *Smith v Comcare* [2012] FCA 502, [21]. Most amending legislation also contains application provisions that provide for the changes to apply prospectively, based on matters such as when the injury was suffered, when eligibility for a benefit crystalised, or when the claim was made.

Appeals Tribunal (AAT) member as 'arbitrary', but was still considered preferable 'because the alternative would be even more arbitrary'.[57]

The uncertainties and complications arising from the situation are neither ideal nor fair. One suggested fix is to attribute liability to the last known noisy employer. This is the approach taken by s 17 of the *Workers Compensation Act 1987* (NSW). The effect of that section is to attribute liability to the last noisy employer for all hearing loss, notwithstanding that there were prior noisy employers that may have contributed to the injury. The section then allows the last employer to recover from prior employers an amount proportional to the length of employment. This section recognises that disentangling employment contribution to noise-induced hearing loss can be a complicated process. Rather than subjecting the claimant to potential disputes, it compensates the worker and leaves the disputes to the employers. A similar scheme for attributing liability was proposed in the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015. However, the bill required the injury to be caused by a gradual process.[58] As noted earlier, there is considerable doubt that noise-induced hearing loss is a gradual process.

That concern aside, we consider that taking a 'last noisy employer' approach is the appropriate policy setting.

5.1.6 Panel recommendations

Recommendation 67

We recommend impairments for multiple injuries arising from the same incident can be combined to achieve a single whole person impairment rating arising out of injuries sustained in that incident.

Recommendation 68

We recommend the new Act allows for the adoption of the Safe Work Australia permanent impairment template national guide.

[57] *Re Chard and Telstra* [2008] AATA 899, [21].
[58] Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth), Sch 14. Note: this bill lapsed without being passed.

Recommendation 69

We recommend in the new Act compensation for permanent impairment be limited to persons suffering a 10% or greater whole person impairment resulting from one or more injuries sustained in the same incident, unless the impairment includes the loss, or loss of use, of a finger or toe (no threshold), the loss of the sense of smell or taste (no threshold), or hearing loss (5% binaural hearing loss, which translates to a 2.5% degree of impairment).

Recommendation 70

We recommend in the new Act the threshold for compensation for the worsening of an impairment arising out of all injuries sustained in a single incident is 5%.

Recommendation 71

We recommend maintaining current arrangements for measuring permanent impairment where a worker has a pre-existing permanent impairment.

Recommendation 72

We recommend an algorithmic model developed in the Hanks Review be used for determining the amount of compensation payable for permanent impairment.

Recommendation 73

We recommend compensation payable for permanent impairment is equivalent to the amount payable for death benefit.

Recommendation 74

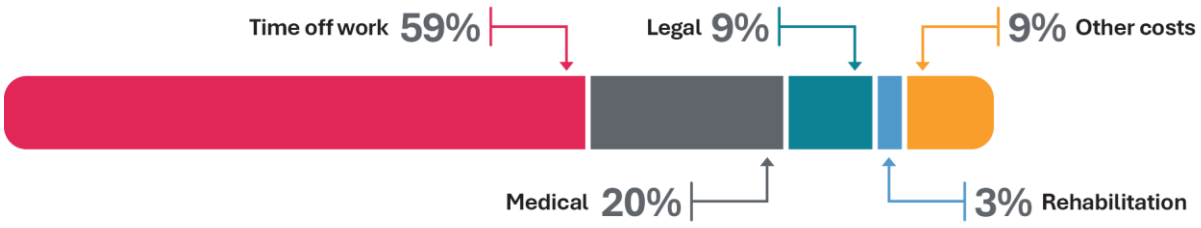
We recommend liability for permanent impairment compensation for hearing loss lies with the last noisy employer, and that employer has a right of recovery against each other scheme employer that contributed to the permanent impairment of an amount reflecting the proportion of the other scheme employer's contribution.

5.2 Incapacity

5.2.1 Background

Compensation for incapacity for work makes up the lion's share of workers' compensation payments. On a general level, compensation for lost income is vitally important to the worker and their family.

Figure 21: Comcare claim costs, 2024–25



Source: Comcare, Scheme Performance. Available at www.comcare.gov.au/scheme-legislation/scheme-performance/overview.

The SRC Act has a detailed method for compensating for incapacity for work.

Once it is determined that a person is 'incapacitated' for work as a result of their injury, the SRC Act uses a method to determine the representative weekly pre-injury earnings, and projects those earnings forward to the relevant week. This amount is the Normal Weekly Earnings (NWE).[59]

For the first 45 weeks of incapacity,[60] a person is generally compensated at the rate of their NWE for that week, minus the greater of their ability to earn, or what they actually earned (AE). After 45 weeks, an adjustment percentage is applied on a sliding scale, depending on a comparison to the Normal Weekly Hours, which is a calculation of the hours ordinarily worked before the injury. The closer a person is to returning to their Normal Weekly Hours (that is, returning to the hours they were working before their injury), the greater percentage of their NWE they receive before the reduction for the AE.[61]

Table 4: Adjustment percentages based on normal weekly hours worked

Normal weekly hours worked	Adjustment percentage
Not working	75%
>25%	80%
25%–50%	85%
50%–75%	90%
75%–100%	95%
100%	100%

[59] SRC Act, s 19.
[60] See SRC Act, ss 19(2)–(2D). This amount is defined as 45 times the Normal Weekly Hours, whether it is consecutive or not. Thus, it is calculated on an hourly basis.
[61] SRC Act, s 19(3).

Additionally, after 45 weeks, incapacity payments are capped at 150% of the Average Weekly Ordinary Time Earnings of Full-Time Adults (AWOTEFA), as determined by the Australian Bureau of Statistics. For those not working, compensation must be at least equal to the minimum earnings (the lesser of 90% of NWE or an indexed statutory minimum, currently $594.46 per week plus an amount for dependents).[62]

Incapacity entitlements are also reduced (whether in the first 45 weeks or not) when the worker has retired and is receiving superannuation benefits.[63]

The SRC Act 'cuts off' compensation for incapacity when people reach the Age Pension age (currently 67), or after 2 years, whichever is later.[64]

5.2.2 Previous reviews

Hanks Review

The Hanks Review recommended replacing the NWE provisions with 'average remuneration'. Hanks recommended calculating the average remuneration received in the 13 weeks immediately before the injury, including remuneration received in other employment. If that resulted in an unfair representation of the rate the worker was being paid before the injury, up to 52 weeks of pre-injury earnings could be taken into account.[65]

In terms of post-injury adjustments to NWE (or average remuneration), Hanks noted '[t]he current adjustment and indexation provisions are well meaning; however, they are administratively burdensome to apply and may result in inequitable outcomes.' He recommended a 'more arbitrary default position to indexation' to provide clarity to both employers and workers.[66] Under this recommendation, the NWE (or average remuneration) would be subject to annual indexation by reference to the Wage Price Index, unless the decision-maker was satisfied from other evidence that the amount should be increased or reduced by reference to a different amount (for example, through salary increments contained in an industrial agreement).

Hanks also made recommendations relating to superannuation. He recommended removing (or amending) deductions for superannuation received. Additionally, he recommended that the government consider amending the *Superannuation Guarantee (Administration) Act 1992* (Cth) to provide that incapacity payments are 'ordinary time earnings' and require inclusion of superannuation contributions.[67]

[62] SRC Act, s 19(6). For the current rate, see Comcare, *Statutory rates for compensation*, 2025, Comcare, accessed 29 July 2025. Available at www.comcare.gov.au/claims/statutory-rates.
[63] SRC Act, ss 20, 21, 21A.
[64] SRC Act, ss 23(1), 23(1A).
[65] Hanks Review, para 7.38.
[66] Hanks Review, para 7.64.
[67] Hanks Review, Recommendation 7.9.

Hanks also recommended changes to the 'step-downs'. Under his model, incapacity payments would be paid at 100% of the NWE for the first 13 weeks, followed by a further 13 weeks at 90%, with the remainder of the incapacity paid at 80%. Hanks's reasoning was:

> *'A three-level system will provide a more sophisticated system of compensation, so that those employees who return to work relatively quickly are not disadvantaged; but, in order to fund a substantial increase in the level of compensation payable to long-term incapacitated employees, those employees who return to work between 13 and 26 weeks will receive a lower rate of weekly compensation. In order to ensure that the most significantly incapacitated employees, who remain on weekly compensation payments beyond 26 weeks, are not further disadvantaged, I recommend that the final step-down be to 80 % of NWE.'*[68]

He also recommended amending the SRC Act to cease incapacity payments at the Age Pension age (this has been implemented), or after 5 years, whichever is longer.[69]

5.2.3 State and territory arrangements

The fundamental differences in the various workers' compensation schemes are most clearly illustrated through the entitlements available for incapacity. Some schemes, such as in Queensland and South Australia (and to a lesser extent, New South Wales and Victoria), are short-tail, with restricted access to incapacity benefits.[70] Such schemes provide for more generous alternative benefits, such as greater lump sum entitlements or unfettered access to common law.

Other schemes, such as the Commonwealth, Tasmanian and Northern Territory schemes, are long-tail in that incapacity payments continue for the duration of the incapacity, up to (or around) retirement age.

Because the availability (or not) of long-term incapacity payments often involves a trade-off with other entitlements, state and territory arrangements for incapacity payments are frequently not directly comparable to the long-tail Comcare scheme. We have, nevertheless, considered the alternative approaches offered by the states and territories where it is useful to do so.

[68] Hanks Review, para 7.191.
[69] Hanks Review, Recommendation 7.16.
[70] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, pp 203–213.

5.2.4 What we heard

Comcare submitted that incapacity entitlements were outdated and required a fundamental update to improve both Comcare scheme viability and outcomes for workers and their families. Specifically, Comcare recommended amending how the Comcare scheme calculates a worker's remuneration so that lost earnings are fairly represented over the period of incapacity.[71]

> [The Comcare scheme incapacity provisions] may lead to unfair or unequitable results and may hinder return to health, and where possible, return to work.
>
> **Comcare submission, p 30.**

> The calculation of normal weekly earnings could be simplified to better fit varying work arrangements.
>
> **John Holland Licensees submission, p 10.**

> [The step-down provision] has led to cases where unwell or injured members return to work prematurely due to financial pressures, often before completing necessary treatment.
>
> **Australian Federal Police Association submission, p 8.**

Pacific National and John Holland Licensees both submitted that the calculations of NWE should be more flexible to account for different types of working arrangements.[72] The Family and Injured Workers Advisory Committee (FIWAC) stated workers should not have their payments reduced when employers could not provide suitable employment.[73] Unions observed step-down provisions were often detrimental to a recovery, as they can increase pressure on the injured or ill worker who often prioritises the financial security of their family over their health.[74] In contrast, Pacific National submitted that the current step-down provisions provide no incentive for workers to return to work in the first 45 weeks of incapacity payments.[75]

Many of those who made submissions argued it was necessary to remove or redesign the superannuation provisions in the Comcare scheme to better support workers.[76] Comcare expressed concern about the complexities for a claimant around accruing leave and suggested clarifying these.[77]

[71] Comcare submission, p 30.
[72] Pacific National submission, p 2; John Holland Licensees submission, p 10.
[73] Family and Injured Workers Advisory Committee (FIWAC) submission, p 4.
[74] Australian Federal Police Association (AFPA) submission, p 8; Australian Education Union (ACT) Branch submission, p 2.
[75] Pacific National submission, p 10.
[76] Comcare submission, p 33; Australian Education Union (ACT) Branch submission, p 13; Slater and Gordon submission, pp 12–13.
[77] Comcare submission, p 31.

5.2.5 What we considered

Consistent with what we heard, we considered how to:

- fairly represent the rate at which a worker was earning before the injury (NWE)
- post-injury adjustments to NWE, including safety nets and caps
- post-injury step-downs
- the ability to deem a person able to earn in suitable employment
- superannuation
- the cut-off at Age Pension age.

We also considered the desirability of provisions relating to maintaining a worker in hospital or nursing care, and the entitlement to accrue leave.

Normal Weekly Earnings

Our starting point is that compensation for incapacity should – as far as possible – be based on a fair and accurate representation of the worker's earnings before they suffered an injury. While the current NWE structure allows for considerable adjustment for personal circumstances, it is unwieldy and difficult to understand, leading to disputes.

The tripartite reference group supported the Pre-injury Average Weekly Earnings (PIAWE) approach used in New South Wales.[78] PIAWE is the weekly average of a worker's gross earnings over the 52 weeks before their date of injury. Earnings from all employment are included, as are loadings, allowances, commissions and some non-monetary benefits.[79] The 52-week period can be varied for reasons including being in the job for less than 52 weeks, ongoing changes in employment circumstances (for example, promotion) or extended leave. The New South Wales system allows the worker and employer to agree the PIAWE, effectively binding the insurer. If they don't reach an agreement, the insurer decides the PIAWE.

To best represent pre-injury earnings, the NWE should generally reflect all the worker's earnings in a period proximal to the injury. Like the current NWE, this would include overtime, allowances and loadings. Commissions and non-monetary benefits are not specifically dealt with in the SRC Act and should also be included.

It is not uncommon for workers, including full-time workers, to have secondary employment income from other sources. All workers, and not just part-time and volunteer workers,[80] should have their earnings from other employment included in the NWE. A person incapacitated for work will generally be incapacitated from all employment and we consider that loss of earnings should be compensated. Under the current legislative settings, a full-time worker will not have earnings from other employment

[78] See *Workers Compensation Act 1987* (NSW), Sch 3.
[79] Non-monetary benefits earned in place of salary that cannot be used after the injury. Examples include residential accommodation, childcare or use of a motor vehicle. See SIRA, *Weekly payments*, SIRA, accessed 8 August 2025. Available at www.sira.nsw.gov.au/workers-compensation-claims-guide/understanding-the-claims-journey/weekly-payments/piawe2.
[80] As per SRC Act, s 8(3).

included in their NWE. However, the earnings from other employment as an AE will be deducted from the NWE in the incapacity entitlement calculation. This means a person can receive considerably less than they were earning before their injury. That is not a fair result.

We consider the simple and equitable solution is to include all secondary employment in the NWE. If the injury does not incapacitate the worker for that secondary employment, the incapacity entitlement will be reduced by the earnings from that employment.

We consider the current 2-week standard period immediately before the injury for calculating the NWE is too short to represent a worker's pre-injury earnings. Many workers have working patterns not accurately captured in those weeks; for example, those with 'swing rosters', seasonal workers and those with significant commission-based earnings. While the SRC Act has some mechanisms to deal with such issues, these are unnecessarily complicated. As an alternative, we consider a 52-week period is appropriate. For those employed for less than 52 weeks before their injury, we consider that a shorter period should be used, calculated on a pro-rated basis.

Generally, the 52-week period will allow for a fair representation of pre-injury earnings by averaging out the highs and lows of earnings across a year. For some, permanent changes in the terms of employment may have occurred within that year. In those cases, the 52-week average does not fairly represent the rate they were paid at the time of their injury. This includes promotions, demotions and changes in working patterns (for example, part-time to full-time work). In such circumstances, we consider that the NWE should be calculated as though the permanent change had been in effect across the entire 52-week period, or the earlier period be disregarded (largely to the same effect).

The NWE requires adjustment after the injury. Like Hanks, we consider that the SRC Act provides for overly prescriptive and subjective methods of adjusting the NWE post-injury. These decisions are inherently labour-intensive and not well understood. This leads to disputed outcomes and delays in decision-making. Instead, we consider that the NWE should be based on a simple indexation methodology for all claims. This can be achieved by indexing the NWE to the Wage Price Index or the relevant industrial instrument (whichever is higher).

Also, as in New South Wales, we think the detail of the calculation of NWE should be set out in a legislative instrument made by the Minister.

Step-downs

The step-down provisions were designed to encourage active engagement with the return to work process. Research has shown they are generally ineffective as a return to work incentive.[81] Rather, they have been a fiscal moderator, lowering the cost to the insurer of long-term claims.

According to Taylor Fry, removing the step-down provisions would create a significant cost for the Comcare scheme (see further discussion in Part D). If evidence leads to changed assumptions that

[81] TJ Lane et al., 'Step-downs reduce workers' compensation payments to encourage return to work: are they effective?', 2020, 77(7), *Occupational and Environmental Medicine,* pp 470–477. See also Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Framework*, 2004, Productivity Commission, pp 263–264.

reduce the assessed cost to the Comcare scheme, we consider that the step-downs should be removed in full.

In the absence of a revised assessment of cost, we recommend partially removing step-downs. Step-downs should not apply where:

- the employer has refused to, or been unable to, provide suitable duties to an otherwise willing and available worker
- the worker has retired (whether voluntarily or not) because of their injury.

This means workers who are unable to engage in the return to work process for reasons beyond their control are not unfairly penalised.

Ability to earn in suitable employment

As discussed earlier, under s 19(4)(b) of the SRC Act, one possible reduction to an incapacity entitlement is through the deeming of an amount a person could hypothetically earn in suitable employment. The general basis for this deduction is to ensure that those capable of working, and who have had reasonable suitable opportunities offered to them, engage in the return to work process.

In our view, the matters described in the provision are reasonable for determining a person's ability to earn and should be retained.

We have recommended changes to the concept of 'suitable employment' (see Chapter 4). These changes will have a consequential effect on the terms of s 19(4) (or its equivalent in new legislation).

Safety net and cap

As noted earlier, after 45 weeks of incapacity for work, if a person is receiving compensation that is less than the defined minimum earnings, the amount of compensation is increased to match minimum earnings.[82] On its face, this provision applies only to those not working at all.[83] It is not clear why this safety net applies only to such persons.

We accept it is not reasonable to extend a general minimum entitlement to all claims. Some individuals who receive a small incapacity entitlement due to working at reduced suitable duties or minor absences from work will be receiving actual earnings and do not require the safety net. Rather, our concern is that a person receiving modest incapacity payments may have their entitlement reduced by step-downs, taking them below the minimum earnings. In these circumstances, we conclude that the entitlement should be increased to the minimum earnings level.

[82] SRC Act, s 19(6).
[83] SRC Act, s 19(6) refers to the 'amount … calculated under paragraph (3)(a)'. S 19(3)(a) refers to the employee not being employed 'during that week'.

With respect to a cap for high-income earners, the SRC Act limits compensation after 45 weeks of incapacity to 150% of the AWOTEFA.[84] As at 8 August 2025, 150% of AWOTEFA was $2,963.70 (gross).[85] This cap principally acts as a cost saver for the Comcare scheme.

We consider that some form of cap on entitlements is necessary to maintain scheme sustainability. As noted in the 2014 review of the Northern Territory scheme, it is not unreasonable to expect that people earning double or more than the average wage privately protect any amount beyond a reasonable cap.[86]

Nevertheless, at least initially, we consider that the worker should be compensated at the rate that effectively returns them to their pre-injury earnings. This is because such workers will inevitably have living expenses based on their former high income and will need time to adjust their outgoings in anticipation of the reduction. On balance, we consider that the cap should apply after 45 weeks of incapacity, consistent with the SRC Act. This would also assist with administration, with the 45-week point triggering a number of changes to entitlements. We also consider 150% of AWOTEFA represents the right setting and is broadly similar to other long-tail schemes.[87]

Superannuation

Despite workers' compensation providing income replacement, such payments are not considered ordinary earnings for the purposes of superannuation legislation. Workers receiving long-term incapacity entitlements are often left with considerably less superannuation to fund their retirement. This is particularly notable given the entitlement to workers' compensation is not indefinite (see our discussion of the appropriate cut-off time later). With less superannuation, the prospect of the worker relying on social security is higher.

The *Superannuation Guarantee (Administration) Act 1992* (Cth) provides that workers' compensation payments are not 'ordinary time earnings'. An exception is made for payments for hours a worker actually performs work or is required to attend work.[88] Despite this, state and territory workers' compensation Acts, awards and enterprise agreements may entitle workers to superannuation while they are on workers' compensation. This means that some workers under the Comcare scheme could be receiving superannuation contributions while others are not.[89]

The superannuation guarantee is a government policy designed to ensure people accumulate savings for their financial freedom during retirement, making them less reliant on the Age Pension. The

[84] See SRC Act, s 19(5). Average Weekly Ordinary Time Earnings of Full-Time Adults is a figure published by the Australian Statistician.
[85] Comcare, *Statutory rates for compensation*, Comcare, accessed 8 August 2025. Available at www.comcare.gov.au/claims/statutory-rates.
[86] Roussos Legal Advisory and Cross Innovate Consulting, *Review of (NT) Workers Rehabilitation and Compensation Act,* 2014, NT WorkSafe, p 57.
[87] For example, see *Return to Work Act 1986* (NT), s 65.
[88] See Superannuation Guarantee Ruling SGR 2009/2, [39], [68], [76]. See also Australian Taxation Office (ATO), *List of payments that are ordinary time earnings*, ATO, accessed 18 August 2025. Available at www.ato.gov.au/businesses-and-organisations/super-for-employers/paying-super-contributions/how-much-super-to-pay/list-of-payments-that-are-ordinary-time-earnings.
[89] For example, see the *Building and Construction General On-site Award 2020*, Cl 28.5.

government has instituted measures (such as tax advantages for superannuation and the superannuation guarantee levy) to encourage workers to save for their retirement. Including superannuation contributions in workers' compensation benefits could reduce the potential for the cost to shift to the Australian Government once a permanently incapacitated worker reaches normal retirement age. According to the then Department of Family and Community Services, in 2004:

> *'The introduction of compulsory superannuation aims to improve the incomes of people in retirement. Long-term unemployment can have significant implications on superannuation for both workers and their families. As injured workers that have not returned to work have a decreased amount of superannuation, many will have increased reliance on age pension in retirement and lower overall income, as age pension only provides a basic level of support … Periods out of the workforce have a significant impact on the capacity of individuals to save for retirement. For example a person earning $45,000 per year will have accumulated $521,000 by the time they retire at 65. However if they were to leave the workforce for 5 years at age 30 and then return part time they will only accumulate just over $300,000.'*[90]

Accordingly, it is incongruous that such payments are not considered 'ordinary time earnings'. Further, superannuation is an entitlement paid for the benefit of workers. A person should not be deprived of that entitlement because they were injured on the job. We consider that the government should review this arrangement to ensure all injured and ill workers in Australia receive superannuation as an element of their workers' compensation, as if they were still at work.

In the absence of such a review or until that review is complete, we consider superannuation contributions should be made where a worker has suffered an injury resulting in time away from work, mirroring this provision in some modern awards. Where the person remains employed, their employer should make the contribution (subject to the rules of the relevant superannuation fund) for a maximum of 52 weeks. Where the person has ceased that employment, Comcare or the licensee (as appropriate) should make the payments subject to the same proviso.

Relatedly, the SRC Act contains deductions upon receiving superannuation. The Hanks Review contained a detailed and useful summary of the history of these provisions, and ultimately recommended that they be repealed. As discussed by Hanks, '[t]he SRC Act treats superannuation as a form of income replacement to which injured workers will have access when they retire from employment', and in that way deals with incapacity benefits as though double dipping on the income replacement provided by the superannuation.[91]

We consider that superannuation is not a type of income replacement equivalent to incapacity payments. Incapacity payments compensate for loss of earnings. Superannuation is effectively a form of savings. Subject to the relevant law, superannuation is the worker's money to do with as they please. No other state or territory includes such a deduction. We recommend not replicating those deductions in the new legislation.

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[90] Quoted in Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks*, 2004, Productivity Commission, p 270.
[91] Hanks Review, Recommendation 7.5, paras 7.94–7.119. See para 7.101 for quote.

Maintenance in hospital

We received few submissions about the application of s 22 of the SRC Act. This provision covers entitlement for incapacity for a narrow subset of claims. They relate to injured or ill workers with no dependants who, because of their injury, are hospitalised or kept in a nursing home for more than a year.

Any reason to reduce compensation to such a person needs a strong policy basis. We consider that no reasons have been advanced to maintain this provision in the new Act.

Annual leave

Section 130 of the *Fair Work Act 2009* (Cth) (FW Act) provides that a person is not entitled to take or accrue any leave while absent from work due to a compensable injury, unless permitted by the compensation law. Section 116 of the SRC Act is such a law, permitting, in limited circumstances, the accrual of leave while on compensation. The effect of the provision ensures sick leave and what the SRC Act calls 'recreation leave' continues to accrue in the first 45 weeks of incapacity, while long service leave accrues across the life of the claim.

The structure of s 116 has, however, caused difficulties. First, the 45 weeks referred to in the provision is not necessarily the same 45 weeks used in s 19 for the purpose of starting the step-down provisions. Second, the accrual of leave only arises in relation to 'post-determination compensation leave', being periods of incapacity that occur after the incapacity claim has been determined.

We conclude that there is no need to specify 45 weeks. Annual, personal and long service leave should all continue to accrue where the worker remains employed for the life of the claim. We can also see little reason to limit the accrual to the post-determination period. Provided that liability is ultimately accepted, leave should accrue against all periods of incapacity found to be compensable.

When should incapacity entitlements be cut off?

The SRC Act effectively cuts off compensation for incapacity at Age Pension age, as defined by the *Social Security Act 1991* (Cth). As an exception to this, if a person is injured within 2 years of Age Pension age (or after that age), they are entitled to receive a minimum of 104 weeks of incapacity payments (whether consecutive or not).

Generally, the Age Pension age is a reasonable indication of when a worker will have ceased work and should no longer be entitled to income replacement. However, this is not true for all workers. Where a worker demonstrates on reasonable grounds, that they will continue working beyond the Age Pension age or, if applicable, the additional 104 weeks (for example, through a fixed-term contract for a specific task), the cut-off should be up to 260 weeks.

5.2.6 Panel recommendations

Recommendation 75

We recommend simplifying the calculation of Normal Weekly Earnings, based on the Pre-Injury Average Weekly Earnings model in NSW:

a. Normal weekly earnings is the weekly average of a worker's gross earnings over the 52 weeks prior to their date of injury.

b. Earnings from all employment are included.

c. Earnings includes overtime, loadings, allowances, commissions and select non-monetary benefits.

d. Provision be given to vary the 52-week period for reasons such as being in the job for less than 52 weeks, ongoing changes in employment circumstances, or extended leave.

e. Post-injury adjustments are aligned with the applicable industrial instrument or, if none, to the Wage Price Index.

f. In respect of Commonwealth workers, the worker and employer may agree to the Normal Weekly Earnings. Comcare makes the decision in the absence of an agreement.

g. The details of the model are set out in a legislative instrument.

Recommendation 76

We recommend the removal of all step-downs or, if the cost of doing so is unacceptable, the removal of step-downs where:

a. a worker has made themselves available and an employer has refused or been unable to provide suitable duties, or

b. a worker has been retired (whether voluntarily or not) due to injury.

Recommendation 77

We recommend no change in relation to ability to earn in suitable employment and that s 19(4) is replicated in the new Act.

Recommendation 78

We recommend after 45 weeks of incapacity:

a. a worker should not drop below minimum wage due to the step-down

b. a worker should not receive more than 150% of Average Weekly Ordinary Time Earnings of Full-Time Adults.

Recommendation 79

We recommend the government review the treatment of workers' compensation payments in the *Superannuation Guarantee (Administration) Act 1992* (Cth). In the absence of a review or until that review is complete, we recommend that where the person remains employed and incapacitated for work, their employer should be liable to continue making employer superannuation contributions calculated with reference to the person's Normal Weekly Earnings and actual earnings for a maximum of 52 weeks in total.

Recommendation 80

We recommend deductions for superannuation (ss 20, 21, 21A) are not replicated in the new Act.

Recommendation 81

We recommend the reduction for incapacity payments while in a hospital or nursing home (s 22) not be replicated in the new Act.

Recommendation 82

We recommend that the new Act makes clear that a worker can take or accrue leave (such as annual, personal, long service leave) while employed by the employer and in receipt of compensation.

Recommendation 83

We recommend that the new Act allows for an entitlement to weekly payments of compensation to continue:

a. for a period of 104 weeks where a worker is injured 2 years before attaining retirement age, or

b. at any time after attaining that age or for a longer period of up to 260 weeks if the worker can demonstrate, on reasonable grounds, that they would continue working.

5.3 Treatment and care expenses

5.3.1 Background

Treatment and care of an injured or ill worker is a primary objective of any workers' compensation scheme. Under the SRC Act, compensation is paid for medical treatment expenses, aids and appliances, household and attendant care services, and the alteration or modification of the home and/or vehicle and other aids to daily life. We have dealt with rehabilitation, which can intersect with treatment and care, in Chapter 3.

5.3.2 Previous reviews

Hanks Review

The Hanks Review noted that under the SRC Act, medical treatment must be provided by, or be under the direction or supervision of, legally qualified doctors and dentists, or physiotherapists, osteopaths, masseurs or chiropractors 'registered under the law of a State or Territory'.[92]

Hanks referred to the introduction in 2010 of the National Registration and Accreditation Scheme administered by Australian Health Practitioner Regulation Agency (AHPRA). The scheme regulates a more extensive list of health professions. He indicated that the list of those who administer medical treatment for the purposes of the SRC Act should be consistent with that in the AHPRA scheme. In addition, Hanks recommended that Comcare recognise, accredit and monitor medical treatment providers not subject to AHPRA regulation (for example, masseurs). He also suggested Comcare should have the power to approve treatment provided outside Australia (by non–AHPRA regulated providers) if the quality and cost of the treatment is comparable with local regulated providers.[93]

Hanks pointed out that the SRC Act does not limit the payment of compensation for medicines. He considered this could potentially lead to '"doctor shopping" and the potential abuse of Schedule 8 medications'. To avoid this risk, Hanks recommended Schedule 8 medications[94] be restricted to those prescribed by a single doctor nominated by the worker.[95]

In considering the reasonableness of treatment, Hanks suggested:

> *'... [t]he adoption of the Clinical Framework, and the requirement for medical treatment to have a measurable benefit so that employees can track and monitor their own progress, would facilitate better return to work outcomes.'*[96]

[92] Hanks Review, para 7.267.
[93] Hanks Review, para 7.269.
[94] Controlled drugs listed in schedule 8 of the *Therapeutic Goods (Poisons Standard—June 2025) Instrument 2025*.
[95] Hanks Review, para 7.289.
[96] Hanks Review, para 7.344.

To ensure this, Hanks recommended treatment should meet objective standards, such as those in the *Clinical Framework for the Delivery of Health Services* (Clinical Framework) developed by the Victorian Transport Accident Commission and WorkSafe Victoria.[97] This framework is designed to help healthcare professionals to treat injuries through a biopsychosocial approach that empowers the injured person to manage their injury. Hanks considered several ways to achieve this outcome, including through Comcare issuing guidelines that decision-makers must follow.[98]

Hanks further recommended:

- extending medical treatment to treatment and maintenance for those in nursing homes
- making medicines compensable only when they are prescribed by a legally qualified medical practitioner (LQMP) or dentist and dispensed by a registered pharmacist, or provided to a patient at a hospital or a resident in a nursing home
- implementing a Comcare scale of fees for medical services (via a legislative instrument).[99]

Other recommendations he made related to providing household and attendant care services for the severely injured.[100] These were largely implemented through the introduction of the 'catastrophic injury' exception to service caps via the *Comcare and Seacare Legislation Amendment (Pension Age and Catastrophic Injury) Act 2017* (Cth).

He also recommended changing the applicable rate payable for household and attendant care services for the non-severely injured, and that household assistance and attendant care services be assessed by an independent party, such as a physiotherapist or occupational therapist. In addition, he recommended a process for Comcare to approve attendant care providers.[101]

5.3.3 State and territory arrangements

Most of the variations between state and territory arrangements concern the cost of treatment, and limits on the amount of treatment for which compensation is payable.

Some schemes use a schedule of fees prescribed in delegated legislation to outline the maximum payable for treatment.[102]

General limits on the amounts of compensation for treatment also apply in some jurisdictions. For example, in Western Australia, the total amount of medical and health expenses must not exceed 60% of the 'general maximum amount'.[103] The current general maximum amount is $273,220, making the

[97] Transport Accident Commission and WorkSafe Victoria, Clinical Framework for the Delivery of Health Services, 2012, Transport Accident Commission.
[98] Hanks Review, paras 7.345–7.346.
[99] Hanks Review, paras 7.263–7.368.
[100] Hanks Review, Recommendations 7.32 and 7.33.
[101] Hanks Review, para 7.460.
[102] For example, *Workers Compensation Act 1987* (NSW), s 61(3); *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 223(2); *Workers Compensation and Injury Management Act 2023* (WA), s 73(3).
[103] *Workers Compensation and Injury Management Act 2023* (WA), s 75.

medical and health expenses cap $163,932.[104] This amount can be increased in certain circumstances. In South Australia, the entitlement to treatment expenses generally ends one year after the cessation of incapacity payments (or after one year from acceptance of liability, if there are no incapacity payments), reflecting the short-tail nature of that scheme.[105]

5.3.4 What we heard

Many submissions suggested the Comcare scheme should improve the treatment options available to workers. They argued the scheme had an approach that was too narrow to support a wider range of therapy options, including emerging and traditional First Nations treatments.[106] It was also submitted that the failure to cover full expenses for travelling to treatment created barriers for workers.[107]

> Medical treatment compensation and travel reimbursement can help remove barriers to accessing treatment where it may be more costly and hard-to-reach in remote areas.
>
> **John Holland Licensees submission, p 3.**

> It would also be beneficial to have the system recognise alternative treatment options - particularly from a cultural perspective.
>
> **Individual submission No. 8, p 3.**

> Comcare's decision to deny physiotherapy treatment ... is inconsistent with its historical approval of this treatment, despite clear evidence of its effectiveness.
>
> **Individual submission No. 154, p 5.**

5.3.5 What we considered

We considered:

- the approach to treatment and care generally
- what treatment and care should be compensable
- the reasonableness of treatment
- the cost of treatment
- travel expenses to access treatment
- compensation for loss or damage to property used by the worker
- the provision of aids and appliances
- household assistance and attendant care services.

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[104] See WorkCover WA, *Indexation of Workers Compensation Payments 2025/26,* 2025, WorkCover WA. Available at www.workcover.wa.gov.au/news/indexation-of-workers-compensation-payments-for-2025-26/.
[105] *Return to Work Act 2014* (SA), s 33; see also *Workers Rehabilitation and Compensation Act 1988* (Tas), s 75.
[106] Individual submission No. 86, p 9; Individual submission No. 59, p 2; Individual submission No. 114, p 3; Individual submission No. 96, p 2; Individual submission No. 8, p 3; Individual submission No. 115, p 4; Individual submission No. 86, p 3.
[107] Individual submission No. 96, p 2.

Approach to treatment and care generally

We consider that the treatment and care of an injured or ill worker should be dealt with holistically.

As noted earlier, the SRC Act deals separately with medical treatment expenses, aids and appliances, household and attendant care services, and the alteration or modification of the home and/or vehicle and other aids to daily living. We consider each of these entitlements form part of the worker's overall treatment and care. As such, the legislation should deal with these benefits as a package.

What treatment and care should be compensable?

Medical treatment

Section 16 of the SRC Act provides an exhaustive definition for 'medical treatment'. Unless an expense is covered by the definition, it cannot be compensated. A wide range of potential treatments are used in the care of an injury or illness. Some are commonly understood as medical treatment, such as a doctor's appointment, provision of pharmaceuticals and surgery.[108] Such items clearly fall within the definition, provided they are prescribed by, or under the supervision of, a LQMP.[109] Similarly, dental treatment falls within this definition, if treatment is provided by, or under the supervision of, a legally qualified dentist.

The SRC Act also clarifies or extends this common understanding. 'Therapeutic treatment', defined to include treatment to alleviate an injury (rather than cure it), falls within the definition of 'medical treatment'.[110] Coverage depends on the treatment being obtained at the direction of an LQMP. Alternatively, the direction of an LQMP may not be required if the therapeutic treatment is provided by (or under the supervision of) a registered physiotherapist, osteopath, masseur or chiropractor.

Similarly, medical examinations and tests are captured by the definition, including those undertaken to diagnose an injury. The supply, replacement or repair of an 'artificial limb or other artificial substitute or of a medical, surgical or other similar aid or appliance' is also covered. Medical and surgical supplies, along with curative apparatus, fall within the definition, as does nursing care.

Two areas were the subject of submissions on what medical treatment should be covered by the Comcare scheme: emerging (or experimental) treatments and alternative medicines.

With respect to emerging treatment, provided the treatment is by, or under the supervision or direction of, a doctor, dentist or specified allied health practitioner, the treatment is likely to be 'medical treatment'; that is, appropriate. It would not be appropriate to compensate for emerging treatment that does not have the support of a qualified and registered treating practitioner. The distinction depends on whether obtaining the treatment is reasonable, as discussed further later.

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[108] In the absence of a statutory definition, Comcare has provided scheme guidance that a 'legally qualified medical practitioner is a general practitioner or specialist registered to practice with the Australian Health Practitioner Regulation Agency': Comcare, 'Definition of medical treatment', Comcare, accessed 10 July 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/definition-medical-treatment.
[109] SRC Act, s 4(1), definition of 'medical treatment'.
[110] SRC Act, s 4.

Alternative medicine can also suffer from the same concerns around reasonableness. At present, such treatments may not fall within the definition of 'medical treatment'. This is particularly the case with cultural medicine, which often does not have the requisite supervision of an LQMP. However, cultural medicine used by Australia's First Nations people is the oldest continuing medicine in the world. First Nations Elders have described such treatments as providing substantial benefits to First Nations people. Such treatment may include:

- physical medicines (inhaled, topical and ingested medicines)
- native Australian foods (used as medicine)
- ceremony (healing ceremonies, dances and songs)
- spiritual medicine (spiritual and energetic medicines)
- practices of traditional healers
- Country as medicine.[111]

The challenge for a workers' compensation scheme is the absence of 'cultural medicines guidance in national policies to support health professionals to deliver culturally safe and holistic care to First Peoples'.[112] At least for First Nations people, cultural medicine and practices may be an effective part of the overall treatment and care plan. However, the lack of involvement of an AHPRA-regulated practitioner suggests such treatment could not be compensated.

We see 2 potential resolutions to this issue. First, treatment provided by, or under the supervision or direction of, an Aboriginal and/or Torres Strait Islander health practitioner could be defined as 'medical treatment'. Any determination of liability would depend on whether that treatment was reasonable, and reasonable to obtain.

An alternative option is for the governing board to specify in a legislative instrument further forms of treatment that would be 'medical treatment' for the purposes of the claim. Authority already exists under the SRC Act, but it has not been exercised in relation to cultural medicines.[113] If such a power remains in the new legislation, the governing board could specify certain cultural medicines, with guardrails deemed appropriate, including any restrictions on who can access such treatments and in what circumstances.

On balance, we favour the latter. The literature appears to indicate that mainstream understanding and acceptance of cultural medicine is still developing. Direct consultation needs to be held with relevant experts and stakeholders. This could be done through the development of a legislative instrument to ensure the settings are optimal.

At the same time, it is likely the power will remain unused, as at present. For this reason, the legislation should specifically reference cultural medicine, along the lines of 'Medical treatment includes any form

[111] See A Gall et al., 'First Peoples' cultural medicines: A review of Australian health policies using an Indigenous critical discourse analysis approach', 2025, 3(3), *The Lowitja Journal*.
[112] See A Gall et al., 'First Peoples' cultural medicines: A review of Australian health policies using an Indigenous critical discourse analysis approach', 2025, 3(3), *The Lowitja Journal*, p 21.
[113] See SRC Act, s 4(1) for the definition of 'medical treatment'.

of treatment that is prescribed for the purposes of this definition, including First Nations cultural treatments'.

Reasonableness

As noted earlier, most disputes around treatment expenses do not concern whether the treatment is compensable, but whether that treatment is reasonable to obtain in the circumstances. The SRC Act provides no guidance on what 'reasonable' means in this context. Nevertheless, extensive case law would provide guidance on the relevant touchstones for decision-makers.

For example, *Re Rope and Comcare*, the AAT summarised the authorities:

> *'Generally speaking, treatment is more likely to be considered reasonable where:*
>
> - *its benefits are substantial and its cost is low;*
> - *it is effective, i.e. achieves measurable benefits;*
> - *it is active and promotes self-management of the compensable condition;*
> - *it is consistent with the principles in the [Clinical Framework]; and*
>   *it is of limited duration.*
>
> *Conversely, treatment is less likely to be considered reasonable where:*
>
> - *its benefits are insubstantial and its cost is high;*
> - *it is passive and promotes dependence on itself; and*
> - *it is ongoing and indeterminate.'*[114]

As the quote indicates, recently decision-makers have adopted the Clinical Framework to guide their decision-making about what treatment is reasonable. According to the Victorian Transport Accident Commission, it is 'intended to support healthcare professionals in their treatment of an injury through:

- measurement and demonstration of the effectiveness of treatment
- adoption of a biopsychosocial approach
- empowering the injured person to manage their injury
- implementing goals focused on optimising function, participation and return to work
- base treatment on best available research evidence'.[115]

[114] *Re Rope and Comcare* [2018] AATA 42, [45]–[46].
[115] Victorian Transport Accident Commission (VTAC), *Clinical Framework for the Delivery of Health Services*, 2012, VTAC, p 1 (Foreword), accessed 31 August 2025. Available at www.tac.vic.gov.au/providers/working-with-the-tac/clinical-framework.

Despite decision-makers adopting this document, it nevertheless remains without statutory authority. Comcare provides the following guidance (original emphasis):

> *'The Clinical Framework is a better practice tool claims managers may take into account when making evidence-based assessments on the reasonableness, or otherwise, of medical treatment. The Clinical Framework **does not** alter the statutory test of whether medical treatment is reasonable under section 16 under the SRC Act.'*[116]

While in a number of decisions the Clinical Framework has been found by the AAT (now ART) to be a useful guide,[117] it has not been universally accepted.[118]

As discussed earlier, one area of specific concern relates to whether emerging or experimental treatments are 'reasonable to obtain'. In *Re King and Comcare*, the Tribunal stated the test for whether 'medical treatment' was reasonable to obtain:

> *'... we think allowances should be made in appropriate cases for different schools of thought within the medical profession. If a particular form of treatment is advocated by a significant minority of the medical profession, and is regarded by the majority as controversial, we do not think obtaining that form of treatment would ordinarily be regarded as unreasonable. If, on the other hand, a patient undertakes treatment on the advice of a doctor whose views are at odds with the rest of the medical profession, one would have to conclude that it was not reasonable to obtain such treatment in the circumstances.'*[119]

Other factors may be relevant, depending on the circumstances. Relatively low-cost and safe treatment, even if not accepted by the majority of the medical profession, would be more likely considered reasonable than experimental treatment with a high cost, or treatment that has the potential to harm the worker.

Cultural medicine presents different challenges. Cost–benefit analyses should continue to be a consideration. It may be necessary to take a more holistic approach to benefits, and the effect of cultural medicines on the worker's health and wellbeing. While this is true of all medical treatments, it appears to be more relevant in the largely unregulated cultural medicine space. Whether treatment is reasonable must be considered within the treatment and care plan, and not in isolation. This is one of the bases upon which we recommend developing treatment and care plans, which are discussed later.

We heard specific concerns about the availability of certain Schedule 8 medications, such as medicinal cannabis (including cannabis containing tetrahydrocannabinol or THC), methamphetamine

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[116] Comcare, *Scheme guidance - Applying the Clinical Framework to assess the reasonableness of medical treatment*, Comcare, accessed 31 August 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/applying-clinical-framework.
[117] For example, *Re Durham and Comcare* [2014] AATA 753.
[118] For example, *Re Kumar and Comcare* [2025] ARTA 112.
[119] *Re King and Comcare* (1998) 53 ALD 791, [24].

and psilocybin. The term 'Schedule 8 medications' refers to controlled drugs listed in Schedule 8 of the Poisons Standard made under the *Therapeutic Goods Act 1989* (Cth) (Therapeutic Goods Act).[120] These treatments have been reported to be effective for a range of conditions, such as chronic pain, entrenched depression and epilepsy.

The Therapeutic Goods Administration has not approved most of these drugs.[121] However, this does not mean that they are unavailable as treatment. Under the Therapeutic Goods Act, several methods are available to enable access to unapproved medicines. These include the Special Access Scheme and the Authorised Prescriber Scheme. Such processes can be a gateway to inclusion as 'medical treatment' under the SRC Act. We do not propose changes to that approach. Ultimately, the question is whether the treatment is reasonable.

As with all Schedule 8 drugs, particular attention must be paid to the safety of use (including dependency) and evidence of efficacy. These are inherently questions of reasonableness. However, we consider that significant weight should be placed on the opinion of a qualified and registered treating medical practitioner who prescribes such treatments, and the fact that such practitioners are subject to considerable oversight and regulation.

We recommend the governing board develop guidance on what is 'reasonable treatment'. Such guidance should explicitly deal with Schedule 8 medicines, including any avenues to avoid negative effects from using such medicines, such as dependency.

We also considered the application of the Clinical Framework. This is a guide to what medical treatment is reasonable, and reasonable to obtain, and can assist with ensuring claims management works towards achieving the best overall result for the worker.

We note the Clinical Framework has been developed to reflect current medical knowledge and decision-makers apply it in a non-legislative manner. We consider that the governing board should be empowered to develop similar binding guidance on what is reasonable medical treatment and care. This may or may not incorporate the Clinical Framework by reference.[122] Any such guidance should also include consideration of emerging and cultural treatments.

[120] The current Poisons Standard is the *Therapeutic Goods (Poisons Standard—June 2025) Instrument 2025* (Cth).
[121] The Therapeutic Goods Administration has approved a small number of medicinal cannabis goods. See Therapeutic Goods Administration, *Medicinal cannabis hub,* 2025, Therapeutic Goods Administration, accessed 31 August 2025. Available at www.tga.gov.au/products/unapproved-therapeutic-goods/medicinal-cannabis-hub.
[122] Within the limits of *Legislation Act 2003* (Cth), s 14.

Cost

The SRC Act does not specify the appropriate cost of medical treatment. This contrasts with some jurisdictions that adopt schedules of fees (see 5.3.3).[123] Unlike the matters discussed earlier, the case law provides little guidance.

Two main reasons are likely for the lack of judicial consideration of the cost. First, expensive treatment is a matter of 'reasonableness', and would often be considered in this context (see *Re Rope* quote in section 5.3.5). Second, noting that many medical treatment providers claim their expenses directly from Comcare,[124] a dispute about cost often does not directly involve the worker. The treatment provider does not have appeal rights under the SRC Act, and we suspect are often loath to involve the worker in such disputes. As a matter of practice, it is likely that where the fees are high, the treatment provider would seek pre-approval of the fees, preventing the dispute.

We suggest that the governing board issue a schedule of fees so there can be no dispute about the appropriate cost. The legislation (or the schedule itself) should provide for exceptional circumstances in which fees are paid above the schedule rates; for example, due to location and supply. We recommend that the schedule also not be exhaustive: treatments not covered by the schedule should remain compensable at an amount the decision-maker considers appropriate, and merit reviews of such decisions should be available.

Reimbursement of travel expenses

Comcare and licensees are generally liable to pay the cost of the journey to obtain medical treatment. Except where the journey involves using public transport or an ambulance, such journeys must be a minimum of 50 kilometres for a round trip.[125] Generally, the amount of compensation is calculated by reference to a specified rate per kilometre. The current rate is 68 cents per kilometre.[126] This rate has been derived from the tax deduction for work-related car expenses under the *Income Tax Assessment Act 1997* (Cth).[127]

On the face of the current legislation, this rate is applied irrespective of what transport is used.[128] This can mean the amount of compensation is less than the cost the worker has incurred.[129] In practice, notwithstanding the legislation, we expect where a reasonable cost is incurred and claimed by the worker, it is paid.

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[123] Comcare recommends that decision-makers refer to 'published national, state and territory rates', such as the Schedule of Fees issued by the Australian Medical Association. See Comcare, *Scheme Guidance: Appropriate Cost of Medical Treatment*, 2024, Comcare, accessed 10 July 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance/appropriate-cost-medical-treatment.

[124] Compensation for medical treatment expenses can be paid directly to the service provider: see SRC Act, s 16(4).

[125] SRC Act, s 16(7).

[126] *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Instrument 2019* (Cth).

[127] Explanatory Statement to the *Safety, Rehabilitation and Compensation (Specified Rate per Kilometre) Instrument 2019*.

[128] There is an exception if the expense is payable to a third party (and not the subject of a claim by the worker). In such a case, the incurred expense is payable: see SRC Act, s 16(9).

[129] Note that the 'expenditure reasonably incurred' provision in s 16(6)(d) of the SRC Act only applies to the cost of 'remaining' in a place (for example, the cost of parking or a hotel).

For personal transport, we generally think the minimum of a 50-kilometre round trip is appropriate. This removes the administrative burden of minor expenses. However, where longer trips are necessary to obtain medical treatment, the worker should not be out of pocket. In terms of the rate, a per kilometre rate derived from tax legislation is a reasonable approach. That rate includes consideration of fuel, registration, insurance and maintenance costs. However, the current legislation does not specifically link the rate to the relevant tax ruling.[130] Instead, the legislation provides for the Minister to specify a rate.

The problem with this approach is that the rate of 68 cents per kilometre applicable under the SRC Act was specified by the Minister in 2019. The current rate in the tax legislation is 88 cents per kilometre. We recommend that the governing board, rather than the Minister, specify the rate, to assist with timely action. Similarly, we recommend that the governing board be delegated responsibility for specifying the circumstances, such as the 50-kilometre round trip minimum, in which a benefit can be obtained.

We consider that other transport options should be compensated for at cost, payable either to the provider of the service, or to the person who paid the provider. To protect against unreasonable claims, the form of transport and its cost must both be reasonable. These matters could be included in a treatment and care plan.

Compensation for loss or damage to property

Section 15 of the SRC Act deals with property used by the employee.[131] It is an original provision of the Act, largely replicating s 28 of the 1971 Compensation Act. Under s 15, if an employee loses select types of property, or the property is damaged, in an accident arising out of and in the course of employment,[132] and that accident does not also result in an injury, they may be compensated for that damage or loss.

The property referred to in that section is limited to artificial limbs and substitutes, and medical, surgical or other similar aids or appliances. For persons who have suffered an injury (such that s 15 does not apply), such property falls within the definition of 'medical treatment'.[133] This means the provision does not exclude those who have suffered an injury – it relocates their entitlement to a different section.

The term 'other similar aids or appliances' refers to property that has 'a similar inherent nature, character or attributes to a medical or surgical aid or appliance'.[134] When read together with the term 'artificial limb or substitute', it is apparent that s 15 of the SRC Act is directed towards compensating for 'injury-like' damage or loss of property.

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[130] See Australian Taxation Office, *D1 Work-related car expenses 2025*, Australian Taxation Office, accessed 12 August 2025. Available at www.ato.gov.au/forms-and-instructions/individual-tax-return-2025-instructions/deduction-questions-d1-d10-individual-tax-return-2025/d1-work-related-car-expenses-2025.
[131] See the definition of 'property used by an employee' in the SRC Act, s 4.
[132] Note that the conjunctive 'and' is used in this phrase, requiring both a temporal and a causal relationship to employment. Compare SRC Act, s 5A, in respect of injuries.
[133] See paragraph (f) of the definition of 'medical treatment' in s 4 of the SRC Act.
[134] *Comcare v Heffernan* [2013] FCA 299, [24], approved on appeal in *Heffernan v Comcare* [2014] FCAFC 2.

We consider that this entitlement should be replicated in the new legislation. However, we see no reason to require that the damage or loss arose out of 'and' in the course of employment: consistent with the test for compensable injuries, the disjunctive 'or' should apply.

We also considered whether the entitlement should be more broadly extended to other property used by workers, such as mobile phones or clothes. However, on balance, we consider that compensation for such property would be better dealt with under other insurance or industrial arrangements.[135]

Aids and appliances

Compensation for aids and appliances appears in several places in the SRC Act. As previously noted, some aids and appliances are covered by the definition of medical treatment ('medical, surgical or other similar aid or appliance'), while others are found in the rehabilitation provisions ('any aids or appliances for the use of the employee').[136]

We consider the provision of aids and appliances, including repairs, along with the modification and alteration of the home, the workplace and the vehicle, should be dealt with in the same manner as medical treatment. This would also allow governing board guidance to cover these elements.

Otherwise, we consider the current settings are appropriate and we make no substantive recommendations.

Household and attendant care services

The SRC Act provides for compensation for household services and attendant care services reasonably required due to an injury. 'Household services' refers to domestic type services such as cooking, cleaning and gardening. 'Attendant care services' captures services not compensated for elsewhere that are required for the essential and personal care of the worker.[137]

The legislation provides for indexed rates:

- household services – the amount Comcare or the licensee 'considers reasonable', being no less than half the cost paid (or payable), but also no more than $588.55 per week. These limits do not apply to household services for those with catastrophic injuries
- attendant care services – the entitlement must be the lesser of the amount paid (or payable) and $588.55 per week. Again, these limits do not apply to catastrophic injuries.[138]

Generally, these services must be of a commercial nature. They are not usually payable to a family member.[139]

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[135] With respect to Commonwealth employees, Chapter 4 of the Comcover Statement of Cover provides coverage for property lost, damaged or destroyed in certain circumstances. Available at www.finance.gov.au/government/comcover/insurance/comcover-statement-cover.
[136] SRC Act, s 39.
[137] SRC Act, s 29.
[138] Comcare, *Statutory rates payable for benefits*, 2025, Comcare, accessed 27 August 2025. Available at www.comcare.gov.au/claims/statutory-rates.
[139] See *Re VXJ and Comcare* [1990] AATA 109; compare *Re Torney and Telstra* [1994] AATA 163.

Our general starting point is that, as far as possible, the legislation should return the worker to the position they were in before the injury. From there, it becomes apparent that compensation for household and attendant care services should be framed to focus on the worker's needs. If the need for such services arises because of the injury (as occurs with attendant care services), compensation should be payable. For needs that pre-existed the injury (for example, gardening), the focus should be on what the worker did before the injury, and what they can do after the injury. The current Act's reference to matters such as the number of people living in the household, and the extent to which they could be expected to provide such services (presumably gratis), misses the point. The concern is compensating the worker for their loss.

Many workers may choose for family members to provide attendant care or household services rather than a commercial provider. Such an approach may have benefits for the worker that commercial services cannot provide, particularly for their mental health, dignity and autonomy, and is more aligned with restoring a worker to their pre-injury position. In such circumstances, and with proper consideration of the worker's needs, the worker's choice to receive such services by a family member should be respected.[140] Furthermore, commercial providers may not be easily sourced, particularly in regional areas or because of competition with providers in the aged care or disability sector. That is, in some circumstances, family members may be the only feasible option. Compensation should be paid at a reasonable rate for the services provided by family members in lieu of a commercial provider. Except in the circumstances of a catastrophic injury, some form of compensation cap must remain on household and attendant care services. The current rates appear to be an appropriate amount. However, the specific amount should be specified by the board.

Again, this is a matter that should be included within the treatment and care plans discussed later. It would also be appropriate for the new Act to permit that, in certain circumstances such as long-term impairment, the plan allow for the amount to be determined on a basis longer than one week and permit a degree of self-management by the worker. This would also reduce administrative burden.

Treatment and care plans

As referenced throughout this chapter, the key to taking a holistic approach to the treatment and care of injured or ill workers is the development of treatment and care plans.

Early development of a medical treatment plan – identifying what treatment is required and its frequency – brings considerable benefits, including providing certainty for the worker. But its true value lies in providing general oversight of the worker's treatment and care.

Such plans are not necessary for all claims (for example, minors claim with straightforward approaches to treatment). But they are appropriate for many claims (for example, claims with multiple injuries, multiple treating practitioners and treatment modalities) and could be developed by the decision-maker in consultation with the worker, treating practitioners and other experts. Once the decision-maker has determined a medical treatment plan, the worker should be able to rely on it to obtain treatment. This provides certainty for the worker.

[140] See in a separate (but analogous) context, *Stewart v Metro North Hospital Service* [2025] HCA 34.

Provided the invoice is consistent with the plan, we consider that Comcare or the licensee should pay the expenses without reviewing the evidence that has already been considered. Reasons for accepting such a claim would not be needed. This would also make a degree of automation possible. Further, this decision-making framework would reduce the number of contestable determinations.

Medical treatment for AFP officers – consideration of a 'Blue Card'

During consultation, the Australian Federal Police Association (AFPA) proposed the introduction of a Blue Card for AFP officers, akin to the Department of Veterans' Affairs (DVA's) White Card, which is available to former Australian Defence Force (ADF) members. The AFPA argued that the nature of AFP service – particularly its exposure to trauma – warrants a similar approach to mental health support.[141] This is especially relevant given the AFP's active recruitment of ex-ADF personnel,[142] many of whom already hold a White Card. The presence of White Card holders within the AFP creates a disparity in access to mental health treatment between officers with prior ADF service and those without.

The White Card provides treatment for some cancers and fully funded mental health treatment on a non-liability basis, meaning veterans do not need to prove that their service caused the condition.[143] This model ensures early access to care and reduces barriers to treatment. However, replicating such a scheme within the Comcare framework by introducing a Blue Card risks creating inequities within the broader Comcare scheme.

In Chapter 4, we have recommended a system of early support for psychological injuries, including access to treatment prior to liability being determined. We also noted that a denied claim does not prevent employers from continuing to support workers with non-compensable psychological injuries. These recommendations aim to address concerns about access to early treatment without creating structural inequities within the Comcare scheme.

Given the unique nature of AFP service and the operational parallels with Defence, we recommend that the Australian Government investigate the feasibility of a separate mental health treatment scheme for AFP officers, outside the remit of the Comcare scheme and this review. Such a scheme could mirror the White Card model and provide equitable access to early mental health support for all AFP personnel, regardless of prior ADF service.

[141] AFPA submission, pp 9–10, 12.
[142] See Australian Federal Police (AFP), *Pathways to a career with the AFP*, AFP, accessed 5 September 2025. Available at www.afp.gov.au/jobs/pathway.
[143] See Department of Veterans' Affairs, *Veteran White Card*, accessed 5 September 2025. Available at www.dva.gov.au/access-benefits/veteran-card/veteran-white-card.

5.3.6 Panel recommendations

Recommendation 84

We recommend that compensation for matters such as rehabilitation, aids and appliances, repair and modifications fall under the definition of treatment and care.

Recommendation 85

We recommend that the governing board has the authority to specify via legislative instrument additional forms of treatment that would be 'medical treatment'. That power should explicitly include reference to First Nations cultural treatments.

Recommendation 86

We recommend that the governing board has authority to develop and make via legislative instrument binding guidance on what is reasonable treatment and care (such as medical, rehabilitation, aids, modifications, household and attendant care service), including consideration of emerging and cultural treatments.

Recommendation 87

We recommend the governing board has authority to issue, via legislative instrument, a non-exhaustive schedule of fees to determine the appropriate cost of treatment, with provision for variations in price according to location, and provide for exceptions.

Recommendation 88

We recommend private car transport to and from treatment be compensated in the circumstances, and at the rate, specified by the governing board and other forms of transport be compensated at reasonable cost.

Recommendation 89

We recommend the new Act provides for compensation for the loss or damage to artificial limbs and substitutes, and medical, surgical or other similar aids or appliances, where that loss or damage arose out of, or in the course of, the worker's employment.

Recommendation 90

We recommend that household and attendant care services be considered within treatment and care plans. Liability for compensation should be determined by reference to the needs of the worker arising because of the injury or, in the case of pre-existing needs, by what the worker did before the injury. Compensation caps should remain at an amount specified by the governing board, except for catastrophic injuries.

Recommendation 91

We recommend the new Act provide for the development of a treatment and care plan that provides, in relation to a worker who has suffered an injury, certainty for a fixed amount of medical treatment, travel-related expenses, household services and attendant care services for a specified period.

5.4 Death and funeral benefits

5.4.1 Background

Everyone deserves a safe and healthy workplace, yet work-related deaths can happen in any industry or occupation. When they do, there are significant effects on families and the wider community. According to SWA, there were 200 worker fatalities across Australia in 2023. From 2019 to 2023, there were 1.4 fatalities per 100,000 workers. This number is lower than historical averages, and the rate has stabilised in recent years.[144]

The Comcare scheme has an above-average death rate, compared to the national average, with the premium payers (Commonwealth entities) being the largest source of such claims.[145] This may be due to deaths related to historical asbestos exposure, and the respective methods for counting such deaths in statistics.

Table 5: Premium payers versus licensees, comparison of compensable deaths

Year	Entity	Number of compensable deaths[146]	Compensable deaths per 100,000 FTE[147]
2019–20	Premium payers	3	1.63
	Licensees	2	0.94
	Total	**5**	**1.26**
2020–21	Premium payers	13	7.08
	Licensees	5	2.23
	Total	**18**	**4.41**
2021–22	Premium payers	7	3.62
	Licensees	6	2.41
	Total	**13**	**2.94**
2022–23	Premium payers	14	7.19
	Licensees	4	1.55
	Total	**18**	**3.98**
2023–24	Premium payers	7	3.31
	Licensees	5	1.92
	Total	**12**	**2.54**

[144] SWA, *Key Work Health and Safety Statistics Australia 2024*, accessed 13 August 2025. Available at data.safeworkaustralia.gov.au/insights/key-whs-statistics-australia/latest-release.
[145] In part, this may reflect different liability requirements between workers' compensation schemes, such as liabilities for heart attacks and strokes. See our discussion in Chapter 2.
[146] Comcare and Safety, Rehabilitation and Compensation Commission (SRCC), *Annual Report 2023–24*, Table 13.
[147] Derived from Comcare and SRCC *Annual Report 2023–24*, Table 13 data compared with Figure 3 data.

The compensation provisions in the SRC Act for when an injury results in death are:

- a lump sum, currently indexed up to $664,264.56
- a weekly entitlement of up to $182.68 per week for a dependent child
- funeral expenses up to $14,990.43.[148]

As discussed in Chapter 3, these payments can only be made once liability for the death has been accepted. We recommend that pre-liability payments are made to dependents of deceased workers to ensure immediate support during this crisis period.

5.4.2 Previous reviews

The Hanks Review did not make recommendations regarding entitlements arising from the death of a worker.

The 2014 review of the Northern Territory scheme recommended revising the lump sum amount payable for the death benefit and compensation for funeral expenses. That review also recommended compensation include counselling for family members.[149]

The 2014 review of the Western Australian scheme sought a significantly increased lump sum entitlement, and to develop a revised framework for payment.[150] The recommendations were largely reflected in Western Australia's 2023 legislation (the current arrangements are outlined later).

The 2023 review of Queensland's scheme deferred consideration of its approach to death claims. Instead, the review recommended a further independent review focus on the topic.[151]

5.4.3 State and territory arrangements

Each state and territory scheme provides for a death benefit lump sum to be paid to dependants, weekly payments to dependent children (and sometimes spouses), funeral expenses and, occasionally, other support payments.

The lump sum benefit is generally a single amount shared between dependants as provided for by the legislation. Most jurisdictions are more prescriptive than the SRC Act about how the lump sum amount is shared. The criteria depend on matters such as the level of dependency, the number of partners or spouses, and the number of dependent children. In the absence of dependants, a lump sum amount is

[148] Comcare, *Statutory rates payable for benefits*, 2025, Comcare, accessed 27 August 2025. Available at www.comcare.gov.au/claims/statutory-rates.
[149] Roussos Legal Advisory and CrossInnovate Consulting, *2014 Review of NT workers' compensation scheme*, 2014, NT WorkSafe, Recommendation 19.
[150] WorkCover WA, *Review of the Workers' Compensation and Injury Management Act 1981*, 2014, WorkCover WA, Recommendation 60.
[151] G Fisher and D Peetz, *2023 review of the operation of the Queensland workers' compensation scheme,* 2023, WorkSafe Qld, Recommendation 30.

generally not payable, although Queensland permits payment of a limited amount to certain non-dependants.[152]

Some jurisdictions require the lump sum payment to be made through an intermediary. For example, the Australian Capital Territory requires that the lump sum amount be paid into the Magistrates Court (unless ordered otherwise).[153] Queensland suggests the payment may be made to the worker's legal representative, if there is one.[154] Various jurisdictions allow for payment through a trustee for the benefit of a minor or person with disability.[155]

Weekly payments for children of the deceased worker are available in all jurisdictions (see Table 7). Like the SRC Act, these payments are generally made until the child turns 16, but extended up to the age of 25 if the child is in full-time education. South Australia permits the extension of weekly payments if the child cannot work because of disability. Tasmania extends weekly payments to a spouse or caring partner (who was dependent on the worker) for up to 2 years after death. In some jurisdictions, the pension amount is prescribed by the legislation (or subordinate legislation), while in others the amount is determined by reference to a percentage of the worker's pre-injury earnings. South Australia, Victoria and Tasmania also permit a weekly payment to dependent partners for a limited time (for example, 3 years).[156]

Table 6: Death benefits statutory amounts as at 1 July 2025

Jurisdiction	Lump sum amount	Weekly payment to child	Funeral expenses
Comcare[157]	$664,264.56	$182.68 per child	Up to $14,990.43
ACT[158] (as at 1 July 2024)	$643,667.00	$177.02 per child	Up to $14,639.09
Queensland[159]	$790,994.52	$195.37 per child	Reasonable expenses
New South Wales[160]	$955,950.00	$171.10 per child	Up to $15,000.00

[152] See *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 201A.
[153] *Workers Compensation Act 1951* (ACT), s 78.
[154] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 128E.
[155] For example, *Workers Compensation and Rehabilitation Act 2003* (Qld), s 198.
[156] WorkSafe Victoria, *Entitlements following a work-related death*, 2025, WorkSafe Victoria, accessed 27 August 2025. Available at www.worksafe.vic.gov.au/entitlements-following-work-related-death.
[157] Comcare, *Statutory rates for compensation*, 2025, Comcare, accessed 13 August 2025. Available at www.comcare.gov.au/claims/statutory-rates.
[158] WorkSafe ACT, *ACT Indexation Benefit Guide*, 2024, WorkSafe ACT, accessed 13 August 2025. Available at www.worksafe.act.gov.au/workers-compensation/your-entitlements.
[159] Queensland expresses statutory rates by reference to Queensland Full-time Adult's Ordinary Time Earnings (QOTE), as declared by the Australian Statistician: see WorkSafe Qld, *What is QOTE?*, 2025, WorkSafe.qld.gov.au, accessed 13 August 2025. Available at www.worksafe.qld.gov.au/laws-and-compliance/workers-compensation-laws/guidance-materials/workers-compensation-benefits-including-qote/what-is-qote.
[160] SIRA, *Workers' compensation benefits guide*, SIRA, accessed 13 August 2025. Available at www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-and-claims/workers-compensation-benefits-guide.

Jurisdiction	Lump sum amount	Weekly payment to child	Funeral expenses
Northern Territory[161]	$671,871.20	$184.58 per child, up to 10 children	Up to $19,196.32
South Australia[162]	$639,955.00	Calculated by reference to pre-injury earnings	Up to $13,506.00
Tasmania[163]	$455,259.15	$164.55 per child	Up to $9,500.00
Victoria[164] (as at 1 July 2024)	$759,510.00	<5 children: 5% of the worker's pre-injury earnings (per child), to a maximum combined amount of $2,930.00 a week >5 children: An equal share of 25% of the worker's pre-injured earnings, to a maximum combined amount of $2,930.00 a week	Up to $15,320.00
Western Australia[165]	$683,050.00	$161.00 per child	Up to $12,477

Funeral expenses are compensated at cost up to a statutory prescribed figure in each state.

The reasonable costs of counselling services and financial advice for dependants is also sometimes payable; for example, in the Northern Territory and Tasmania.[166]

[161] Northern Territory expresses statutory rates by reference to the Northern Territory's Full-time Adult's Ordinary Time Earnings as declared by the Australian Statistician. See NT WorkSafe, *Average Weekly Earnings (AWE) Figures for 2025*, NT WorkSafe, accessed 13 August 2025. Available at worksafe.nt.gov.au/forms-and-resources/bulletins/average-weekly-earnings-awe-figures-for-2025.
[162] ReturntoWorkSA, *Schedule of Sums - Maximum lump sum payable on death*, 2025, ReturntoWorkSA, p 19. Available at www.rtwsa.com/search?query=maxiumum+lump+sum+payable+on+death.
[163] Tasmania uses 'basic units' to calculate maximum entitlement rates for the lump sum and weekly entitlement. See WorkSafe Tasmania, *Basic rate and basic salary indexation*, 2024, WorkSafe Tasmania, (funeral expenses are prescribed in regulations). Available at worksafe.tas.gov.au/topics/compensation/workers-compensation/information-for-employers/basic-rate-and-salary-indexation.
[164] WorkSafe Victoria, *Entitlements following a work-related death*, 2025, WorkSafe Victoria, accessed 13 August 2025. Available at www.worksafe.vic.gov.au/entitlements-following-work-related-death.
[165] See WorkCover WA, *Indexation of Workers Compensation Payments 2025/26,* 2025, WorkCover WA, accessed 13 August 2025. Available at www.workcover.wa.gov.au/news/indexation-of-workers-compensation-payments-for-2025-26/.
[166] WorkSafe Tasmania, *How to make a claim as a dependant or family member (deceased worker)*, WorkSafe Tasmania, accessed 27 August 2025. Available at worksafe.tas.gov.au/topics/compensation/workers-compensation/information-for-workers/how-to-make-a-workers-compensation-claim-dependant-family-member-deceased-family-member.

5.4.4 What we heard

FIWAC suggested the Comcare scheme needed to broaden its definition of 'dependent' so it supports all those financially and emotionally dependent on the deceased worker, as well as immediate family members who have suffered disruption to their work capacity, irrespective of financial dependence.[167] Mothers in Arms said much of the financial assistance offered by the Comcare scheme was inadequate. For instance, lump sum compensation is arguably deficient, and may not cover the actual costs for meeting the average mortgage and funeral expenses.[168] Comcare and many unions agreed that the lump sum rate and funeral payment should be increased and that economic dependence should not be the only determinant of who receives the payment.[169] Many submissions said the Comcare scheme needed to provide support services to grieving family members.[170]

> Today we should recognise the devastating impact of a workplace death on those who may not have been dependant on an adult child financially.
>
> **Mothers in Arms submission, p 4.**

> [Comcare] benefits are roughly in line with what a worker's family might expect under other schemes.
>
> **Maurice Blackburn Lawyers submission, p 14.**

> The current regime appears to be well outdated and inadequate.
>
> **FIWAC submission, p 2.**

5.4.5 What we considered

Lump sum

The amount of the lump sum is currently affected by whether the worker had dependants at the time of death. A 'dependant' in this context generally refers to a family member who depends on the worker for economic support.[171]

We do not see the need for the requirement that the lump sum be limited to those with dependants. Workers who die on the job (or because of the job) should be equally entitled to the lump sum.

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[167] FIWAC submission, p 3.
[168] Mothers in Arms submission, pp 3–5.
[169] Comcare submission, p 31; ACTU submission, p 20; CPSU submission, p 14.
[170] Australian Association of Psychologists submission, p 7; CPSU submission, p 14; Comcare submission, p 31.
[171] The full definition of 'dependant' in SRC Act, s4: '(a) the spouse, parent, stepparent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the employee; or (b) a person in relation to whom the employee stood in the position of a parent or who stood in the position of a parent to the employee; being a person who was wholly or partly dependent on the employee at the date of the employee's death'. SRC Act, 4(2) clarifies that this includes persons such as de facto partners and adopted children. 'Dependent' means 'dependent for economic support'.

Because there are no dependants in this situation, legislation does not need to deal with how to share the lump sum. We consider that in such situations, the lump sum should be payable to the estate.

When the worker dies leaving dependants, we consider that the lump sum should be shared among them, taking into account the losses they have suffered as a result of the worker's earnings being stopped. Spouses and children living with the worker immediately before their death should be deemed to be 'wholly dependent' and receive a greater share. Only one lump sum should be payable, irrespective of the number of dependants.

We consider that once the amount of the lump sum has been determined, the decision-maker should resolve how it will be divided among the dependants. To limit disputes, the formula for determining the share of the lump sum payable to each dependant (including key considerations) should be made transparent and be set by the governing board.

The lump sum payable for death under the SRC Act is among the lowest of all the schemes. Given the importance of the payment, particularly in the distressing context in which it arises (and noting the relatively low number of death claims), there is no reason the Commonwealth legislation should not compensate dependants at a rate at least commensurate with the scheme that provides for the highest entitlement, which is currently New South Wales.

Weekly entitlement for children

The current legislation provides for a weekly entitlement payable in respect of children of deceased workers aged under 16, or who are full-time students and not normally employed, and aged between 16 and 25 years. The weekly entitlement ends once the child no longer meets these requirements.

In our view, the current weekly entitlement for children is in line with other schemes, is generally appropriate and should be replicated in the new legislation. However, requiring a child to be engaged in full-time study and not normally employed does not reflect modern work and study arrangements. It is common for a person to be both a full-time student and normally employed in a part-time role, and also common for people to balance part-time work and part-time study. It is also not unusual for people to continue to receive support from their parents while studying full or part time, particularly by continuing to live in the family home. We therefore consider that weekly entitlements should continue for 16- to 25-year-old children of deceased workers who are engaged in part-time or full-time education, and weekly entitlements should not cease where the person is in part-time employment. Further, as in other schemes, such as in South Australia, the weekly entitlement for children continues beyond 25 years where the child is unable to engage in employment due to disability. This reflects the ongoing dependency faced by persons with disabilities who are unable to work.

The present entitlement is for a statutory prescribed amount, subject to indexation. This is a common approach. South Australia and Victoria use a formula based on the deceased worker's pre-injury earnings. Linking the entitlement to the pre-injury earnings (as relevantly indexed) has appeal because the lost economic support experienced by the dependant was linked to the pre-injury earnings.

Having considered the alternatives, we think that Victoria's method of determining the weekly entitlement for children is broadly appropriate. Under this approach, each child will receive 5% of the

worker's NWE (as indexed and subject to the minimum earnings level safety net that applied, or would have applied, after 45 weeks of incapacity) per week for up to 5 children. For more than 5 children, the children receive an equal share of 25% of the NWE.

Funeral expenses

Comcare or the licensee is liable to pay the reasonable cost of funeral expenses up to the statutory maximum amount (see Table 7). In determining the reasonable amount, the decision-maker considers the ordinary charges for funerals in that area, and the amount payable for funerals under other Commonwealth laws.

We are not aware of any significant dispute about the operation of this provision.

According to the Australian Securities and Investments Commission's Moneysmart website, funerals cost between $4,000 and $15,000.[172] This is consistent with the amounts payable under workers' compensation schemes. Allowing for special circumstances that increase costs, we consider it reasonable to increase the maximum amount to $16,000, with future annual indexation. As this is a maximum amount, and compensation will still be paid on the basis of the reasonable cost incurred, it is unlikely many would receive the full entitlement.

We note that s 16(9) of the SRC Act provides for compensation for expenses relating to the transportation of the body, at cost. This may or may not relate to the funeral, but in any event, this provision should remain.

Other entitlements

As noted earlier, we received several submissions identifying the need for financial advice and grief counselling for the families of deceased workers, and respite care services for those terminally ill. Many state and territory workers' compensation schemes compensate for such services.[173]

All workers and their families deserve comprehensive support when facing the consequences of work-related injury, illness or death. While the primary focus of workers' compensation legislation is to provide financial redress and medical support, it must also reflect the broader human effect of workplace harm. We consider that it should include provisions for grief counselling and financial advice for the families of deceased workers, enabling them to acknowledge the profound emotional and practical challenges they face.

Grief counselling offers essential psychological support during a time of trauma, helping families navigate loss and possibly preventing long-term mental health issues. Similarly, financial advice

[172] Australian Securities and Investments Commission, *Paying for your funeral*, Moneysmart, accessed 15 August 2025. Available at moneysmart.gov.au/manage-your-money-in-retirement/manage-health-costs-in-retirement/paying-for-your-funeral.
[173] WorkSafe Tasmania, *How to make a claim as a dependant or family member (deceased worker)*, 2024, WorkSafe Tasmania, accessed 27 August 2025. Available at worksafe.tas.gov.au/topics/compensation/workers-compensation/information-for-workers/how-to-make-a-workers-compensation-claim-dependant-family-member-deceased-family-member.

ensures families can make informed decisions about complex matters such as superannuation, insurance and estate management, reducing stress and the risk of financial mismanagement.

For workers who are terminally ill due to work-related conditions, access to respite care services is equally vital. Terminal illness places immense strain on the individual and their carers, who often provide round-the-clock support. Respite care services offer temporary relief, allowing carers to rest and maintain their own wellbeing, which is critical for sustaining care over time. We consider that recognising respite care services as compensable under workers' compensation legislation affirms the dignity of the worker and the value of their support network.

These measures align with contemporary approaches to trauma-informed care, mental health support, and family-centred compensation frameworks. They reflect evolving community expectations around workplace safety and employer responsibility. Moreover, the financial cost of providing these supports is modest compared to the long-term social and economic costs of untreated grief, financial instability and carer burnout. By embedding these provisions in legislation, governments can promote recovery, resilience and fairness for those most affected by workplace harm.

5.4.6 Panel recommendations

Recommendation 92

We recommend the definition of 'dependant' is a person who was totally or partly dependent on the worker's support and earnings at the time or, but for the incapacity, would have been so dependent, and includes spouses, children and parents.

Recommendation 93

We recommend that where the worker dies leaving dependants, the lump sum be shared among those dependants, having regard to the losses suffered by those dependants as a result of the cessation of the employee's earnings. Comcare and licensees should retain the ability to determine the share of compensation payable to dependants consistent with the formula specified, via legislative instrument, by the governing board.

We further recommend that where a worker dies without leaving dependants, the lump sum be payable to the estate.

Recommendation 94

We recommend that compensation for injuries resulting in death is increased, such that:

a. the lump sum amount for death is increased to be equal to the highest comparable amount and indexed annually

b. dependent children receive weekly payments based on the deceased worker's pre-injury earnings, subject to caps for 16- to 25-year-old children of deceased workers who are engaged in full-time or part-time education, and weekly entitlements should not cease where the person is in part-time employment. Further, the weekly entitlement for children should continue beyond 25 years where the child is unable to engage in employment due to disability. The weekly entitlement is based on each child receiving up to 5% of the Normal Weekly Earnings per week, capped at 25% in total

c. the maximum funeral expense amount is increased to $16,000 and indexed annually.

d. reasonable expenses for financial advice and grief counselling be provided for the families of deceased workers, as well as respite care services in the case of terminally ill workers

e. where a deceased worker leaves no dependants, non-dependent family members receive reimbursement of reasonable expenses in cases of financial hardship.

5.5 Common law

5.5.1 Background

The introduction of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* saw a significant change to the way the Commonwealth managed workers' compensation. This reform saw the introduction of various long-term benefits and rights to rehabilitation, effectively as a substitute for some common law rights.[174] Justice McHugh of the High Court provided the following summary of the history (footnotes omitted):

> *'The 1988 Act extinguishes all rights to sue the Commonwealth or a Commonwealth authority for damages for injuries sustained in the course of employment with the Commonwealth or a Commonwealth authority. In place of those rights is substituted a statutory scheme of compensation which provides for lump sums for permanent impairment, weekly payments for incapacity, medical expenses and sums for non-economic loss. According to the second reading speech explaining the Commonwealth Employees Rehabilitation and Compensation Bill 1988, the purpose of the proposed Act was to "provide incentives for injured employees to return to work as soon as possible" and to "provide greater powers in relation to rehabilitation". These objectives were said to be the Commonwealth's response to a 700 per cent increase in government expenditure on workers' compensation over the decade between 1976 and 1986. The Minister attributed the increase to inefficiencies in the 1971 Act and to long delays in the court system in bringing negligence actions on for hearing. Both factors were said to provide disincentives for injured workers to return to work and to encourage them to maximise the extent and duration of their injuries. The Minister stated that the new Act was an attempt to reverse this position by encouraging speedy rehabilitation.'*[175]

The SRC Act distinguishes between common law actions against the employer, and actions against third parties, and deals with each in a different manner. Actions against the employer (and other workers) relating to injuries sustained in the course of employment are effectively barred. Workers can elect to sue their employer only for non-economic loss in exchange for their entitlement to receive compensation for permanent impairment. However, the legislation caps the amount available at $110,000, which has not been indexed since 1988. On one reading of the SRC Act, the cap set by the legislation is $110,000 per injury – such to permit for the limit a common law action to be capped at a multiple of $110,000 for each injury suffered in an incident – is ambiguous. An alternative reading limits an 'action or proceeding' to a cap of $110,000, irrespective of the number of injuries involved.[176]

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[174] See Explanatory Memorandum to the Commonwealth Employees' Rehabilitation and Compensation Bill 1988, p 8; P Sutherland, *Annotated Safety, Rehabilitation and Compensation Act 1988, 12 ed*, 2023, The Federation Press, p lxxv (introduction).
[175] *Georgiadis v Australian Overseas Telecommunications Corporation* [1994] HCA 6.
[176] See SRC Act, s 45.

Action against third parties is largely unrestricted. Receiving damages from a third party triggers clawback provisions, in that the worker must repay Comcare or the licensee for compensation received. The worker is also precluded from receiving compensation under the SRC Act. Comcare and the licensees also have some rights of subrogation, albeit in the name of the worker.

5.5.2 Previous reviews

Hanks Review

The Hanks Review examined the benefits and challenges of long-tail schemes, which largely restrict access to common law, unlike short-tail schemes with their broader access to common law remedies. This led to a comparison between statutory schemes and common law. Under statutory schemes, workers do not need to establish fault to receive compensation. But under common law, the worker would need to show fault (generally negligence) on the part of the employer. Hanks noted this may be a benefit of common law actions because they expose negligent and harmful practices of employers.[177] Other positives of common law compensation are similar to commutation of claims, which we discuss in section 6.2 Resolving claims.

Hanks concluded:

> *'The benefits associated with statutory compensation schemes (namely the no-fault nature of liability, the timeliness of compensation, support for early intervention, reduced legal costs, greater certainty and reduced medical expenses) provide compelling reasons in favour of retaining statutory compensation for employment-related injuries and diseases.*
>
> *While common law damages for employment-related injuries may be argued by some to be a "fundamental right", a statutory compensation scheme does not disregard that right; it simply provides a different mechanism for compensating employees for work-related injury and disease. For the same reason, statutory compensation payments do not discriminate against those harmed in the workplace compared to those harmed outside the workplace. Indeed, a person injured at work may be in a better position, because he or she does not have to prove either negligence or a duty and a breach of that duty in order to recover compensation for the injury.'*[178]

Hanks recommended that the restrictions on access to common law in the SRC Act remain.

[177] Hanks Review, para 10.20.
[178] Hanks Review, paras 10.27–10.28.

5.5.3 State and territory arrangements

Most workers' compensation schemes provide some form of access to common law damages against employers, though the extent and conditions vary significantly. A common feature is the requirement for a statutory threshold of permanent impairment, typically ranging from 15% to 35%, to qualify for a claim.[179]

Generally, actions can be taken for economic loss and non-economic loss, although this is modified in some jurisdictions. For example, in South Australia only economic loss may be pursued.[180]

Caps on damages of varying amounts are prevalent. In Tasmania and the Australian Capital Territory, unlimited damages may be awarded.[181] The irrevocability of electing to pursue common law varies. Queensland and South Australia require an irrevocable election, while New South Wales and the Australian Capital Territory allow continued access to statutory benefits if the common law claim fails.[182]

The Northern Territory is distinctive as the only jurisdiction that has abolished the right to pursue common law damages against the employer entirely. By contrast, under the private sector scheme in the Australian Capital Territory, the right to common law damages is effectively unfettered by workers' compensation laws.[183]

5.5.4 What we heard

Many stakeholders submitted that the common law provisions in the Comcare scheme should be reviewed.[184] Comcare agreed the common law provisions needed to be clarified.[185] Numerous unions and claimant legal services argued the Comcare scheme needed to allow workers to access common law remedies.[186] Some believed the current Comcare scheme's restriction on common law action disincentivised employers from complying with safety standards.[187] The ACTU argued that without

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[179] See, for example, threshold requirements in *Workers Compensation Act 1987* (NSW), s 151H, and the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), ss 335(1)–(2); SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Table 5.6.

[180] *Return to Work* Act *2014* (SA), s 73.

[181] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Table 5.6.

[182] See SRC Act, s 45; *Return to Work Act 2014* (SA), s 56A; *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 239; SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Table 5.6.

[183] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Table 5.6.

[184] CPSU submission, p 35; Comcare submission, p 34; Mothers in Arms submission, p 6; FIWAC submission, p 3; Slater and Gordon submission, pp 3, 8; Maurice Blackburn Lawyers submission, p 6.

[185] Comcare submission, p 34.

[186] CPSU submission, p 35; ACTU submission, pp 39–40; Slater and Gordon submission, pp 3, 8; Maurice Blackburn Lawyers submission, p 6; Australian Education Union (ACT) Branch submission, pp 13–14; Electrical Trades Union submission, p 3.

[187] FIWAC submission, p 3; ACTU submission, pp 39–40; Slater and Gordon submission, pp 3, 8.

access to common law damages, workers can remain 'stuck' on the Comcare scheme, with claimants continually having to prove their injury in protracted legal disputes, which can negatively affect their health.[188] Some employer groups and their legal representatives also referred to this issue and suggested common law proceedings could be appropriate as an avenue to finalise a claim or in situations that cannot be adequately compensated through statutory entitlements.[189]

> A fair path to common law claims should be established to provide justice.
>
> **Mothers in Arms submission, p 6.**

> The exclusion at s 44 of the SRC Act from bringing any common law claim is, in our opinion, arbitrary.
>
> **Elringtons Lawyers submission, p 5.**

> We are in favour of removing any restrictions to common law.
>
> **Pacific National submission, p 11.**

5.5.5 What we considered

Actions against the employer

Other than in limited circumstances, s 44 of the SRC Act effectively extinguishes the right to sue the Commonwealth, a Commonwealth authority, a licensee or another worker for personal injury. One limited exception is if a person is entitled to compensation for permanent impairment and non-economic loss under the statutory provisions of the SRC Act (ss 24, 25 and 27). Under s 45 of the SRC Act, they may make an irrevocable election to instead sue their employer for up to a maximum of $110,000.

In 1988, the original maximum amount payable under the permanent impairment provisions was $110,000 (the maximum under s 24 ($80,000), plus that under s 27 ($30,000)). This equated with the statutory limit on maximum amounts that could be awarded for non-economic loss by a court in a common law action. However, the maximum payable under the permanent impairment provisions is subject to indexation (it is now $323,722.77[190]), whereas the limit for non-economic loss under common law is not, and remains at the original $110,000. For this reason, elections to sue for non-economic loss at common law are now rare.

We agree with the Hanks Review that the benefits of a predominantly statutory scheme are compelling, and that many of the concerns around restricting access to common law fall away with the implementation of a commutation process. However, the deterrent factor against unsafe practices of common law remains. For this reason, we consider that the restrictions on the right to sue the

[188] ACTU submission, pp 39–40.
[189] Pacific National submission, pp 2–3; McInnes Wilson Lawyers submission, p 2; Ai Group submission, pp 12–13.
[190] As at 1 July 2025, $235,434.71 under s 24(7) + $44,144.03 under s 27(2) (component A) + $44,144.03 under s 27(2) (component B). See Comcare, *Statutory rates for compensation*, Comcare website, 2025, accessed 10 July 2025. Available at www.comcare.gov.au/claims/statutory-rates.

employer (and other workers) for damages arising from an injury should remain, but the cap should be removed.

Any action against the employer in relation to an injury sustained in the course of employment should be limited to non-economic loss. As with the current legislation, if the worker is entitled to a payment for permanent impairment, they would also have the right to make an irrevocable election to sue at common law in lieu of the permanent impairment payment.

We also considered statutory limitations. In some states and territories, there is a statutory bar to taking action at common law for negligence, based on the amount of time that has passed since the injury was sustained.[191] In other states, the timeframe starts when 'the cause of action arose'.[192] It is our view that any timeframe in which to take action, as applicable to the situation, should apply from the date the worker sues at common law. This should be the time that the cause of action arises. Consultation with states and territories may be required to implement this recommendation.

Actions against third parties

The right to sue third parties at common law does not face the same barriers that exist for actions against the employer (and other workers). However, an award of damages in such an action affects SRC Act entitlements, provided the settlement concerns the same injury. To put it simply:

- If the worker pursues a claim for damages, compensation under the SRC Act ceases to be payable once they receive the damages. Any compensation received under the SRC Act must be repaid to Comcare, to the maximum amount received for damages. Receiving damages guillotines the right to compensation under the SRC Act for that injury.
- Comcare or the licensee has the right to take an action for damages against a third party in the name of the injured or ill worker. It also has the right to take control of an action the worker was already pursuing. If such an action is settled (or a court awards damages), the damages are paid to Comcare, which reimburses itself for compensation already paid under the SRC Act and its costs of the proceedings, and pays the balance to the worker. If the damages amount is insufficient to cover that reimbursement amount, the worker is not entitled to receive any further compensation under the SRC Act until the reimbursement amount is reached. In this way, the recovery of damages in this circumstance is not a complete guillotine to SRC Act compensation rights.

The Hanks Review expressed concerns about the lack of a statutory cause of action under the SRC Act. That is, while the SRC Act permits Comcare or the licensee to take (or take over) an action against a third party in the name of the worker, the legislation does not effectively indemnify Comcare or the licensee. We agree with Hanks that permitting Comcare and licensees to directly recover compensation from third parties, in the absence of an action under the name of the worker, would simplify processes for recovering compensation. It would also permit Comcare or the licensee to recover compensation without needing to institute proceedings.

[191] For example, *Limitations Act 1985* (ACT), s 16B.
[192] For example, *Limitation of Actions Act 1974* (Qld), s 11.

To rectify this concern, the Hanks Review recommended having a right similar to that in s 151Z of the *Workers Compensation Act 1987* (NSW). This provision gives the compensation payer a right of recovery from either the worker or the third party without needing to institute legal proceedings. We similarly consider that s 151Z provides an appropriate direct right of recovery in such circumstances.

Further, the legislation should actively encourage Comcare and licensees to pursue recovery from third parties responsible for injuries. This would benefit both workers (who should receive larger amounts from wrongdoers) and Comcare and licensees (which are more likely to recover greater proportions of the compensation they have paid).

To provide that encouragement, the new Act should provide that, in such situations, it is the duty of Comcare or the licensee to assist the worker and their legal representatives in any such action. Where Comcare or the licensee has exercised its right to start or take over such proceedings, it should have a duty to maximise the amount recovered.

5.5.6 Panel recommendations

Recommendation 95

We recommend that if a worker suffers from at least a 10% degree of impairment, the worker can irrevocably elect to take common law action for non-economic loss in lieu of receiving that permanent impairment compensation. We further recommend that the cap on damages for non-economic loss be removed and that the new Act specify that for the purposes of statutes of limitations, the cause of action to sue the employer for non-economic loss arises with the making of the election.

Recommendation 96

We recommend the new Act provides Comcare and licensees a statutory right of recovery, similar to the right in s 151Z of the *Workers Compensation Act 1987* (NSW). We further recommend that it is the duty of Comcare or the licensee to maximise damages recovered in an action against a third party.

5.6 Entitlements from other sources

5.6.1 Background

Entitlements from other sources may also affect compensation paid under the SRC Act. Provisions are contained in the Act (discussed later), with the basic premise being to prevent claimants receiving double benefits for the same loss.

In contrast, some other sources of entitlements do not affect SRC Act compensation, but we discuss them here in light of recent case law.

State compensation

The SRC Act contains recovery and preclusion provisions, which apply to injuries for which a person receives state workers' compensation.[193] This circumstance most likely arises in the context of ailments with more than one cause, or that are caused by employment with different employers (for example, ailments caused by cumulative exposure to a hazard at multiple employers). Any compensation received under a state or territory scheme relating to that injury must be repaid to Comcare or the licensee.

The SRC Act also has recovery provisions for compensation obtained under other specified state laws.[194] Those laws are identified in an instrument made by the Minister and include compensation paid under laws concerning victims of crime and motor vehicle accidents.[195] The SRC Act requires that Comcare or the licensee is reimbursed the amounts paid under the SRC Act, to a limit of the amount received under the state or territory law.

Payments under an award

Where compensation under the SRC Act and benefits payable under an industrial award (defined broadly in s 52(6) to include all types of industrial instruments) are both payable for the same injury, the SRC Act requires the worker to make an irrevocable election as to which scheme they wish to have apply.[196] An 'award' in this context extends to determinations, orders and agreements.

Statutory damages

Occasionally, compensation is paid for the same circumstances that gave rise to the injury under another Commonwealth scheme, particularly under the *Australian Human Rights Commission Act 1986* (in conjunction with, for example, the *Disability Discrimination Act 1992* and the *Sex Discrimination Act 1984*). Other possible Commonwealth avenues for civil penalties include the general protections provisions of the FW Act, the *Public Interest Disclosure Act 2013*, the

[193] SRC Act, s 118.
[194] SRC Act, s 119.
[195] Currently the *Safety, Rehabilitation and Compensation (Specified Laws) Declaration 2017*.
[196] SRC Act, s 52.

Privacy Act 1988 and the whistleblower provisions of the *Corporations Act 2001*.[197] A person cannot simultaneously make a non-dismissal discrimination claim under the FW Act and a claim under anti-discrimination law or the Australian Human Rights Commission Act in relation to the same conduct.[198]

The interaction of these schemes with the SRC Act was largely untested until recently.[199] In 2024, the Full Court of the Federal Court found in *Comcare v Friend*[200] that the SRC Act does not contain any clawback provisions in relation to such statutory damages.

Breach of contract damages

It is possible that an injury arises through a breach of an employment contract and so could result in damages being payable. The amount of damages may closely relate to the losses compensated for under workers' compensation legislation. This has occurred, for example, in the context of a worker suffering injuries resulting from a breach of workplace harassment and discrimination policies that were incorporated into their employment contract.[201]

The SRC Act neither bars such an action nor provides a mechanism to recover such damages.

5.6.2 Previous reviews

We are not aware of a review that has considered these provisions in state and territory schemes. We further note that the issues raised in matters such as *Friend*[202] have not been expressly clarified in recent amendments to some schemes, such as in Victoria[203] and South Australia,[204] nor in statutory reviews such as the 2023 review of the operation of the Queensland workers' compensation scheme.[205] Newly established schemes, such as in Western Australia, also did not explicitly address it.[206]

[197] In *Bartlett v Commonwealth of Australia* [2025] FCA 1107, [11], the Federal Court observed that there was 'no reason why [the approach in *Friend*] would not apply to claims for personal injury made under the [Fair Work] Act'.
[198] *Fair Work Act 2009* (Cth), s 734.
[199] Noting the interlocutory decision in *Bartlett v Commonwealth of Australia* [2025] FCA 1107.
[200] *Comcare v Friend* [2024] FCAFC 4.
[201] *Romero v Farstad Shipping (Indian Pacific) Pty Ltd* [2014] FCAFC 177.
[202] *Comcare v Friend* [2024] FCAFC 4.
[203] *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2023* (Vic).
[204] *Return to Work (Scheme Sustainability) Amendment Act 2022* (SA).
[205] WorkSafe Qld, *Statutory reviews of Queensland's workers' compensation scheme,* 2023, WorkSafe Qld.
[206] *Workers Compensation and Injury Management Act 2023* (WA).

5.6.3 State and territory arrangements

All state and territory schemes contain provisions that provide for the recovery and/or preclusion of workers' compensation payments made for an injury, illness, or death where a worker or dependant has recovered or, in some cases, is entitled to recover, compensation and/or damages for that injury, illness, or death.[207]

5.6.4 What we heard

During consultations, we heard many discussions about workers receiving benefits from multiple sources.[208] Most submissions focused on the issue of statutory damages. Unions supported the circumstances involving like remedies, such as those in *Friend*, being permitted under the Comcare scheme.[209] They were offended by this being referred to as 'double dipping'. It was considered that to deny like remedies was to deprive the claimant of justice where the compensation was for breaches of different causes of action.[210]

> The SRC Act should be interpreted to allow these distinct remedies to coexist, ensuring victims are not deprived of justice under the guise of "double-dipping".
>
> **Australian Nursing and Midwifery Federation submission, p 11.**

> The injured employee should be able to get all compensation they are rightfully owed.
>
> **Individual submission No. 30, p 15.**

> Adjusting workers' compensation benefits according to payments from other sources aims to promote equity of outcomes and fairness.
>
> **John Holland Licensees submission, p 13.**

In contrast, some employer groups expressed concerns over claimants double dipping.[211] The Australian Taxation Office stated that the provisions in the legislation needed to be reviewed given the changing nature of claims since the inception of the Comcare scheme.[212] Pacific National stated the legislation on lump sum payments needed to be tightened.[213]

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[207] For example, *Workers Compensation Act 1987* (NSW), s 151A; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), ss 48–49; *Workers' Compensation and Rehabilitation Act 2003* (Qld), Div 4 of Pt 2; *Workers' Compensation and Injury Management Act 1981* (WA), Div 3 of Pt 7; *Return to Work Act 2014* (SA), ss 67, 75; *Workers Rehabilitation and Compensation Act 1988* (Tas), ss 31E, 133; *Return to Work Act 1986* (NT), s 54; and *Workers Compensation Act 1951* (ACT), ss 36F, 183–184.

[208] John Holland Licensees submission, p 13; Pacific National submission, p 11; ACTU submission, pp 40–41; AMWU submission, p 34; Australian Nursing and Midwifery Federation submission, p 11; CPSU submission, p 35.

[209] ACTU submission, pp 40–41; AMWU submission, p 34; Australian Nursing and Midwifery Federation submission, p 11; CPSU submission, p 35.

[210] Australian Nursing and Midwifery Federation submission, p 11; Individual submission No. 30, p 15.

[211] Australian Taxation Office submission, p 20.

[212] Australian Taxation Office submission, p 20.

[213] Pacific National submission, p 11.

In general, while many employer groups argued that benefits should subtract payments received from other sources,[214] some union groups opposed this position.[215] The AMWU stated there could be circumstances where subtraction is necessary.[216] The ACTU stated it was important that payments were not reduced because the worker could receive support from other sources. This would 'effectively externalise the costs to other parties, which is unfair to the injured worker'.[217]

5.6.5 What we considered

We considered as a general rule compensation should aim as far as possible to return a person to the position they were in before their injury. As the court noted in *Friend*, '[t]he law has a well-entrenched policy against permitting the recovery of damages representing a loss that is greater than that suffered'.[218]

These are principles we do not seek to overturn. As with the recovery of common law damages, there must be legislative mechanisms to recover compensation (and prevent further compensation, where appropriate) that has already been substantially paid by another scheme. This directs focus on whether those other schemes do, in fact, duplicate the reason for the compensation provided under the scheme we envisage.

State and territory compensation

There are broadly 2 types of state and territory compensation: state and territory workers' compensation and other compensation schemes, such as victims of crime schemes.

Plainly, state and territory workers' compensation schemes compensate on an equivalent basis to the SRC Act. The schemes pay compensation because of the injury suffered by the worker, and the benefits received all flow from suffering that injury. If compensation is paid, the worker should only be entitled to it under one scheme.

The primacy of Commonwealth legislation over that in states and territories is such that the compensation should be paid under the state or territory scheme (because the Commonwealth legislation can exclude entitlement from its own scheme). Comcare or the licensee should have a right of recovery for any compensation it has paid (if any), and the worker should be barred from obtaining further compensation for that injury under the Commonwealth scheme. This reflects s 118 of the SRC Act. We consider that those provisions should be replicated in the new Act.

[214] John Holland Licensees submission, p 13; Pacific National submission, p 11; Australian Taxation Office submission, p 20.
[215] ACTU submission, p 41; CPSU submission, p 35.
[216] AMWU submission, p 35.
[217] ACTU submission, p 41.
[218] *Comcare v Friend* [2024] FCAFC 4, [80].

Although not state or territory compensation, for completeness we note that compensation paid in respect of Defence-related claims[219] is also generally paid on an equivalent basis to the SRC Act.

Other state and territory compensation depends on the nature of the scheme. At present, the Minister specifies some 25 state and territory laws subject to the recovery provisions of s 119.[220] We consider that a similar power should be retained and delegated to the governing board to identify via an instrument. In making its instrument, the governing board should pay keen attention to the basis on which the compensation is paid. It should also examine whether the worker might lose an entitlement they would otherwise have received (such as some form of damages compensating for something other than the injury). Receiving compensation of this nature should only be a recovery provision – it should not be a bar to future compensation under the Comcare scheme. This is because many are short-tail schemes and provide limited compensation.

Payment under an award

Some industrial instruments, such as awards,[221] provide for an entitlement equivalent to workers' compensation. For example, *Teekay Shipping (Australia) Pty Ltd Ningaloo Vision AIMPE Agreement 2023* provides:

> *'The parties expressly agree that regardless of any issue about the application of the* Seafarers Rehabilitation and Compensation Act 1992 *the employer will provide equivalent benefits to employees as if the Act had full effect.*
>
> *The provisions of the* Seafarers Rehabilitation and Compensation Act 1992 *and Regulations shall be applied as though they formed part of this Agreement to employees who are subject to this Agreement.'*[222]

In the above example, it cannot be the intention that if the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) applied, compensation would be received under both that legislation and an industrial award. Indeed, that agreement is likely drafted with specific awareness of s 61 of that Act, which prevents compensation from being payable both under that Act, and under an award (this is the equivalent provision to s 52 of the SRC Act).

We consider that the new Act must therefore include such a provision. First, the compensation is being paid for substantially the same reason. Second, there are industrial arrangements in place that rely on s 52 of the SRC Act (or their equivalents in other schemes) to operate.

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[219] Including payments made under the *Veterans Entitlement Act 1986* (Cth), the *Military Rehabilitation and Compensation Act 2005* (Cth) and the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (Cth).

[220] SRC Act, s 119, states that workers receiving Commonwealth or state or territory compensation can only receive compensation from one jurisdiction.

[221] The term 'Award' is used by the SRC Act in an expansive manner, including for awards, determinations, orders or agreements: see s 52(6).

[222] *Teekay Shipping (Australia) Pty Ltd Ningaloo Vision AIMPE Agreement 2023*, Cl 18.1.

Statutory damages

Damages paid under other Commonwealth statutes present a different concern.

Discrimination statutes compensate not for the injury but because of unlawful discrimination.[223] That discrimination may compensate for specific losses also compensated for under workers' compensation legislation was noted by the court in *Friend*:

> *'An award of general damages under statute in a case involving unlawful discrimination or sexual harassment can compensate a claimant for damage that goes well beyond any injury of the nature that is compensable under the SRC Act or by an award of damages at common law. This is illustrated by the leading cases on the assessment of damages under the AHRC Act [*Australian Human Rights Commission Act 1986*], such as* Oracle*, and* Hughes v Hill*. The insult, distress, anxiety, unhappiness, and humiliation suffered by a claimant as a result of an act of discrimination or sexual harassment are compensable in addition to any mental or physical injury that might result from the unlawful acts.'*[224]

A mechanism should be available to avoid duplicating those elements of the damages payment that replicate compensation paid, or payable, under the SRC Act (for example, compensation for medical treatment). However, significant care must be taken to avoid inappropriately recovering compensation that is not based in the same loss. This poses the question of how to do so.

There is a persuasive argument that, faced with this dichotomy, compensation should be paid by the wrongdoer (for example, the perpetrator of unlawful discrimination) rather than by a no-fault workers' compensation scheme. However, we consider this to be a risky proposition, and largely to have no significant effect.

Awards of damages under statutory schemes may not clearly separate and particularise the basis of the calculation of damages. Indeed, it would be rare to do so. For Comcare to attempt to disentangle such an award as a non-party to the discrimination proceedings would be complicated, and inherently unreliable. There is a significant risk that in doing so, the worker would be worse off.

Instead, we consider that if the possible double compensation issue is to be addressed, it would be best to do so in the context of the discrimination proceedings. This was also the view of the court in *Friend*.[225] Those involved in those proceedings would be in an inherently better position to agree (or have decided) on what has already been (or will be) compensated under the SRC Act, and how that affects the damages payable under the discrimination scheme. To the extent that this could be seen to reduce the liability of the wrongdoer, there is no great difference. Licensees would largely bear the liability either way, and for premium payers the liability will be reflected in the premiums.

Other Commonwealth statutory schemes are less clear, due to the dearth of judicial consideration. In the recent decision of *Bartlett v Commonwealth of Australia*, the Federal Court wrote that it could see

[223] See, for example, *Australian Human Rights Commission Act 1986* (Cth), s 46PO.
[224] *Comcare v Friend* [2024] FCAFC 4, [84].
[225] *Comcare v Friend* [2024] FCAC 4, [80]–[85].

no reason why the *Friend* approach would not apply to a claim for compensation for personal injury arising under the FW Act. While that decision was interlocutory, the Court wrote that it was 'far from persuaded' otherwise, and provides a persuasive indication that the *Friend* approach would apply to other such statutory schemes.[226]

There is no clear reason to depart from the approach we described earlier – the new Act should not contain any recovery or bar provisions relating to these forms of compensation.

For completeness, although Medicare, Centrelink and the National Disability Insurance Scheme are statutory schemes, they do not provide for damages. Nevertheless, we note that each of these schemes has a provision to recover funds from workers' compensation payments.[227] We consider this appropriate, and the new Act will not need to address this issue.

In private consultation, it was raised with us that statutory compensation payments could not take into account the receipt of workers' compensation, where the workers' compensation is not claimed until after receiving such damages. This can arise under the current legislative framework, because, while notice of injury must be made as soon as practicable,[228] the time for making the claim itself is not restricted.[229]

In Chapter 4, we discussed adopting a model that provides notice of injury and the claim for compensation in a one-step process. We have stated that the timeframe for starting the compensation process for an injury should remain. This timeframe, in s 53 of the SRC Act, applies only when Comcare or the licensee would not be prejudiced by a late claim (among other matters). A claim for compensation made after the settlement of such a statutory damages claim may well give rise to such prejudice, and we consider this to be sufficient protection against such concerns.

Breach of contract damages

In *Romero v Farstad Shipping (Indian Pacific) Pty Ltd*,[230] the worker successfully obtained damages resulting from a breach of contract. In that matter, the court found that the employment contract incorporated a workplace harassment and discrimination policy. The breach of that policy (and, consequently, the contract) led to the worker suffering from an injury for which compensation was payable under the *Seafarers Rehabilitation and Compensation Act 1992* (Cth). *Elisha v Vision Australia Limited*,[231] concerning a claim for damages for breach of an employment contract for a psychological injury.

[226] *Bartlett v Commonwealth of Australia* [2025] FCA 1107, [19].
[227] See *Social Security Act 1991* (Cth), Pt 3.14; *Health and Other Services (Compensation) Act 1995* (Cth), s 28; *National Disability Insurance Scheme Act 2013* (Cth), Pt 3.
[228] SRC Act, s 53.
[229] SRC Act, s 54.
[230] *Romero v Farstad Shipping (Indian Pacific) Pty Ltd* [2014] FCAFC 177.
[231] *Elisha v Vision Australia Limited* [2024] HCA 50.

Again, the focus is initially on what the damages were paid for. They were not paid because the worker had suffered an injury but because of the breach of contract. Thus, the damages and the workers' compensation entitlements were not grounded in the same loss.

However, again there may be some more specific crossovers between the losses compensated. For example, time off work may have been compensated for under both the damages and the workers' compensation scheme.

We conclude, for much the same reasons as discussed earlier, the best place for this to be managed is within the settlement (or decision) on the damages for breach of contract. It is at this time that incidents of any double compensation payments can be most clearly identified. Allowing the workers' compensation provider a right of recovery from the damages raises far too high a risk that compensation will be recovered that is not, truly, compensation for the same loss.

5.6.6 Panel recommendations

Recommendation 97

We recommend sections akin to the current ss 118 and 119 of the SRC Act be replicated in the new Act.

Recommendation 98

We recommend a section akin to the current s 52 be replicated in the new Act.

Recommendation 99

We recommend the new Act does not contain any recovery or bar provisions relating to other forms of compensation or to damages for breach of contract.

Chapter 6. Achieving successful resolution to reduce harm and cost

What this chapter considers

The terms of reference for the review asked us to consider how disputes can be resolved fairly and as quickly and efficiently as possible, taking into account the impact of disputes on claimants. They also asked us to consider how to ensure the Comcare scheme framework does not negatively affect an injured or ill worker's health and wellbeing.

This chapter explores mechanisms to resolve:

- **disputes** when they arise at the various stages throughout the compensation process through non-adversarial means, including alternative dispute resolution (ADR)
- **claims** that could be settled through commercial settlements, commutation of entitlements, or compulsory redemption.

Links to other chapters

A key objective of this review has been to consider how to avoid, manage and resolve disputes that can arise during the compensation process, due to the significant harm and expense they cause. This means that many of the preceding chapters already contain recommendations related to preventing and resolving disputes. For example:

- In Chapter 1, the recommendation to apply modern drafting practices when drafting the new Act will improve clarity and help reduce disputes arising from issues of interpretation.
- In Chapter 2, recommendations regarding eligibility provisions will further improve clarity, fairness and certainty to minimise disputes.
- In Chapter 3, recommendations for early support payments should prevent disputes occurring in the initial stages of an injury. Further recommendations relating to return to work inspectors will help resolve disputes concerning rehabilitation plans and suitable duties.
- In Chapter 4, recommendations to improve claims management practices, including training of claims managers, will improve claimant experience and avoid disputes. Further recommendations in the chapter relating to reconsideration (that is, second-tier decisions), including payment of costs, will help gather necessary evidence to resolve disputes at that stage.
- In Chapter 5, recommendations relating to common law entitlements will provide another option for claim finality. Further recommendations regarding compensation for incapacity, rehabilitation and medical treatment will help prevent disputes.

The current framework

Resolving disputes

Most disputes originate with an injury or illness. A dispute can be present even before a claim for workers' compensation is made (see Chapter 3). It may arise during the claims-making process or during ongoing management of a claim (see Chapter 4). A dispute may concern the interpretation of laws or facts of a case related to one or more of the following issues:

- **injury or illness**, including the type and extent of the injury or illness and associated incapacity or impairment, and whether it is temporary or permanent, as well as initial and ongoing evidence of the injury or illness claimed
- **eligibility**, such as the extent to which the injury or aggravation is work-related or whether it resulted from reasonable administrative action
- **entitlements**, such as what initial and ongoing support is considered reasonable for time off work, medical treatment and rehabilitation, and suitable duties on return to work given the injured or ill person's capacity for work at a point in time
- **jurisdiction**, including whether valid notice of injury has been given, whether an injury has been the subject of a claim, and whether a determination or reviewable decision considered all aspects of a claim.

As outlined in Chapter 4, the SRC Act has a three-tier decision-making framework comprising an initial decision (determination), internal review (reconsideration) and external review of certain decisions made under the Act, known as reviewable decisions.[1] This chapter primarily focuses on Tier 3 of the framework. This involves application to the Administrative Review Tribunal (ART), previously the Administrative Appeals Tribunal (AAT), to consider reviewable decisions that remain disputed.

Applications for review by the ART can be made by the claimant, a Commonwealth entity or a licensed corporation within 60 days of the person making the application being notified of the reviewable decision.[2] The ART may resolve the proceeding by consent at any stage of the proceeding, including during an ADR process.[3] If the proceeding is not resolved by consent, the ART will review the decision, usually after a public hearing.

After reviewing the matter, the ART may dismiss, affirm or vary the decision under review.[4] Alternatively, the ART can set the decision aside and either make a new decision or send the decision back to the decision-maker for a new decision.[5] However, for workers' compensation matters, it is

[1] SRC Act, s 60. Reviewable decisions are those made by Comcare or a determining authority under ss 38(4) or s 62.
[2] SRC Act, ss 64 and 65(4).
[3] *Administrative Review Tribunal Act 2024* (Cth), ss 87, 103.
[4] *Administrative Review Tribunal Act 2024* (Cth), ss 96–101, 105.
[5] *Administrative Review Tribunal Act 2024* (Cth), s 105(c)(ii).

common for the parties to seek to resolve the matter by consent before the review hearing, even when there has been an earlier ADR event.

Section 67 of the SRC Act provides that the ART may make an order as to the payment of costs for legal representation in proceedings before it. That section provides for the standard rule that each party to ART proceedings bears their own costs. However, it also provides that the claimant (usually the worker who made the application to the ART) may receive an order for the payment of some or all of their costs in the proceeding if they obtain a more favourable outcome or if the decision is set aside and remitted to the decision-maker. Where the Commonwealth applies for review of a decision made by Comcare, the worker (being an 'other party' in the proceeding) must be awarded their costs by the Commonwealth applicant or Comcare, depending on the outcome.[6] Legal costs are ordinarily awarded on a reasonable 'party-party' basis, plus reasonable disbursements.

An appeal of the ART's decision on a question of law is available to the Federal Court.[7] An application may also be made to the ART President to refer a decision to the Guidance and Appeals Panel (GAP) within the ART.[8]

Resolving claims

Consistent with its establishment as a long-tail scheme, the SRC Act provides limited options to resolve or end liability for accepted claims. The only option is via redemption of certain entitlements under s 30 of the SRC Act. That section requires Comcare or a licensee (in the case of workers of the licensee) to make a lump sum incapacity payment in lieu of weekly incapacity payments where weekly incapacity payments are $147.20 or less, and the degree of the worker's incapacity is unlikely to change.[9]

There is no ability to negotiate and agree a settlement on small or larger claims because of what is commonly referred to as a bar against 'contracting out' of the rights and entitlements granted by the SRC Act. We are, however, aware of settlements occurring on an ad hoc basis outside the SRC Act when eligibility is disputed. Likewise, as discussed in Chapter 5, the lack of access to common law damages means that it does not provide an effective avenue of finality for an injured or ill worker.

[6] SRC Act, s 67.
[7] *Administrative Review Tribunal Act 2024* (Cth), s 172.
[8] *Administrative Review Tribunal Act 2024* (Cth), s 123.
[9] SRC Act, s 13 provides for the redemption ceiling (at s 30(1)) to be increased annually in line with the consumer price index. All indexed statutory rates for compensation, including the redemption ceiling, are published on the Comcare website at www.comcare.gov.au/claims/statutory-rates.

6.1 Resolving disputes

6.1.1 Background

In 2022–23, the Comcare scheme had a higher average disputation rate (6.3%) than the national rate for all Australian workers' compensation schemes (4.2%).[10] This is the rate of active claims referred for review internally or externally. We note that Safe Work Australia urges caution when comparing data given scheme differences. The 2022–23 data predates the introduction of statutory timeframes in April 2024 and the replacement of the AAT by the ART in October 2024, both of which could affect the comparative disputation rate.

Comcare data from 2023–24 indicates that approximately 2% of claims were referred to the former AAT. Most matters before the AAT were finalised without a hearing. For example, in 2023–24 only 2.3% of applications proceeded to hearing. The majority were settled by consent (96.1%) and the remainder were withdrawn (1.6%).[11]

A common criticism of the AAT was the time taken to finalise appeals. In 2023–24, the median time to finalise a workers' compensation case at the AAT was 43 weeks, with 40% finalised after 12 months had passed. The proportion of applications where a decision changed following review was 34%, meaning that just under two-thirds of cases had the original decision affirmed.[12]

In October 2024, the AAT was replaced with the ART, with the goal of establishing a strong, user-focused administrative review body to increase access to justice, including by providing applicants 'with a quicker and more effective dispute resolution mechanism'.[13] As at the time of conducting this review, the ART has not yet operated for a year, so data on the time taken to finalise claims is limited.

Appeals to the Federal Court of AAT workers' compensation decisions were relatively rare. In 2023–24, only 0.1% of claims proceeded to court on appeal; 23.1% of these were decided by consent or withdrawn. The remaining 76.9% of cases were heard, and in all cases the matter was affirmed.[14]

There are also other mechanisms to deal with issues related to a workplace incident. For example, the Fair Work Commission (FWC) provides an avenue to resolve matters involving workplace bullying and sexual harassment. It can also help settle disputes about matters that arise under enterprise agreements, such as those involving working hours and work arrangements. The Australian Human Rights Commission (AHRC) can investigate and resolve complaints about harassment and

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[10] Safe Work Australia (SWA), *Jurisdictional Comparison, Workers' compensation disputes*, SWA Interactive Data, 2025, SWA, accessed 13 August 2025. Available at https://data.safeworkaustralia.gov.au/interactive-data/topic/jurisdictional-comparison.
[11] Unpublished Comcare data.
[12] Administrative Review Tribunal, 'AAT Caseload Report For the period 1 July 2023 to 30 June 2024', *AAT statistics*, Administrative Review Tribunal, accessed 19 September 2025. Available at www.art.gov.au/about-us/accountability-and-reporting/former-administrative-appeals-tribunal/aat-statistics.
[13] Revised Explanatory Memorandum to the Administrative Review Tribunal Bill 2024.
[14] Unpublished Comcare data. The number of applications to the Federal Court in the Comcare jurisdiction is small, which can cause significant variance across years.

discrimination.[15] It is not unusual for an injured or ill worker to pursue both workers' compensation and harassment and discrimination claims simultaneously in relation to the same workplace incident.

6.1.2 Previous reviews

Productivity Commission Inquiry, 2004

The Productivity Commission considered improvements to initial determination, Tier 1 of the decision-making framework, and internal reconsideration or review (Tier 2) as ways to avoid disputes at Tier 3. It recommended, among other things, the use of ADR procedures involving mediation, conciliation and arbitration, with incentives for using the least invasive approach. The Australian Government supported this recommendation in principle but preferred that the then-Australian Safety and Compensation Council[16] provide advice on the development mechanisms to manage and resolve disputes about claims in an equitable and effective manner.[17]

Hanks Review

In his 2013 review of the SRC Act, Peter Hanks QC found that 'in many cases, the three-level structure of decision making under the SRC Act serves a constructive purpose … It ensures that issues of liability and entitlement are not brought to the AAT before those issues have been investigated by a determining authority and a resolution of those issues has been explored'.[18] However, he noted obstacles at the AAT when additional matters arose that were not 'reviewable decisions' because they had not yet been decided.[19]

Hanks considered an ADR process or requiring mediation before lodging an application for review with the AAT. However, he concluded this additional step would not address the primary issue of insufficient medical evidence at reconsideration, and likely further delay resolution of matters. He did, however, urge determining authorities to voluntarily use ADR processes at the reconsideration stage.[20]

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[15] Australian Human Rights Commission, 'About', *Australian Human Rights Commission*, 2025, Australian Human Rights Commission, accessed 30 August 2025. Available at www.humanrights.gov.au/about.

[16] The Australian Safety and Compensation Council was replaced by Safe Work Australia in 2009.

[17] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks Inquiry: Government Response*, 2004, [68].

[18] Peter Hanks QC, *Safety, Rehabilitation and Compensation Act Review: Report—February 2013* (Hanks Review), para 9.136.

[19] Hanks Review, at paras 9.13–9.134. In *Lees v Comcare; Comcare v Mathews* [1999] FCA 753, [39] the Full Court of the Federal Court said that:
(a) the AAT is authorised by s 64 of the SRC Act to review only reviewable decisions – that is, second-tier or reconsideration decisions made under s 62 of the SRC Act
(b) those decisions are the result of reconsideration by a licensed determining authority of a determination, as defined by s 60 of the Act, concerning which a claimant will have received a notice in writing setting out the terms of the determination and the reasons for the determination, pursuant to s 61(1) of the SRC Act; and
(c) on review of a reviewable decision, the AAT will not be authorised to exercise any powers and discretions which would not have been available to the determining authority at the second-tier decision making stage, albeit that such powers and discretions might have been available to the determining authority at the first-tier decision making stage.
Compare *Ellison v Comcare* [2022] FCA 95.

[20] Hanks Review, para 9.72.

Ultimately, Hanks did not recommend changing the three-tier decision-making framework to include ADR. Instead, he recommended improvement for tiers 1 and 2. He made significant recommendations in relation to reviewable decisions under the SRC Act that involve workplace issues, including transferring jurisdiction for reviewable decisions partially or wholly from the AAT to the FWC, and giving the FWC jurisdiction to review all reviewable decisions relating to rehabilitation programs.[21]

Hanks also recommended the following legislative changes to improve processes related to processes at the AAT:

- licensees to be subject to the Legal Services Directions[22] and in particular the Model Litigant Guidelines
- all determining authorities to:
  - be prohibited from making submissions against the wishes of Comcare
  - be obliged to advise Comcare of any proceedings brought against them
  - upon request by Comcare, provide Comcare with any documents relating to those proceedings
- all parties to a matter before the AAT disclose any evidence to the AAT at least 28 days before the hearing of the matter
- the AAT be permitted to hear matters that are not the subject of a reviewable decision, with the consent of the parties.[23]

Hanks also recommended the identification of FWC decisions dealing with the reasonableness of an employer's action could be evidence in a reasonable administrative action matter under s 5A(1) of the SRC Act. If decisions of this sort were identified, Hanks recommended that the employer and worker be able to rely on the FWC determination for consideration of reasonable administrative action.[24]

6.1.3 State and territory arrangements

All state and territory schemes include a form of initial review to resolve matters before they become disputes.[25] We address ways of avoiding or quickly resolving disputes in Chapter 4, on claims management. Beyond this initial review, all schemes must work in with broader legal frameworks specific to each state or territory. This means there is some necessary variation in the mechanisms and processes to resolve disputes. We considered some specific features of state and territory schemes, which are summarised here.

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[21] Hanks Review, Recommendations 9.15 and 9.16.
[22] For an overview of the Legal Services Directions, see Attorney-General's Department, *Legal Services Directions and guidance notes*, Attorney-General's Department, accessed 20 September 2025. Available at www.ag.gov.au/legal-system/office-legal-services-coordination/legal-services-directions-and-guidance-notes#legal-services-directions.
[22] Hanks Review, Recommendations 9.9, 9.10, 9.12 and 9.13.
[23] Hanks Review, Recommendations 9.9, 9.10, 9.12 and 9.13.
[24] Hanks Review, Recommendation 9.14.
[25] In South Australia, the power to undertake an internal reconsideration arises after an application is made to the South Australian Employment Tribunal. See the *Return to Work Act 2014* (SA), s 102.

Alternative dispute resolution

In all Australian workers' compensation schemes, access to ADR is integrated into the decision-making and review processes. There are a variety of forms of ADR in operation, from conferencing to arbitration. For example, in Queensland these processes are subsumed into the conference process undertaken in external review: while the conference process is not intended to facilitate conciliations, it does envisage resolutions.[26] In Western Australia, on the other hand, the Workers Compensation Conciliation Service has been established, separate to the state's Workers Compensation Arbitration Service, with the stated primary role of assisting the parties to resolve disputes by agreement.[27]

Medical panels

Medical panels are used to help resolve disputes in New South Wales, Victoria, the Northern Territory and Tasmania. Panel findings are taken to be conclusive and binding in Victoria and Tasmania.[28] In Victoria, it may be necessary to settle facts before matters are referred to the medical panel.[29] In New South Wales only, findings on permanent impairment including hearing loss are conclusive; all other findings are taken to be non-conclusive evidence.[30] The medical panel in the Northern Territory may only consider permanent impairment and, as in New South Wales, its findings are conclusive and binding.[31]

South Australia uses independent medical advisors, one or more of which may be asked to provide opinion where medical issues are disputed.[32] This is closest to what we have recommended for the Comcare scheme to assist with reconsiderations. Western Australia does not have provisions for medical panels. In the Australian Capital Territory, the responsible Minister can appoint one or more doctors as medical referees in relation to an injury.[33]

6.1.4 What we heard

The dispute resolution processes through the AAT were said to be lengthy, complex and uncertain, with inherent and unnecessary limitations. However, most of those we consulted conceded that it is too early to say whether these issues have been resolved by the establishment of the ART. Given this uncertainty, the majority of submissions to our review focused on informal, non-adversarial ways to resolve disputes prior to referral to the ART.

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[26] See Queensland Industrial Relations Commission, *Workers' compensation appeal guide*, July 2020, Queensland Industrial Relations Commission, p 25. Available at www.qirc.qld.gov.au/workers-compensation.
[27] WorkCover WA, *Workers Compensation Conciliation Service*, 2025, WorkCover WA, accessed 30 August 2025. Available at www.workcover.wa.gov.au/resolving-a-dispute/workers-compensation-conciliation-service/; WorkCover WA, *Workers Compensation Arbitration Service*, 2025, WorkCover WA, accessed 30 August 2025. Available at www.workcover.wa.gov.au/resolving-a-dispute/workers-compensation-arbitration-service/.
[28] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 313; *Workers Rehabilitation and Compensation Act 1988* (Tas), s 49(4).
[29] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 275.
[30] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), s 326.
[31] *Return to Work Act 1986* (NT), s 72.
[32] *Return to Work Act 2014* (SA), s 121.
[33] *Workers Compensation Act 1951* (ACT), s 201.

Alternative dispute resolution

Many comments in submissions and consultation meetings supported lower-cost ways to resolve disputes in a timely manner and to assist with return to work. Some expressed concern that formalising pre-litigation dispute resolution could cause further delays. Comcare's submission also supported ADR to resolve disputes as early as possible. Its submission proposed that the legislation authorises ADR but avoids prescribing the process or rules.[34]

> We strongly support the legislative provision for pre-litigation dispute resolution processes … [I]t is essential to have a mechanism to adequately resolve claims before reaching the ART.
>
> **ACTU submission, p 47.**

> The process through the AAT, now the ART, can be long and complex. This is in comparison to more informal and expedient processes available in other jurisdictions.
>
> **Australian Education Union submission, p 14.**

> We would prefer for pre-litigation dispute resolution to not be formalised prior to external review by the tribunal to further prevent delays in the process.
>
> **Unpublished submission No. 90, p 17.**

Medical panels

Many submissions indicated support for use of medical panels in dispute resolution, but most expressed caution around how this should occur. Suggestions included limiting use to complex or permanent impairment claims, and some raised the issue of who should appoint the medical panel.[35] Submissions supporting the use of medical panels varied on whether the panel's opinion should be binding or advisory.[36] Some submissions raised concerns about the added time and adversarial nature of the process. A small number cautioned that medical panels can add to disputes rather than resolve them.[37]

The Australian Lawyers Alliance did not support medical panels, as the issues for dispute can include legal matters and not medical ones.[38] Another confidential submission made a similar observation, noting that arrangements in Victoria to address this issue can add significant disruption and time to

[34] Comcare submission, p 37.
[35] For example, see McInnes Wilson Lawyers submission, p 3, on permanent impairment; and Australian Manufacturing Workers' Union (AMWU) submission, p 41, on appointments.
[36] For example, see AMWU submission, p 41, and ACTU submission, p 48, in support of advisory outcomes; and Australian Bar Association submission, p 4, in support of binding outcomes.
[37] For example, see Australian Taxation Office submission, p 23.
[38] Australia Lawyers Alliance submission, p 17.

dispute resolution. One submission suggested using mediation instead of a medical panel, to minimise harm.[39]

> There is scope where medical information is inconsistent to be able to refer to an independent panel for review/ interpretation, to better understand factors impacting on a claim.
>
> **Australian Taxation Office submission, p 23.**

> There may be a role for medical panels, provided … there are robust processes for workers to dispute their findings, particularly if they are in conflict with the worker's treating physician.
>
> **CPSU submission, p 38.**

> The RANZCP recommends prioritising mediation and non-adversarial processes …over medical panels for dispute resolution. The adversarial nature of claims processes can have serious negative health impacts on claimants, so minimising 'zero sum games' is crucial.
>
> **RANZCP submission, p 6.**

Improvements to Tier 3

Our issues paper called for suggestions to improve dispute resolution. Some submissions called for improvements based on or building on recommendations made by Hanks, including:

- applying model litigant requirements in the Legal Services Directions[40] to licensees as per Recommendation 9.9 for parity with premium payers and to improve workers' experiences. Some noted that provisions in the ART legislation imposing a positive duty on the Tribunal to control non-model litigant behaviour may address issues.[41]
- objecting to the ability of employers to challenge Comcare decisions, aligned with Recommendation 9.10 prohibiting determining authorities from making submissions against the wishes of Comcare.[42]
- calls for the ART to be able to review the whole of a claim in certain circumstances, akin to Recommendation 9.13 enabling the ART to hear matters that are not a reviewable decision, with the consent of all parties. Submissions cited the administrative benefits as well as the benefits to workers from having multiple disputes settled as a package.[43]

[39] For example, see The Royal Australian and New Zealand College of Psychiatrists (RANZCP) submission, p 6.
[40] *Legal Services Directions 2017* (Cth).
[41] For example, see Community and Public Sector Union (CPSU) submission, pp 37–38, and Professor Allan Anforth AM submission, p 6.
[42] For example, Slater and Gordon submission, p 11.
[43] For example, Australian Nursing and Midwifery Federation submission, p 12; and Maurice Blackburn Lawyers submission, p 20.

Other issues

Costs were also raised in the context of pre-litigation processes, to encourage genuine engagement and early dispute resolution.[44] The Comcare submission called for workers' costs to be covered in some circumstances when Comcare seeks to clarify the understanding and interpretation of a particular legislative provision with scheme significance by appealing an ART decision to the Federal Court.[45]

Other submissions noted problematic limitations, such as the inability to recover legal costs on a solicitor/client basis at the ART or the inability of the ART to award costs to an unsuccessful applicant.[46] It was also claimed this is affecting the number of law firms willing to take on the work.[47] No submissions touched on the use of the FWC and AHRC to refer matters to resolve disputes.

> There should be no costs imposed on the injured worker for pursuing resolution before pre-litigation. Workers should be supported with reasonable legal costs to enable them to seek advice on their options and assist in resolving their disputes effectively.
>
> **ACTU submission, p 47.**

> From time to time, employers who disagree with a Comcare decision have themselves challenged [a] Comcare decision. ... This should not be permitted.
>
> **Slater and Gordon submission, p 13.**

> Each decision, from approving physiotherapy to return-to-work plans, can be challenged, leaving injured nurses and midwives in a constant state of financial uncertainty and stress.
>
> **Australian Nursing and Midwifery Federation submission, p 11.**

> There is no capacity within the scheme to request a review of the claimant's case as a whole. ... It is possible for an employer to thereby simply "wait it out" until the claimant simply gives up.
>
> **Maurice Blackburn Lawyers submission, p 20.**

[44] For example, CPSU submission, p 38.
[45] Comcare submission, p 37.
[46] Australian Bar Association submission, p 4; Maurice Blackburn Lawyers submission, p 21.
[47] Maurice Blackburn Lawyers submission, p 21.

6.1.5 What we considered

Consistent with what we heard, we considered:

- the feasibility of introducing a low-cost way to resolve disputes in a timely manner and to assist with return to work
- ways to improve Tier 3 of the decision-making process
- the role of medical panels in dispute resolution
- appeals of ART decisions.

Alternative dispute resolution

A notable element of submissions and consultations was a call for earlier settlement of disputes, preferably without resolution by an adversarial process. Having an option to resolve disputes more quickly can help to reduce the incidence of litigation and assist the worker to make an earlier recovery of health and return to work.

ADR has several advantages. The process for agreeing outcomes is less costly than ART or court processes. As ADR is non-adversarial and confidential, it is more likely to maintain the relationship between worker and employer and minimise stigma. The research indicates that use of such person-centred approaches can lead to better health outcomes for the worker and earlier return to work. We have been made aware that rehabilitation authorities in the Comcare scheme have been using ADR for disputes about rehabilitation and return to work without the need for underpinning legislation.

The SRC Act does not explicitly provide for a pre-litigation dispute resolution process. This would typically entail resolving a dispute through ADR processes such as conferencing, mediation or conciliation. Conferencing is designed principally to identify issues, clarify what further evidence is required and explore whether an agreed outcome may be reached. In mediation, a mediator assists the parties to the dispute to identify the issues in dispute and develop options to resolve the matter. Conciliation is similar to mediation but the conciliator has greater control over the process and may suggest terms of settlement to the parties.[48]

While these are not provided for under the SRC Act, it is important to recognise that the ART, at any time, may direct that a matter be referred to an ADR process after receiving an application. It is also important to recognise that even before establishment of the ART, most workers' compensation matters before the AAT were finalised without a hearing.

The states and territories have conciliation or mediation processes in their workers' compensation schemes, commonly initiated as a mandatory precursor to a tribunal or court hearing. Some have additional, bespoke mechanisms. For example, the Independent Review Office (IRO) in NSW helps people injured at work who have a complaint about their insurer, aiming to resolve issues before formal

[48] National Alternative Dispute Resolution Advisory Council, *Your Guide to Dispute Resolution*, 2012, Attorney General's Department, pp 15–19, accessed 19 September 2025. Available at www.ag.gov.au/legal-system/publications/your-guide-dispute-resolution.

dispute resolution is needed. The IRO is an independent statutory body established under the *Personal Injury Commission Act 2020* (NSW).[49]

Hanks considered formal ADR for the Comcare scheme but concluded this additional step would not address the primary issue of insufficient medical evidence at reconsideration, and could further delay resolution of matters. Like Hanks, we have made recommendations to improve internal reconsideration, including coverage of some costs (see Chapter 4). We also agree that a formal, mandatory ADR process would be likely to delay resolution of matters and would unnecessarily duplicate ART processes.

There are, however, model litigant requirements on the Commonwealth and Commonwealth agencies that enjoin consideration of 'alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate'.[50]

We consider there is a need for change to meet this obligation and to provide certainty for injured and ill workers. Processes that contribute to long wait times, uncertain outcomes and disputes create additional stress at a time when the worker is already managing significant health and financial challenges and can exacerbate their condition.[51] Submissions and the research strongly supported providing low-cost, informal dispute resolution processes at an earlier stage.

We support the provision of assistance to resolve disputed decisions under the Comcare scheme through informal means, such as mediation. The option should be voluntary and available throughout the first two tiers of the decision-making process. Mediators should be accredited under the existing industry scheme (the Australian Mediator and Dispute Resolution Accreditation Standards, formerly the Mediator Standards Board) to ensure practitioners are appropriately qualified and experienced.[52] The costs of using an ADR practitioner from the panel should be borne by the determining body.

Consistent with the aim of a low-cost, quick process to achieve agreement, legal representation should not always be necessary, and additional evidence may not be required. However, where the injured or ill worker requests legal representation, coverage of costs recommended for reconsideration should be made available for ADR. Given our earlier recommendation that cost for legal representation and medical evidence should be made available at the reconsideration stage, we think it will be at the reconsideration stage that ADR could play a significant role in achieving earlier and better outcomes.

As the process will be voluntary, Comcare and the worker's representative will need to explain the benefits of this process so the worker can make an informed choice. While we place no limitations on when ADR may be used, parties should be encouraged to avoid using ADR after an application to the

[49] For further information see the Independent Review Office website, www.iro.nsw.gov.au/, accessed 20 August 2025.
[50] *Legal Services Directions 2017* (Cth), App B and s (2)(d).
[51] *Administrative Review Tribunal Act 2024* (Cth), s 4 provides for 'conferencing, mediation, neutral evaluation, conciliation and a procedure or service in practice directions'. We do not consider neutral evaluation or other unspecified procedures in this review.
[52] Australian Mediator and Dispute Resolution Accreditation Standards (AMDRAS) Board, 'AMDRAS Standards', 2024, AMDRAS, accessed 19 September 2025. Available at https://final.msb.org.au/AMDRAS.

ART has been made. It is important to avoid duplicating ART processes. We see this process as complementing the ART dispute resolution process outlined in its Practice Direction.[53]

Improvements to Tier 3

We have considered the submissions we received on the review process at the AAT. We acknowledge that many claimants found making an application to the AAT to be a lengthy, complex and uncertain process, often subject to significant delays. Suggestions were for the SRC Act to provide standard directions for summonsing information, witness statements and filing of expert evidence, and that employers be prohibited from challenging Comcare decisions. These suggestions were also made in the Hanks Review.

However, the ART is still in the first year of its operation. It may be that some concerns about the way the former AAT dealt with SRC Act matters will be resolved under the new legislation and by administrative practice at the ART. ART President the Hon Justice Emilios Kyrou AO, has issued guidance to legal and other representatives at the ART advising of a number of practical measures to enhance timeliness in decision-making.[54] In our view, it would be premature to make significant recommendations in relation to Tier 3 at present.

If our recommendation for an implementation review of the new SRC Act in 5 years is carried out, it should be clearer whether issues such as the timeliness of decision-making have been addressed. We suggest that the effectiveness of this tier should be a focus of that review. If it becomes evident earlier that issues have not resolved, or that new issues have emerged, under our recommendation the governing board can recommend to the Minister that there be a further review or, where appropriate, amendment to the legislation.

We considered some specific issues raised with us that have not been addressed in the transition from the AAT to the ART, including:

- the suggestion that whole-of-claim review could be available at the ART
- a potential role for the FWC in some disputes
- the application of the Legal Services Directions to Comcare and licensees.

Whole-of-claim review

A 'reviewable decision' is a decision by Comcare, a delegate of Comcare under delegated claims management, or a licensee following reconsideration.[55] As we discuss in Chapter 4, in practice, a compensation claim for an injury or illness can comprise a number of claims for different entitlements and for compensation for time off work. Each claim may progress separately through the Tier 1 and Tier 2 decision points. This means that, while a claimant may be in a position to seek a review of one aspect of their claim at the ART, there may not be a reviewable decision in relation to other aspects of the claim at that time. That is, even though some claims are related to an existing reviewable claim,

[53] Administrative Review Tribunal (Common Procedures) Practice Direction 2024.
[54] Administrative Review Tribunal (ART), *Note for legal practitioners and other representatives about Tribunal processes*, 2024, ART, accessed 19 September 2025. Available at www.art.gov.au/help-and-resources/professionals-and-practitioners/practice-directions-and-other-guidance.
[55] SRC Act, ss 60, 62.

they do not amount to a reviewable decision, as they have not been through two tiers of Comcare review.[56]

Some submissions suggested that it would be beneficial to claimants for the ART to be able to consider related claims together, even where each claim is not the subject of a reviewable decision. Hanks also recommended that the then AAT be able to hear matters that are not the subject of a reviewable decision, with the consent of the parties.[57]

We agree that there would be significant benefits to claimants from enabling the ART to undertake a holistic review of the claims on foot, where the parties consent. That approach would streamline the resolution of disputes in cases where decisions are made at different times and the parties are the same and, potentially, the evidence may be the same. It would minimise the number of times claimants are subjected to the stress associated with seeking a review of a decision.

The requirement that both parties consent would ensure that the ART is not asked to consider or determine issues where evidence is incomplete or issues would be better explored by the determining authority through their usual processes.

Under the present framework, whole-of-claim review is not possible. Part 3 of the *Administrative Review Tribunal Act 2024* (Cth) (ART Act) generally provides that the ART has jurisdiction to review a decision (that is, a reviewable decision) if an Act or legislative instrument provides for an application to be made to the ART for a review of the decision. Under a whole-of-claim review, not all of the claims will be the subject of a reviewable decision, and parties to ART proceedings cannot confer jurisdiction on the ART by consent where an Act or legislative instrument does not otherwise do so.

We have considered whether it is possible to confer jurisdiction of this kind on the ART in relation to initial determinations where the issues are relevant to a current ART proceeding, in light of the well-established practice of the ART review only being activated by a fully developed application for review, complete with evidence for all issues or matters. We see value in such an approach, noting that the ART has a practice of ordering that similar matters travel together. We understand that this issue would require consultation with the Attorney-General's Department, with a view to enabling parties to agree to whole-of-claim review by consent at the ART.

Potential role for the Fair Work Commission

We have considered whether there should be a role for the FWC in reviewing some claims. Hanks recommended measures to increase FWC involvement in resolving disputes in the Comcare scheme. This included partial or total transfer from the AAT to the FWC of reviewable decisions that involve workplace issues, and all reviewable decisions relating to rehabilitation programs.[58]

The issues paper did not request specific feedback on Hanks's proposals. We did not receive any submissions raising this as an issue or proposing it as an improvement in response to our general

[56] Compare *Comcare v Ellison* [2022] FCA 95.
[57] Hanks Review, Recommendation 9.13.
[58] Hanks Review, Recommendations 9.15 and 9.16.

questions, though it was clear that many respondents were familiar with Hanks's recommendations on other matters.

Although no consultation feedback was received on this issue, we considered it appropriate to examine given that, in May 2025, the New South Wales Government introduced a Bill requiring that, where an insurer disputes liability for a compensation claim relating to a primary psychological injury, the worker must apply to the Industrial Relations Commission (IRC) to confirm that the injury arose from a 'relevant event', such as bullying, excessive work demands, or sexual or racial harassment. Under the original Bill, compensation would not be payable unless the IRC made a finding that such an event occurred.[59] A subsequent revision to the Bill removed the requirement for an IRC finding but retained the option for referral to the IRC for a binding determination on whether a 'relevant event' had occurred.[60] At the time of writing, the Bill remains before Parliament. In August 2025, the NSW Government introduced a second Bill [61] that was substantially the same as the first.[62]

As such, we discussed this matter with the Tripartite Reference Group (TRG). TRG members noted the differences in processes between the ART and FWC, particularly the efficient and effective use of conciliation at the FWC. They also considered that the FWC may not be best placed to hear matters about suitable duties and rehabilitation, and that return to work inspectors are better placed to resolve such disputes. On balance, they expressed a reluctance to involve another decision-making body, raising concerns about timeframes, costs and the impact on injured and ill workers. They suggested the ART be allowed a grace period to sufficiently embed new processes and gauge their effectiveness before further changes were considered. While we can see benefits to increasing the role of the FWC in relevant matters, we agree that the changes to the ART should be allowed to bed down before determining whether further changes are necessary.

Hanks also proposed FWC decisions on workplace bullying could be used as evidence by the worker or the employer, where reasonable administrative action applies to a psychological injury claim.[63] The current SRC Act does not prevent FWC orders being provided as evidence when making or responding to a claim. Determining authorities must make determinations based on factual or medical evidence relevant to the claim.[64] However, we do see merit in this approach because to make an anti-bullying order, the FWC has to be satisfied that the worker has been 'bullied at work'. For the avoidance of doubt, the *Fair Work Act 2009* (FW Act) makes clear that 'reasonable management action carried out

[59] Workers' Compensation Legislation Amendment Bill 2025 (NSW) (print 1), Sch 1 and 2.
[60] Workers' Compensation Legislation Amendment Bill 2025 (NSW) (print 2), Sch 1 and 2.
[61] Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025 (NSW).
[62] New South Wales Bar Association, *Statement on the NSW Government's Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025*, 8 August 2025, New South Wales Bar Association, accessed 19 September 2025. Available at https://nswbar.asn.au/the-bar-association/publications/media-releases.
[63] Hanks Review, Recommendation 9.14.
[64] See Administrative Review Council, *Best practice guide 3: Decision Making: Evidence, facts and findings*, 2007, Attorney-General's Department, accessed 19 September 2025. Available at www.ag.gov.au/legal-system/publications/arc-best-practice-guide-3-evidence-facts-and-findings; and Comcare, *Scheme guidance: Best-practice decision making under the SRC Act*, 2024, Comcare, accessed 19 September 2025. Available at www.comcare.gov.au/scheme-legislation/src-act/guidance.

in a reasonable manner' is not bullying at work.[65] This is similar to (though arguably broader than)[66] the reasonable administrative action exclusion in the SRC Act.[67] We do not think an injured worker should be required to prove twice that the action was not reasonable in relation to the same incident.

Some issues may limit the ability to rely on an FWC anti-bullying order as evidence in a workers' compensation claim. These issues include the determining authority still needing to consider the relevance of such evidence on a case-by-case basis; the potential for a confidentiality order to apply to the anti-bullying order; and the FWC decision in Whitnall-Comfort that found during a period of workers' compensation leave, a worker cannot be bullied 'at work' within the meaning of the FW Act.[68]

Legal Services Directions – Model litigant obligations

A small number of submissions suggested the Legal Services Directions should apply to licensees. The Legal Services Directions 2017 are a set of binding rules issued by the Attorney-General about the performance of Commonwealth legal work. The directions set out requirements for sound practice in the provision of legal services to the Australian Government. They offer tools to manage legal, financial and reputational risks to the interests of the Australian Government.[69]

Hanks considered that, when resolving disputes, Comcare's actions must be consistent with the provisions of the SRC Act, the ART Act and the Legal Services Directions.[70] Other determining authorities must comply with the SRC Act and the ART Act but may not be automatically subject to the Legal Services Directions.[71]

However, the ART Act contains a positive obligation on decision-makers to help the ART come to the correct or preferable decision, rather than the decision that might be most favourable for the decision-maker.[72] The explanatory memorandum for the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 explains this obligation 'aligns with the principles underpinning the Commonwealth's model litigant obligations'.[73] Thus, model litigant principles apply to all determining authorities in proceedings before the ART.[74] We consider this issue has been resolved and, as such, a recommendation is not needed.

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[65] *Fair Work Act 2009* (Cth) (FW Act), s 789FD.
[66] See, for example, commentary in McInnes Wilson Lawyers, *The SRC Report: Reasonable Administrative Action – Best Practice Evidence in RAA Cases*, 29 April 2022, McInnes Wilson Lawyers, accessed 19 September 2025. Available at www.mcw.com.au/the-src-report-reasonable-administrative-action-best-practice-evidence-in-raa-cases/.
[67] Compare, Fair Work Commission (FWC), *Stop bullying benchbook*, 2023, FWC, accessed 19 September 2025. Available at www.fwc.gov.au/hearings-decisions/case-law-benchbooks.
[68] *Re Whitnall-Comfort* [2024] FWC 2767.
[69] Attorney General's Department, *Legal Services Directions and guidance notes*, 2025, Attorney-General's Department, accessed 19 September 2025. Available at www.ag.gov.au/legal-system/office-legal-services-coordination/legal-services-directions-and-guidance-notes.
[70] Hanks Review, para 9.111.
[71] Hanks Review, para 9.119.
[72] *Administrative Review Tribunal Act 2024* (Cth), s 56(1)(a).
[73] Revised Explanatory Memorandum to the Administrative Review Tribunal Bill 2024 (Cth).
[74] We also note that some contend that the model litigant obligations apply to licensees via s 108E(d) of the SRC Act. We query if this would be enforceable, so have addressed this issue in respect of the *Administrative Review Tribunal Act 2024* (Cth).

Medical panels

Medical disputes are commonly encountered in workers' compensation matters. There is a role for medical experts to provide advice on the interpretation of symptoms and disputed medical or health factors affecting a claim. If appointments to medical panels are made with an eye to independence, they can bring expertise and impartiality.

There are a range of ways to access medical expertise to assist with disputes. All involve additional opinion being obtained from appropriate medical practitioners. However, the weight put on that evidence varies. In some states and territories, medical opinion from qualified practitioners is treated as evidence or advice. In others, a medical panel is convened with tribunal-like powers, and the panel's opinion is binding on the claimant and the determining authority.

We do not favour the 'tribunal' style of medical panel operating in some states and territories. The introduction of that model would increase the possibility of disputes, extend the time needed to finalise matters, and add a degree of stress for the injured or ill worker if required to appear and be examined. We concur with Hanks's assessment that, 'because of the practical difficulties in framing a purely medical question (especially in situations where there remains or is likely to be a factual dispute), it is difficult to see the benefit in providing for the referral of matters to a medical tribunal'.[75]

The SRC Act does not specifically provide for a medical panel as described above. Instead, the Comcare scheme has an independent medical examination (IME) process when there is inconsistent or insufficient medical information to make a decision.[76] Hanks recommended the SRC Act be amended to include the option for medical examinations to be conducted by a panel,[77] but at present, examinations can only be conducted by a single practitioner.[78] We discuss this option in Chapter 4 and have recommended no changes.

Comcare also has a panel of clinical professionals who can review a claimant's file and seek information from the claimant's healthcare providers. The panel members give advice to claims managers to make sure treatment is clinically justified. Clinical panel members are external to Comcare and are called on as needed. If the clinical panel member and the claimant's healthcare providers do not agree on a treatment, the claimant may need to attend an IME.

We note that the experts on the current panel predominantly have qualifications and expertise in psychological injuries, although the Comcare website refers to its clinical panel as also comprising experienced and independent doctors, physiotherapists, pharmacists and psychologists.[79] This likely reflects the needs of claims managers, given psychological injury claims are typically more complex than physical injury or illness. It is, however, necessary to provide for a broader range of expertise.

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[75] Hanks Review, para 9.156.
[76] SRC Act, s 57.
[77] Hanks Review, Recommendation 6.15.
[78] SRC Act, s 57(1).
[79] Comcare, *Clinical panel and clinical reviews*, 2023, Comcare, accessed 19 September 2025. Available at www.comcare.gov.au/claims/assessing-claims/clinical-panel.

Comcare should monitor the composition of the panel to ensure it has sufficiently skilled medical and allied health practitioners to enable it to focus on its interpretation and a wider advice-giving function.

Inevitably, professionals selected by the determining body can be perceived as lacking appropriate independence. We think this perception problem can be overcome if the governing board is given the ability to determine the composition of the clinical panel and set independence requirements.

We have not recommended a medical panel be established. Instead, we propose to improve the current clinical panel and allow for it to operate across the scheme rather than just in the premium-paying part of it.

Costs

Section 67 of the SRC Act provides as the default position that each party at the ART pays its own legal costs, but it also covers circumstances when this default position may be varied. If the injured or ill worker receives a favourable decision, or the ART sets aside the decision under review and remits the claim to the decision-maker for redetermination, the ART may order that some or all of the worker's costs for the ART application are payable by Comcare or the employer.[80] There is no power for the ART to require that the worker pay the costs of Comcare or their employer. However, the ART can reduce an award of costs to a worker in circumstances where the worker does not accept a 'Calderbank offer' made by Comcare or their employer and does not achieve a result on review that is materially better than the terms of the offer.[81]

The costs that a lawyer charges for legal representation are termed 'solicitor-client costs', encompassing all the legal work done for the worker. However, costs are generally ordered to be paid on a party-party basis. These are the reasonable costs incurred in relation to the proceeding only. The ART generally orders an unsuccessful party to pay the party-party costs (that is, the costs of the proceeding) incurred by the successful party. This means the successful party is generally still required to pay some of their legal fees. A submission suggested that, currently, awards of costs by the ART are too low, and may act as a deterrent to workers obtaining legal representation or pursuing a matter.[82] While we recommend no change in relation to costs at the ART, Chapter 4 includes recommendations regarding costs at the reconsideration stage.

For the avoidance of doubt, the present arrangements in the ART (or, indeed, at any stage of the claims process) do not prevent workers from being represented by unions or lay persons, although any fees payable to such persons would not be recoverable as a legal cost. We do not propose a change to these arrangements.

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[80] SRC Act, s 67(8). Note that where an order is made to set aside and remit the claim to the decision-maker, Comcare or the employer must be ordered to pay the worker's costs: s 67(9).
[81] A 'Calderbank offer' is an offer that is made in accordance with the principles described in the English Court of Appeal decision of *Calderbank v Calderbank* [1976] 3 All ER 333 and applied by Australian courts and tribunals. That is, a settlement proposal marked 'without prejudice, save as to costs', which cannot be used in a court or tribunal as evidence to determine liability, but if unreasonably rejected, may be taken into account when making costs orders at the end of the matter. See, for example, *Re Ziade and Australian Postal Corporation (Compensation)* [2024] AATA 3162 and *Re KTKY and Comcare (Compensation)* [2016] AATA 77.
[82] Maurice Blackburn Lawyers submission, p 21.

Appeals

One matter raised with us in submissions was whether there should be some limit on appeal rights where the value of the entitlement that is the subject of the dispute is far exceeded by the costs of the appeal. We deal with this issue below in relation to Comcare's ability to settle disputes on a commercial basis.

A small number of submissions raised a second matter regarding appeals, objecting to employers appealing reconsiderations to the ART. We deal with that issue in Chapter 4 in relation to Commonwealth employers requesting reconsideration.

A remaining matter in relation to appeals is the ability for Comcare to restrict the submission made by other determining authorities before a court or tribunal. Hanks recommended all determining authorities inform Comcare of appeal proceedings and provide documents related to proceedings.[83] He further recommended they be prohibited from making submissions against the wishes of Comcare.[84] For licensees, we note that the Safety Rehabilitation and Compensation Commission is able to impose a condition on a self-insurance licence that 'in all circumstances or specified circumstances, the licensee will not cause or permit to be made on its behalf to a court or tribunal any submission that Comcare or the Commission has requested the licensee not to make'.[85] We understand that all SRC Act licences currently contain this condition.

Given the important role this restriction can play in ensuring equity of outcomes from the practices of Comcare and licensees, we think the content of the licence condition should be contained within the new Act itself.

6.1.6 Panel recommendations

Recommendation 100

We recommend access to voluntary alternative dispute resolution at any stage throughout the claims, rehabilitation and return to work process prior to Administrative Review Tribunal or court proceedings, with:

a. alternative dispute resolution provided on request from the claimant or on the recommendation of a claims manager, return to work coordinator, or decision-maker

b. alternative dispute resolution provided by an accredited independent specialist, not employees or contractors of Comcare.

[83] Hanks Review, Recommendation 9.10.
[84] Hanks Review, Recommendation 9.10.
[85] SRC Act, s 108D(1)(f).

Recommendation 101

We recommend a worker be able to rely on a Fair Work Commission determination that the employer's conduct did not amount to reasonable administrative action for the purposes of the new Act.

Recommendation 102

We recommend the governing board has the ability to determine the composition of members of the clinical panel and set independence requirements.

Recommendation 103

We recommend no change in relation to costs at the Administrative Review Tribunal.

Recommendation 104

We recommend that all determining bodies:

a. be prohibited from making submissions in the Administrative Review Tribunal or a court against the wishes of Comcare
b. be obliged to advise Comcare of any proceedings brought against them
c. upon request by Comcare, provide Comcare with any documents relating to those proceedings.

6.2 Resolving claims

6.2.1 Background

A common complaint about the SRC Act is the lack of options to resolve claims.

Some argue that the better method of settling claims is to negotiate an agreed settlement of all future entitlements (including weekly payments and medical expenses), commuted into one lump sum. This would effectively end the insurer's liability (commutation settlement).

This option is not currently available under the SRC Act because of what is commonly referred to as a bar against 'contracting out' of the rights and entitlements granted by the SRC Act.

The Act's limitations around 'contracting out' are set out in the decision of *Behan v Australian Telecommunications Corporation*.[86] These limitations apply to everyone covered by the SRC Act, including licensees.

The Court in *Behan* wrote:

> *'In my opinion, an analysis of the 1971 and the 1988 Acts themselves and of their history establishes that (a) the obligation of the Commonwealth and its authorities to make payments in the nature of workers compensation to its employees or former employees and (b) the respective rights and liabilities of employer and employee, are to be found within the four corners of the Acts themselves.'* [87]

The Court in *Behan* made clear that the only way to reach an agreement 'which is in substance a redemption of the applicant's rights' was to be found within the legislation itself: in that case, s 137 of the SRC Act (and, by extension, s 30, although that section was not applicable to the applicant's circumstances).

The key takeaway from *Behan* is that, while the SRC Act does not permit contracting out, if the legislation itself permitted some kind of 'full and final settlement' type approach, such a settlement would fall within 'the four corners of the Act' and be permissible. *Behan* itself says nothing about the restrictions on what the legislation could provide.

Limitations on Comcare's use of its money

Section 91 of the SRC Act currently limits the use of Comcare's money. This provision exhaustively lists the matters for which Comcare's money may be used. Section 91(3)(a) relevantly provides that the money of Comcare 'must be applied only in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by Comcare in the performance of its functions and the exercise of its powers under [the SRC Act]'.

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[86] *Behan v Australian Telecommunications Corporation* [1990] FCA 502.
[87] *Behan v Australian Telecommunications Corporation* [1990] FCA 502, [39].

This means even if Comcare could 'contract out' of the SRC Act, it may still be restricted from using its money to meet obligations under such a contract. That is, if liability is in doubt or not established, a lump sum payment cannot be made. It is this same restriction (among others) that prevents Comcare from compensating a person for defective administration, in the absence of a provision that specifically allows for it.

These restrictions do not apply to non-Commonwealth licensees.

Statutory redemptions

Under s 49 of the *Compensation (Commonwealth Government Employees) Act 1971* (Cth) (1971 Compensation Act), an employee in receipt of compensation for partial incapacity had the ability to request that their future entitlements to incapacity payments be redeemed into a lump sum. In that request, the employee was required to 'specify the manner in which the employee intends to use the lump sum if the request was granted'. The Commissioner (being the determining authority) would then determine whether a redemption would be granted (and if so, for how much). This included consideration of whether the level of incapacity was likely to change, that 'the employee intends to use the lump sum in a manner that is particularly advantageous to the employee', and that in all the circumstances a redemption was 'desirable in the interests of the employee'. Once redeemed, future incapacity payments ceased, unless the employee subsequently became totally incapacitated, whereupon payments resumed with a reduction to take into account the prior lump sum payment.[88]

Section 30 of the SRC Act effectively replaced s 49 of the 1971 Compensation Act. However, whereas the 1971 Compensation Act permitted redemption of any permanent partial incapacity, s 30 of the SRC Act required that the permanent incapacity give rise only to a maximum of an indexed amount, currently $147.20.[89] It is fair to say, this is such a low amount that it is rarely used.

As with the 1971 Compensation Act, persons in receipt of a lump sum redemption under s 30 cease to receive incapacity payments. However, they remain in the Comcare system through their entitlement to other heads of compensation, such as medical treatment expenses, which are claimed and paid on an ongoing basis. As under the 1971 Compensation Act, compensation can resume where the employee suffers further incapacity, to the point of not being able to engage in suitable employment, and that incapacity is likely to continue indefinitely.[90]

While under the 1971 Compensation Act the employee had to request the redemption, and factors such as their interests were considered in the exercise of the discretion whether to grant the redemption, s 30 of the SRC Act is mandatory ('Comcare shall make a determination …'). That is, if the relevant authority determines that the requirements of the section are met, the incapacity entitlements must be redeemed. The interests of the employee and their attitude to the redemption are not relevant factors.

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[88] *Compensation (Commonwealth Employees) Act 1971* (Cth), s 49.
[89] Comcare, *Statutory rates for compensation*, SRC Act, 2025, Comcare, accessed 19 September 2025. See 'redemption ceiling rate'. Available at www.comcare.gov.au/claims/statutory-rates.
[90] SRC Act, s 31.

In this respect, the intention of s 30 is substantially different from s 49 of the 1971 Compensation Act. Whereas the 1971 Compensation Act's redemption powers appear to have been mainly around providing a lump sum for the employee's benefit, s 30 is predominantly focused on assisting in the administration of the claim by removing the requirement of the employee to claim, and the relevant authority to determine liability, for ongoing small amounts.

Despite the limitations outlined above, in practice settlements do occur through a variety of means, including:

- the use of s 37(4) (dealing with the cost of a rehabilitation program) to complement closed periods of liability for incapacity payments and medical expenses
- the offer of voluntary redundancy or incentive to retire
- consent orders at the ART as the outcome of an application for review of a decision.

In the context of settlements, it is necessary to clarify the terms used. This section refers to 'redemptions' and 'commutations'. The terms are often used interchangeably in other jurisdictions and other contexts. We use these terms to indicate different forms of settlement we recommend. We use 'redemption settlement' to refer to settlement of entitlement to incapacity payments only, and we use 'commutation' to refer to an agreement to settle entitlements to all forms of compensation.

6.2.2 Previous reviews

Hanks Review

Hanks considered commutation settlements, which he called 'voluntary redemptions', as part of his review.[91] While his analysis is insightful and useful, the ultimate recommendations are not consistent with his discussion.

He recommended the SRC Act be amended so that a worker may 'redeem' their entitlement to compensation payments on a voluntary basis. Those voluntary redemptions would not replace, but would supplement, the compulsory redemption of low-level incapacity payments pursuant to s 30 of the SRC Act.[92]

The supplementary voluntary redemption process suggested by Hanks set out the following features.

- The redemption would apply to incapacity payments, medical treatment and attendant care and household services.
- The redemption would not apply to (and thus be in addition to) compensation for death, permanent impairment and non-economic loss, and rehabilitation.

[91] Hanks Review, paras 7.234–7.262.
[92] Hanks Review, para 7.253.

- To be entitled to a redemption:
  - more than 2 years must have passed since the insurer first accepted the incapacity claim
  - the employee has had a claim for compensation for permanent impairment and non-economic loss 'determined' (note he does not require that such a claim be accepted, nor specify a minimum degree of impairment)
  - the employee has exhausted all rehabilitation options or is likely to be indefinitely unfit to return to suitable employment
  - the employee has an existing and ongoing entitlement to incapacity payments (at a partial or total level).[93]

Hanks also detailed his suggested process. This included the determining authority making an offer, the employee obtaining legal and financial advice at the determining authority's expense (with limits) and the employee electing to accept that offer.[94] The subsequent agreement would mean the employee would 'not be entitled to any further compensation in respect of the injury' and would 'allow employees to make a clean break with the compensation system and allow determining authorities to close their files'. However, aggravations and consequential injuries would be treated as a separate injury, unaffected by the redemption. Similarly, compensation from death resulting from the redeemed injury would also be unaffected by the redemption.[95]

As this process was to be voluntary and subject to an agreement, it would not be subject to merits review.[96]

It is apparent that in his review, Hanks developed a detailed and well considered voluntary redemption scheme that was quite separate in structure and intention to the compulsory redemption scheme in s 30. Unfortunately, and for unknown reasons, the scheme he outlined did not feature in his ultimate recommendations. Rather, the recommendations fell considerably short, recommending that s 30 of the SRC Act be amended so that a worker may redeem compensation payments on a voluntary basis and the threshold for its operation be increased to $150 per week, indexed by reference to the consumer price index.[97]

His recommendations are not consistent with the substance of his report: indeed, it is quite the opposite. If that recommendation was implemented, it would have none of the features of the scheme that Hanks described and would also remove the effect of the compulsory redemption process Hanks considered should be retained.

The Improving the Comcare Scheme Bill would have increased the threshold of s 30 to $208.91 (representing a 54% increase on the 2015 statutory rate), but that is all.[98]

[93] Hanks Review, paras 7.253–7.255.
[94] Hanks Review, para 7.258.
[95] Hanks Review, para 7.261(e).
[96] Hanks Review, para 7.261(f).
[97] Hanks Review, Recommendations 7.18 and 7.19.
[98] Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015, Sch 10.

Review of the *Workers' Compensation and Injury Management Act 1981* (WA)

Western Australia's redemption scheme was considered by a 2014 review of the state's workers' compensation legislation. The review highlighted a general trend towards the use of the common law pathway to settle claims as opposed to the statutory redemption process, even though Western Australia's redemption scheme was acknowledged as having 'the most liberal settlement arrangements of all Australian workers' compensation jurisdictions'. The review report noted concerns that there was 'minimal scrutiny of the terms or lump sum' in such common law settlements.[99]

The review recommended the then 6-month qualifying period be widened to capture 6 months from claim acceptance rather than 6 months of weekly payments, and to allow for redemption prior to 6 months in special circumstances to be set out in the legislation.[100]

The review's recommendations were not implemented in the 2023 legislation; instead the 6-month qualifying period was removed entirely.[101]

Review of the Workers Compensation Scheme (NSW), 2023

In its 2023 report, the NSW Standing Committee on Law and Justice recommended that the NSW Government consider amending the workers' compensation legislation to increase access to commutation settlements, with appropriate safeguards such as a requirement for independent legal advice and the approval of the Personal Injury Commission.[102]

The committee noted that there are many psychosocial benefits from allowing injured workers to appropriately exit the scheme through a commutation settlement. This is particularly beneficial where return to work is not feasible, or where undertaking work in the same workplace may be detrimental to the injured worker.[103]

The NSW Government provided in-principle support for the recommendation. It committed to further work, including modelling and consultation, to further investigate the 'role of commutations in improving outcomes for injured workers alongside potential impacts on scheme financial sustainability'.[104] At the time of drafting our report, the Workers Compensation Legislation Amendment Bill 2025 (NSW) and the Workers Compensation Legislation Amendment (Reform and Modernisation)

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[99] WorkCover WA, *Review of the Workers' Compensation and Injury Management Act 1981: Final Report*, 2014, WorkCover WA, [506–523].
[100] WorkCover WA, *Review of the Workers' Compensation and Injury Management Act 1981: Final Report*, WorkCover WA, 2014, Recommendation 82.
[101] The current provision is at *Workers Compensation and Injury Management Act 2023* (WA), s 149.
[102] NSW Parliamentary Committee, Legislative Council Standing Committee on Law and Justice, *2023 Review of the Workers Compensation Scheme – Final report*, 2023, NSW Parliament, Recommendation 15.
[103] NSW Parliamentary Committee, Legislative Council Standing Committee on Law and Justice, *2023 Review of the Workers Compensation Scheme – Final report*, 2023, NSW Parliament, p 91, [4.146–4.147].
[104] NSW Government, *New South Wales Government Response: 2023 Review of the Workers Compensation System*, 2024, Parliament of New South Wales, p 9.

Bill 2025 both proposed regulations be made to expand the classes of claim that are eligible for voluntary commutations, subject to approval by the Personal Injury Commission.[105]

6.2.3 State and territory arrangements

There are different approaches to commutation settlements across the states and territories, which in some Acts are also called 'settlements' or 'redemptions'.

Western Australia,[106] South Australia,[107] Tasmania,[108] the Northern Territory[109] and the Australian Capital Territory[110] allow for a largely unfettered approach to commutation settlement, relying on a negotiated agreement between the parties for the payment of a lump sum that extinguishes the right to further compensation. New South Wales and Queensland also permit commutation settlements but are more restrictive in terms of coverage or eligibility.[111] For example, Queensland applies a formula for calculating the payment that is heavily discounted.[112]

Some jurisdictions restrict when an application for a settlement can be considered. Queensland, New South Wales and Tasmania permit applications 2 years after either the first weekly payment was made or the claim was accepted.[113] In Tasmania, if less than 2 years has elapsed since the original claim was made, the Tasmanian Civil & Administrative Tribunal may approve the settlement when it is in the best interests of the worker.[114] The Northern Territory provides that when an agreement is made less than 2 years after the claim, the claimant has a 6-month cooling-off period in which they may withdraw from the agreement and repay the settlement amount.[115]

Some jurisdictions, such as the Northern Territory and South Australia, do not allow catastrophically injured persons to access settlements for some expenses.[116] In the Northern Territory, this is linked to coverage by the National Injury Insurance Scheme. This does not prevent the settlement of the weekly wage component.[117]

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[105] Workers Compensation Legislation Amendment Bill 2025 (NSW), Sch 1.5; Workers Compensation Legislation Amendment (Reform and Modernisation) Bill 2025, Sch 1.5.
[106] *Workers Compensation and Injury Management Act 2023* (WA), ss 149–157. Refers to 'commutation'.
[107] *Return to Work Act 2014* (SA), ss 53 and 54. Refers to 'redemption'.
[108] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 132A. Refers to 'settlement by agreement'.
[109] *Return To Work Act 1986* (NT), s 78A. Refers to 'settlement by agreement'.
[110] *Workers Compensation Act 1951* (ACT), ss 136–138. Refers to 'commutation'.
[111] *Workers Compensation Act 1987* (NSW), ss 87EA and 87F; *Workers' Compensation and Rehabilitation Act 2003* (Qld), ss 171–176. Refers to 'redemption'.
[112] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 174.
[113] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 171; *Workers Compensation Act 1987* (NSW), ss 87EA; *Workers Rehabilitation and Compensation Act 1988* (Tas), s 132A.
[114] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 132A.
[115] *Return To Work Act 1986* (NT), s 78A(5).
[116] *Return To Work Act 1986* (NT), s 78A(1A); *Return to Work Act 2014* (SA), s 53.
[117] NT WorkSafe, 'Summary of changes to the *Return to Work Act 1986* and *Return to Work Regulations 1986'*, 2022, NT WorkSafe, p 7, accessed 19 September 2025. Available at https://worksafe.nt.gov.au/forms-and-resources/guides/summary-of-changes-to-the-northern-territory-workers-compensation-scheme-2020; *Return To Work Act 1986* (NT), s 78A(1A).

South Australia and the Northern Territory require evidence that a person has received adequate legal and financial advice at the insurer's expense.[118] The Tasmanian Civil & Administrative Tribunal can only approve a settlement if the worker has received legal advice.[119] New South Wales and Victoria also require that the claimant has received legal advice.[120]

In most cases, it is the workers' compensation authority that approves an agreement between the claimant and the employer or the employer's insurer. In Tasmania, the agreements are reviewed and registered with the Tasmanian Civil & Administrative Tribunal.[121] In New South Wales, agreements are reviewed and certified by the State Insurance Regulatory Authority and registered by the Personal Injury Commission.[122]

In Victoria, settlements are more typical of a redemption, as they allow for the settlement of incapacity entitlements, with the claimant remaining in the scheme and eligible for ongoing compensation for medical and other expenses.[123] Eligibility in Victoria is limited to persons over the age of 55 who are permanently totally incapacitated, and in receipt of at least 130 weeks of incapacity payments. Victoria also has a formula for calculating the benefit, which is heavily discounted – which means that, like the SRC Act provisions, the provisions are rarely used by workers.[124]

6.2.4 What we heard

Our issues paper sought views on lump sum payments to finalise claims (at question 44), a greater right to redeem compensation benefits (at question 46), and 'all in' settlements to resolve disputes (at question 58).

Most submissions responded by calling for additional options and flexibility to finalise claims, noting that current arrangements are limited, vary between licensees and premium-payers, and have few protections for workers.

The strong preference in submissions was for an option to finalise claims via agreement on a lump sum settlement under the SRC Act. Submissions cited the benefits to both the claimant and the employer in resolving matters before going to the ART.[125] Some submissions suggested safeguards such as genuine informed choice, qualifying periods and clear guidelines.[126] The Community and Public Sector Union

[118] *Return to Work Act 2014* (SA), s 53(4); *Return To Work Act 1986* (NT), s 78A(4).
[119] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 132A(7).
[120] *Workers Compensation Act 1987* (NSW), s 87F; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 263.
[121] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 132A.
[122] *Workers Compensation Act 1987* (NSW), s 87EA.
[123] See *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 244 (and more generally, Pt 5, Div 9). Refers to 'voluntary settlement'.
[124] LexisNexis, *Halsbury's Laws of Australia,* 450 Workers' Compensation, '4 Procedure for the Recovery of Workers' Compensation – Victoria' [450-8330].
[125] See, for example, Pacific National submission, p 10.
[126] See, for example, ACTU submission, p 39.

opposed any redemption without worker choice.[127] A subset of submissions noted the process and criteria would need to consider the financial viability of the Comcare scheme.

> "All in" settlements can be code for an improper redemption of all liabilities under the Act. Proposals in this regard should be viewed with caution.
>
> **Peter Sutherland submission, p 8.**

> There are situations where an injured worker may wish to exit the workers' compensation process. ...Legislation could support this via a lump sum payout. There would need to be safeguards in place to protect the worker... and the scheme...
>
> **Comcare submission, p 33-34.**

> There is no current opportunity to truly finalise claims under the Act which may be in the best interests of the worker and so the parties will often manufacture a way to do so. ... Only through the introduction of meaningful... redemption mechanisms can claims be finalised in a way that would benefit workers.
>
> **CPSU submission, p 34.**

Some submissions suggested the involvement of the ART to review and endorse the agreement as a safeguard. This included basing provisions on the Tasmanian workers' compensation settlement framework, which involves endorsement by the Tasmanian Civil & Administrative Tribunal.[128]

One submission called for options to settle claims for low-cost items such as hearing aids.[129]

6.2.5 What we considered

In light of what we heard, we considered how claims could be settled, including on a 'without prejudice' basis. We also considered options for injured and ill workers to reach a settlement with Comcare or the licensee so they can exit the scheme, with a view to reducing the impact of staying in the scheme on their recovery. We looked at the guardrails needed to protect parties who are contemplating resolving their claims using this approach. Finally, we also considered whether compulsory redemptions currently provided for under the SRC Act were still required and how they should function.

[127] CPSU submission, p 33.
[128] Safety Rehabilitation and Compensation Licensees Association submission (unpublished), p 32.
[129] ACTU submission, p 40.

Commercial settlements

We considered the concerns raised with the review about Comcare's inability to settle issues that arise regarding liability at any stage throughout the compensation process.

As explained in the background for this chapter, it is commonly said that Comcare is prevented from taking a 'commercial' approach to settlements. We consider that the position is more complex.

In his review, Hanks was concerned that the Legal Services Directions 2017 (the Directions) restricted Comcare from taking a commercial approach to settlements. He said that although the Directions appear to 'ensure that the Commonwealth only settles those matters where appropriate liability is identified, there is an argument that, acting effectively as an "insurer", an inherently commercial role, Comcare as a determining authority should be able to make commercial settlements. That could resolve disputes earlier, thus saving money in the long run, but it would also facilitate the rehabilitation and recovery of employees involved in disputes with Comcare'.[130]

The Directions comprise several appendices. Restrictions around 'commercial settlements' arise in Appendix C to the Directions. To settle a claim, that appendix requires a 'meaningful prospect of liability being established' and that the 'settlement is not to be effected merely because of the cost of defending what is clearly a spurious claim'. However, once that 'meaningful prospect' has been established, the appendix explicitly permits the cost of defending a claim to be taken into account in assessing a fair settlement amount. [131] Of course, the Directions do not require that the cost be taken into account. It may well be that the Commonwealth elects to defend a matter of relative low cost because there is a significant point of law to be clarified, or the matter could affect a number of other matters.

Appendix C does not apply to Comcare in relation to SRC Act claims. Furthermore, that appendix only applies to 'monetary claims', and the Directions specifically give as an example of something that is not a monetary claim, 'a Comcare benefit'.[132] However, there is an argument that Appendix C provides a broad yardstick for Comcare to use as a guide to how commerciality may be used in its decision-making. Clearly the Commonwealth does not support settling claims on a 'pure' commercial basis. That is, it does not approve of the payment of monies to rid itself of a spurious claim, even at a low cost. However, provided that the claim meets the relatively low threshold of having a 'meaningful prospect', a cost–benefit analysis is a relevant consideration in determining how to proceed under that yardstick.

Appendix B, the obligation to act as a model litigant, does apply to Comcare and nothing in that appendix expressly dictates whether Comcare can take commercial factors into account in settling a claim.

Rather, the greatest barriers to commerciality are the issues discussed in the background section of this chapter: that Comcare can only operate within the 'four corners of the Act', and that it may only

[130] Hanks Review, paras 9.115–9.118.
[131] *Legal Services Directions 2017* (Cth), App C and s 2.
[132] *Legal Services Directions 2017* (Cth), App C and s 1.

use its money to (for present purposes) pay compensation for a liability under the Act. Were there a provision of the SRC Act allowing for the payment of legal costs in the absence of liability, the crux of recommendation 9.11 of the Hanks Review would have been able to be implemented without the need for the Attorney-General's approval for the application of modified Directions.

Accordingly, we consider it is already open to Comcare to apply a cost–benefit analysis or good management approach to the settlement of claims where:

- the claim specifically relates to an entitlement under the SRC Act
- the cost of defending a claim is likely to exceed the cost of the claim itself and there is at least a meaningful prospect that the claim could be successful (that is, the prospect is not fanciful).

This approach aligns with the approach currently taken by the Australian Taxation Office (ATO) under its code of settlement for taxation and superannuation disputes, where the ATO decision to settle (or not) must 'reflect a fair, effective and efficient use of resources in resolving dispute matters, balancing competing considerations, and applying discretion'.[133]

To the extent that Comcare's ability to settle claims in this way is unclear under the current SRC Act, we consider that it should be clarified.

Other circumstances

We have also considered whether Comcare should have the ability to settle claims in a broader range of circumstances than those outlined above – for example, where the claim is for a treatment or support that would contribute to the worker's wellbeing and potentially enhance their prospects of rehabilitation and return to work, but the need for it does not arise directly from the compensable injury or illness.

We see risks in this approach. Permitting Comcare to settle claims of this type potentially broadens the scope of the Act beyond the compensation of work-related injury and illness. We are also concerned about its potential to undermine the model for commutation of entitlements we recommend below, which has safeguards to protect the interests of claimants and the scheme's financial stability.

We note that it may be open to premium-paying employers at present to pay for treatments or supports, even if it is not open to Comcare to use its funds in that way. We understand from face-to-face consultations during this review that this a practice adopted by some licensees.

We also note that under our proposed hybrid model of rehabilitation (see Chapter 3), premium-paying employers have duties to return workers to health and work and, subject to their duties under the *Public Governance, Performance and Accountability Act 2013* (Cth), could pay for such treatments and supports. This aligns the arrangements for all workers covered by the scheme.

[133] Australian Taxation Office (ATO), 'Practical guide to the ATO Code of settlement', 2024, ATO, accessed 28 August 2025. Available at www.ato.gov.au/individuals-and-families/your-tax-return/if-you-disagree-with-an-ato-decision/settlement/a-practical-guide-to-the-ato-code-of-settlement.

We see value in Comcare being able to swiftly resolve low-value claims in a cost-effective way. We therefore consider that Comcare should be able to make a payment to resolve claims of this type, but only for low-value claims, on a one-time only basis, where the relevant authority has not already facilitated access to the treatments or supports. Limiting this to low-value claims protects the scheme's sustainability. The settlement agreement would be used as evidence to defend any future claim for the same entitlement from Comcare.

Therefore, we recommend the new Act clarifies Comcare's legal basis for settlement and whether it has the authority to settle matters on principles that reflect good management of the Comcare scheme, overall fairness to the claimant, and the best use of Comcare resources.

Comcare's new governing board should be empowered to approve guidance on the exercise of this authority to balance flexibility with prudence, and encourage consistency for claimants across the scheme. The guidelines should apply to all employers covered by the Comcare scheme. This is consistent with current Safety Rehabilitation and Compensation Commission powers under s 73A of the SRC Act, and with our proposed role for the governing board under the new Act, described in Chapter 7.

Commutation

Allowing workers to commute their claims frees them to make decisions about how best to meet their care needs. This is consistent with the person-centred approach underpinning our review, which gives primacy to what will work best for the injured worker in their circumstances including their abilities, culture and family. It provides certainty and finality, and reduces the administrative burden on all those involved. As the process allows for workers to exit the scheme, commutation reduces the likelihood of disputes and appeals. It also addresses situations where an ongoing link to the worker's employment can hinder the worker's recovery and cause further harm.

We have formed the view that the scheme should allow a form of voluntary commutation in certain circumstances, subject to safeguards to ensure that the lump sum reflects the worker's future entitlements, and that the worker has made a fully informed decision to redeem their entitlements. The model we propose would bring an end to compensation payments of all kinds and ongoing liability in relation to the compensable injury or illness.

As a threshold consideration, we propose that this can only occur in circumstances where the determining body and the injured or ill worker have agreed to bring an end to compensation payments of all kinds in relation to the compensable injury or illness.

Pre-conditions

Voluntary commutation should only occur where it is likely that the worker's condition is permanent and stable. This ensures that the injury or illness has stabilised and that the worker's prognosis and future capacity are relatively certain. We have considered models in other schemes and the model proposed by Hanks, as well as submissions that put forward suggested frameworks. A common feature of many models is that a worker is not eligible to settle their claim until a fixed period has passed, either since making the claim or since incapacity payments commenced. Two years after the

initial claim is a common threshold in other schemes.[134] Other schemes require a statement from an appropriate medical practitioner instead of or in addition to the qualifying period.

Voluntary commutation should not occur when there is still a reasonable prospect of the worker returning to work and rehabilitation remains a possibility. As the 2014 review of the Western Australian workers' compensation scheme observed, unfettered lump sum settlements have the potential to undermine the injury management focus of a workers' compensation scheme.[135] To permit commutation before reasonable prospects of rehabilitation and return to work options have been exhausted would deprive the worker of the benefit of the stronger supports for return to work we recommend in Chapter 3.

Some other schemes require that the threshold for permanent impairment has been reached before a claimant is eligible to settle their claim. We have considered whether this is appropriate in the Comcare scheme. Requiring that claimants meet the permanent impairment threshold of 10% significantly reduces the number who would be eligible to commute their claim. At present, there are 3,706 claimants in the premium-paying side of the scheme who have been receiving benefits for 2 years or more (67.9% of 5,460 open claims). Of these, 1,108 have permanent impairments of 10% or more, accounting for 20.3% of the current claimant cohort.[136]

Restricting the availability of commutation to this cohort has several advantages. First, the requirement that the claimant has reached the permanent impairment threshold aligns with the requirement that their condition be permanent and stable, and ensures that this option is targeted to those with serious, lasting injuries or illnesses, who are most likely to benefit from an option for scheme exit. Restricting commutations to these more serious cases also reduces administrative burden and promotes the stability of the Comcare scheme. However, research clearly shows that participation in the compensation process leaves workers worse off than if they managed their conditions independently.[137] We think requiring that the threshold for permanent impairment has been reached would limit the effectiveness of this proposal.

We have considered further eligibility requirements in other jurisdictions, such as the age requirement in Victoria, and restrictions on the redemption of entitlements by catastrophically injured workers. The latter may be related to supports through state and territory statutory schemes for those catastrophically injured in a motor vehicle accident or at work.[138] We consider there is merit in

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[134] See, for example, New South Wales, Tasmania and Queensland, as discussed above at 6.2.3.
[135] WorkCover WA, *Review of the Workers Compensation and Injury Management Act 1981: Final Report*, 2014, WorkCover WA, Recommendations 506–523.
[136] Comcare data provided 15 August 2025. Equivalent data was not available for self-insured licensees.
[137] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – Bringing evidence-informed practice to work injury schemes helps workers and their workplaces*, April 2022, Royal Australasian College of Physicians. Available at www.itpaystocare.org/resources-1/resources.
[138] The Treasury, 'National Injury Insurance Scheme', *The Treasury*, n.d., accessed 8 August 2025. Available at https://treasury.gov.au/programs-initiatives-consumers-community/niis; National Disability Insurance Agency, 'Catastrophic injury life time support scheme, Commonwealth, state or territory statutory schemes (SATSS)', 2023, *National Disability Insurance Scheme*, accessed 8 August 2025. Available at www.ndis.gov.au/participants/compensation-and-your-plan/commonwealth-state-or-territory-statutory-schemes-satss.

conducting further research on the interaction of the state and territory schemes and the National Disability Insurance Scheme with the Comcare scheme, to determine the optimal scope of commutation provisions. In particular, further consideration is required as to whether catastrophic injuries should be excluded, consistent with the objective of the National Injury Insurance Scheme to provide lifetime care and support for people who have sustained a catastrophic injury.

Safeguards

Inherent in any form of lump sum compensation is the risk that the sum may be exhausted sooner than expected. Analysis of lived experience of compensation claimants who received lump sums has shown that many face significant difficulty in managing the funds, driven by a range of factors, including low financial literacy.[139] To mitigate this risk, we consider there should be no commutation of entitlements unless a worker has first received both financial and legal advice on the proposed settlement. This should ensure that the worker is making an informed choice and receives advice on the future management of the lump sum payment. This aligns with the approach in South Australia and Tasmania discussed earlier, at section 6.2.3.

The costs of the worker obtaining legal advice should be borne by Comcare or the licensee where the worker meets other eligibility requirements, with consideration to be given to the use of an appropriate schedule of costs for this purpose. Consideration could also be given to limiting costs by providing that if a worker subsequently decides not to proceed with commutation of their entitlements, they cannot obtain further legal and financial advice for this purpose for another 2 years.[140]

The Northern Territory scheme allows commutation via lump sum or periodic payment funded by an annuity or another agreed means, known as a structured settlement.[141] Structured settlements could address concerns raised with us about the welfare of claimants whose lump sum settlement runs out. This may also be attractive to claimants who are not confident making their own investment arrangements, even after receiving financial advice.

While a structured settlement would continue the relationship between the claimant and the Comcare scheme, the relationship would fundamentally change, as evidence would no longer be required to receive payment. Annuity may also assist with the financial stability of the scheme, as the outgoing payments would be spread over a number of years.

While we are attracted to the concept of structured settlements, there is limited evidence available on how it would affect the take-up of commutations, how it would benefit claimants in the Comcare scheme, and on the extent of the administrative burden it would impose on Comcare. This makes it difficult to justify the additional complexities involved. We instead suggest that the post-implementation review revisits this issue to determine whether structured settlements would have benefits for claimants in the Comcare scheme.

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[139] P Vines, M Butt and G Grant, 'When Lump Sum Compensation Runs Out: Personal Responsibility or Legal System Failure?', 2017, 39(3) *Sydney Law Review* 365.
[140] Hanks Review, para 7.258.
[141] Return to Work Act 1986 (NT), s 78A.

What can be commuted

We have carefully considered how the lump sum payable on commutation should be determined. In doing so, we have been mindful that a further driver of premature exhaustion of lump sum compensation generally is systemic under-compensation.[142] This is built into some existing models in state schemes. The Victorian formula for calculating redemption of incapacity entitlements is heavily discounted, and accordingly rarely used by injured workers.[143] Queensland also applies a heavily discounted formula for calculating redemptions.[144] This approach is not consistent with the guiding principle of our review that workers should be able to depend on security of benefits, so that they do not become a financial burden on their family or the community. For this reason, we do not favour a model in which the legislation specifies a formula to be applied, though consideration should be given to whether a degree of discounting is appropriate based on the time-value of money and to avoid a windfall gain for claimants.

Instead, we consider that the interests of workers are better served by the worker and determining body having the flexibility to negotiate a lump sum by agreement, as is the case in the majority of jurisdictions. To inform the agreement, medical reports should be obtained by both the worker and the determining authority, addressing the worker's future capacity and need for any further treatment and rehabilitation. The cost of obtaining the medical reports should be borne by the determining body.

Flexibility does not mean unfettered discretion, and any commutation amount must be consistent with the requirement of the *Public Governance, Performance and Accountability Act 2013* (Cth) for the proper use of Commonwealth resources. A guide on how to calculate a commutation amount could assist with consistency and with meeting proper use obligations. The calculation of the lump sum should take into account:

- the need for sufficient funds, based on the injured worker's most recent level of incapacity payments, to cover the worker for the anticipated period of total or partial incapacity
- the need for sufficient funds to cover the worker's foreseeable needs for treatment and rehabilitation arising from the compensable injury or illness
- a permanent impairment payment if not already paid.

The sum should not include legal costs; while this is a common practice in such settlements it too contributes to the issue of systemic under-compensation.

Exclusions

In recommending this model for commutation, we are also conscious of another guiding principle of our review: the need to ensure the Comcare scheme's ongoing financial viability. We sought actuarial advice on a range of models for voluntary commutation, including existing models in other jurisdictions, and have considered that advice in developing the proposed model. The advice noted that estimates of

[142] P Vines, M Butt and G Grant, 'When Lump Sum Compensation Runs Out: Personal Responsibility or Legal System Failure?', 2017, 39(3) *Sydney Law Review* 365.
[143] For example, *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 246 (and, more generally, Pt 5, Div 9); LexisNexis, *Halsbury's Laws of Australia*, 450 Workers' Compensation, '4 Procedure for the Recovery of Workers' Compensation – Victoria' [450-8330].
[144] *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 174.

costs impact to the scheme from introducing voluntary commutation were highly uncertain, because they relied in part on observations of past experience in other workers' compensation schemes that may not be appropriate in the SRC Act context, and are sensitive to the implementation and administration of commutation, and because of some uncertainty about the tax treatment of the payments. However, we acknowledge that if workers take up the option to commute their entitlements, this will represent an up-front cost to the scheme as claim costs are drawn forward, with the potential to significantly affect premium rates and scheme volatility. The effect is likely to be greater in the initial period after commutation first becomes available.

There is a detailed discussion on this in Part D.

Further safeguards

A further safeguard on settlements in Tasmania and New South Wales is the requirement for the agreement to be reviewed and registered with an external body – respectively, the Tasmanian Civil & Administrative Tribunal[145] and the Personal Injury Commission.[146] Some submissions called for the ART to play a review role in a voluntary commutation framework.

We agree that it would be appropriate for there to be a further approval of the proposed commutation once it has been agreed between the worker and Comcare or the licensee. The ART is well placed to review the agreement and provide the appropriate approval. However, noting that the ART's usual merits review function may necessitate the ART to conduct such a review (notwithstanding the parties' consent), further consideration is required as to how this process could operate including, for example, whether this process could instead arise from powers conferred on members personally.[147] To ensure a streamlined approval process, the process could be conducted by a registrar of the ART and confined to ensuring that the legislative safeguards have been met, such as ensuring that the requisite legal and financial advice has been received, rather than reviewing the merits of the agreement.

We make no firm recommendation on this issue because we understand matters regarding the ART's jurisdiction would require consultation with the Attorney-General's Department. However, we consider that any arrangements for further approval of the commutation agreement should allow a short cooling-off period for the claimant.

Other issues

Compulsory redemption

The availability of the voluntary commutation option outlined above will not address all the circumstances in which it is desirable that a worker settle future entitlements in the form of a lump sum. There remains the situation provided for in s 30 of the current SRC Act – that is, compulsory redemption of low-level incapacity entitlements.

[145] *Workers Rehabilitation and Compensation Act 1988* (Tas), s 132A.
[146] *Workers Compensation Act 1987* (NSW), s 87H.
[147] For example, *Telecommunications (Interception and Access) Act 1979* (Cth), s 6DA.

Section 30 is limited in that it:

- only applies to incapacity payments
- does not finalise a claim for compensation, or sever the relationship with the relevant authority
- is a compulsory mechanism, directed at the administration of the claim
- is applicable only to a small cohort of persons due to the low threshold for operation.

It means that there are very few workers who qualify for redemption.

Hanks considered that this section served a purpose in addressing situations where the cost of administering payments would approach or exceed the level of payments being made, though he noted it was important the interests of workers remained protected by existing systems for reconsideration and external review.[148] In addition, we note that while compulsory redemption of incapacity payments does not finalise a claim for compensation, or wholly sever a worker's connection to the Comcare scheme, it has the potential to reduce disputes about that aspect of the claim. It also gives workers access to a lump sum rather than small payments over a number of years, and has some of the same benefits of broader commutation discussed above for a worker's mental health.

We consider that the current s 30 provides an appropriate framework for compulsory redemption to occur, to reduce the administrative burden associated with low-level incapacity payments for both the claimant and the scheme.

Like some of those who made submissions, we consider that the current threshold for compulsory redemption is too low. At present, incapacity payments can only be redeemed where the permanent incapacity gives rise to a maximum weekly payment of $147.20 (the indexed redemption ceiling rate).[149] Since 2015–16, there have been 18 redemption claims across the entire scheme.[150] This indicates that the current redemption ceiling rate is preventing the section from operating as intended: it does not allow the determining authority to settle claims where the cost of administering them is near to or exceeding the payments, and it does not free an injured worker on partial incapacity payments from ongoing uncertainty about the continuation of payments.

We therefore recommend an increase to the redemption ceiling rate for compulsory redemption. The ceiling rate should be set at a level that ensures it is a viable route for redemption of low-level incapacity payments, taking into account claims administration costs and average incapacity payments. The amount should continue to be indexed.

[148] Hanks Review, para 7.253.
[149] Comcare, 'Statutory rates for compensation', 2025, *Comcare,* accessed 28 August 2025. Available at www.comcare.gov.au/claims/statutory-rates.
[150] Unpublished Comcare data.

6.2.6 Panel recommendations

Recommendation 105

We recommend the new Act clarifies Comcare's legal basis for settlement and whether Comcare has the authority to settle matters on principles that reflect good management of the Comcare scheme, overall fairness to the claimant and the best use of Comcare resources.

Recommendation 106

We recommend a form of voluntary commutation to allow workers to opt out of the scheme (that is, an extinguishment of liability for a compensable injury or illness), subject to thresholds and safeguards. Eligibility criteria would be the following:

a. The injured or ill worker has undertaken all reasonable rehabilitation treatments for the impairment and more than 2 years on compensation has elapsed since the first receipt of compensation.
b. The insurer and the injured or ill worker have agreed to bring an end to compensation payments of all kinds in relation to the compensable injury or illness.
c. The sum is agreed by both parties with the assistance of medical reports obtained by each side.
d. The sum provides sufficient funds based on the injured or ill worker's most recent incapacity payments to sustain the worker and their dependants for a period of total or partial incapacity.
e. The sum enables the injured or ill worker to meet the cost of their foreseeable needs for treatment and rehabilitation, household and attendant care.
f. The sum includes an amount for permanent impairment payment (if relevant).
g. The sum is exclusive of legal costs, subject to caps.
h. The injured or ill worker has received financial and legal advice.
i. The agreement is endorsed by an independent body.

Recommendation 107

We recommend the threshold for the operation of s 30 (compulsory redemption) be increased and continue to be indexed.

Chapter 7. Ensuring scheme integrity, and strong governance and administration to secure scheme sustainability

What this chapter considers

The terms of reference for the review asked us to consider Comcare scheme coverage, including whether national private sector employers should have access to the Comcare scheme and whether 'non-Commonwealth licensees' should continue to have coverage under the Commonwealth *Work Health and Safety Act 2011* (WHS Act).

The terms of reference also asked us to consider best practice governance arrangements for the Comcare scheme that ensure the appropriate regulatory oversight of scheme participants and include social partner involvement and tripartism. We were further asked to consider the ongoing financial management and viability of the Comcare scheme.

Links to other chapters

This chapter addresses self-insurance issues similarly discussed in Chapter 4 regarding delegated claims management.

The current framework

Scheme coverage for licensees

Part VIII of the SRC Act covers the issuing and regulation of licences to enable Commonwealth authorities and certain corporations to accept liability for and/or manage their own claims.

Section 102 allows Commonwealth authorities or eligible corporations to apply to the Safety, Rehabilitation and Compensation Commission (SRCC) for a self-insurance licence. A corporation is eligible if it has been so declared by the Minister under s 100. The Minister may decide a corporation is eligible under that section if the Minister is satisfied that it would be desirable for the Act to apply to the corporation's employees, and if:

- the corporation is, but is about to cease to be, a Commonwealth authority

- the corporation was previously a Commonwealth authority, or
- the corporation is in competition with a Commonwealth authority or former Commonwealth authority ('the competition test').

Section 12 of the WHS Act provides that the WHS Act applies to non-Commonwealth licensees during the transitional period. The transitional period began upon the commencement of the WHS Act and will end on a date prescribed by the regulations. To date, no regulations have been made to conclude the transitional period.

7.1 Scheme coverage

7.1.1 Background

The SRC Act establishes the Commonwealth workers' compensation and rehabilitation scheme for workers of the Commonwealth, Commonwealth authorities and licensed corporations (generally referred to as the Comcare scheme).

The Comcare scheme currently applies to workers in Commonwealth departments, agencies and authorities, and 40 licensees, including private corporations, Commonwealth authorities and the ACT Government.

As the issues paper highlights, when first introduced in 1988 the SRC Act was designed solely for Australian Government workers. This was reflected in its original title, the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*.[1]

There has always been the ability for employers to self-insure under the Act. In 1992, the Act's name was changed to the 'Safety Rehabilitation and Compensation Act' and the first version of licensing was introduced. The Act was also extended to certain corporations outside the Commonwealth public sector, so that the Comcare scheme was able to cover corporations of which the Commonwealth had substantial ownership and also corporations that were in competition with privatised Commonwealth authorities.[2]

This action was taken in response to the full or partial privatisation of several government functions during this period. It ensured continuity of entitlements for existing workers and avoided privatised bodies with a national footprint having to insure under multiple compensation systems.[3] This has since been referred to as creating a 'level playing field' for private corporations that were in competition with

[1] Explanatory Memorandum, Commonwealth Employees' Rehabilitation and Compensation Bill 1988, p 8.
[2] *Commonwealth Employees' Rehabilitation and Compensation Amendment Act 1992*.
[3] Explanatory Memorandum to the Commonwealth Employees' Rehabilitation and Compensation Amendment Bill 1992.

privatised Commonwealth authorities.[4] For example, Optus was granted a licence to self-insure under the Comcare scheme because it was in competition with Telstra, a former Commonwealth authority.[5]

In 2001, the 5 classes of licences available under the Act were rationalised into a single generic licence, now under Part VIII.[6]

More workers are now covered by the self-insurance arrangements under the SRC Act than the premium-paying arrangements. As at 30 June 2025, 40 licensees (including public sector employers like the ACT Government) have 263,302 workers or 53.5% of the 491,781 full-time equivalent (FTE) workers covered by the SRC Act. Of those workers, 39.8% are from private sector corporations.

The mix of industries covered by licensees in the Comcare scheme is wide, covering transport, construction, telecommunications, banking and finance. Some of Australia's largest employers are licensees, including Telstra, Australia Post, the ACT Government and 3 of the 4 major banks.

The ability of the SRCC to grant new licences has been significantly restricted since revisions to the *Safety, Rehabilitation and Compensation Directions 2019* in 2023.[7]

Work health and safety coverage

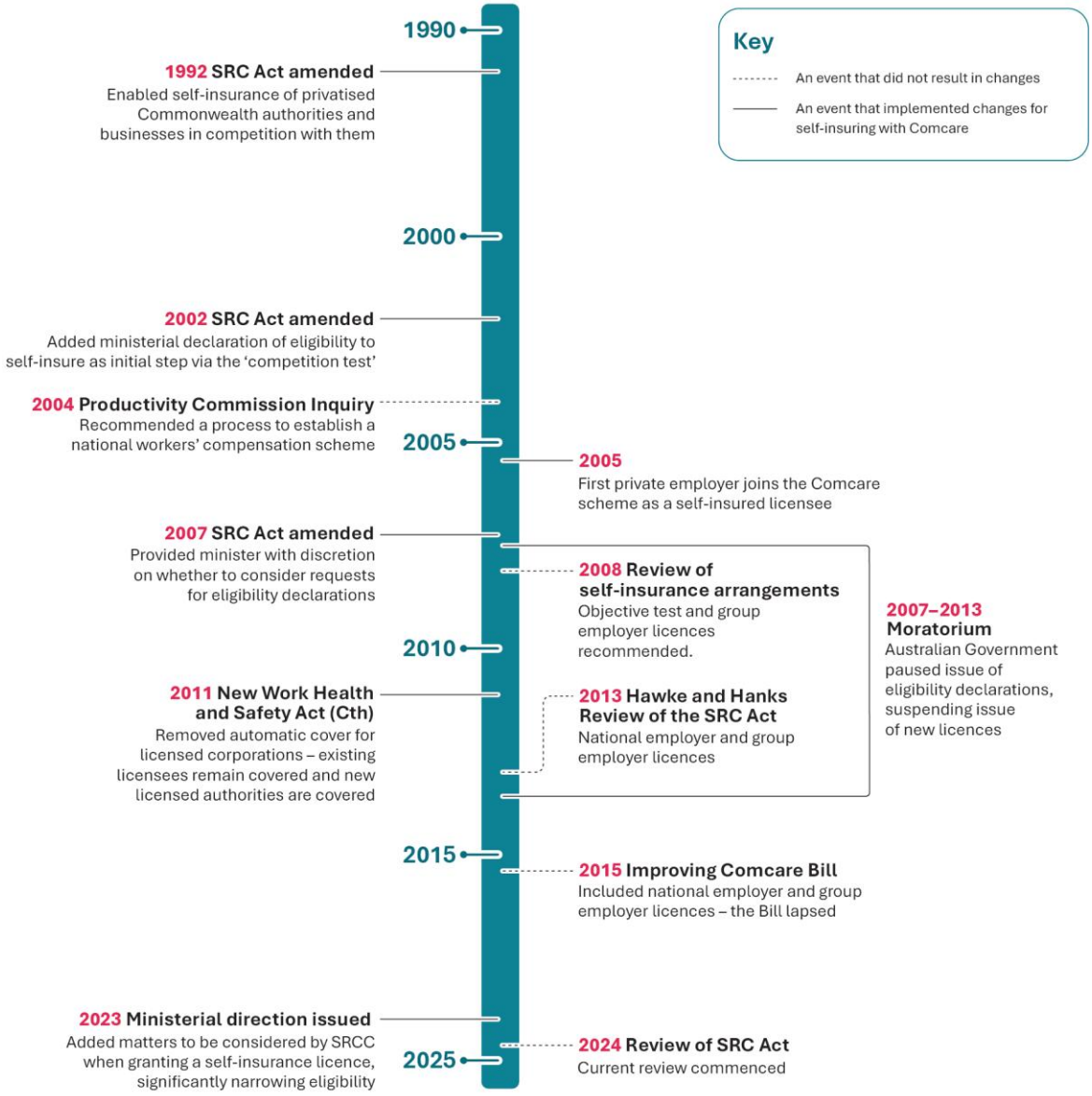
To facilitate an 'integrated approach to workers' compensation and occupational health and safety (OHS) across the Commonwealth scheme', in 2006 private corporations were provided with mandatory coverage under the *Occupational Health and Safety Act 1991* on gaining a self-insurance license under the SRC Act. Before then the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS(CE) Act) covered only employers and workers of the Commonwealth and Commonwealth authorities. In the case of licensed authorities, not all Commonwealth authorities covered by the SRC Act were covered by the OHS(CE) Act. Only where the Commonwealth retained at least a substantial interest in a corporation did the corporation remain under the cover of the OHS(CE) Act. A fully privatised former Commonwealth authority could retain SRC Act coverage but not OHS(CE) Act coverage. Likewise, when a corporation carrying on business in competition with an existing or former Commonwealth authority obtained a licence under the SRC Act, it remained covered by state and territory OHS legislation.[8]

Since the commencement of the WHS Act on 1 January 2012, new self-insurers are not automatically covered by the WHS Act. They continue to be regulated by the relevant state and territory work health and safety (WHS) regulators. 'Non-Commonwealth licensees' (that is, self-insured licensees previously covered by the OHS(CE) Act) retained coverage under transitional arrangements. These arrangements were intended to operate until the implementation of harmonised WHS laws across

[4] *Attorney-General (Vic) v Andrews* [2007] HCA 9, [2] per Gleeson CJ, referencing a submission of Optus, a licensee.
[5] *Attorney-General (Vic) v Andrews* [2007] HCA 9.
[6] *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001* (Cth), Pt VIII.
[7] The *Safety, Rehabilitation and Compensation Directions Amendment Instrument 2023* amended the *Safety, Rehabilitation and Compensation Directions 2019* to introduce s 7A.
[8] Explanatory Memorandum, OHS and SRC Legislation Amendment Bill 2006 (Cth), pp 4, 10.

Australia.[9] However, despite WHS laws now largely being harmonised in relation to key aspects, they remain in place.

Figure 22: Comcare self-insurance timeline



At the request of the Minister for Employment and Workplace Relations and state and territory ministers responsible for WHS, Safe Work Australia (SWA) is currently undertaking a best practice

[9] Explanatory Memorandum, Work Health and Safety Bill 2011 (Cth), Cl 12, [51–55].

review of the model WHS Act and model WHS Regulations to consider best practice approaches in the context of strengthening and maintaining harmonisation of WHS laws.[10]

Figure 22 provides a high-level summary of reviews and proposed changes related to self-insurance.

7.1.2 Previous reviews

The Australian Government has commissioned many inquiries into the establishment of a national workers' compensation scheme and the arrangements in the SRC Act that provide for national employer access to self-insurance within the Comcare scheme.

Proposals have included: setting up a national personal injury scheme (proposed in 1974); establishing a bespoke national self-insurance model for workers' compensation, premium setting or a privately underwritten scheme (proposed in 2004); and giving national employers greater access to self-insurance within the Comcare scheme (proposed in 2014).

Woodhouse Inquiry, 1974

The first inquiry into a national compensation scheme originated in 1973 with the establishment by the Whitlam Labor government of the Committee of Inquiry into a National Rehabilitation and Compensation Scheme for Personal Injury in Australia.[11] The inquiry was led by Justice Owen Woodhouse, a New Zealand jurist, who had conducted a similar inquiry in New Zealand. His New Zealand report led to the *Accident Compensation Act 1972* (NZ) and the establishment of the Accident Compensation Commission in New Zealand in 1974. The Accident Compensation Commission continues to oversee New Zealand's scheme today, providing no-fault accidental injury compensation to citizens, residents and temporary visitors.[12]

The Australian Woodhouse Inquiry recommended a universal, no-fault scheme that would provide rehabilitation and compensation to every person who at any time or in any place suffers a personal injury or sickness.[13] This form of 'universal social insurance' was intended to replace workers' compensation and some social security programs.[14] The inquiry report included a draft Bill to implement Woodhouse's proposals. The Bill was introduced on 3 October 1974, less than 3 months after publication.[15]

The Bill was referred to the Senate Standing Committee on Constitutional and Legal Affairs in 1975. The committee's report stated that, while members were attracted to the Bill's aims, there were

[10] Safe Work Australia (SWA), Best practice review, 2025, SWA, accessed 20 September 2025. Available at https://consult.swa.gov.au/best-practice-review.
[11] AO Woodhouse and CLD Meares, *Report of the National Committee of Inquiry on Compensation and Rehabilitation in Australia*, 1974, 1, Australian Government, Parliamentary Paper No.100.
[12] Accident Compensation Corporation, , ACC, accessed 11 April 2025. Available at www.acc.co.nz.
[13] AO Woodhouse and CLD Mears, *Report of the National Committee of Inquiry on Compensation and Rehabilitation in Australia*, 1974, 1, Australian Government, Parliamentary Paper No.100, p 16.
[14] N Buys, 'The Woodhouse Report 22 years on', *The Australian Journal of Rehabilitation Counselling*, 1996, 2(2), Editorial, pp ii.
[15] National Compensation Bill 1974 (Cth).

significant deficiencies in its provisions and serious doubts about its constitutional validity. The committee recommended the Bill be withdrawn,[16] and it was not reintroduced.

During consultation for our review, several stakeholders commented that this was a missed opportunity for Australia.

Industry Commission inquiry, 1994

In 1992, the Industry Commission was tasked as part of its terms of reference to inquire into workers' compensation arrangements in Australia, covering:

- the effect of differences between the various state schemes, including premiums, levies and administrative costs, and the effect of these differences on the competitiveness of businesses in the public and private sectors
- the identification of best practice within all existing workers' compensation arrangements.[17]

The Industry Commission noted Australia had a 'multiplicity of schemes' at both federal and state levels, with inherent inconsistencies, for a relatively small national workforce, resulting in work-related injury and illness costing the economy more than they should.[18] This was deemed 'unhealthy competition' by the Commission.[19]

The inquiry report released in 1994 recommended the 'establishment of a National WorkCover Authority to develop national standards and to regulate a nationally available workers' compensation scheme that would compete with existing schemes'. The authority was not to provide workers' compensation insurance but would 'license underwriters/insurers' and 'license firms to self-insure Australia-wide', subject to meeting prudential requirements.[20] This was rejected by the government.[21]

The response to the Industry Commission's agenda for change was coordinated through a new body comprising the chief executive officers of the state and territory schemes, together the Heads of Workers' Compensation Authorities (HWCA). HWCA developed a program intended to promote 'scheme improvements and greater national consistency through the identification of best practice in workers' compensation'. The agenda had the backing of the Labour Ministers' Council, which endorsed

[16] Senate Standing Committee on Constitutional and Legal Affairs, *Report on the Clauses of the National Compensation Bill 1974*, July 1975, Australian Government, Parliamentary Paper No. 142, p 7.
[17] Industry Commission, *Workers' compensation in Australia: Report No. 36*, Inquiry report, 1994, Productivity Commission, p XXVI.
[18] Industry Commission, *Workers' compensation in Australia: Report No. 36*, Inquiry report, 1994, Productivity Commission, p XXXI.
[19] Industry Commission, *Workers' compensation in Australia: Report No. 36*, Inquiry report, 1994, Productivity Commission, p XXXI.
[20] Industry Commission, *Workers' compensation in Australia: Report No. 36*, Inquiry report, 1994, Productivity Commission, p XXXVIII.
[21] K Purse and R Guthrie, 'Workers Compensation Policy in Australia: New Challenges for a New Government', 2008, 1, *Journal of Applied Law and Policy*, pp 101–102.

its program of national consistency in May 1997. However, the desire to nationally harmonise workers' compensation arrangements eventually lost momentum.[22]

Productivity Commission inquiry, 2004

In 2004, the Productivity Commission conducted an extensive inquiry into national occupational health and safety, and workers' compensation arrangements. Following are the relevant recommendations.

1. Australian Government amend the OHS(CE) Act to enable those corporations that are licensed under the Australian Government's workers' compensation scheme to elect to be covered by the Australian Government's OHS legislation.
2. Australian Government develop an alternative national workers' compensation scheme to operate in parallel to existing state and territory schemes in 3 stages. The stages, to be implemented progressively, were to:
    a. encourage self-insurance of eligible employers under the Comcare scheme
    b. establish an alternative national self-insurance scheme for all corporate employers
3. establish an alternative national insurance scheme for all corporate employers, which would be competitively underwritten by private insurers and incorporate the national self-insurance scheme established by stage ii.[23]

The Productivity Commission assessed stage one as having a minimal effect on state and territory schemes. However, they assessed the proposed alternative national insurance scheme for all corporate employers as potentially having a significant effect if there was widespread uptake, including to the extent that some state and territory schemes may cease to be viable.[24]

The Australian Government supported the recommendation enabling self-insurance of eligible private employers under the Comcare scheme and coverage by the OHS(CE) Act. However, it rejected the establishment of an alternative national scheme in 2 stages. This was on the basis that the national scheme would result in a substantial shift of responsibility to the government for an area of the economy that is traditionally a state or territory matter.[25]

The *OHS and SRC Legislation Amendment Act 2006* (Cth) implemented the Australian Government's response, by providing automatic coverage to former Commonwealth authorities and corporations operating in competition with existing or former Commonwealth authorities. The justification was that not having integrated WHS and workers' compensation arrangements 'may compromise health and safety'.[26]

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[22] K Purse and R Guthrie, 'Workers Compensation Policy in Australia: New Challenges for a New Government', 2008, 1, *Journal of Applied Law and Policy*, pp 101–102.
[23] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks Inquiry Report No. 27*, 2004, Productivity Commission, pp XL–XLI, [146]–[150].
[24] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks Inquiry Report No. 27*, 2004, Productivity Commission, pp XXXVI, [133].
[25] Australian Government, *Response of the Australian Government to the Productivity Commission Inquiry Report No. 27: National Workers' Compensation and Occupational Health and Safety Frameworks,* Australian Government, 2004, [39].
[26] Explanatory Memorandum, OHS and SRC Legislation Amendment Bill 2005, p iii.

Review of self-insurance arrangements under the Comcare scheme, 2008

In 2008, Taylor Fry reviewed the self-insurance arrangements under the Comcare scheme (for workers' compensation and safety). Taylor Fry produced a report with Professor Michael Quinlan and Professor Richard Johnstone in May 2008.

The review found minimal risk to the Comcare scheme from coverage of self-insurers, with evidence indicating the effect of employers exiting state and territory schemes was likely to be small. On private employers using Comcare self-insurance arrangements, the review called for:

- access to the scheme to continue, with weaknesses addressed (for example, those relating to staff expertise, lack of cooperation between schemes, dispute resolution processes, and timeframes)
- group licences to be introduced.[27]

The report, while not including it as a formal recommendation, also suggested the competition test be replaced with stringent and objective eligibility rules regarding safety, finances and processes.[28]

Hawke Review

Hawke looked at scheme governance and performance and the financial framework, including the approach to self-insurance. He considered that 'it would be a retrograde step to remove the coverage of the present Comcare scheme to licensees and return them to the state/territory jurisdictions as previously intended'. Instead, he suggested that the good 'performance of licensees is such that the moratorium and competition test should be lifted altogether for all national employers'.[29]

He made 2 recommendations on scheme access in addition to lifting the moratorium and removing the competition test. They were to:

1. establish a process to determine that applicants for self-insurance are national employers
2. allow group licences to be granted to national employers with more than one entity, subject to prudential requirements, in order to reduce administrative costs for scheme participation.[30]

Hanks Review

Hanks looked at ways to modernise and address legislative anomalies in the SRC Act. His report included recommendations for changes to the SRC Act to implement Hawke's recommendations.

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[27] M Fry, M Quinlan and R Johnstone, *Review of self-insurance arrangements under the Comcare scheme*, 15 May 2008, Taylor Fry, pp 3–8, 79–81, 84.
[28] M Fry, M Quinlan and R Johnstone, *Review of self-insurance arrangements under the Comcare scheme*, 15 May 2008, Taylor Fry, pp 82–84.
[29] Dr Allen Hawke AC, *Safety, Rehabilitation and Compensation Act Review: Report of the Comcare Scheme's Performance, Governance and Financial Framework*, 2013 (Hawke Review), [2.56], [2.58].
[30] Hawke Review, Recommendations 6 and 8.

Accordingly, Hanks recommended:

- the ability for the Minister to declare corporations eligible to be removed and replaced with additional criteria the SRCC is required to consider when granting a licence
- that 'national employer' be defined in simple and direct terms, with the content to be based on a government policy decision
- introducing group licensing arrangements.[31]

The Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (the 2014 Amendment Bill) proposed to remove the competition test and introduce a 'national employer' test for licence eligibility and to allow 'group employer licences' to be granted where at least one corporation in a group of corporations is a national employer. It was estimated that approximately 80 large employing businesses would have the capacity and capability to join the Comcare scheme under the proposed eligibility changes.[32]

The 2014 Amendment Bill was referred to the Senate Standing Committee on Education and Employment. The committee recommended the Senate pass the Bill, but Labor and Greens senators provided dissenting reports rejecting the Bill. These Senators considered, among other things, that amendment of s 100 to remove the ministerial declaration would result in businesses exploiting the provision because there was no requirement for a minimum number of workers. They considered the changes would be to the detriment of workers, given state and territory schemes were more supportive of injured workers, Comcare was viewed as lacking capacity to monitor health and safety, and common law protections and rights would be lost. They also raised concerns that state schemes would be disadvantaged.[33]

The 2014 Amendment Bill lapsed when Parliament was prorogued on 15 April 2016, and was not reintroduced.

Academic analysis of the Taylor Fry, Hawke Review and Hanks Review reports noted many of the findings were qualified, as they recommended additional changes to support access to self-insurance via the Comcare scheme. Taylor Fry was explicit about this, calling for weaknesses to be addressed in addition to providing for group licences. Typically, the reviews called for improved oversight and regulation of self-insurers, particularly to uplift safety outcomes and ensure financial viability, and improvements to the performance of Comcare and the SRCC to align with standard practices in states and territories.[34]

[31] Peter Hanks QC, *Safety, Rehabilitation and Compensation Act Review: Report—February 2013*, 2013 (Hanks Review), Recommendations 4.6 and 6, 8.
[32] Explanatory Memorandum to the Safety, Compensation and Rehabilitation Bill 2014, pp xxxv–xxxvii.
[33] Parliament of Australia, *Labor Senators Dissenting Report, Safety, Rehabilitation and Compensation Amendment Bill 2014,* [1.34]–[1.37] and [1.45]–[1.46].
[34] See: J Howe, 'Possibilities and Pitfalls Involved in Expanding Australia's National Workers' Compensation Scheme ', 2015, 39(2), *Melbourne University Law Review 27*, pp 472–506.

7.1.3 State and territory arrangements

All state and territory schemes allow employers to self-insure for workers' compensation if they meet certain requirements. Common requirements include:

- exceeding minimum standards for WHS, injury management and return to work arrangements
- capacity and capability to manage workers' compensation claims effectively
- having extensive financial and prudential eligibility requirements.[35]

In addition to prudential requirements, employers must take out bank guarantees or similar guarantees to cover outstanding claims liabilities. Self-insurers must also have excess of loss insurance to cover catastrophic events. The amounts vary across states and territories.

Four states also require a minimum number of workers in the state (that is, 500 in New South Wales, 2,000 in Queensland, 200 in South Australia and, from 1 July 2024, 500 in Western Australia).[36] Licences for corporate groups apply in all schemes except Comcare.

Three states (Victoria, South Australia and Tasmania) have a 2-step application process whereby an initial assessment of eligibility is required before an application can be submitted.[37] The SRC Act also has a 2-step process, but it is the only scheme to require a ministerial declaration of eligibility.

Application fees apply in about half of the schemes, though all require, at a minimum, coverage of costs for prudential, financial or WHS reports.[38] The SRC Act imposes the fees at the completion of the application process; others require payment with the application or as the costs are incurred.[39]

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[35] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Chapter 7.

[36] NSW State Insurance Regulatory Authority (SIRA), *Self-insurance licensing policy: Workers compensation regulation*, June 2017, SIRA, [15.1]. Available at www.sira.nsw.gov.au/workers-compensation-claims-guide/forms-and-publications; *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 71; J Yuile, 'Return to Work Act 2014: Code of Conduct for Self-Insured Employers', 1 August 2017, *The South Australian Government Gazette,* No 49, p 2995; WorkCover WA, *Application for Self-insurer Licence Guidelines*, July 2024, WorkCover WA, p 7. Available at www.workcover.wa.gov.au/service-providers/self-insurers/.

[37] *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 376; ReturntoWorkSA, *Applying for registration as a single or group self-insured employer*, RTWSA, accessed 19 September 2025. Available at www.rtwsa.com/insurance/self-insurance/becoming-self-insured; *Workers Rehabilitation and Compensation Act 1988* (Tas), s 134; WorkSafe Tasmania, *How to apply for a permit to insure (self-insurer)*, WorkSafe Tasmania, accessed 19 September 2025. Available at https://worksafe.tas.gov.au/topics/compensation/workers-compensation/information-for-self-insurers/information-for-self-insurers.

[38] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Chapter 7.

[39] *Workers Compensation Act 1987* (NSW), s 210; *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 376; *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 70; *Workers Compensation and Injury Management Act 2023* (WA), s 261; *Return to Work Act 2014* (SA), s 131; *Workers Rehabilitation and Compensation Act 1988* (Tas), s 100; WorkCover Tasmania, *Information sheet: How to apply for a permit to self-insure*. Available at https://worksafe.tas.gov.au/topics/compensation/workers-compensation/information-for-self-insurers/information-for-self-insurers; *Return to Work Act 1986* (NT), s 121A; *Workers Compensation Regulation 2002* (ACT), s 89.

Evidence required to prove compliance with criteria is typically set out in guidance material or subordinate instruments.

The decision to grant a self-insurance licence rests with:

- workers' compensation authorities in New South Wales, Victoria, Queensland, the Northern Territory and the Australia Capital Territory, or the CEO of the agency in Western Australia[40]
- boards responsible for workers' compensation authorities, in South Australia and Tasmania.[41]

In some cases, internal and external review rights are available. For example, in South Australia employers can appeal to the relevant Minister against a decision not to be registered as a self-insurer.[42]

The Australian Capital Territory and Western Australia place no duration on self-insurance licence terms, while other jurisdictions can issue self-insurance licences for between one and 8 years.[43]

Licensees must fulfil ongoing obligations to maintain their licence. These include regular periodic audits (external and internal) of WHS management systems and performance. They are also obliged to comply with workers' compensation legislation to at least the same extent as premium-paying companies to maintain their self-insurer status. They may also have extra conditions imposed on them that require compliance measures with financial, prudential, WHS, claims management and reporting obligations.[44]

In South Australia, there is a code of conduct to ensure that all self-insured employers are aware of their ongoing obligations of registration.[45] The ReturnToWork Board of Directors has issued a policy on self-insurance that also sets out relevant expectations.[46]

All schemes require comprehensive annual reporting.[47] Many schemes also require additional monthly reporting, with reports submitted electronically. In South Australia, this reporting is done fortnightly,

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[40] *Workers Compensation Act 1987* (NSW), s 177*; Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), s 379; *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 77; *Return to Work Act 1986* (NT), s 120; *Workers Compensation Act 1951*(ACT), s 145L; *Workers Compensation and Injury Management Act 2023* (WA), s 245.
[41] *Return to Work Act 2014* (SA), s 129; *Workers Rehabilitation and Compensation Act 1988* (Tas), s 101.
[42] *Return to Work Act 2014* (SA), s 133.
[43] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Table 7.3. Note: SIRA has discretion to set a license duration; they have maintained an 8-year maximum.
[44] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Table 7.3; Safety, Rehabilitation and Compensation Commission (SRCC), 'Licence compliance and performance', SRCC, accessed 26 August 2025. Available at www.srcc.gov.au/current-self-insurers/licence-compliance-and-performance.
[45] J Yuile, 'Return to Work Act 2014: Code of Conduct for Self-Insured Employers', 1 August 2017, No 49, *The South Australian Government Gazette,* p 2995.
[46] ReturnToWorkSA, *Policy on Self-insurance*, July 2017, ReturnToWorkSA, accessed 30 August 2025. Available at www.rtwsa.com/insurance/self-insurance
[47] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA.

and in Victoria each quarter. Ad hoc reports must also be completed within certain timeframes, including those relating to:

- changes to company structure, key personnel, predominant industry, employee numbers or risk profile
- breaches or failure to comply with licence conditions.[48]

7.1.4 What we heard

> Current private sector licensees should be allowed to remain in the scheme provided that they become premium-payers, and their membership of the scheme has the support of the relevant union(s) and the majority support of their workers.
>
> **CPSU submission, p 18.**

> Applying an assortment of schemes to a dynamic national and mobile workforce causes increased administrative complexity and inefficiencies which negatively impact employees and employers.
>
> **John Holland Licensees submission, p 6.**

> As a national employer operating across multiple jurisdictions, we see substantial benefits in a unified workers' compensation framework under Comcare, compared to the inefficiencies and inequities of fragmented state-based schemes.
>
> **Ramsay Health Care submission (unpublished), p 3.**

> Whatever decisions are made about the future inclusion of additional employers within the Comcare scheme, the Government should provide certainty to current self-insurers that they will not find themselves having to unwind years of claims management and benefit structures aligned with Comcare and move back into individual state/territory schemes.
>
> **Ai Group submission, p 10.**

Very few novel positions were put forward in submissions regarding ongoing self-insurance arrangements. Unions supported limiting coverage to public servants.[49] Businesses and their representatives supported continuing coverage for multi-state corporations.[50] Individual submissions tended not to address this issue. However, we commissioned Monash University to undertake user-experience research, which showed that injured workers from self-insured licensees and Commonwealth agencies using delegated claims management wanted Comcare or an independent

[48] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Table 7.9.
[49] See, for example, Australian Manufacturing Workers Union (AMWU) submission, p 22.
[50] See, for example, Westpac submission, p 1.

third party to have greater oversight and input into claims determination decisions made by their employer. This was because they did not consider self-insured employers were sufficiently independent to deal with claims for injuries occurring in the workplace. Research participants also said that Comcare should exercise quality control over the process.[51]

Eligibility to self-insure if retained

There was some support for changing the eligibility criteria in s 100 for declaring a corporation eligible to be granted a licence and the SRCC considerations for granting a licence in s 104, if self-insurance continues. Businesses and their representatives supported previous recommendations for national employer and group licences.[52] Unions and some law firms called for additions to the current criteria.[53]

A minority of submissions restated the case for a truly nationalised scheme or indicated eligibility requirements should not change.[54]

> [Suggested the criteria be:]
>
> a. Have operations in all states and territories, and
> b. Exclusively or predominantly competing with the Commonwealth, and
> c. Subject to agreement with relevant unions and have majority of workers agreement [and] be premium payers, with no opportunity to self-insure.
>
> **AMWU submission, p 23.**

> Replacing the outdated 'competition test' with a more practical 'national employer test', ... will simplify administration, reduce regulatory burdens and improve injury management strategies.
>
> **Ramsay Health Care submission (unpublished), p 3.**

Employers and their representatives pointed to the significant benefits of coverage of non-Commonwealth licensees under the WHS Act, including consistency in workplace safety standards; improved health and safety outcomes; streamlined incident response and management; and reduction in financial and administrative burden.[55] Unions called for an end to transitional WHS coverage under the WHS Act now that WHS laws are largely harmonised across the country.[56]
Ai Group submission, page 11: ...all Comcare self-insurers should be covered by the Commonwealth WHS laws and regulated by Comcare under those laws. We have two key reasons for this response.

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[51] Monash University, *User experiences of the Comcare workers' compensation scheme, Qualitative Research Study Findings – Final report* (Monash user-experience study), pp 8, 34.
[52] For example, Safety Rehabilitation and Compensation Licensees Association's (SRCLA) *Viability and value of maintaining Comcare self-insurance licensing* submission, p 14, 21 (unpublished).
[53] For example, Slater and Gordon Lawyers submission, p 10.
[54] For example, Australian Taxation Office, AON and Ai Group submissions.
[55] SRCLA submission (unpublished), p 17; John Holland Licensees submission, p 7.
[56] Community and Public Sector Union submission (CPSU), pp 18, 50; ACTU submission, pp 25–26.

> … all Comcare self-insurers should be covered by the Commonwealth WHS laws and regulated by Comcare under those laws. We have two key reasons for this response. Australia has not achieved harmonisation… [and] licensing requirements may be inconsistent with state/territory laws.
>
> **Ai Group submission, p 11.**

> … extending WHS Act coverage to all non-Commonwealth licensees under the Comcare scheme would ensure equitable, consistent and comprehensive worker protection.
>
> **SRCLA submission (unpublished), p 18.**

> For consistency, if operating under Comcare provisions, regulation should also be enforced through Commonwealth WHS laws, with Comcare as regulator.
>
> **Australian Taxation Office submission, p 11.**

> We believe that ending the transitional period for non-Commonwealth licensees' coverage under the WHS Act is necessary and would not pose significant issues. Given the harmonisation of WHS laws across Australia, there should be minimal negative impacts on non-Commonwealth licensees transitioning to state and territory WHS jurisdictions.
>
> **ACTU submission, p 25.**

7.1.5 What we considered

Consistent with what we heard, we first considered the advantages and disadvantages of self-insurance in workers' compensation schemes, before turning our consideration to the appropriateness of self-insurance in the Comcare scheme. In terms of the Comcare scheme, we assessed the:

- benefits to organisations, including from better integrated systems
- effect on workers, including equity within organisations as compared to within jurisdictions
- safe
- ty outcomes and effects
- effect on state and territory workers' compensation and WHS schemes
- feasibility of transitioning to state and territory workers' compensation schemes
- strengthening regulatory oversight and the test for eligibility.

After reaching our conclusions on self-insurance in the Comcare scheme, we then considered the eligibility criteria for scheme entry and the process for granting licences.

Our final consideration in this part is the effect on non-Commonwealth licensees if the coverage of the Commonwealth's WHS laws was removed.

Workers' compensation

Self-insurance

A threshold consideration for us is whether self-insurance is a necessary and appropriate component of a workers' compensation scheme. As outlined above, all Australian jurisdictions permit employers who fulfil certain prudential requirements, to apply for a licence to self-insure their workers' compensation risks as an alternative to paying premiums.

We heard from Comcare licensees of how self-insurance provides a strong incentive to control workers' compensation losses through disciplined safety management and injury prevention practices.[57] That is because the self-insurers directly bear the cost of workplace injury and illness. Submissions from and discussions with licensees showed they consider that this arrangement facilitates a seamless transition from injury prevention to injury management, rehabilitation and return to work.

Conversely, we heard from unions that the power imbalance between an injured worker and their employer can be intensified when the employer is also their insurer.[58]

The experiences of injured workers with self-insurance reflect these diametrically opposed views. We heard of both positive and negative experiences.

We agree with the view of our union stakeholder that 'self-insurance is a privilege not a right'.[59] We are also firmly of the view that only businesses that have a superior track record in all aspects of WHS and claims management should be able to hold and maintain a licence. In addition, a well-resourced regulator with appropriate powers is needed to provide vigorous oversight to ensure the integrity of the self-insurance system.

Of relevance to our review are the findings of the Victorian Ombudsman's investigation into Victorian self-insurers' claims management and WorkSafe oversight.[60] The Ombudsman found that the picture of self-insurance in Victoria was 'not of a broken system, but a patchy and unequal one' and considered that workers should not have a fundamentally different claims experience depending on who their employer is.[61] The Ombudsman recommended, among other things, that WorkSafe has the compliance tools necessary to respond to non-compliance by self-insurers, including the ability to make mandatory codes of practice; that the information collected through audits includes injured worker survey and complaints; and information is published about self-insurers, including tier rating, worker survey results and compliance activity.[62]

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[57] John Holland Licensees submission, pp 6–7; SRCLA submission (unpublished), p 15; Ramsay Health Care submission (unpublished), p 2; SRCLA supplementary submission (unpublished).
[58] For example, see AMWU submission, p 6, footnote.
[59] CPSU submission, pp 19, 50.
[60] Victorian Ombudsman, *WorkSafe 3: Investigation into Victorian self-insurers' claims management and WorkSafe oversight*, June 2023, Victorian Ombudsman.
[61] Victorian Ombudsman, *WorkSafe 3: Investigation into Victorian self-insurer' claims management and WorkSafe oversight*, June 2023, Victorian Ombudsman, p 7.
[62] Victorian Ombudsman, *WorkSafe 3: Investigation into Victorian self-insurers' claims management and WorkSafe oversight*, June 2023, Victorian Ombudsman, p 81.

Self-insurance in the Comcare scheme

It is fair to say that self-insurance under the Comcare scheme is a 'political football'. The scheme is likely to be expanded when a Coalition government is in power and to contract when there is a Labor government.

The previous Coalition government declared several large corporations, including Ventia Australia Pty Ltd, eligible to hold a licence.[63] These eligible corporations have yet to be granted a self-insurance licence. Should they be granted a licence, this would mean around 56% of workers in the Comcare scheme would be covered under self-insurance arrangements. If this trend continues, Comcare and the SRCC will be responsible for a growing number of Australia's largest employers. This raises significant concerns regarding the scheme being fit for purpose and scale.

Benefits to organisations, including from integrated systems

The benefits of self-insurance for employers under the Comcare scheme are numerous and have been pointed out in previous reviews. Although the initial motivation behind the expansion of the scheme in 1992 was to cater for Commonwealth authorities that had been corporatised or privatised since that time,[64] national employers have moved to the Comcare scheme, as it allows them to streamline their approach to managing workers' compensation as they operate under one piece of legislation rather than multiple pieces in each state or territory. We understand the practicalities of this objective.

In a similar vein, we understand the practicalities of group licensing and its necessity given modern corporate structures. However, we also understand the objections and concerns. Permitting group licensing could provide a 'back door' for smaller employers who do not currently meet the eligibility requirements to enter the Comcare scheme, increasing risk to the scheme and stopping these businesses from contributing to state and territory premium pools.

Effect on workers, including equity within organisations versus within jurisdictions

The benefits of the Comcare scheme for employers have always been obvious, but not so much the benefits for workers. Comparing the benefits and entitlements offered under state and territory schemes with those of the Comcare scheme is complex. This review and past reviews have found that concerns regarding inferior benefits under the Comcare scheme tend to centre on the lack of coverage for journey claims and access to common law remedies.

In relation to the former, we were informed by the Safety Rehabilitation and Compensation Licensees Association (SRCLA) representative in tripartite reference group (TRG) discussions that many self-insured licensees take out additional cover to bridge these gaps. In relation to the access to common law remedies, we received submissions that such restrictions are due to the long-tail nature

[63] See *Safety, Rehabilitation and Compensation (Licence Eligibility—Ventia Australia Pty Ltd) Declaration 2022*; *Safety, Rehabilitation and Compensation (Licence Eligibility—Toll Transport Pty Ltd) Declaration 2022*; and *Safety, Rehabilitation and Compensation (Licence Eligibility—Healthscope Operations Pty Ltd) Declaration 2019*.
[64] *Commonwealth Employees' Rehabilitation and Compensation Amendment Act 1992*; Explanatory Memorandum to the Commonwealth Employees' Rehabilitation and Compensation Amendment Bill 1992.

of the Comcare scheme.[65] In that regard, we have recommended improving access to damages for non-economic loss (see Chapter 5).

AON argued that Australia's patchwork of 11 different workers' compensation schemes has created a noticeably unequal system that leaves both employers and workers worse off because the criteria for determining benefits vary widely across the country.[66] This has become even more pronounced with recent amendments in Victoria and then New South Wales progressing amendments to narrow the eligibility criteria for psychological injuries.[67]

We found that there are inconsistencies across all areas of scheme design, from eligibility criteria and coverage for journey and recess claims to access to common law. We were told by employers during consultation on the review that their primary objective for enhancing access to self-insurance under the Comcare scheme is to provide equity for their workers so that, irrespective of the state or territory in which an injury occurs, the same benefits and entitlements apply.[68] Despite this, we also understand the lack of group licences means inequities continue. The result is that workers in the same corporate group, injured in the same incident, could have different outcomes. Equally, during TRG consultations, worker representatives told us of inequities arising when injured workers on the same work site are under different employers and schemes.

In our view, these arguments tend to cancel each other out. We therefore consider it important to ensure that workers have the opportunity to make an informed choice about which compensation scheme applies to them. Due to worker turnover and corporate restructuring, this should not be a one-off opportunity at the initial application stage.

Concerns continue about a gap in insurance coverage for independent contractors when employers move to the Comcare scheme.[69] These concerns can be dismissed as the SRC Act provides that if a person is entitled to compensation in respect of an injury but for the licence (that is, they would have been entitled under the relevant state or territory scheme), the licence extends coverage to that person under the SRC Act.[70] We have recommended that this situation remain unchanged (see Chapter 2).

[65] John Holland Licensees submission, p 12.
[66] AON submission, p 2.
[67] *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024* (VIC); Workers Compensation Legislation Amendment Bill 2025 (NSW).
[68] For example, SRCLA submission (unpublished), p 2; John Holland Licensees submission, p 6; Ai Group submission, p 10.
[69] ACTU submission, pp 33–34; CPSU submission, p 29.
[70] SRC Act, s 5(1A).

Safety concerns

Before the harmonisation of WHS laws, the objections to self-insurance under the Comcare scheme on the basis of inferior safety laws and standards were entirely valid. Also valid were concerns about Comcare's ability to regulate high-risk industries. As Taylor Fry's 2008 review found, there were gaps in the (since repealed) Commonwealth's *Occupational Health and Safety Act 1991* or areas in which that Act took a different approach to state and territory provisions. Taylor Fry also highlighted deficiencies in Comcare's ability to enforce compliance with safety duties, and confusion regarding enforcement responsibilities between OHS regulators and state and federal union officials.[71]

This is not so much the case today in terms of the content of the laws themselves. However, the complexity around the interaction between Commonwealth and state and territory laws lingers, and due to the concept of 'a person conducting a business or undertaking' used in WHS law, the issue may not be solved by ending the transitional period. This is discussed below in relation to the issue of the transitional period.

Effect on state and territory workers' compensation and WHS schemes

Another commonly raised concern over the past 20 years is the effect on the financial viability of state and territory workers' compensation schemes if a significant number of employers switch to the Comcare scheme. Taylor Fry has consistently maintained that evidence suggests the effect of corporations exiting state and territory schemes to join Comcare has been insignificant.[72] In its report for this review, it states that it does not anticipate that the transition of multi-state employers to self-insurance under the SRC Act would materially affect the state and territory workers' compensation schemes because:

- state self-insured licensees hold their own liability
- state premium payers are likely to be:
  - experience-rated (and so cost-neutral) in jurisdictions where they are large employers
  - immaterial in aggregate in jurisdictions where they are small employers.[73]

To explore the effects further, we put the following questions to members of the HWCA:

1. What, if any, are the impacts of private corporations self-insuring with Comcare on workers' compensation in your jurisdiction?
2. What, if any, would have been the impact of the National Employer test74 as set out in the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015 (Cth) (Improving the Comcare Scheme Bill), if it had passed?

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[71] M Fry, M Quinlan and R Johnstone, *Review of self-insurance arrangements under the Comcare scheme,* Taylor Fry, 15 May 2008, pp 5, 8, 51–55, 92.
[72] M Fry, M Quinlan and R Johnstone, *Review of self-insurance arrangements under the Comcare scheme*, Taylor Fry, 15 May 2008, p 80.
[73] Taylor Fry, *SRC Act reform options: Actuarial costings* (Taylor Fry report), 2025, p 54.
[74] A corporation that had employer obligations in 2 or more Australian jurisdictions would satisfy the National Employer test. Note that the test was proposed by the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, Sch 1, and not the Improving the Comcare Scheme Bill.

3. What, if any, are the impacts of current WHS regulation coverage of selected Comcare self-insurance licensees in your jurisdiction?
4. If private corporations leave your workers' compensation either as premium payers or self-insured licensees, is it a problem that they remain regulated by you for WHS purposes?
5. Do the premiums or licence fees in your jurisdiction include consideration for, or directly contribute to, WHS regulation?

Broadly, the response was that effects will vary, depending on the eligibility criteria. There were no significant concerns based on past criteria. However, there were concerns if Comcare scheme coverage was to be based on the 'national employer test' as proposed by the 2014 Amendment Bill. The basis for the concern was the possible effect on premium pools should there be a large-scale movement of large employers from state and territory schemes, since this could increase the risk profile if only smaller employers with higher risk profiles were to remain in the pool. What we heard in that regard reflected concerns raised in state and territory government submissions to the Senate inquiry into that Bill (and the subsequent Improving the Comcare Scheme Bill, which was introduced into Parliament shortly after the 2014 Amendment Bill).[75]

As Western Australia responded:

> *'In WA many large employers are likely to have the commercial benefit of negotiating discounts on recommended premium rates or are offered burning cost policies (experience rated). Generally small and medium employers pay the recommended premium rate, or well above the recommended premium rate if they have poor claims experience.*
>
> *Therefore, the departure of many large employers may distort insurer underwriting models (and recommended premium rating classes) – more so if concentrated in particular industries.*
>
> *However, the numbers departing would need to be quite significant, well above the numbers that are currently, or previously, self-insured with Comcare.'*[76]

We were also informed through discussions with state and territory scheme administrators that the effect of an existing self-insurer moving to the Comcare scheme should be minimal. This is because self-insured employers are directly responsible for the administration of injury claims and the associated costs involved, and they do not contribute to the premium pools. We were told that there

[75] See, for example, Queensland Government, *Submission to the Senate Standing Committee on Education and Employment inquiry into the Safety, Rehabilitation and Compensation Amendment Bill 2014* (June 2014), pp 2–4; Northern Territory Government, *Submission to the Senate Standing Committee on Education and Employment inquiry into the Safety, Rehabilitation and Compensation Amendment Bill 2014* (17 June 2014), pp 1–2. See also the comments in Victorian Government, *Submission to the Senate Education and Employment Legislation Committee inquiry into the Safety, Rehabilitation and Compensation Amendment (Improving the Comcare Scheme) Bill 2015* (April 2015), pp 1–2.

[76] WorkCover WA, response to questions asked by the independent panel following consultation with Heads of Workers' Compensation Authorities, May 2025.

should be no effect as long as they continue to bear the financial responsibility for any outstanding liabilities associated with existing claims at the time of leaving.

We found that workers' compensation premiums were used to fund WHS regulatory oversight in some jurisdictions. For example, SafeWork NSW's primary funding source is the Workers Compensation Operational Fund managed by the State Insurance Regulatory Authority (SIRA).[77] However, s 39A of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) requires Comcare employers to pay contributions into the fund to ensure that contributions for WHS oversight continue.

Concerns were also expressed that if the Comcare scheme was expanded, employers would want to move to take advantage of Comcare's lower premiums. However, this should not be a concern for self-insurance, as self-insurers do not pay premiums.

Feasibility of licensees transitioning to state and territory workers' compensation schemes

We heard compelling rebuttals of the belief that licensees could seamlessly transfer to state and territory workers' compensation schemes as self-insurers. Following is some of the feedback.

- Licensees who have small workforces in some states would not be eligible for self-insurance under some state schemes.
- There would be a need to hold duplicate bank guarantees to cover legacy liabilities, many of which are long-tail claims, and new liabilities in state and territory schemes, tying up significant amounts of capital.
- There would be a need to obtain separate actuarial reports for Comcare legacy claims and to rebuild new claims and online systems to deal with a multi-jurisdictional model.
- It would be necessary to fragment the national claims and rehabilitation staffing model into state- and territory-based teams.
- Claims costs and operational expenses would increase, particularly in New South Wales and Victoria, where employer costs have risen in recent years.
- The differences in eligibility, benefits, return to work and other obligations across the schemes would create confusion for injured workers. Additionally, workers could be worse off if they are in jurisdictions that have moved to tighten eligibility criteria and reduce entitlements.
- The departure of licensees risks weakening the Comcare scheme, as it would erode the pool of contributors and reduce the diversity and innovation brought by private scheme participants.
- There is a risk to state- and territory-based systems with deteriorating financial positions.[78]

We are particularly concerned that outcomes for injured workers will be worse, as there is the potential for some to be exposed to reduced eligibility and entitlements. A guiding principle of our review has been that injured workers should be better off, not worse off, as a result of the legislative changes we are proposing.

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[77] *Workplace Injury Management and Workers Compensation Act 1998* (NSW), ss 34, 35; *State Insurance and Care Governance Act 2015*, s 24.

[78] SRCLA further submission (unpublished).

Enhancing regulatory oversight

The SRCC has limited tools to investigate the compliance of licensees with the conditions of their licence or their obligations under the SRC Act. This is an unusual situation. It is common for regulatory schemes to confer specific monitoring and investigation powers on the regulator or authorised person, as is the case for Comcare inspectors under the WHS Act.[79]

Similarly, the SRC Act does not specify any sanctions for a licensee's failure to comply with its self-insurance licence or the SRC Act. The regulatory responses available to the SRCC under the SRC Act are limited to imposing or varying conditions on a licence, or suspending or revoking a licence.[80]

The standard monitoring and investigation powers included in the WHS Act should be made available to the authorising authority. In tandem, the standard set of sanctions should be available to the authorising authority to enforce compliance. Examples are contained in the WHS Act and in the *Regulatory Powers (Standard Provisions) Act 2014* (Cth).[81]

In addition, there needs to be the ability for state and territory WHS regulators to share information with Comcare on the WHS performance of entities they regulate who are self-insured in the Comcare scheme. The sharing of information is often restricted, or restricted to regulators within the same jurisdictions.[82]

Conclusion

On balance, we recommend that national private sector employers should continue to have access to the Comcare scheme, but only if the scheme's governance and regulatory oversight is improved. We consider that this reflects that 'we are a federation but also a nation'. The federal system presents challenges that require pragmatic solutions.

Also, in recognition of the practical realities of corporate structures, we recommend group licensing. Currently, Comcare licensees with more than one employing entity must obtain separate self-insurance licences for each entity to achieve national coverage under the Comcare scheme. Licensees holding multiple licences or those applying for additional licences comprise approximately 50% of Comcare self-insurance licences.[83] As highlighted above, group licensing is available in the states and territories.

Group licensing has several potential advantages. It can streamline administrative processes by allowing large employer groups to manage workers' compensation coverage collectively, reducing duplication and improving efficiency. The model can foster consistency in injury management and return to work practices across these employers, leading to better outcomes for workers. It can leverage economies of scale, potentially lowering insurance and administrative costs for participating

[79] *Work Health and Safety Act 2011* (Cth), s 160.
[80] SRC Act, ss 106, 107, 108.
[81] *Work Health and Safety Act 2011* (Cth), Parts 8–10; *Regulatory Powers (Standard Provisions) Act 2014* (Cth).
[82] For example, *Work Health and Safety Act 2011* (NSW) s 271 (Confidentiality of information) and s 271A (Information sharing between regulators).
[83] SRCLA submission (unpublished), p 107.

employers. It may also encourage proactive risk management and safety initiatives through shared resources and collective accountability.

However, there are notable concerns with group licensing. One key issue is the potential dilution of individual employer accountability, as risks and responsibilities are pooled across a group. There is also a risk that group licensing could reduce transparency and oversight, making it harder for regulators to monitor compliance and outcomes effectively.

We do not favour the granting of a group licence where only one employer within the corporate group qualifies for licensing under the Act, as was proposed under the 2014 Amendment Bill. We consider it important that in providing for administrative efficiency the Comcare scheme is not exposed to risk or exploitation. Comcare should also be able to review the approval of an employer as a self-insurer at any time, including when changes occur in relation to a holding company or subsidiaries of the holding company. A relevant example is contained in s 384 of the *Workplace Rehabilitation and Compensation Act 2013* (Vic). This power could also be used to deal with situations where a licensee moves workers between subsidiaries or between a subsidiary and a parent company, affecting workers' compensation coverage. The new Act should deal with this situation directly or indirectly by allowing for licence restrictions to be imposed by the licensing authority.

Another safeguard is the length of the licence term. We understand that no specified length and no renewal process reduces administration burden on the licensing authority and licensee; however, we consider the licence renewal process provides an opportunity to redemonstrate suitability. In 2017, SIRA introduced a 4-tiered oversight model for self-insurance, based on self-insurer performance, together with a maximum licence term of 8 years.[84] A review recommended removing the expiry date to reflect that the licence is ongoing until cancelled or suspended by the Authority.[85] This has been implemented in s 180 of the *Workers Compensation Act 1987* (NSW), which gives SIRA the discretion to impose a licence expiration date as it sees fit.[86]

Our preference is for the new Act to set a maximum licence term of 4 years. This approach aligns with a typical external auditing cycle for mature self-insurers, including ISO 45001 Occupational Health and Safety Management System recertification, and allows sufficient time for any corrective actions arising from these audits to be implemented.[87]

Noting the continuous oversight by Comcare, we recommend a streamlined renewal process where there is worker support for the licence to continue and the licensee continues to meet eligibility criteria.

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[84] SIRA, *Self-insurance licensing policy: Workers compensation regulation*, June 2017, SIRA, pp 11–12. Available at www.sira.nsw.gov.au/workers-compensation-claims-guide/forms-and-publications.
[85] SIRA, *Summary of changes to the standard licence conditions for self and specialised insurers*, 2024, NSW Government, accessed 27 July 2025. Available at www.haveyoursay.nsw.gov.au/ssi-licensing-framework.
[86] *Workers Compensation Act 1987* (NSW) s 180; SIRA, *Self-insurers*, SIRA, accessed 30 August 2025. Available at www.sira.nsw.gov.au/workers-compensation/self-insurers; SIRA, *Summary of changes to the standard licence conditions for self and specialised insurers*, 2024, NSW Government, accessed 27 July 2025. Available at www.haveyoursay.nsw.gov.au/ssi-licensing-framework.
[87] SAI Global, *ISO 45001 Occupational Health and Safety Management System*, SAI Global, accessed 18 September 2025. Available at https://saiassurance.com.au/iso-45001.

Influencing our decision regarding the continuation of self-insurance under the Comcare scheme was the feasibility of transitioning employers to state and territory workers' compensation systems. If it was to take place, we can see that the transitional arrangements would be incredibly complex and resource-intensive for all involved, potentially diverting resources from injury prevention and recovery.

We acknowledge that it is not ideal for the Comcare system to continue to be a proxy for a national system of workers' compensation. We concur with the views expressed in the past and in submissions that self-insurance of private sector corporations under the Comcare scheme is not the appropriate vehicle to achieve the goal of a national workers' compensation scheme. In our view, the ideal solution was proposed by the Woodhouse Review: that a fit-for-purpose national personal injury scheme should be established that would dovetail with Medicare and the National Disability Insurance Scheme (NDIS) to provide compensation to 'cover every Australian who from any cause, or at any time, or in any place, suffers a physical or mental incapacity'.[88] A major policy development of that nature is not within our terms of reference.

We further suggest that other options continue to be explored, including allowing for private sector corporations to be premium payers or the development of a national private workers' compensation scheme underwritten by insurers authorised by the Australian Prudential Regulation Authority (APRA).

In relation to the latter, submissions proposed the Seacare scheme could be expanded to cover national employers. It has also been suggested previously that development of a national fit-for-purpose scheme 'could provide an unprecedented opportunity for the establishment of a new scheme that incorporates the best design features of existing schemes, as well as a range of new policies to improve the return to work prospects for injured workers'.[89]

We do not consider harmonisation of workers' compensation arrangements around Australia to be an effective alternative. It is remarkable that harmonisation has been achieved to the degree it has in WHS law, and we have noted above the best practice review that SWA is currently undertaking.[90] However, harmonisation has never been advanced to any significant degree for workers' compensation, despite the best efforts of SWA, its predecessor bodies and HWCA.

There are several reasons for this situation. One is cost shifting by state and territory schemes, where the costs for work-related injury and disease shift from state schemes to national taxpayer-funded social security systems through restrictive eligibility criteria, 'step-down' provisions and limits on the amount of income maintenance payable.[91] As was advised by Purse and Guthrie in 2008, this important but neglected issue bears directly on agendas to advance harmonisation under cooperative

[88] AO Woodhouse and CLD Mears, *Report of the National Committee of Inquiry on Compensation and Rehabilitation in Australia,* 1974, 1, Parliamentary Paper No.100, Australian Government, p 135, [341].
[89] K Purse and R Guthrie, 'Workers' compensation policy in Australia: New challenges for a new government', 2008, 1, *Journal of Applied Law and Policy*, p 107.
[90] SWA, *Best practice review*, 2025, SWA, accessed 20 September 2025. Available at https://consult.swa.gov.au/best-practice-review.
[91] K Purse and R Guthrie, 'Workers' compensation policy in Australia: New challenges for a new government', 2008, 1, *Journal of Applied Law and Policy*, p 108.

federalism.[92] It has once again become apparent with Victoria and New South Wales moving to restrict eligibility for psychological injuries.[93] We can do no more under our terms of reference than flag this as an issue.

We believe the risks to premium payers and the Comcare scheme would be minimal if the prudential and financial requirements of the scheme are solid. We recommend the development of a new regulatory framework for self-insurance under the Comcare scheme that emphasises continuous oversight and assessment of self-insurer performance, moving away from point-in-time assessments. This shift should encourage self-insurers to take a complementary, continuous performance approach.

We also consider the risk to workers of employers who self-insure can be minimised by strict regulatory safeguards that would include:

- the adoption of our recommendations regarding eligibility
- the adoption of our recommendations regarding rehabilitation and return to work, including the establishment of a return to work inspectorate
- the adoption of our recommendations regarding the governance of the Comcare scheme and the powers of its governing board
- the requirement for the governing body to develop guidelines on self-insurance, setting out expected standards for the issuing authority and licensees
- the issuing authority having appropriate information-gathering and investigative powers, and the ability to impose penalties on employers for refusing or failing to comply with the exercise of such powers
- the issuing authority having the ability to review the approval of an employer as a self-insurer at any time, including when changes occur in relation to a holding company or the subsidiaries of a holding company
- providing clear arrangements for transitioning to and from Commonwealth self-insurance, ensuring continuity for injuries and claims that straddle the transition.

Eligibility considerations

Competition test

Aside from the desire to 'level the playing field', information on the rationale for introducing the competition test into the Comcare scheme is limited. Presumably the test was intended to preserve the integrity of state and territory workers' compensation systems, preventing the large migration of employers from state schemes to the federal system, while allowing limited private sector access.

The scope of the competition test is sufficiently broad to cover a wide range of employers in a range of different industries.[94] Further broadening the test has been the changing nature of current and former

[92] K Purse and R Guthrie, 'Workers' compensation policy in Australia: New challenges for a new government', 2008, 1, *Journal of Applied Law and Policy*, p 108.
[93] *Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024* (Vic); Workers Compensation Legislation Amendment Bill 2025 (NSW).
[94] K Purse and R Guthrie, 'Workers' compensation policy in Australia: New challenges for a new government', 2008, 1, *Journal of Applied Law and Policy*, p 105.

Commonwealth authorities. Since the competition test was first introduced 20 years ago, the Commonwealth's approach to privatisation has changed, as have the business operations of current and former Commonwealth authorities. The diversification of the business operations of companies such as Australia Post, for example, has effectively watered down the test. As stated earlier, the incentives for companies to join the scheme have also changed.

While it can be argued that the competition test in the Comcare scheme no longer reflects the current policy environment or business landscape, and could be replaced with a more targeted test, we consider it important to retain the test to maintain the policy rationale for allowing self-insurers into the scheme. The test serves as a safeguard to ensure that only businesses genuinely competing with Commonwealth authorities are eligible, thereby preserving the original intent of the scheme and stopping it from becoming a de facto national workers' compensation scheme. To maintain its integrity, we recommend that the new Act provide further detail to define 'competition' for new entrants into the Comcare scheme, including that:

- it refers to genuine competition, meaning that an applicant corporation is wholly or predominantly in competition with a current or former Commonwealth authority
- every company within the corporate group is required to be in competition
- competition is an ongoing requirement and is not just satisfied at the time of application.

Worker agreement

The decision to transfer from state and territory workers' compensation schemes to the Comcare scheme rests exclusively with the employer. It is not a joint decision of the employer and their workers. Aside from the SRCC needing to be satisfied that the granting of the licence will not be contrary to the interests of the workers and that relevant consultation requirements have been met, workers have no choice in the matter.

As pointed out in past debates on this issue, the consequence of inter-jurisdictional differences affects workers too.[95] Depending on the entitlements and benefits in the state or territory where they reside and the nature of their injury or illness, some workers may benefit from a change while others will not. We consider that workers and their representatives should actively be involved in any decision to move to the Comcare scheme. Part of the agreement process could include conveying to the workers that moving to the Comcare scheme will not result in an overall reduction in workers' compensation entitlements. A process like this could be based on the approval process for enterprise agreements under the *Fair Work Act 2009* (Cth).

Objective criteria

We considered what objective criteria could be used to determine whether an employer was eligible to enter the Comcare scheme. These could be embedded in the legislation, making it less prone to political moves to expand or narrow the gate. Appropriate criteria are those that indicate an employer is of sufficient size and experience to have adequate WHS, injury management and return to work arrangements in place, as well as the capacity to effectively manage workers' compensation. They

[95] K Purse and R Guthrie, 'Workers' compensation policy in Australia: New challenges for a new government', 2008, 1, *Journal of Applied Law and Policy*, p 105.

could include the number of workers and annual revenue. Whether an employer operates in more than one jurisdiction is also a relevant factor.

Number of workers

The most common measure of size as an eligibility criterion in workers' compensation is headcount or FTE workers. The requirement in New South Wales and Western Australia is 500 FTE. In South Australia it is 200, and in Queensland it is 2,000.[96] The requirement is contained in the relevant Acts or in codes and guidelines.

The Australian Bureau of Statistics' (ABS) definition of a large business is one with 200 or more employees.[97] As at June 2025, there were 5,322 large businesses in Australia.[98] The Australian Securities and Investment Corporation (ASIC), meanwhile, defines a company as 'large' if 'the company and any entities it controls have 100 or more employees' (and satisfies revenue or asset requirements).[99]

However, we believe the criteria and definitions for entry into the Comcare scheme should be set higher to meet policy objectives and avoid adding risks and complexity to the scheme.

While setting the number low – at 500 FTE, for example – would maximise competition and diversity, it would also increase regulatory complexity and risk for Comcare. Setting the number high, at 10,000 FTE, for example, would minimise regulatory risk and ensure scheme integrity. However, few employers would qualify, thus excluding employers with strong safety and performance systems. We estimate there are about 30 ASX-listed companies, as well as at least some private companies, with 10,000 or more employees.

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[96] SIRA, *Self-insurance licensing policy: Workers compensation regulation*, June 2017, SIRA, p 13, accessed 18 September 2025. Available at www.sira.nsw.gov.au/workers-compensation-claims-guide/forms-and-publications; WorkCover WA, *Application for Self-insurer Licence Guidelines*, July 2024, WorkCover WA, p 27, accessed 18 September 2025. Available at www.workcover.wa.gov.au/service-providers/self-insurers/; J Yuile, 'Return to Work Act 2014: Code of Conduct for Self-Insured Employers', 1 August 2017, No 49, *The South Australian Government Gazette,* p 2995; *Workers' Compensation and Rehabilitation Act 2003* (Qld), s 71.

[97] See explanation in Australian Bureau of Statistics, *8155.0 - Australian Industry*, 2016–17, ABS, accessed 28 August 2025. Available at www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/8155.0Main%20Features42016-17?opendocument&tabname=Summary&prodno=8155.0&issue=2016-17&num=&view=#:~:text=Businesses%20in%20the%20Economic%20Activity,be%20exercised%20when%20analysing%20movements.

[98] Australian Bureau of Statistics, (July 2021 – June 2025), *Counts of Australian Businesses, including Entries and Exits*, ABS, accessed 28 August 2025. Available at www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release#employment-size.

[99] Australian Securities and Investments Commission, 'Are you a large or small proprietary company', *Financial reporting and* audit, ASIC, accessed 21 August 2025. Available at www.asic.gov.au/regulatory-resources/financial-reporting-and-audit/preparers-of-financial-reports/are-you-a-large-or-small-proprietary-company/.

We note the Workplace Gender Equality Agency (WGEA) collects data covering more than 5 million employees in Australia. It groups employers by size, and has a category for employers with 5,000 or more employees. WGEA's 2023–24 data indicates there were 163 such employers.[100]

We suggest a threshold of 3,000 FTE could be the 'sweet spot' for controlling entry into the Comcare scheme for a single corporate entity. A business could move above or below this FTE threshold in any particular year for a range of reasons. So, we also recommend basing the initial FTE entry criterion on an employer's average FTE over the previous 3 years at the time of application. This would ensure that only companies that have a track record of operating at that size can enter the scheme.

Given the dynamic nature of company operations, we consider this criterion only needs to be met at initial application and therefore has no effect on companies once in the Comcare scheme.

We estimate there may be about 60 ASX-listed companies and about 20 private companies that meet the 3,000 FTE criterion. Some of these may already be in the scheme and others may not be eligible for other reasons – for example, they are not competing against the Commonwealth or the ACT Government and do not fall within the category of a private sector company in which the Commonwealth has a substantial interest, or they are not in competition with privatised Commonwealth authorities.

Revenue

The size of a company's revenue is another criterion that suggests an employer may be sufficiently large and sophisticated to enter the Comcare scheme.

ASIC classifies a company as large if it meets at least 2 of the following criteria: $50 million or more in consolidated annual revenue; $25 million or more in consolidated gross assets; and 100 or more employees.[101] As pointed out earlier, we believe these thresholds are too low and would result in increased risk and complexity for the scheme. The Australian Taxation Office defines a large corporate group as a group with a turnover greater than $250 million.[102] It says there are approximately 2,081 large corporate groups in Australia.[103]

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[100] Workplace Gender Equality Agency (WGEA), *An exploration of employer gender pay gaps*, WGEA, accessed 28 August 2025. Available at www.wgea.gov.au/employer-gender-pay-gaps-data-interactive.
[101] Australian Securities and Investments Commission, 'Are you a large or small proprietary company', *Financial reporting and audit*, ASIC, accessed 30 August 2025. Available at www.asic.gov.au/regulatory-resources/financial-reporting-and-audit/preparers-of-financial-reports/are-you-a-large-or-small-proprietary-company/.
[102] Australian Taxation Office (ATO), *Demographics of large corporate groups*, ATO, accessed 20 August 2025. Available at www.ato.gov.au/about-ato/learn-about-tax-and-the-ato/tax-and-corporate-australia/we-have-confidence-in-the-tax-compliance-of-large-corporate-groups/demographics-of-large-corporate-groups.
[103] ATO, *Demographics of large corporate groups*, ATO, accessed 20 August 2025. Available at www.ato.gov.au/about-ato/learn-about-tax-and-the-ato/tax-and-corporate-australia/we-have-confidence-in-the-tax-compliance-of-large-corporate-groups/demographics-of-large-corporate-groups.

We note that there are over 100 ASX-listed companies and about 75 private companies with annual revenue above $1 billion.[104] As with FTE, if annual revenue was to be a criterion, it could be based on an employer's annual average revenue over 3 years. This criterion should only be considered alongside the FTE criterion, and not as an alternative to it.

Operating in multiple states and territories

A criterion that is relevant to the Comcare scheme but not to state and territory schemes is that the company has a national or near-national presence. We note, however, the ABS does not publish data on entities operating in more than one jurisdiction.

Adding jurisdictional requirements to the eligibility criteria for Comcare self-insurance narrows the pool of potential applicants and shifts the profile of those eligible. While headcount threshold is already an effective filter for large and financially capable organisations, requiring operations in multiple jurisdictions introduces a geographic footprint that some large companies do not meet.

The entry criterion proposed in the 2014 Amendment Bill was that the employer needed to operate in 2 or more jurisdictions.[105] While this could be assessed at the time of applying for a licence, the number of jurisdictions in which an employer operates may fluctuate during the licence term. There is also more potential for this criterion to operate unfairly. One business could have a large FTE but small geographic footprint and not be eligible, while another could have a small FTE with a large footprint and be eligible. This criterion would therefore have to work in tandem with the employer size criterion, increasing the complexity of the licensing scheme for little value.

Operating as self-insurers in other schemes

Self-insurance in one or more states and territories is a difficult proposition, with different requirements and benefits, different licensing fees and requiring multiple bank guarantees.

As at 7 July 2025, there are an estimated 242 self-insurers in state and territory schemes. Of those:

- 161 companies are self-insured in a single state or territory
- 36 companies are self-insured in more than one state or territory.

The low number of companies with self-insurance in multiple states supports its lack of feasibility for many companies.

While the profile of those who self-insure in the states and territories may provide an insight into companies that have an interest in self-insuring in Comcare, it is not a reliable criterion for entry into the scheme.

We are concerned with any objective criterion that there is potential for employers to game the system by, say, temporarily inflating worker numbers or restructuring operations to appear as though they operate in multiple jurisdictions. While this can be overcome by introducing other requirements, such

[104] IBISWorld, *Australia's Top 500 Private Companies of 2024*, IBISWorld, accessed 20 August 2025. Available at www.ibisworld.com/blog/top-500-private-companies-2024/61/5644/.
[105] Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014, Sch 1, item 9.

as a minimum number of jurisdictions the employer has operated in over the last 3 years or annual average revenue over 3 years, or having to satisfy at least 2 of the criteria, we conclude that this adds a degree of complexity for very little gain. We therefore do not recommend that objective criteria be added to or operate as an alternative to the competition test. We consider it preferable to strengthen the competition test to ensure there is more than incidental competition with a current or former Commonwealth authority. In addition, we recommend that further criteria are added to ensure that only employers with significant operational and financial capacity are able to enter the Comcare scheme.

Ministerial declaration of eligibility

Historically, the requirement in SRC Act s 100 for a ministerial declaration of eligibility was introduced to ensure that only corporations meeting the competition test and policy objectives could access the Comcare scheme. This 2-stage process – ministerial declaration followed by SRCC assessment – was intended to preserve government oversight, manage the scheme's profile and maintain a balance between Commonwealth and state workers' compensation schemes.[106]

The concern is that without this ministerial gatekeeping, there is a risk that the scheme could expand beyond its intended scope, potentially drawing in employers whose participation may not align with national policy priorities.

Conversely, removing the declaration process would streamline the application process and reduce uncertainty for applicants. It would also reinforce the integrity of the licensing process by ensuring that eligibility is determined solely based on merit, capability, and compliance with regulatory standards.

This change would also align the Commonwealth scheme with best practice models nationally and internationally, such as those in the Netherlands[107] and the United States,[108] where self-insurance approvals are managed by independent regulatory bodies without ministerial involvement.

The 2014 Amendment Bill proposed removing ministerial involvement in the approval process but noted that the Minister would retain the power to give directions to the governing body (the SRCC) on the issuing of licences.[109] This would ensure that relevant policy considerations are part of the assessment process.

On balance, we favour removing the ministerial declaration process, as doing so would simplify the licensing process, reduce subjectivity and, to a significant degree, remove political influence. It would ensure eligibility is assessed by the issuing authority solely on merit, while retaining ministerial

[106] Department of Employment and Workplace Relations, 'Minister's guidelines for assessing subsection 100(1) applications', 2 July 2019, DEWR, accessed 27 August 2025. Available at www.dewr.gov.au/workplace-relations-australia/resources/ministers-guidelines-assessing-subsection-1001-applications-selfinsure-under-safety-rehabilitation.
[107] Business.gov.nl, *Self-insurer for employee insurance*, Business.gov.nl, accessed 27 August 2025. Available at https://business.gov.nl/staff/health-and-safety/self-insurer-for-employee-insurance/.
[108] U.S. Government General Services Administration, Subpart 28.3 – Insurance, Acquisition.gov, accessed 27 August 2025. Available at www.acquisition.gov/far/subpart-28.3.
[109] Explanatory Memorandum to the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014.

oversight of the authority through directive powers to uphold policy objectives. This would also remove the involvement of the Department of Employment and Workplace Relations.

Currently the SRCC is the body that issues licences and has the regulatory responsibility for licensees. Consistent with the governance model we propose later, the new governing body is to focus on licensing strategy and policy, not issuing licences, regulatory and operational matters.

We recommend that Comcare has the powers and functions relating to self-insurance licences, including assessing eligibility, issuing licences, ongoing monitoring and regulation. This will increase the efficiency of the application process, and Comcare's investigation and compliance functions. The allocation of responsibilities to Comcare will also assist in establishing an authoritative, single and accessible point of contact for licensees.

The streamlined application process we recommend is:

1. The application for grant of a licence is made to Comcare.
2. Comcare assesses eligibility and makes the initial decision to grant a licence with or without conditions, or refuse to grant a licence.
3. Where Comcare has refused to grant a licence, internal review of the decision by the governing board is available.
4. If the governing board affirms the decision, external merits review by the Administrative Review Tribunal (ART) is available.

Table 7 provides further information on our recommended licensing process and the comparison to current arrangements. It provides an illustrative, high-level comparison of the current and recommended decision-making arrangements for self-insurance licensing under the Comcare scheme. It outlines who is responsible for each step and key process differences. Note: 'Non-legislative' refers to administrative practices required by law. 'Legislative' refers to processes with statutory authority, either in the SRC Act or subordinate legislation.

Table 7: Comparison of current and recommended self-insurance licensing process

Step/aspect	Current decision-maker and process	New decision-maker and process
Setting guidelines for eligibility	Minister – May issue non-legislative Guidelines to assist eligibility assessment[110]	Governing board – Issues binding legislative Guidelines for assessing eligibility
Declaring eligibility	Minister – May declare eligibility if satisfied that it would be desirable for the Act to apply to employees of a	Comcare – Assesses eligibility against a 'genuine' competition test and the governing board's legislative

[110] Department of Employment and Workplace Relations, *Minister's Guidelines for assessing subsection 100(1) applications*, July 2019, DEWR. Available at www.dewr.gov.au/workplace-relations-australia/resources/ministers-guidelines-assessing-subsection-1001-applications-selfinsure-under-safety-rehabilitation.

Step/aspect	Current decision-maker and process	New decision-maker and process
	corporation that was a Commonwealth authority, or that is carrying on business in competition with a current or former Commonwealth authority[111]	Guidelines, including objective criteria (if any)
Issuing guidance/guidelines on applications, extensions and ongoing monitoring	SRCC – Provides non-legislative guidance on applications, extensions and ongoing monitoring, including decision-making factors[112]	As part of Guidelines issued by the governing board (see above)
Decision to grant, impose conditions, renew, suspend or revoke licence	SRCC – Comcare assesses and prepares recommendations; SRCC considers and decides[113]	Comcare – Assesses against the Guidelines issued by the governing board and makes the decision
Licence period	SRCC – Has implemented a non-legislative policy of 4-year licences[114]	SRC Act/Comcare – The maximum licence period (4 years) is set in the Act. Comcare can grant a licence up to 4 years.
Ongoing oversight	SRCC – Limited powers; can unilaterally vary conditions and suspend or revoke licences and make other decisions upon request from licensees[115]	Comcare – Enhanced powers for monitoring, investigation and sanctions
Dispute resolution process	SRCC/Courts – SRCC is the decision-maker, advised by Comcare. SRCC decisions are generally subject to judicial review.[116]	Governing board/ART – Board reviews application, renewal and regulatory decisions (if affirmed, subject to external merits review by ART)
Ministerial role	Minister – Gatekeeper for eligibility	Standard Ministerial Direction power

[111] SRC Act, s100.
[112] For example, SRCC, *Licence Compliance and Performance Model*, 2025, SRCC. Available at www.srcc.gov.au/about-us/publications-and-resources.
[113] SRCC, *Assessing licence applications*, February 2024, SRCC, accessed 19 September 2025. Available at www.srcc.gov.au/become-a-self-insurer/assessing-licence-applications.
[114] SRCC, *Outcomes from 12 June 2025 SRCC meeting*, June 2025, SRCC, accessed 19 September 2025. Available at https://www.srcc.gov.au/about-us/news/12-june-2025-meeting-outcomes.
[115] SRC Act, ss 105, 106, 108D(2).
[116] SRCC, *Dispute resolution process*, July 2022, SRCC, accessed 19 September 2025. Available at www.srcc.gov.au/current-self-insurers/dispute-resolution-process.

Step/aspect	Current decision-maker and process	New decision-maker and process
Worker involvement	SRCC – Has implemented a non-legislative requirement for workers to be consulted as part of a licence application[117]	There will be a legislative requirement that workers agree to move into or stay in the Comcare scheme. Comcare must assess this when considering an initial or renewal application.
Group licensing	SRCC – Not permitted; each entity must apply separately	Comcare – Permitted if all entities individually meet eligibility and licensing requirements

Limitations/carve-outs

We have considered the submission from Coal Services Pty Ltd (Coal Services) regarding the need to carve out specialist workers' compensation arrangements. Coal Mines Insurance (CMI) Pty Ltd provides workers' compensation insurance services for the New South Wales coal industry. The company is a wholly owned subsidiary of Coal Services, which administers a specialised health and safety scheme for the New South Wales coal industry.[118] Significant concerns arise when an employer in a specialist industry scheme becomes a self-insured licensee under the SRC Act. These concerns include those in relation to companies no longer contributing premiums but leaving existing and possible future liability with the Comcare scheme and still requiring WHS regulatory oversight. CMI coverage is not restricted to workers who mine coal. Coverage extends to workers employed in or about a mine and employers whose workers work in or about a coal mine.[119]

We recommend that the new Act makes it clear that coverage of the Comcare scheme is not available where workers and employers are covered by specialist industry-based workers' compensation arrangements like CMI.

WHS coverage

Our terms of reference describe the Comcare scheme's early history as primarily designed to cover Australian Government workers, with relatively consistent employment conditions, engaged in generally similar types of work. This statement was repeated by many submitters to this review and was also shortened to the scheme being established for 'white-collar' workers. We find it necessary to challenge the accuracy of this statement.

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[117] SRCC, *Assessing licence applications* (see 'Comcare evaluates the licence application'), February 2024, SRCC, accessed 19 September 2025. Available at www.srcc.gov.au/become-a-self-insurer/assessing-licence-applications.

[118] Coal Services, *About us: Governance*, Coal Services, accessed 27 August 2025. Available at www.coalservices.com.au/about-us/governance/.

[119] *Coal Industry Act 2001* (NSW), s 3; Coal Services, *Who is a coal miner? Workers compensation cover and entitlements for coal miners fact sheet,* March 2021, Coal Services, accessed 27 August 2025. Available at www.coalservices.com.au/insurance/policy-premium/who-needs-cmi-policy/.

When the scheme (and earlier Commonwealth schemes) was introduced, Australian Government workers included both operational and administrative workers. This included a significant number of blue-collar and field-based roles across high-risk industries such as construction, transport, postal services and defence.[120] Even today the scheme covers workers in high-risk settings such as defence, the Australian Federal Police (AFP), Home Affairs (Border Force officers) and the Department of Foreign Affairs and Trade (for example, missions in high-risk overseas locations).

The arguments by Comcare licensees for continued WHS coverage, or for restating the mandatory WHS Act coverage for all self-insurers, are like those raised when mandatory coverage was first introduced.[121] That is, compliance with only one set of WHS laws and one single regulator will ensure consistency and lead to a substantive reduction in administrative burden for businesses, resulting in enhanced safety outcomes. These arguments also reflect the aims of the WHS harmonisation, which were to enable the development of uniform, equitable and effective safety standards and protections, and address the compliance and regulatory burdens for employers with operations in more than one jurisdiction.[122]

Despite the lack of complete harmonisation, the model WHS laws are still considered a significant step towards consistency in WHS practice across Australia. Because the model WHS laws were based on Victoria's OHS laws, Victoria's failure to adopt the model laws is less concerning. Some employers we consulted expressed concern harmonisation has been 'chipped away' over time, resulting in increasingly different laws and penalties between the states and territories.

A 2018 post-implementation review concluded that the model WHS laws were largely operating as intended.[123] Since the undertaking of the review, further chipping away has taken place. However, the central features of the laws remain, and it is important to acknowledge that the differences do not involve the fundamental nature of the duties but rather the specifics about how duties of care are discharged.

It was always proposed that jurisdictions would retain flexibility in implementation, particularly in aspects of administration and enforcement.[124] We acknowledge that while harmonisation sought consistency in the content of the laws, and the broad duties of care, the ultimate effect on health and safety outcomes depends on its implementation and enforcement across workplaces and industries in the states and territories.

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[120] While no specific scheme data is available, the profile of the Australian public administration and safety workforce in the 1990s included more tradespeople, plant and machine operators, labourers and related workers working in public administration and defence. See I Castles, 6203.0 *The Labour Force, Australia*, May 1990, Australian Bureau of Statistics, accessed 27 August 2025. Available at www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6203.0May%201990?OpenDocument.

[121] SRCLA submission (unpublished), p 17, proposes the extension of coverage under the WHS Act to all non-Commonwealth licensees and prospective non-Commonwealth licensees.

[122] Council of Australian Governments, *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*, 3 July 2008, Australian Government.

[123] M Boland, *Review of the model Work Health and Safety laws: Final report*, SWA, Australian Government, 2018.

[124] Explanatory Memorandum, *Model Work Health and Safety Act*, p 2.

We also acknowledge that while a nationally consistent approach to enforcement of WHS laws is facilitated through the National Compliance and Enforcement Policy (NCEP), there are still inconsistencies in enforcement and compliance approaches. The NCEP is updated on a regular basis, with the last update seeking to establish more uniform enforcement practices across jurisdictions and promote greater collaboration.[125]

The Construction, Forestry and Maritime Employees Union (CFMEU) argued that the transitional period should end. It regards the application of the WHS Act to private corporations as a relic from the 'WorkChoices' era[126] and no longer necessary in light of harmonisation. The practical effect is that it undermines the capacity of state- and territory-based union officials and health and safety representatives to represent workers. This is because permit rights and designated work groups are state- and territory-based.[127]

Further, the CFMEU pointed out in its submission that there have been significant difficulties associated with the Commonwealth WHS laws applying to non-Commonwealth licensees where multiple firms are operating at a single site but are covered by different WHS laws. The CFMEU presented a case study that showed those differences are not ameliorated by co-operative cross-jurisdictional arrangements. State and territory regulators also advised of enforcement confusion.

However, we consider that in some circumstances it may not be reasonably practicable for a self-insured licensee to be regulated by a state or territory WHS regulator because they have always been regulated by Comcare. We considered whether the clock should be turned back and, in essence, reinstate the coverage provisions that existed under the OHS(CE) Act prior to mandatory coverage.

Implementation of this suggestion would cater for Comcare licensees like Thales, which has been regulated by Comcare for over 28 years due to its ownership of Australian Defence Industries. We understand that the transitional process to move regulation and licensing to state and territory schemes in these situations would be a significant undertaking, giving rise to possible confusion and reduced WHS outcomes. Other self-insured licensees continue to be Commonwealth authorities under the WHS Act and are also not captured by the transitional arrangements but have permanent coverage under the Act.

Concerns were expressed that a transition period is needed if the existing transitional period is to end. We understand that some time may be needed for adjustments to take place but not in relation to all matters – for example, high-risk licensing is covered by states and territories, not Comcare. It is also the case that licensees operating in the Comcare scheme would be taking a systems-based approach using AS/NZS ISO 45001:2018 Occupational Health and Safety Management System to ensure their compliance with WHS laws around the country.

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[125] SWA, *National compliance and enforcement policy*, SWA, accessed 28 August 2025. Available at www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws/national-compliance-and-enforcement-policy. Jurisdictional notes were included in the model WHS Bill to indicate the matters that may be considered by a local jurisdiction when implementing the legislation to ensure workability.
[126] *Workplace Relations Amendment (Work Choices) Act 2005* (Cth).
[127] Construction, Forestry and Maritime Employees Union submission, p 6.

We do not doubt Comcare is capable of regulating high-risk industries if properly resourced, but regard it is a waste of resources and effort to replicate regulatory expertise that already exists in the states and territories. Therefore, it is our view that Comcare's efforts should focus on the challenges that exist within the Commonwealth's jurisdiction, including prevention of psychological injury and illness among Australian Government workers; and prevention of both physical and psychological injuries and illnesses in the Australian Defence Force, AFP and other Commonwealth entities that carry out high-risk activities.

This would be consistent with Comcare's new strategic priorities, which are focused on Comcare becoming a leader in the prevention of psychological injuries, and increasing its influence in this space to more effectively drive positive change with employers and workers.

The clear policy intent of the WHS Act is that it does not apply to non-Commonwealth entities on a permanent basis. The current coverage of non-Commonwealth licensees is a transitional arrangement that, arguably, should have ended when Western Australia commenced its WHS Act.

However, we consider it is necessary to reduce the effect for Comcare and for the licensees that have never been covered by state or territory WHS laws. We propose that for non-Commonwealth licensees that are former Commonwealth authorities, the transition is discretionary and gradual, and that upon renewal of a licence the governing board considers whether they should be transitioned to state and territory WHS schemes, and makes a recommendation to the Minister about whether a regulation should be made to remove them from the coverage of the Commonwealth's WHS Act. We consider too that the outcome of a vote of the licensees' workers about which WHS laws they want to be covered by should be a mandatory consideration for the governing board.

7.1.6 Panel recommendations

Recommendation 108

We recommend that self-insurance remains part of the scheme.

Recommendation 109

We recommend multi-jurisdictional private sector employers remain part of the scheme, with the ability to self-insure subject to the adoption of our recommendations regarding governance of the Comcare scheme in Chapter 7 and our recommendations regarding rehabilitation and return to work in Chapter 3.

Recommendation 110

We recommend that granting a group employer licence would be possible where all employers within the corporation qualify for licensing under the new Act.

Recommendation 111

We recommend that the maximum licence term of 4 years is set in the new Act, with a streamlined renewal process.

Recommendation 112

If the recommendations specified in Recommendation 109 are not adopted, we recommend the scheme is closed to private sector employers and those in the scheme are transitioned back to state and territory schemes.

Recommendation 113

If the recommendations specified in Recommendation 109 are adopted, we recommend:

a. the eligibility criteria in s 100(1) is retained, but the test is tightened to require for new entrants into the Comcare scheme that:
   i. the corporation is wholly and predominantly engaged in competition
   ii. every company within the corporate group is in competition, and
   iii. competition is an ongoing requirement and is not just satisfied at the time of application
b. that worker agreement is required to transition to and remain in the Comcare scheme
c. that a further criterion is added to ensure that only employers with significant operational and financial capacity are able to enter the scheme
d. the one-step application process and the granting of eligibility to hold a licence by the Minister is not replicated in the new Act
e. that Comcare makes the initial decision to grant/renew/suspend/cancel a licence with internal review by the governing board and an external merits review by the Administrative Review Tribunal

f. that the governing board is provided with the ability to make guidelines for Comcare on assessing eligibility, issuing licences and ongoing monitoring of licensees.

Recommendation 114

We recommend Comcare is provided with a full set of regulatory powers and functions (like its work health and safety functions) to regulate self-insured licensees.

Recommendation 115

We recommend that the new Act makes it clear that coverage of the Comcare scheme is not available where employees and employers are covered by specialist industry-based workers' compensation arrangements like Coal Mines Insurance Pty Ltd.

Recommendation 116

We recommend the work health and safety transition period ends for non-Commonwealth licensees. However, for non-Commonwealth licensees that were former Commonwealth authorities, we recommend that upon renewal of a licence the governing board gives consideration to whether the licensee should be transitioned to state or territory work health and safety schemes and makes a recommendation to the Minister as to whether a regulation should be made to remove them from the coverage of the Commonwealth's *Work Health and Safety Act 2011*.

We further recommend the outcome of a vote of the licensees' workers about which work health and safety laws they want to be covered by is a mandatory consideration for the governing board.

7.2 Functions of Comcare and SRCC

7.2.1 Background

As the issues paper highlighted, there is significant complexity in the governance arrangements of the combined Comcare workers' compensation and WHS schemes. Previous reviews have raised the concern that the Comcare scheme's governance arrangements are not efficient, effective or suitable for current workplace conditions.

The history of governance and functions under the SRC Act

Under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988* (CERC Act), Comcare was responsible for both the regulatory and administrative functions for Commonwealth workers' compensation. The *Industrial Relations Legislation Amendment Act (No 3) 1991* (Cth) amended the CERC Act to establish a new commission called the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (now the SRCC). The amendments were introduced to separate the regulatory and service functions performed by Comcare.[128]

Functions of the SRCC

The SRCC is established under s 89A of the SRC Act. It is a statutory body that administers the regulatory functions of the SRC Act, other than those assigned to Comcare. The SRCC also has functions under the WHS Act; however, it is not a regulator under that Act.[129] The WHS regulatory functions are provided by Comcare or the state regulator, depending on the individual self-insurance licence.

The SRCC's key functions and powers include:

- granting, extending or varying self-insurance licences
- providing advice to the Minister
- ensuring equity of outcomes under the SRC Act
- issuing guidance to Comcare and advice to the Minister about the SRCC's functions and powers
- reviewing premium determinations and regulatory contributions made by Comcare.[130]

Functions of Comcare

The SRC Act establishes Comcare and sets out its functions and powers. Comcare has WHS and workers' compensation regulatory functions. It is the claims administrator and liability manager for the premium-funded scheme and supports the SRCC in exercising its functions.

[128] Explanatory Memorandum, Industrial Relations Legislation Amendment Bill (No. 3) 1991 (Cth).
[129] *Work Health and Safety Act 2011* (Cth), Sch 2, Pt 2.
[130] SRC Act, ss 73A, 89B, 97E, 97H and Pt VIII.

Comcare's key functions under the SRC Act include:

- making claims determinations accurately and quickly
- publishing guidance on claims management and rehabilitation
- conducting and promoting research on rehabilitation and prevention of injury
- determining and collecting premiums and regulatory contributions
- providing support to the SRCC, including in monitoring self-insured licensees
- advising the Minister on Comcare's functions and powers.[131]

As has been pointed out in previous reviews and in submissions to this review, there is structural confusion, insufficient accountability and undesirable overlap between the role and responsibilities of the agency (Comcare) and the SRCC.

7.2.2 Previous reviews

Productivity Commission inquiry, 2004

The relevant 2004 Productivity Commission recommendation was to develop the SRCC as a standalone regulator controlled by a board of independent directors.[132]

The *OHS and SRC Legislation Amendment Act 2006* implemented the Australian Government's response. This was to provide automatic coverage to former Commonwealth authorities and corporations operating in competition with existing or former Commonwealth authorities on the basis that not having integrated WHS and workers' compensation arrangements 'may compromise health and safety'.[133]

Hawke and Hanks reviews

In 2012, Dr Allan Hawke AC was asked to review the Comcare scheme's performance, governance and financial framework. The Hawke Review identified there was confusion among stakeholders regarding the roles played by the SRCC and Comcare. Hawke considered 3 options to provide 'a more robust regulatory framework' to minimise confusion and conflict.

- **Make the SRCC the sole regulator of the Comcare scheme** – under this option, all regulatory functions would reside with the SRCC. The benefits were that it would provide greater role clarity and oversight of Comcare. Comcare would revert to being a determining authority and perform no regulatory functions under the SRC Act. Under this option, ideally the SRCC would have its own staff.
- **Make Comcare the sole regulator of the Comcare scheme** – under this option, all regulatory functions would reside with Comcare. Regulatory power for workers' compensation would be vested in the same body responsible for claims management functions. To overcome the conflict

[131] SRC Act, s 69.
[132] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks Inquiry Report No. 27*, 2004, Productivity Commission, pp 149–150.
[133] Explanatory Memorandum, OHS and SRC Legislation Amendment Bill 2006.

associated with this arrangement, claims management would be outsourced to third parties.

- **Maintain the current regulatory arrangements with both the SRCC and Comcare sharing regulatory powers, with improvements** – under this option, changes would be made to the SRCC's functions to provide a more robust ability to monitor the performance of Comcare as a determinative authority.[134]

Hawke recommended the Department of Employment and Workplace Relations provide administrative support to the SRCC to achieve separation of powers from the body (Comcare) it is regulating (Recommendation 2). He also recommended the SRCC be given the function of monitoring the claims management performance of Comcare as a determining authority (Recommendation 3). These recommendations were included in the Hanks Review. Hanks adopted the recommendations, including Hawke's recommendation 9 to allow SRC Act premium payers to apply and be approved as determining authorities.[135]

7.2.3 State and territory arrangements

A scan of arrangements in state and territory workers' compensation schemes shows most have governing board arrangements. The CEO is typically responsible for the scheme's day-to-day operations, subject to the control, policies and directions of a board.

Examples of common board functions in state and territory arrangements include overseeing performance; ensuring schemes are managed effectively and efficiently; providing directions to the CEO; determining policies and strategic direction; setting premiums; and financial management.

Boards in state and territory workers' compensation schemes also undertake a range of advisory functions. These include advising their ministers on the operation of their scheme and legislation, providing advice to regulators, and collecting and publishing statistics.

Schemes that do not have governing board arrangements (including NT WorkSafe and WorkSafe ACT) are supported by advisory councils.[136] These councils typically provide advice to the minister on workers' compensation matters and focus on the operation of the legislation more than on the scheme management and performance.

There does not seem to be any correlation between the type of scheme funding and the governance arrangements in place. For example, in New South Wales, Victoria, Queensland and South Australia, the schemes are all publicly underwritten, whereas in Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory, they are privately underwritten.[137]

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[134] Hawke Review, paras 2.21–2.29.
[135] Hanks Review, Recommendations 4.1, 4.2 and 4.7.
[136] *Return to Work Act 1986* (NT), Pt 3; *Workers Compensation Act 1951* (ACT), Sch 3.
[137] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, Table 3.1.

7.2.4 What we heard

> ... there is an undesirable overlap between the role and responsibilities of the agency Comcare and those of the regulator, the SRCC.
>
> **Peter Sutherland submission, p 1.**

> ... a board type arrangement may also provide Comcare's CEO with support for managing risk across both licensees and premium payers.
>
> **SRCC submission (unpublished), p 8.**

> The SRCC requires both the budget and resourcing to enable it to effectively regulate and mitigate risk.
>
> **SRCC submission (unpublished), p 8.**

> Governing board. Both expertise and representation.
>
> **Individual submission No. 138, p 6.**

> ... there would be many advantages in merging the two entities and making the SRCC the Board of Comcare and the Accountable Authority ...
>
> **Steve Somogyi submission, p 1-2.**

> SRCC is a mystery to me.
>
> **Anonymous rehabilitation case manager No. 5, p 5.**

> Anything that holds systems accountable to employees ...
>
> **Individual submission No. 24, p 6.**

> The powers currently available to the SRCC are very limited.
>
> **SRCC submission (unpublished), p 4.**

> An independent body, I'm not sure how to explain it.
>
> **Individual submission No. 66, p 9.**

> An independent board that reviews Comcare's actions, processes, timeliness ...
>
> **Individual submission No. 57, p 7.**

Comcare's submission stated:

> *'The SRCC has a role in overseeing Comcare, however the scope of this role is unclear. Broadly, Comcare considers that there is an opportunity to further define the roles of Comcare and the SRCC that may promote role clarity and efficiency, noting the unique governance arrangement and relationship between the 2 entities created under the SRC Act.'*[138]

7.2.5 What we considered

We first considered the features of best practice governance arrangements before turning our attention to whether WHS and workers' compensation functions should remain in a single body. We considered whether Comcare's insurance and claims management functions should be within one body. We then considered governance models and options that are fit for purpose and scale.

Best practice governance

As the Australian Institute of Company Directors (AICD) states, all corporate organisations, whether for profit or not, or whether public or private, need to be governed accordingly, and all need a governing body to ensure they are effectively led.[139]

A best practice scheme is one where the governance structure is fit for purpose so it can ensure, among other things:

- accountability
- participation
- transparency
- effective decision-making and risk management.

The *OECD Best Practice Principles for Regulatory Policy* on the governance of regulators includes the following complementary principles:

- **Role clarity:** clear and linked functions between the regulator and its governing body, with mechanisms to ensure coordination and avoid conflict
- **Independence and integrity:** the importance of maintaining trust and being free from undue influence, particularly in relation to the appointment of board members to ensure there is confidence in the regulatory regime
- **Accountably and transparency:** ensuring clearly defined levels of decision-making between the regulator, its governing body and the responsible government minister are clearly allocated
- **Engagement:** ensuring there are established mechanisms for stakeholder engagement to produce genuine opportunities for dialogue.[140]

[138] Comcare submission, p 20.
[139] Australian Institute of Company Directors (AICD), *Good governance*, AICD, accessed 30 August 2025. Available at www.aicd.com.au/good-governance.html.
[140] Organisation for Economic Co-operation and Development (OECD), *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators*, 2014, OECD Publishing.

The Australian Prudential Regulation Authority's (APRA's) *Governance Review – Discussion Paper*, released in March 2025, says governance comprises the principles, practices, processes and behaviours that determine how entities are directed and controlled.[141]

APRA's discussion paper states:

> *'Boards have a central role to play in ensuring good governance as they are responsible for setting the strategic direction, culture and risk appetite of an institution, and for holding management to account.*
>
> *'Effective governance arrangements enable boards to make well-informed decisions, based on sound judgement and in the best interest of the entity and its key stakeholders or beneficiaries.'*[142]

We note Australia's international obligations also need to be considered. Late last year, Australia ratified the International Labour Organization's *Promotional Framework for Occupational Safety and Health Convention 2006 (No. 187)* and the *Safe and Healthy Working Environment Convention 2023 (No. 191)*.[143] These commit Australia to a unified, tripartite collaboration between unions, employers and government to enhance the conditions under which workers operate.

In 2004, the Productivity Commission recommended that the current regulatory framework for overseeing Australian Government workers' compensation schemes and occupational health and safety regimes 'be strengthened by progressively developing the SRCC as a stand-alone regulator'. They recommended the SRCC:

- be controlled by a board of independent directors appointed for a fixed term on the basis of their expertise and skills
- have a full-time director appointed as chairperson
- be provided with its own staff and funding.[144]

This recommendation was rejected by the government at the time because it was made to support the recommendations for the government to develop an alternative national workers' compensation scheme.[145] However, the government's response did acknowledge the merit of examining in more

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[141] Australian Prudential Regulation Authority (APRA), *Governance Review – Discussion Paper*, 2025, APRA, accessed 30 August 2025. Available at www.apra.gov.au/governance-review-discussion-paper.
[142] APRA, *Governance Review – Discussion Paper*, 2025, APRA, accessed 30 August 2025, Chapter 1. Available at www.apra.gov.au/governance-review-discussion-paper.
[143] International Labour Organization (ILO), *Australia ratifies all fundamental Conventions and Convention No. 191 enters into force*, ILO, accessed 16 September 2025. Available at www.ilo.org/resource/news/australia-ratifies-all-fundamental-conventions-and-convention-no-191-enters.
[144] Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks Inquiry Report No. 27*, 2004, p xli.
[145] Australian Government, *Response of the Australian Government to the Productivity Commission Inquiry Report No. 27: National Workers' Compensation and Occupational Health and Safety Frameworks*, 2004, Australian Government Treasury, pp 11–12.

detail the Productivity Commission's recommendation that the SRCC become a standalone regulator.[146]

Same or separate bodies?

Whether workers' compensation and WHS should be regulated by the same body is a complex issue with valid arguments on both sides. It is argued that a unified approach could lead to better integration and consistency in managing both aspects of workplace safety. On the other hand, it is also argued that separate bodies are better suited to handling the specific needs and complexities of each area and avoiding potential conflicts of interest. There appeared to be no appetite in submissions and among those we consulted to separate the WHS and SRC Act regulatory functions and create a separate statutory agency dedicated to WHS regulation.

They did strongly argue for the benefits of an integrated approach given the continuum between prevention and effective injury management. That is, WHS prevention actions rely on information about contemporary risk gathered from workers' compensation claims, and workers' compensation claims are made when prevention action fails. Given Comcare's size, a unified body is a reasonable response to reduce duplication and create efficiencies.

Separating Comcare's insurance function from its role in claims management and determination

We noted the concerns expressed by some workers about actual and perceived conflict in Comcare, as the 'insurer', also being responsible for the claims management process and the determination of claims.

We acknowledge these concerns; however, we do not consider that there are desirable and viable alternatives.

We note the problems that have plagued Victoria's workers' compensation scheme over the years when claims agents assessed claims. A report by the Victorian Ombudsman observed the scheme's claims agents were:

> *'… still unreasonably terminating complex claims: cherry-picking evidence, doctor shopping, relying on Independent Medical Examiners (IMEs) over-treating doctors even when evidence is unclear, contradictory or inconclusive – or ignoring it if it didn't support termination.*
>
> *… If anything, the evidence strongly suggests that much of the impact of my 2016 report has been to drive these practices underground. Agent staff were told to be careful what they put in writing – in case the Ombudsman sees it.'*[147]

[146] Australian Government, *Response of the Australian Government to the Productivity Commission Inquiry Report No. 27, National Workers' Compensation and Occupational Health and Safety Frameworks*, 2004, Australian Government Treasury, pp 11–12.
[147] Victorian Ombudsman, *WorkSafe 2: Follow-up investigation into the management of complex workers compensation claims*, 2019, Victorian Ombudsman, pp 4, 37.

In theory, 'independent' claims agents sound like a solution, but the process can be distorted or corrupted, especially where incentives are offered to claims managers, and can lead to claim suppression.

We note that the model of the insurer also being the body that assesses and determines claims is widespread in the Australian insurance sector, including in areas such as home, motor vehicle and medical insurance. Further, Comcare is not technically an insurer. This is because Comcare assumes workers' compensation liability under the SRC Act rather than indemnifying a liable party.

Governance models and options

Various governance models and options were presented in the written submissions, including by Comcare. They were similar to the options presented by Hawke in 2012. At the same time, we are aware of the need to ensure our recommendations reflect contemporary norms, practices and expectations regarding governance of private and public sector organisations.

Models and options presented included:

- maintaining the status quo, with Comcare and the SRCC each responsible for defined aspects of the scheme, but with the SRCC having greater compliance powers
- establishing a governance board, together with a ministerial or advisory council, to advise Comcare
- making the CEO accountable to the governing board
- establishing an advisory board for Comcare, with SRCC powers and functions transferred to Comcare
- establishing a tripartite ministerial advisory council whose principal function would be to provide advice and carry out any requests made by the responsible minister.[148]

The 'minimal changes/status quo' option would see SRCC officials become subject to the PGPA Act. We note Seacare Authority officials are bound by the PGPA Act, requiring them to adhere to the performance and accountability frameworks established by the Act for managing public resources.[149] This option would also give the SRCC appropriate compliance and enforcement powers.

However, we believe minimal changes will not provide the Comcare scheme with the strong governance arrangements it needs to accommodate some of this review's other key recommendations and to ensure the long-term viability of the scheme. If the status quo was to remain, it would not, for example, be responsible or prudent to allow self-insured licensees to remain in the scheme.

[148] See Comcare submission, pp 20–21; CPSU submission, p 21; AMWU submission, p 25; ACTU submission, pp 26–27.
[149] Under Schedule 1 of the Public Governance, Performance and Accountability Rule 2014, the Seacare Authority is prescribed as a 'listed entity' to which the *Public Governance, Performance and Accountability Act 2013* (Cth) applies.

The status quo where Comcare and the SRCC are each responsible for different aspects of the scheme and the only oversight of the CEO and Chair is ministerial does not reflect contemporary best practice governance. It is also an oddity within the framework of government entities.

Other options suggested creating new ministerial and/or new independent advisory bodies to provide Comcare with guidance. However, we believe this risks adding administrative burden on Comcare and potentially creating confusion about roles, responsibilities and reporting lines that may compromise the focus on supporting workers. There is a risk with advisory boards that they are not subject to sufficient accountability.

We note the Family and Injured Workers Advisory Committee was recently formed to provide advice to the Minister for Employment and Workplace Relations and Comcare.[150] The committee, whose members all have lived experience, provides advice on the support needs of those affected by serious workplace incidents and helps inform on relevant Comcare policies, practices and strategies. The committee also advises the Australian Maritime Safety Authority and the National Offshore Petroleum Safety and Environmental Management Authority. We believe and recommend that a sub-committee be established with a role in providing advice to the governing board.

Best practice governance arrangements

We studied governance arrangements of overseas workers' compensation agencies and several Australian Government bodies to identify structures and features for an appropriate governance framework for oversight of the Comcare scheme. Such an arrangement needs to reflect contemporary best practice and be sufficiently flexible to adapt to the changing needs of the scheme. This includes being able to embrace and call upon corporate and financial expertise, tripartism and lived experience. It can be seen that while the structure of non-departmental entities around Australia differs – depending on the functions they were set up to perform – they all, to a greater or lesser extent, adopt concepts and structures derived from private sector notions of corporate governance.[151]

International example

The structure and functioning of the Workers' Compensation Board of British Columbia (WorkSafeBC) is a possible model. We acknowledge that an apparently appropriate governance structure as legislated may not operate effectively in practice. WorkSafeBC has been under ongoing scrutiny over allegations that British Columbian companies routinely suppress claims of workplace injuries but are rarely investigated or punished. Critics say WorkSafeBC has done little to enforce employer claim reporting requirements and the prohibition on claim suppression.[152]

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[150] *Work Health and Safety Act 2011* (Cth), Sch 2, Pt 3A.

[151] BB Saunders, 'Ministers, Statutory Authorities and Government Corporations: The Agency Problem in Public Sector Governance', 2022, 45(2), *Melbourne University Law Review*, p 695.

[152] J Wilson, *'Moral crisis': Former tribunal official urges end to experience rating in workers' compensation*, 29 May 2025, The Safety Mag, Canadian Occupational Safety. Available at www.thesafetymag.com/ca/topics/leadership-and-culture/moral-crisis-former-tribunal-official-urges-end-to-experience-rating-in-workers-compensation/537153; A MacLeod, *WorkSafeBC's Failures a 'Major embarrassment' says Report*, 26 May 2025, The Tyee. Available at https://thetyee.ca/News/2025/05/26/WorkSafeBC-Failures-Major-Embarrassment-Report/.

Case study
WorkSafeBC

WorkSafeBC is an independent statutory body established by the Government of British Columbia.[153] It is responsible for administering the Workers Compensation Act and assists employers to comply with the Occupational Health and Safety Regulation.[154]

WorkSafeBC has 3 main mandates: compensation, prevention and insuring employers. Its services include education, prevention, compensation and support for injured workers, and no-fault insurance. WorkSafeBC serves more than 2.7 million workers and around 285,000 employers.[155]

It is governed by a Board of Directors appointed by the government. The Board guides strategic direction, while WorkSafeBC's leadership team carries out the Board's mandate and runs the day-to-day operations.

Membership is diverse, ranging from representatives of public interest organisations and employers to healthcare and other workers. Members also include WorkSafeBC's president and CEO, and people with actuarial and OHS expertise.[156]

The Board's functions include:

- setting and revising its policies, including compensation, assessment, rehabilitation, and occupational health and safety
- setting and supervising WorkSafeBC's direction
- selecting the WorkSafeBC president, determining their functions and assessing their performance
- approving WorkSafeBC's operating and capital budgets
- establishing policies and accounting systems to ensure adequate funding
- approving the investment of funds in accordance with requirements imposed under the Workers Compensation Act.[157]

[153] Workers Compensation Act, RSBC, 2019, British Columbia, Pt 8, Div 1.
[154] Workers Compensation Act, RSBC, 2019, British Columbia, Pt 2, Div 2.
[155] WorkSafeBC, *Who we are*, 2023, WorkSafe BC, accessed 30 August 2025. Available at www.worksafebc.com/en/about-us/who-we-are.
[156] WorkSafeBC, *2023 Annual Report and 2024–2026 Service Plan*, 2024, WorkSafe BC, pp 69–71.
[157] WorkSafeBC, *2023 Annual Report and 2024–2026 Service Plan*, 2024, WorkSafe BC, pp 69–71.

Australian examples

The Australian Nuclear Science and Technology Organisation (ANSTO), ASIC and the National Disability Insurance Agency offer governance models that could be drawn on for this exercise.

Case study

Australian Nuclear Science and Technology Organisation

ANSTO is a corporate Commonwealth entity within the Industry, Science and Resources portfolio. The *Australian Nuclear Science and Technology Organisation Act 1987* (Cth) details the organisation's functions, powers, Board, CEO's duties, staffing, finance and other roles and responsibilities.

The ANSTO Board is the accountable authority of ANSTO. The Board is comprised of at least 5 and up to 8 part-time, non-executive members drawn from the broader community, and ANSTO's full-time CEO.

All non-executive members are appointed by the Governor-General. Under the Australian Nuclear Science and Technology Organisation Act, the CEO is appointed by the ANSTO Board. As a significant appointment, Cabinet endorsement is also required for the CEO position.

The CEO is accountable for managing ANSTO's affairs in accordance with the strategy, plans and policies approved by the Board, as well as any Board Directions.

Under the Australian Nuclear Science and Technology Organisation Act and the PGPA Act, ANSTO's responsible Minister (the Minister for Industry, Science and Resources) and the Minister for Finance may provide the ANSTO Board with Directions (formal instructions) relating to the performance of the functions or the exercise of the powers of the Board or the organisation. Ministers can also issue Statements of Expectations.

The CEO is supported by an Executive Team. As a team and through their individual roles, the Executive leads, directs, coordinates and controls ANSTO's operations and performance.

The Board is assisted by 2 standing committees, which meet regularly:

- The Risk and Audit Committee provides independent oversight, advice and assurance to the Board on the appropriateness of ANSTO's systems of risk oversight and management, financial reporting processes, performance reporting arrangements, systems of internal control, and systems to ensure compliance with relevant laws and policies.
- The Remuneration and Nomination Committee, among other things, reviews the Board skills matrix at least annually and uses this as a basis for making recommendations to the government concerning the appointment or reappointment of Board members.

The remuneration and allowances payable to Board members, including the CEO, are determined by the Australian Government Remuneration Tribunal.

Case study

Australian Securities and Investments Commission

ASIC is a non-corporate Commonwealth entity under the PGPA Act. Its Commission, comprising a Chair and 2 other commissioners, is ASIC's governing body and is responsible for achieving ASIC's statutory objectives set out in the *Australian Securities and Investments Commission Act 2001* (Cth). Despite being a non-corporate Commonwealth entity and not a body corporate for the purposes of the PGPA Act, ASIC is a body corporate, with perpetual succession and a common seal. It may acquire, hold and dispose of real and personal property; enter into contracts; and sue and be sued in its corporate name.

ASIC makes regulatory decisions, sets its strategy and oversees its delivery and performance against the strategy. ASIC's Chair is the accountable authority under s 9A of the *Australian Securities and Investments Commission 2001* (Cth) Act. On operational matters, the Chair has sole executive management responsibility.

Case study

National Disability Insurance Agency

The NDIA is an independent statutory agency established to implement the NDIS.

It is a corporate Commonwealth entity overseen by the NDIA Board. The Board has responsibility for ensuring the proper, efficient and effective performance of the NDIA's functions, setting its strategic direction, ensuring the financial sustainability of the NDIS, and managing risk and ensuring compliance with relevant legislative and statutory requirements.

The Board is the accountable authority for the NDIA under the PGPA Act. The CEO is responsible for the day-to-day administration of the NDIA. With the support of a Strategic Leadership Team, the CEO executes the Board-approved strategic objectives and policies, in line with the agreed risk appetite.

Board members are appointed by the responsible Commonwealth minister in consultation with the Disability Ministers of each state and territory. In 2023–24, Board appointments were made by the Minister for the National Disability Insurance Scheme.

The NDIA's governance also includes the Independent Advisory Council, which advises the Board, in accordance with the *National Disability Insurance Scheme Act 2013* (Cth) (NDIS Act). The Independent Advisory Council represents the participants' voice in the NDIS.

Under the NDIS Act, the Independent Advisory Council has a statutory function to advise the NDIA Board on the most important issues affecting participants, carers and families. The Independent Advisory Council members represent a wide range of disability and advocacy sectors, and their lived experience and expertise in disability offers valuable insights.

Independent Advisory Council members are appointed by the Minister for the National Disability Insurance Scheme, with the support of state and territory governments. The Principal Member of the Independent Advisory Council must be a member of the NDIA Board.

Separately, as recommended by the Independent Review into the NDIS, an NDIS Reform Advisory Committee has been formed to provide independent advice from people with disability to the Minister for the National Disability Insurance Scheme, and state and territory Disability Ministers, on the implementation of NDIS reforms.

It will also formally report to the Disability Reform Ministerial Council on implementation progress and risks every 6 months.

Ultimately, we were drawn to a model in which the Comcare CEO is accountable to the governing board. Under such a model, the Comcare governing board's high-level functions would be:

- determining Comcare's strategic direction, consistent with its statutory powers and functions
- maintaining oversight of and monitoring Comcare and its operations
- providing the guidance and stewardship required to ensure Comcare's ongoing viability
- establishing operational, accountability and funding policies
- providing a forum for tripartite discussion
- providing advice to the Minister on the operation of the Comcare scheme and the new Act
- approving the investment of funds.

Comcare's high-level functions would be:

- assuming workers' compensation liability and setting premiums
- acting as claims and rehabilitation manager
- regulating compliance with WHS and workers' compensation laws
- acting as scheme manager
- being the issuing authority and regulator for self-insured licensees.

Views differed on whether the CEO of Comcare, the governing board or the chair of the governing board should be the accountable authority, and if it is the chair, whether they need to be full time. We leave open the decision as to who should be the accountable authority. As discussed, both approaches present distinct advantages and disadvantages. It is appropriate to allow for further consideration of this issue.

There were also different views on whether the CEO should be a member of the governing board. We concluded that the CEO should be on the board as a non-voting member. Given the complexities of the Comcare scheme, the CEO's insights and knowledge would benefit board discussion on strategic issues.

Even after adopting this model, there would be significant differences in how Comcare operates compared to private sector companies. This is because Comcare is subject to the PGPA Act and under the new Act, the Minister should continue to have the ability to issue directions to Comcare.

In addition, the Minister should be given the power to appoint and remove the CEO and members of the governing board. Aside from this, Comcare would be independent of government.

Non-corporate or corporate Commonwealth entity?

The question of whether a government organisation should be a non-corporate Commonwealth entity or a corporate Commonwealth entity is complex.

We believe consideration should be given to whether Comcare should remain a corporate Commonwealth entity or become a non-corporate Commonwealth entity. The change would enhance accountability and ensure, for example, Comcare's compliance with the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme)[158] and the *Legal Services Directions*.[159]

The CDDA Scheme provides a mechanism for a non-corporate entity to compensate people who have experienced detriment due to an entity's defective administration (for example, for not complying with administrative procedures or failing to give proper advice).[160]

Non-corporate entities must comply with the *Legal Services Directions 2017*. These directions, issued by the Attorney-General, govern how these entities engage and manage legal services. For corporate entities, some of the directions apply by virtue of specific provisions.

If Comcare was a non-corporate entity, it would also have to fully comply with the Australian Government's *Policy for the responsible use of AI in government*.[161]

Non-corporate Commonwealth entity

Non-corporate entities are legally and financially part of the Commonwealth. According to Department of Finance guidance, creating a non-corporate entity may be suitable if the body will:

- need direct accountability to parliament, including through parliamentary committees
- be mainly funded through the budget
- need to be subject to Australian Government policies
- raise relevant money or perform regulatory activities under a law of the Commonwealth
- be classified as part of the general government sector.

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[158] Department of Finance, *Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme)*, 2021, Department of Finance, accessed 31 August 2025. Available at www.finance.gov.au/individuals/act-grace-payments-waiver-debts-commonwealth-compensation-detriment-caused-defective-administration-cdda/scheme-compensation-detriment-caused-defective-administration-cdda-scheme.

[159] *Legal Services Directions 2017* (Cth).

[160] Department of Finance, *Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme)*, 2021, Department of Finance, accessed 31 August 2025. Available at www.finance.gov.au/individuals/act-grace-payments-waiver-debts-commonwealth-compensation-detriment-caused-defective-administration-cdda/scheme-compensation-detriment-caused-defective-administration-cdda-scheme.

[161] Digital Transformation Agency (DTA), *Policy for the responsible use of AI in government Version 1.1*, 2024, DTA, p 8.

Government policies automatically apply to non-corporate Commonwealth entities. Enabling legislation can override government policy in the event of a conflict.[162]

Corporate Commonwealth entity

A corporate Commonwealth entity is a body corporate that has a separate legal personality from the Commonwealth. Corporate Commonwealth entities generally have enabling legislation that establishes the scope of their activities and a multi-member accountable authority (such as a board of directors).

According to Department of Finance guidance, creating a corporate Commonwealth entity may be suitable if:

- the body will operate commercially or entrepreneurially
- a multi-member accountable authority will provide optimal governance for the body
- there is a clear rationale for the assets of the body not to be owned or controlled by the Australian Government
- the body requires a degree of independence from the policies and direction of the Australian Government.[163]

The Department of Finance also notes that a commercial focus may include the need to hold money on its own account, to borrow or invest money, or to have the power to engage staff outside the *Public Service Act 1999* (Cth).[164] Additionally, when the entity is a regulator and needs to be able to take enforcement action against the Commonwealth itself, this presents the need for a separate legal identity.

Notwithstanding Comcare's status as a corporate Commonwealth entity under the PGPA Act, the guidance indicates Comcare has features of a hybrid entity, not clearly falling into either the non-corporate or corporate category. Although we have outlined arguments about why Comcare should be a non-corporate entity, we also consider that as the WHS regulator, responsible for enforcing and prosecuting compliance of the Commonwealth under the WHS Act, Comcare should be a separate legal entity from the Commonwealth. The ASIC model is interesting in this regard because, despite being a body corporate, it is deemed to be a non-corporate Commonwealth entity for the purposes of the PGPA Act.[165]

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[162] Department of Finance, *Types of Australian Government Bodies*, 2021, Department of Finance, accessed 31 August 2025. Available at www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/types-australian-government-bodies.
[163] Department of Finance, *Types of Australian Government Bodies*, 2021, Department of Finance, accessed 31 August 2025. Available at www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/types-australian-government-bodies.
[164] Department of Finance, *Types of Australian Government Bodies*, 2021, Department of Finance, accessed 31 August 2025. Available at www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/types-australian-government-bodies.
[165] Subsection 8(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) declares that ASIC is a body corporate. However, under s 8(1A), ASIC is taken to be a non-corporate Commonwealth entity for the purposes of the 'finance law', which includes the PGPA Act.

We note the Hawke Review also grappled with whether Comcare should have a governing board or an advisory board. He also considered whether Comcare should be a non-corporate Commonwealth entity or a corporate Commonwealth entity. For Hawke, this was a question of whether Comcare should be a body under the since repealed *Financial Management and Accountability Act 1997* (Cth) (FMA Act) or the *Commonwealth Authorities and Companies Act 1997* (Cth) (CAC Act).[166]

We disagree with Hawke on the question of Comcare's most appropriate governance structure. Hawke believed 'as the functions of Comcare are not entrepreneurial, a governing board would not seem necessary and I have not seen any compelling evidence that Comcare needs a governing board. Existing guidelines for governance arrangement of Australian Government bodies envisage 'regulatory bodies do not usually require a governing board'.'[167] Our investigation of government entities did not find this to be the case.

Interestingly, Hawke said the governance structure of the Civil Aviation Safety Authority (CASA) was a 'useful' example.[168] We note, however, that CASA is a corporate Commonwealth entity that is governed by a board that is the accountable authority under the PGPA Act. CASA's Director, who serves as CASA's CEO, is appointed by the board after consultation with the relevant Minister.[169]

But we do not consider that we are in fundamental disagreement with Hawke. His review noted 'Comcare is subject to the CAC Act as specified by the SRC Act. However, it is really a hybrid entity as elements of its existing structure and functional features are typical of an FMA Act body (such as claims management processing for other government bodies) while others are more akin to a CAC Act body (such as the long-term insurance function)'.[170]

The Australian National Audit Office's 2022 *Reporting on Governing Boards of Commonwealth Entities and Companies* says that 'most corporate Commonwealth entities (CCEs), some non-corporate Commonwealth entities (NCEs) and all Commonwealth companies are governed by a group of persons described as a 'board'.[171] The data displayed in that report shows that it is an exception to the rule for a non-corporate Commonwealth entity to have a governing board.[172] The report said the Department of Finance's List of Commonwealth entities and companies under the PGPA Act (as at 2 March 2022) showed that, of the 187 Commonwealth entities and companies under the PGPA Act, 80 had a governing board. Only 3 of the 98 non-corporate Commonwealth entities had a governing board.[173]

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[166] Hawke Review, paras 3.20–3.39.
[167] Hawke Review, para 3.25.
[168] Hawke Review, para 3.37.
[169] *Civil Aviation Act 1988* (Cth), s 74.
[170] Hawke Review, para 3.12.
[171] Auditor-General, *Reporting on Governing Boards of Commonwealth Entities and Companies*, Auditor-General Report No. 27, 2021–22, Australian National Audit Office, p 7.
[172] Auditor-General, *Reporting on Governing Boards of Commonwealth Entities and Companies*, Auditor-General Report No. 27, 2021–22, Australian National Audit Office, p 11.
[173] Auditor-General, *Reporting on Governing Boards of Commonwealth Entities and Companies*, Auditor-General Report No. 27, 2021–22, Australian National Audit Office, p 11.

We agree that Comcare can be viewed as a hybrid as its range of functions and responsibilities do not all fit within the description of either a non-corporate entity or a corporate entity. However, without the benefit of advice on this issue from the Department of Finance, we hesitate to make a recommendation either way.

Composition and skills of the board

A board of directors can be composed of individuals representing specific constituencies (representatives) or individuals selected for their specific skills and expertise (skilled). Both approaches have advantages and disadvantages. A representative board ensures diverse perspectives are considered, while a skilled board provides specialised knowledge and expertise. The SRCC membership comprises members from both categories.

A balanced approach that incorporates both representation and skills – as is currently the case with the SRCC – is often the ideal. This approach should be retained for the SRCC. As stated earlier, its tripartite composition is important to ensure that consultation between governments, workers and employers takes place, reflecting Australia's international obligations.[174]

The AICD advises that boards function best when they have a broad mix of skills, knowledge, experience and diversity.[175] It also says the goal in selecting board members should be to build a mix that can work as a well-rounded team of people, each with an appropriate range of experience, skills and attributes relevant to the purpose, needs and strategies of the organisation.[176] It said the core skills that should be represented on a board include:

- strategic expertise
- accounting and/or financial literacy
- legal knowledge
- governance skill
- risk management
- human resources management
- marketing and communications – experience in media and marketing (potentially including social media)
- industry knowledge – experience in similar organisations or industries
- information technology.[177]

[174] ILO, *Convention C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)*.
[175] AICD, *Role of the board*, 2020, AICD, accessed 18 September 2025, p 4. Available at www.aicd.com.au/board-of-directors/duties/liabilities-of-directors/role-of-board.html.
[176] AICD, *Role of the board*, 2020, AICD, accessed 18 September 2025, p 4.
[177] AICD, *Role of the board*, 2020, AICD, p 4.

Accordingly, we recommend:

- the SRCC be abolished and replaced by a new body governing the whole scheme
- membership continue to be tripartite
- the board has the ability to establish sub-committees
- the Comcare CEO be responsible to the new board
- expert sub-committees be established to provide expert advice, with a standing lived experience sub-committee to advise the board on the experience of injured workers, their families, carers and other significant persons in their lives.

To ensure the right mix of representation and skills, we recommend the board has:

- a chair
- up to 3 union representatives
- up to 3 employer representatives
- up to 3 experts.

We recommend the Comcare CEO is a non-voting member of the board. We do not favour having more members on the board, given the difficulties of convening groups that are overly large. However, we consider that there should always be a balanced representation between the union and employer representatives.

We are not recommending that the CEO of SWA is an ex officio member of the board. This is because we consider that this could result in continued confusion between the role of SWA in developing national WHS and workers' compensation policy and the role of Commonwealth, state and territory WHS regulators in enforcing WHS laws.

To ensure all the identified criteria for membership are represented on the board, we also recommend that, to be eligible for appointment, a person should have more than one of the core skills listed earlier, which would include worker safety and workers' compensation expertise. We recommend that the board hold the number of meetings that are necessary for it to efficiently perform its functions. But at a minimum, we recommend it meets at least 4 times each calendar year.

7.2.6 Panel recommendations

Recommendation 117

We recommend establishing a new tripartite governing board (to replace the Safety, Rehabilitation and Compensation Commission), to which the Chief Executive Officer of Comcare is responsible, with the ability to establish sub-committees:

a. **Functions of the governing board**: oversee the whole Comcare scheme, which includes setting strategic direction including issuing policies; setting and supervising the direction of Comcare; establishing operational, accountability and funding policies; approving the

investment of funds; ensuring the governing board is a tripartite forum; and providing advice to the Minister.

b. **Functions of Comcare**: assume liabilities; operate as claims manager, regulator, scheme manager and issuing authority; and regulator for self-insured licensees.

c. Under the new Act, the Minister should have the ability to issue directions to Comcare.

d. The power to appoint and remove the Chief Executive Officer and members of the governing board should be conferred on the Minister.

e. Consideration should be given to whether Comcare is required to be a corporate entity or is established as a non-corporate entity to ensure coverage of the Compensation for Detriment Caused by Defective Administration Scheme and full coverage of the *Legal Services Directions 2017* (Cth).

f. Composition of the governing board:

   i. Chair

   ii. up to 3 x representatives of unions

   iii. up to 3 x employers

   iv. up to 3 x experts

   v. 1 x Chief Executive Officer of Comcare (non-voting).

g. The governing board will have the ability to establish sub-committees to draw on expert advice, including a standing lived experience sub-committee to provide advice to the governing board on the experience of injured and ill workers, their families, carers and other significant persons in their lives.

h. To be eligible for appointment to the governing board, a person should possess more than one of the Australian Institute of Company Directors' recommended skill areas, including health and safety and regulatory knowledge.

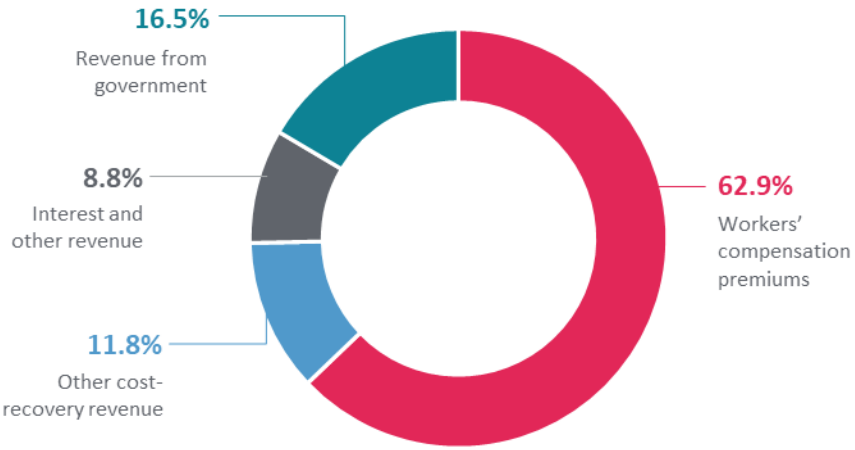
i. The governing board must hold the number of meetings that are necessary for the efficient performance of its functions, and a minimum of 4 each calendar year.

7.3 Comcare finances

7.3.1 Background

The Comcare scheme operates on a user-funded model, charging premiums to Australian Government agencies, and collecting licence fees, provider approval fees and fees for other services, such as training courses. It also receives regulatory contributions.[178] Its primary source of revenue is employer premiums, with additional revenue through investment income and cost recovery activities.[179] The scheme also receives government appropriations for managing and paying asbestos-related claims, pre-premium claims and Parliamentary Injury Compensation Scheme–related claims, and to support the Seacare Authority and WHS Act regulations (see Figure 23 and Table 8).[180]

Figure 23: Comcare financial operating results, 2023–24



Source: *Comcare and Safety, Rehabilitation and Compensation Commission Annual Report 2023–24.*

Table 8: Comcare revenue, 2019–20 to 2023–24, $m

Revenue source	2019–20	2020–21	2021–22	2022–23	2023–24
Workers' compensation premiums	163.3	167.4	161.6	175.5	213.1
Other cost recovery revenue	36.4	37.0	45.0	39.1	40.0
Interest and other revenue	24.0	13.9	9.2	20.9	30.0
Revenue from government	61.2	51.2	44.0	51.2	55.9

Source: *Comcare and Safety, Rehabilitation and Compensation Commission Annual Report 2023–24.*

[178] Comcare, *Recovering our costs*, 2025, Comcare, accessed 31 August 2025. Available at www.comcare.gov.au/scheme-legislation/recovering-costs.
[179] Comcare and SRCC, *Comcare and Safety, Rehabilitation and Compensation Commission Annual Report 2023–24*.
[180] Department of Employment and Workplace Relations, *Portfolio Budget Statements 2024–25, Budget Related Paper No. 1.6*, 2025, Employment and Workplace Relations Portfolio, pp 117–121.

Workers' compensation premiums

Under the SRC Act, Comcare is responsible for the claims liabilities, including claims administration costs, associated with the workers' compensation claims of Australian Government agency workers. These costs are primarily funded by employer premiums. Under the SRC Act, Comcare's CEO determines the premium entities pay each financial year. In setting the premium, the CEO considers relevant legislative requirements, including any guidelines issued by the SRCC and obligations under the PGPA Act.[181] The CEO can determine whether to apply a discount or levy (surcharge) to the premium pool to ensure the scheme is viable and that employers are paying appropriate premium rates.[182]

In 1989, to reduce the number, cost and duration of claims by Australian Government agencies, a premium model was introduced to make agencies accountable for workplace injuries and illnesses, and incentivise prevention and rehabilitation.[183]

Up until the 2010s, the Comcare scheme was relatively stable and the performance-based incentives of the premium model were successful in managing costs and providing low premiums for agencies.[184] During this period, Comcare began to receive premiums and regulatory contributions directly. This allowed Comcare to invest funds to support its investment pool.[185]

By 2012–13, the Comcare scheme's financial position had deteriorated, with the funding ratio (the percentage of premium-related assets to liabilities) for the premium-paying sector at 64%.[186] This was driven by a large increase in psychological injury claims, an underestimation of long-tail liabilities, poor investment returns and premiums that were not keeping pace with rising claims costs.

In recent years, Comcare has returned to financial stability, with the scheme's funding ratio reaching a high of 131% in 2018–19.[187] The improvement was due to reducing claim frequency, reflecting decreases in accepted claim numbers and a reduction in assumed average claim size. This has also had a positive effect on the duration of expenses.[188]

The estimate of outstanding liability at the end of June 2025 was $1.8 billion, a funding ratio of 120%. The average Commonwealth premium rate for 2025–26 is 0.98%, the lowest in Australia.[189]

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[181] Comcare, *Framework for setting premiums*, 2023, Comcare, accessed 27 August 2025. Available at www.comcare.gov.au/scheme-legislation/premium-payers/premiums-calculated; SRC Act, ss 97, 97A, 97E; Public Governance, Performance and Accountability (Charging for Regulatory Activities) Order 2017.
[182] SRC Act, ss 97A, 97E.
[183] Comcare, *Comcare Annual Report 1988–89*, p 17.
[184] Comcare, *Comcare Annual Report 1988–89*, p 7.
[185] Hawke Review, paras 4.4–4.5.
[186] Comcare and SRCC, *Comcare and Safety, Rehabilitation and Compensation Commission Annual Report 2014–15*, p 33.
[187] Comcare and SRCC, *Comcare and Safety, Rehabilitation and Compensation Commission Annual Report 2018–19*, p 99.
[188] Comcare, *Scheme performance: Overview,* 2025, Comcare, accessed 18 September 2025. Available at www.comcare.gov.au/scheme-legislation/scheme-performance/overview.
[189] Comcare and Taylor Fry, *Comcare information session: Understanding your 2025-26 Comcare premium*, 2025, Comcare, p 13. Available at www.comcare.gov.au/about/news-events/events/comcare-webinars.

The SRC Act established 2 funds for the collected premiums: Comcare-retained funds and Commonwealth-retained funds. Comcare-retained funds can be invested under strict rules in low-risk, low-return options (for example, bank deposits or government securities), as outlined in the PGPA Act. In contrast, Commonwealth-retained funds – unused premiums from 1988 to 2002 – are held in consolidated revenue and only become available to Comcare once its own funds are exhausted. These earn notional interest set by the Finance Minister.[190]

Cost recovery, interest and other revenue

Comcare undertakes cost recovery to fund the functions and activities of the SRCC and Comcare. These activities include:

- the SRCC's monitoring and regulation of self-insured licensees
- Comcare's regulatory activities under the WHS Act, including monitoring and enforcing compliance
- activities under the SRC Act, including undertaking research
- approval and renewal of workplace rehabilitation providers.[191]

The cost recovery activities are subject to the PGPA (Charging for Regulatory Activities) Order 2017 and Australian Government cost recovery policies and frameworks.[192]

Government appropriations

As a corporate Commonwealth entity, Comcare does not receive direct government appropriations. Grants from the Department of Employment and Workplace Relations, its portfolio department, include:

- an annual appropriation for delivering its services, including administering the Parliamentary Injury Compensation Scheme, for certain regulatory activities, to support the Seacare Authority and to manage asbestos-related claims
- special appropriations under the SRC Act for paying pre-premium costs and to settle claims under the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005*.[193]

Section 91 of the SRC Act sets the parameters for how Comcare can spend appropriations. These are broad and include the 'expenses, charges, obligations and liabilities incurred or undertaken' under the Acts Comcare administers, including the SRC Act.

Section 90C of the SRC Act requires Comcare to meet the cost of its liabilities, damages and administration expenses through Comcare-retained funds. Where Comcare has insufficient funds to

[190] Comcare submission, p 23.
[191] Comcare and SRCC, *Cost Recovery Implementation Statement* (2025). Available at www.comcare.gov.au/scheme-legislation/recovering-costs.
[192] Department of Finance, *Australian Government Cost Recovery Policy*, 2023, Department of Finance, accessed 31 August 2025. Available at www.finance.gov.au/government/managing-commonwealth-resources/implementing-charging-framework-rmg-302/australian-government-cost-recovery-policy.
[193] Department of Employment and Workplace Relations, *Portfolio Budget Statements 2024–25, Budget Related Paper No. 1.6*, 2025, Employment and Workplace Relations Portfolio, pp 117–121.

do so, the Commonwealth provides the required funds to make the payment to a maximum specified amount.[194]

7.3.2 Previous reviews

Hawke Review

The Hawke Review examined the financial framework of the Comcare scheme. At that time, the scheme was facing increasing liabilities and rising premium rates. The review highlighted that the premium setting process lacked transparency. It also found there was insufficient incentive for employers to reduce workplace injuries or improve return to work outcomes.[195]

The review noted several issues in the financial and premium frameworks, including cross-subsidisation – agencies with strong performance were effectively subsidising those with poorer performance.[196] This diluted the financial motivation for individual agencies to invest in injury prevention and rehabilitation.

To address these issues, the review recommended a shift toward a more experience-rated premium model, under which premiums would directly reflect an employer's claims history and risk profile. It also called for greater transparency in premium calculations, improved actuarial oversight, and a review of Comcare's investment strategy to reduce financial volatility. Hawke also suggested that regulatory fees charged to self-insured licensees should be more closely aligned with the actual cost of services provided.[197]

Comcare has taken several steps to address the findings of the Hawke Review. These include introducing a new premium model in 2016, developing a framework for setting premiums, and making more information available – including through guides, data and webinars – on the premium process, improving transparency.[198]

Compared to state and territory schemes, Comcare has traditionally performed well in terms of funding ratios and premium rates. Comparative data from SWA shows the scheme's premium rate is the lowest of Australian schemes.[199]

7.3.3 State and territory arrangements

In recent years, several workers' compensation schemes across Australia have come under financial pressure. WorkSafe Victoria had been operating at a significant deficit, reporting a shortfall exceeding $1 billion for the 6 months to December 2023 due to increased psychological injury claims,

[194] SRC Act 1988, s 90C(2).
[195] Hawke Review, paras 4.66–4.68.
[196] Hawke Review, para 4.54.
[197] Hawke Review, paras 2.96–2.101, and Recommendation 14.
[198] Comcare, *How premiums are calculated*, 2023, Comcare. Available at www.comcare.gov.au/scheme-legislation/premium-payers/premiums-calculated.
[199] SWA, *Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023, 29th ed*, 2024, SWA, p 348.

longer claim durations and increased expenses.[200] In 2024, reforms were introduced in Victoria, including stricter eligibility for psychological injury claims and, to support scheme sustainability, a higher threshold of impairment for workers to continue receiving weekly payments beyond 130 weeks.[201] WorkSafe Victoria's financial position has improved since the introduction of these reforms, mainly driven by strong investment returns that were significantly greater than long-term expectations.[202]

New South Wales currently has a funding ratio of 85% and, without reform, premiums for businesses without any claims are forecast to rise by 36% over the 3 years to 2027–28.[203] In May 2025, New South Wales introduced the Workers Compensation Legislation Amendment Bill 2025. The Bill aims to address these financial issues in the scheme by limiting liability and entitlements for psychological injury.[204]

7.3.4 What we heard

We received little commentary on this issue, which perhaps reflects Comcare's improved financial performance since the Hawke Review. What we did receive came mostly from organisations.

Employers

Employers emphasised the need to ensure that any reforms to the Comcare scheme did not jeopardise its financial stability.

Premium-paying employers considered that the premium setting is not always transparent. They said this could be addressed through oversight by a governing body or premiums being set by a third party. Other suggestions to improve the setting of premiums included additional forecasting and claims modelling, and increased engagement with stakeholders.[205]

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[200] WorkSafe Victoria, *WorkSafe half-year results*, 2024, WorkSafe Victoria, accessed 20 September 2025. Available at www.worksafe.vic.gov.au/news/2024-03/worksafe-half-year-results; WorkSafe Victoria, *Annual Report 2024*, 2024, WorkSafe Victoria, accessed 20 September 2024, p 71. Available at www.worksafe.vic.gov.au/resources/worksafe-annual-report-2024.
[201] WorkSafe Victoria, *Scheme modernisation*, 2024, WorkSafe Victoria, accessed 25 August 2025. Available at www.worksafe.vic.gov.au/scheme-modernisation.
[202] WorkSafe Victoria, *WorkSafe half-year results, 2025,* WorkSafe Victoria, accessed 17 September 2025. Available at www.worksafe.vic.gov.au/news/2025-03/worksafe-half-year-results.
[203] *NSW Parliamentary Committee, Legislative Council Standing Committee on Law and Justice, Evidence Consolidation Report for the Exposure Draft of the Workers Compensation Legislation Amendment Bill 2025: Report of the Inquiry into Proposed Changes to Liability and Entitlements for Psychological Injury in New South Wales*, vol 1, 23 May 2025, NSW Parliament, Appendix 1; Ministerial Statement by the Treasurer, NSW, Parliamentary Debates, Legislative Assembly, 18 March 2025, p 17.
[204] Workers Compensation Legislation Amendment Bill 2025 (NSW).
[205] Australian Taxation Office submission, p 13.

Unions

Unions supported a premium and regulatory contribution system that contributes to safer workplaces:

- The ACTU supported a premium-based model that recovers the costs of the system from users and a demerit system that imposes additional levies on employers with poor safety performance.[206]
- The Community and Public Sector Union argued that Comcare's current cost recovery model is inadequate for effective regulation and long-term sustainability. It proposed a new model that included:
  - higher base premiums to reflect the benefits of a national scheme
  - appropriation payments for Australian Government workers
  - additional risk-based charges, set according to the nature and severity of work risks across employers
  - targeted payments for high-risk projects
  - a psychosocial risk payment to fund regulatory programs.[207]

Comcare

Comcare indicated its satisfaction with the premium liability and prudential framework as set out in the SRC Act. Its submission noted that the SRC Act provides the appropriate levers and mechanisms for Comcare to charge premiums that respond to the claims experience in the scheme. This ensures the scheme is funded for its liabilities and costs incurred.[208]

Comcare's suggestions for ways to strengthen the Act to ensure future scheme financial and prudential management arrangements included:

- having the ability to invest Comcare-retained funds in a broader range of investments, and to access Commonwealth-retained funds, to enable Comcare to improve its investment returns
- receiving a government appropriation (separate from the monies received through premiums and other cost recovery arrangements) to fund the cost of specific and proactive activities relating to prevention, rehabilitation and return to work, to support improvements in those areas for the benefit of the whole scheme
- articulating that Comcare can collect and use premiums and interest earned on those premiums for activities relating to prevention, rehabilitation and return to work.[209]

For cost recovery, Comcare suggested changing the limitations that apply to regulatory contributions and licence fees. These limitations mean the SRCC and Comcare are bound by licence fee decisions on a financial year basis, and cannot adjust fees based on changes (for example, to a regulated entity's situation). This makes it more difficult to undertake longer-term planning and prioritisation of work

[206] ACTU submission, p 30.
[207] CPSU submission, p 26.
[208] Comcare submission, pp 22–23.
[209] Comcare submission, pp 23–24.

programs and capital investments. Comcare suggested considering expressly providing for it to charge for activities, such as an audit or an inspection, when it completed the work.

Comcare said generally the scheme's prudential management arrangements were adequate, but could be improved.

All submissions on the operation of the scheme supported Comcare being able to invest funds to support preventative and return to work initiatives, noting that investments should be risk-based to ensure sustainability.

7.3.5 What we considered

Investment returns

The SRC Act refers to 2 funds for the premiums Comcare collects. The first is Comcare-retained funds, which is defined by subs 90C(5) of the SRC Act. Comcare's investment of these funds must adhere to the legislative authority conferred under s 91 of the Act to invest money that is not immediately required for Comcare's purposes, in accordance with s 59 of the PGPA Act.

Comcare said under s 59 of the PGPA Act, its ability to invest is limited to low-risk and generally lower-return options, including but not limited to:

- bank deposits, including deposit evidenced by a certificate of deposit
- securities of, or securities guaranteed by, the Commonwealth, a state or a territory.[210]

Comcare said having the ability to invest the Comcare-retained funds in a broader range of investment types 'may mean that Comcare has greater returns which may be able to be used to lower premiums or to invest in proactive and preventative activities for the benefit of the whole scheme'.[211]

We consider that – subject to appropriate governing board oversight, a thorough assessment of an appropriate risk–return profile for Comcare, and the development of clear investment mandates for fund managers – Comcare should have the ability to seek higher returns for its retained funds.

The second funding source is Commonwealth-retained funds. These represent a notional balance of unused premiums retained in consolidated revenue from 1988 to 2002, before Comcare was able to retain premium payments.

These funds are payable to Comcare after it has exhausted all its retained funds in accordance with subs 90C(2) of the SRC Act. However, as Hawke noted in 2012, s 90C of the SRC Act places certain limitations on Comcare's ability to access additional funding from the Commonwealth-retained funds when faced with a liability deficit. This is because it effectively caps the level of funding the Commonwealth can provide when claims liabilities outstrip the amount of the Comcare-retained funds.[212]

[210] Comcare submission, p 23.
[211] Comcare submission, p 23.
[212] Hawke Review, para 4.27.

These funds are held within the Commonwealth Consolidated Revenue Fund (CCRF), earning notional interest at a rate determined by the Minister of Finance. The notional interest earned in 2023–24 was $42.5 million.[213]

As at 30 June 2024, the Comcare premium component of the CCRF's notional balance was $1,615.0 million. Independent actuarial assessment obtained by Comcare has established the estimated liability for the premium business claims as at 30 June 2024 was $1,809.7 million (2023: $1,705.5 million). Table 9 summarises the sources of funds available to Comcare to settle outstanding claims for the premium business.

Table 9: Sources of funds available to Comcare to settle claims for the premium business

Fund source	2024 ($'000)	2023 ($'000)
Net premiums held in the Commonwealth Consolidated Revenue Fund*	1,615,014	1,572,513
Cash and cash equivalents	397,931	414,965
Actuary assessed third party recoveries	7,802	7,869
Actuary assessed gross outstanding liability for payment of premium-related claims**	(1,809,738)	(1,705,526)
Surplus funds in excess of claims liabilities	211,009	289,821

Source: *Comcare and Safety Rehabilitation and Compensation Commission Annual Report 2023–24*, p 118.
Notes:
* $1,415.3 million has been recognised as a receivable from the CCRF as at 30 June 2024 (2023: $1,294.0 million).
** Excludes $11.3 million for additional latent psychological injury or illness claims where the date of injury, as defined in the SRC Act, is after balance date.

In relation to Commonwealth-retained funds, we conclude that consideration should be given to whether Comcare should have access to those funds to achieve higher investment returns.

If Comcare were to invest part or all the CCRF funds it would need to maintain reserves to cover outstanding claims liabilities and ensure that its investment portfolio was sufficiently liquid. The government needs to undertake a thorough assessment to determine whether Comcare has the expertise and experience to manage this quantum of funds. We conclude it would probably be necessary to engage an experienced external investment manager, or panel of managers.

Comcare has adopted a long-term strategy to better align the duration of its asset investments with the average duration of its claims liabilities. Historically, funds held with the CCRF accrued notional interest at a rate set by the Minister for Finance under subs 90C(3) of the SRC Act.[214]

To address the mismatch in durations, Comcare proposed updating the determination to change the rate of notional interest from one based on a cash benchmark – the 6-month overnight indexed swap

[213] *Comcare and Safety, Rehabilitation and Compensation Commission Annual Report 2023–24*, p 117.
[214] See SRC Act 1988, ss 90B, 90C, 90D.

rate – to one based on a bonds benchmark, specifically the Bloomberg AusBond Treasury 5+ Index. The Minister for Finance issued a new determination under subs 90C(3) of the SRC Act in March 2022, which revised the methodology for calculating notional interest on balances, with retrospective effect.[215] This change improves duration matching, enhances funding ratio stability, and reduces the effect of interest rate volatility on premium values.

Comcare has informed us it has established various mechanisms to safeguard its investment capabilities. While it says these safeguards are effective, Comcare acknowledges they will need to be extended if it is given greater ability to invest funds. Comcare says this could involve expanding in-house capabilities and seeking additional external investment expertise, such as an experienced investment manager.

Comcare shared with us a recent Investment Strategy Review conducted by Mercer. The review compared the returns achieved on Comcare's investment portfolios with those of various peer organisations and highlighted Comcare's weak returns.

We also note the investment returns achieved by WorkSafeBC in British Columbia, Canada. In 2024, WorkSafeBC's investment return, net of fees, was 11.6%, compared to 8.4% in 2023.[216]

The British Columbia Investment Management Corporation (BCI) manages WorkSafeBC's Accident Fund. BCI invests on behalf of British Columbia's public sector pension plans, insurance funds, such the WorkSafeBC Accident Fund, and other government and institutional entities. It invests in public and private equity, infrastructure and renewable resources, fixed income and private debt, as well as real estate equity and real estate debt.[217]

Catastrophic event

In his review, Hawke emphasised the need for greater clarity regarding the Commonwealth's financial support for Comcare. He observed that while Comcare-retained funds and access to the CCRF may suffice for short-term needs, there was uncertainty about how longer-term or catastrophic liabilities would be managed.[218]

Hawke recommended the SRC Act be amended to make it clear to what extent the government was able to provide supplementary funding to the Comcare premium-funded scheme, over and above the provisions in s 90C(3), in the event of a catastrophe.[219] This would provide Comcare with the certainty needed to effectively manage risk and may reduce the need for excessive premium increases or the pursuit of reinsurance to cover potential funding shortfalls.

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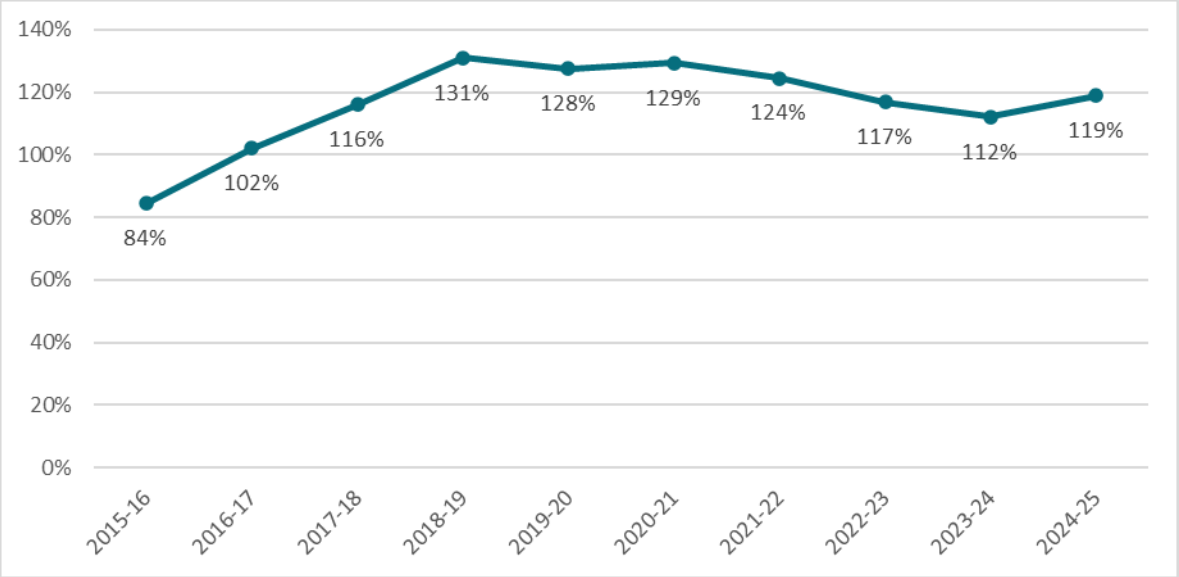
[215] Safety, Rehabilitation and Compensation (Notional Interest) Determination 2022 (Cth).
[216] WorkSafeBC, *Financial Management*, 2025, WorkSafeBC, accessed 25 August 2025. Available at www.worksafebc.com/resources/about-us/news-and-events/backgrounders/financial-management?lang=en&direct.
[217] British Columbia Investment Management Corporation (BCI), *About BCI: A Closer Look*, BCI, accessed 31 August 2025. Available at www.bci.ca/who-we-are/about/.
[218] Hawke Review, para 4.26.
[219] Hawke Review, para 4.28, and Recommendation 27.

While our recommendations to improve Comcare's access to funds and investment opportunities should reduce the risks of catastrophic events, we agree with Hawke that further clarity should be provided on funding should Comcare exhaust its funds.

Funding ratio

Comcare has advised that its funding ratio as at the end of June 2025 was 120%. The ratio is above Comcare's target minimum ratio of 110% for the eighth consecutive year. Ensuring that it can maintain this position has guided the making of our recommendations.

Figure 24: Comcare funding ratio



Source: Comcare data.

Maintaining this target is not without its challenges. Former SRCC Commissioner and actuary, Steve Somogyi, has projected workers' compensation payments will grow at more than double (6.68% per annum) the rate of GDP growth predicted in the most recent Intergenerational Report (2.2% per annum).[220] This is the result of the changing nature of work, ageing workforce and gender mix. It assumes there are no changes to current prevention efforts. He concluded that prevention is crucial to reduce incidents of injury and illness, and consequent claims.

Taylor Fry, in its analysis of the Comcare scheme without reform, noted that claim frequency and average claim size will be the key drivers of claims experience over the next decade.[221] The actuaries project the breakeven premium pool for premium payers will grow at approximately 3.4% per annum. This will take the breakeven premium pool from $279 million in 2026–27 to $364 million in 2034–35. The main driver of this growth is forecast inflation.[222]

[220] Steve Somogyi submission, p 8.
[221] Taylor Fry report, p 130.
[222] Taylor Fry report, p 129.

Taylor Fry also noted that Comcare's liability is especially vulnerable to changes in the economic environment because of the long-term nature of the liability. Inflation and interest rates affect investment returns – Comcare has advised that a 1% increase in Comcare's returns reduces premiums by 6%.[223]

Although we have not been asked to consider prevention in the sense of changes to WHS laws, we also believe prevention is the key to achieving scheme sustainability, whether that be in relation to the primary injury or illness or from a secondary condition. Further, the terms of reference asked us to consider the ongoing financial management and sustainability of Comcare. No concerns were expressed during consultation about the type of funding model that underpins the Comcare scheme, which is a centrally managed publicly underwritten scheme. We received suggestions that were targeted more at improving that model. It is in this context we frame our recommendations.

Premium collection and preventative activities

The Hawke Review made several recommendations that Comcare has implemented.[224] These include a new premium model, introduced in 2016,[225] and a new framework for premium setting.[226] Consistent with the governance arrangements we have recommended, we consider it would be appropriate for the governing board to have the ability provided for in s 97E of the SRC Act to prepare and issue guidelines and principles in relation to Comcare determining premiums. We also consider it appropriate that Comcare has the ability to reward good performance and punish poor performance and, if considered necessary, to impose special levies. In this regard, we consider that s 97A should be replicated in the new Act. We further consider it would be appropriate for the premium setting arrangements to be reviewed, given the passage of time, to ensure the model is able to incentivise good management of psychosocial hazards and risks.

There was widespread support for Comcare being able to use premium monies to invest in preventative activities. Given the significant investment needed to limit the predicted increase in psychological injury claims, we consider Comcare should have fewer restrictions on its investment of Comcare-retained funds and gain access to Commonwealth-retained funds to support this and other preventative activities. Again, it would be appropriate for the governing board to have oversight.

A Comcare function that has received minimal attention is its educational role. Additional funding should focus on this task. The role is important to educate those within government. During consultations, we were alerted to the need for more information about the scheme and its entitlements for workers from diverse backgrounds, with language difficulties or specific cultural practices, and for those operating in remote or regional areas. We recommend that Comcare is allocated increased funding for this purpose.

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[223] Comcare and Taylor Fry, *Comcare information session: Understanding your 2025-26 Comcare premium*, 2025, Comcare, p 9. Available at www.comcare.gov.au/about/news-events/events/comcare-webinars.
[224] Hawke Review, Chapter 4.
[225] Comcare, *How premiums are calculated*, 2023, Comcare, accessed 27 August 2025. Available at www.comcare.gov.au/scheme-legislation/premium-payers/premiums-calculated.
[226] Comcare, *Framework for setting premiums*, 2023, Comcare, accessed 27 August 2025. Available at www.comcare.gov.au/scheme-legislation/premium-payers/premiums-calculated.

The increased number of workers suffering psychological injuries is a focus of this review. During consultation, the Australian Public Service Commission (APSC) informed us of the APS Mental Health Capability Framework, which is a systems-based approach developed to build psychological health and suicide prevention capability among Australian Government workers. It provides the overarching architecture for agencies to develop programs and initiatives aimed at improving the psychological health and wellbeing of their workers. There is also an APS Mental Health Capability Hub, which features tools, practical guidance and resources that agencies can use and adapt for their operating context and needs.[227]

Given these developments, we sought advice on how agencies have been funded to develop programs and initiatives using the architecture provided. This information is pertinent for agencies with high-risk psychosocial hazards, such as the AFP. Unfortunately, the APSC was unable to identify a funding source.

Successful implementation of the APS Mental Health Capability Framework requires agencies to be funded appropriately. We commend the Australian Government agencies we consulted for their efforts in this regard. Their representatives displayed an admirable commitment to their work. When asked about resources for their areas, the typical response was that more was required to achieve the best practice of embedding WHS and psychological safety into the leadership and culture of Australian Government agencies to proactively address psychosocial risks. They said more trauma-informed support systems were also needed for early intervention, recovery and sustainable return to work.

As stated earlier, Comcare suggested it receive an appropriation to fund preventative activities. We consider, however, Comcare's current ability to tap into resources, which will be enhanced by our recommendations, to be sufficient. At the same time, we suggest resources may best be directed to achieving a joined-up approach to implementation of the APS Mental Health Capability Framework.

We consider this to be an important and worthwhile investment. During consultations, we heard that behind some of the calls from Australian Government agencies to tighten the eligibility for psychological claims were concerns about a perceived risk of engaging a worker with pre-existing psychological illness that could then be aggravated by the workplace environment. We were surprised by this concern, given the prevalence of psychological illness in the community. It should not be regarded as an unforeseen risk, but as a risk, alongside many other risks, that employers have a duty to manage.

We therefore consider a better alternative is to invest significantly in preventative measures aimed at identifying risks early, assessing those risks and implementing appropriate controls, consistent with WHS duties of care. This would also help shift the stigma around making claims for psychological illness more broadly. It could also help identify problems at an early stage, which is important because one of the reasons psychological claims end up being so expensive is that the person can be unwell for some time before making a claim. Ideally, it would also avoid the need to claim because the risks to

[227] APS Academy, *APS Mental Health Capability Hub*, 2024, APS Academy, accessed 29 August 2025. Available at www.apsacademy.gov.au/aps-people/health-and-wellbeing/aps-mental-health-capability-hub.

health are being managed and workers are able to remain at work. This is important as the research clearly shows that workers on workers' compensation have worse health outcomes.[228]

We nevertheless support Comcare being funded through the normal budgetary process for major expenditure, such as developing a new claims management system and a targeted education program. This is a significant one-off investment that would be difficult to fund through cost recovery. A new claims management system that enhances the user experience could have the effect of reducing claim size and length. We heard during consultations how the current system hampers Comcare in providing a quality person-centred service. We consider that the full benefit of our recommendations will only be realised with a modern case management system that supports their implementation.

Cost recovery, interest and other revenue

We have been unable to ascertain the rationale for the current limited timeframe for setting regulatory contributions and licence fees. We understand the inability to adjust fees once set provides certainty for the entity being regulated, but circumstances will arise when it is necessary to adjust fees. An example is if a licensee acquires a new company early in the financial year that significantly increases its worker numbers. We consider the new governing board should have the ability to make adjustments in appropriate circumstances. We also support Comcare having the ability to charge for an audit or an inspection when the activity is completed, rather than waiting until the end of the financial year. These changes will provide fairness for those involved in the scheme and increase the potential for Comcare to earn interest, supporting scheme sustainability.

Financial risks associated with licensees

If a licensee is wound up, there are potential financial risks to the scheme and to workers' entitlements associated with the outstanding claims liabilities.

Under the SRC Act, a licensee is responsible for the liabilities that arise when the licence is in force in their name.[229] Deregistration of a licensed corporation does not change this situation.

The SRC Regulations provide that liability under the SRC Act for payments for injury, loss or damage suffered by, or the death of, an employee occurring before the final licence is revoked remains with the 'former licensed corporation'.[230] However, there will be no former licensed corporation when a licensee is wound up and deregistered and no one is legally responsible or liable for ongoing claims arising from the licence period.

In this situation and where a licence has been revoked, the SRC Regulations allow Comcare to hold a guarantee in a separate bank account and take amounts from that account to discharge liabilities and meet claims management costs.[231] Comcare may also decide to manage the claims or arrange for the

[228] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – Bringing evidence-informed practice to work injury schemes helps workers and their workplaces*, April 2022, Royal Australasian College of Physicians.
[229] SRC Act 1988, s 108A.
[230] *Safety, Rehabilitation and Compensation Regulations 2019*, reg 27(2).
[231] *Safety, Rehabilitation and Compensation Regulations 2019*, reg 30.

claims to be managed by a third party. However, the SRC Act does not contain a specific provision requiring Comcare to take these actions and Comcare will not be legally liable for the claims.

In circumstances in which an injury arises after the licence of a former licensed corporation is revoked, it will not be captured by the preserved licence. Accordingly, no liability arises under the SRC Act framework in relation to injuries sustained after the revocation of licence for a licensed corporation (because neither the SRC Act nor the SRC Regulations will apply in these circumstances).

The absence of a legally responsible entity when a licensee is deregistered creates a serious gap in the SRC Act framework, with concerning implications for injured workers. Without a 'former licensed corporation' to manage and discharge claims, workers who suffered injuries during the licence period may face uncertainty and delays in accessing compensation and support.

The new Act should explicitly address the continuity of liability and claims management in the event of a licensee's winding up. This would mean Comcare or a person who has willingly entered into an arrangement with Comcare:

- is authorised to accept liability for injuries of workers of the former licensed corporation suffered during the licence period or attributable to employment but sustained after the licence period
- must manage the claims of a former licensed corporation
- discharges liability from the guarantee money held by Comcare
- is the relevant authority for the workers.

7.3.6 Panel recommendations

Recommendation 118

We recommend Comcare has the ability to invest Comcare-retained funds in a broader range of investment types with:

a. the governing board having oversight of the drawing and investment of these funds

b. appropriate safeguards being put in place to manage risks and ensure adequate reserves for outstanding claims liabilities.

Recommendation 119

We recommend the new Act provides clarity in relation to providing supplementary funding to Comcare in the event of a catastrophe.

Recommendation 120

We recommend Comcare review the premium setting arrangements to ensure the model incentivises good performance and management of psychosocial hazards and risks.

Recommendation 121

We recommend Comcare be able to charge regulatory contributions, licence fees and the activity costs outside the standard financial year timeframes.

Recommendation 122

We recommend the new Act provides for safety net arrangements to manage ongoing liabilities in circumstances where a licensee goes into liquidation and/or is wound up.

Recommendation 123

We recommend that where a licensed corporation has been wound up, Comcare or a person who has willingly entered into an arrangement with Comcare:

a. is authorised to accept liability for injuries of employees of the former licensed corporation suffered during the licence period or attributable to employment but sustained after the licence period
b. must manage the claims of a former licensed corporation
c. discharges the liability when Comcare pays money from the bank guarantee
d. is the relevant authority for the employees
e. takes over any proceedings on hand that the former licensed corporation was involved in.

Part D

Caring and costs

What we did

Our terms of reference asked us to make recommendations to improve outcomes for injured and ill workers, and to ensure the Comcare scheme has the flexibility to respond to new and emerging workplace practices, while maintaining its ongoing financial viability. In doing this, we were supported by specialist advice and actuarial modelling.

The Department of Employment and Workplace Relations commissioned Taylor Fry on our behalf to conduct actuarial modelling of the effects of a number of possible reform options that we were considering. Taylor Fry's brief was narrow, focused on the financial effects on the scheme from the reform options.

The department also commissioned Monash University to conduct a rapid review of the literature, with the aim of producing a summary of significant developments in workers' compensation scheme design over the previous 10 years (2014–24).[1]

Monash University was also contracted to undertake an independent research study, exploring user experiences of the Comcare scheme.[2] The study sought to identify aspects of the scheme that supported or hindered recovery and return to work. Its scope did not include consideration of the resourcing or financial impacts of the reform opportunities it discussed.

We also studied the Royal Australasian College of Physicians' (RACP) report, *It Pays to Care: Bringing evidence-informed practice to work injury schemes helps workers and their workplaces* (*It Pays to Care*). *It Pays to Care* calls for a collective conversation about the need to reconnect injury insurance schemes with the values commonly shared by people – honesty, respect, fairness, compassion and collaboration.[3]

This enabled us to take a 'mixed methods' approach in forming our recommendations, considering and analysing quantitative and qualitative data in a way that drew on the strengths of each to help us gain greater insights.

Because we wanted to conduct our review in a transparent way, we outline in the following sections how this qualitative and quantitative research informed our decisions on the recommendations.

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[1] P Bragge et al. *Key trends and developments in Australian workers' compensation schemes from 2014–2024: A literature review*, October 2024, Monash Sustainable Development Institute Evidence Review Service, BehaviourWorks Australia, Monash University.
[2] Monash University, *User experiences of the Comcare workers' compensation scheme - Qualitative Research Study Findings – Final Report* (Monash user-experience study), 27 June 2025.
[3] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – Bringing evidence-informed practice to work injury schemes helps workers and their workplaces* (*It Pays to Care*), April 2022, Royal Australasian College of Physicians.

Caring considerations

Social or qualitative research provides insights into human experience and perspective that cannot be captured by numbers. The Organisation for Economic Co-operation and Development says that embracing a people-centred and evidence-informed approach to policymaking (that is, by applying a behavioural lens) equips policymakers with a more realistic understanding of the issues and can prevent reliance on assumptions about people and their behaviour that may not be true in practice.[4]

Monash University – Literature review

Monash University's *Key trends and developments in Australian workers' compensation schemes from 2014 – 2024* literature review was undertaken by a desktop review team comprising experts in evidence synthesis (Peter Bragge, Paul Kellner, Angela Batson, Cong Ngo and Diki Tsering) and researchers with extensive knowledge of workplace compensation schemes and workplace or occupational safety (Dr Caryn van Vreden, Michael Di Donato and Veronica Delafosse).[5]

The review was commissioned to ensure we were apprised of the latest literature in this area and understood the most recent development and trends in areas related to the review terms of reference.

Monash University – User-experience study

Consistent with above, we considered that a review of the Comcare scheme could not be properly undertaken without considering the lived experience of injured or ill workers who have been through the claims process, as well as the workers' compensation professionals such as claims managers, rehabilitation case managers and workplace supervisors who supported and engaged with them.

Monash University conducted a user-experience research study in the first half of 2025 that sought to better understand the experiences of injured or ill workers, claims managers, rehabilitation case managers and workplace supervisors in the Comcare scheme to identify areas for potential policy reform.

The study was undertaken through the lens of injured worker recovery and return to work.[6]

The study was prepared by Dr Caryn van Vreden and Professor Alex Collie of the Healthy Working Lives Research Group, and Dr Tessa Keegel, Dr Monica O'Dwyer and Professor Karen Walker-Bone of the Monash Centre for Occupational and Environmental Health. The two organisations sit within Monash University's School of Public Health and Preventive Medicine.

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[4] Organisation for Economic Co-operation and Development (OECD), *LOGIC: Good Practice Principles for Mainstreaming Behavioural Public Policy*, 2024, OECD Publishing, p 7.
[5] P Bragge et al., *Key trends and developments in Australian workers' compensation schemes from 2014–2024: A literature review*, October 2024, Monash Sustainable Development Institute Evidence Review Service, BehaviourWorks Australia, Monash University.
[6] Monash user-experience study, p 5.

Participants, who were categorised as either Group 1 (Injured employees) or Group 2 (Workers' compensation professionals) were asked, among other questions, what aspects of the scheme they found supportive and what aspects they found hindering.[7]

Supportive aspects

The positive aspects of the scheme reported by some Group 1 participants related to relations with other scheme participants, including supportive healthcare practitioners who believed the worker and advocated for them. Early access to medical treatment before claim acceptance was also regarded as beneficial. Empathetic, knowledgeable claims managers and rehabilitation case managers were valued, particularly early in the claim. Modified and flexible working arrangements from employers were helpful for claimants returning to work.[8]

However, other Group 1 participants were not able to identify any positive or helpful aspects of the Comcare scheme. A number of Group 1 members said a key motivation for them to participate in the study was to prevent other workers having similar negative experiences with the scheme.[9]

Claims managers reported a number of positive aspects, including having a degree of autonomy and discretion in decision-making, enabling them to use their expertise and experience. Claims managers, rehabilitation case managers and supervisors said the 'flexible' nature of the SRC Act meant it provided an overarching framework for decision-making but also empowered them to determine the best approach on an individual case.[10]

Hindering aspects

It is not surprising that Group 1 participants shared many more hindering aspects of the current scheme than positive aspects. When explaining their findings to us, Monash University researchers noted it was common to encounter more negative than positive comments in this type of research due to the inherent tendency towards negativity bias.

A common theme was the negative influence of employers. Participants talked about purposeful claims suppression or obstruction. Employers were perceived as 'gatekeepers' to the workers' compensation system who had too much power and influence, not only on whether a claim was submitted but also on how it was determined.[11]

Some comments pointed at the inherent injustice of any insurance-based scheme in which the employer is compelled to pay the insurance premiums but then acts as the arbiter of claim submission and may incur financial penalties from insurers when claims are made. This injustice was perceived most acutely in cases where the employee described a significant breakdown in their relationship with their employer during the claim process.[12]

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[7] Monash user-experience study, pp 10–11.
[8] Monash user-experience study, pp 15–17.
[9] Monash user-experience study, p 15.
[10] Monash user-experience study, pp 17–18.
[11] Monash user-experience study, p 19.
[12] Monash user-experience study, p 19.

For some participants, their experience of dealing with Comcare scheme processes and policies was a barrier to their recovery. They highlighted a range of specific policies, system complexity, administrative burden, dehumanising practices, process-driven interactions and delayed appeals processes. Many found the system confusing to deal with and reported not knowing what to do, who to talk to or who was managing their claim. They reported a lack of support to navigate a complex system during a period when they were also dealing with their injury and ill health.[13]

Meanwhile Group 2 participants said important stakeholders in the rehabilitation process did not understand system rules or processes, due to their complex and technical nature. Claims managers and rehabilitation case managers said injured workers did not understand the system or their responsibilities during a claim. Claims managers and supervisors reported that employers had limited knowledge of their roles and responsibilities under the SRC Act or of good practices in supporting injured workers.[14]

Reform opportunities

The Monash user-experience study said participants from both groups made constructive suggestions for improving the scheme. The main reform opportunities identified are summarised in Table 10.

Table 10: Reform opportunities (Monash user-experience study)

Reform opportunity emerging from study	Rationale as described by participants
The primary legislative objective should be clearly characterised as the return to work and health of injured or ill workers	A worker-centred scheme must have worker outcomes as its core objective. Clarifying this as the primary legislative objective will ensure 'flowthrough' of the worker focus to regulation, guidelines, procedures and processes.
Introduce shorter timeframes for claims decision-making and remove 'stop clock' provisions.	Delays in claim determination are experienced as stressful, can generate financial distress and can delay access to essential treatment. Delays in decision-making regarding access to treatment can contribute to chronicity of injury or illness, and to ongoing disability.
Introduce the ability to fund psychological health care prior to claim acceptance for workers with psychological injury claims or with physical injury claims and elevated risks to psychological health.	Many workers with psychological injury are currently unable to access funded psychological health care early after symptom onset, potentially prolonging illness and impeding recovery. Potential to reduce the number and duration of psychological injury and physical injury claims in which psychological health is impacted.
Broaden access to redemptions for workers with longer-duration claims and for whom continued scheme participation is harmful.	Prolonged exposure to scheme processes and procedures may cause ongoing harm for some injured workers. Exiting the compensation scheme may support improvements in their health and enhance their ability to work.

[13] Monash user-experience study, pp 23–25.
[14] Monash user-experience study, pp 25–28.

Reform opportunity emerging from study	Rationale as described by participants
Introduce an alternative dispute resolution process.	An alternative process may resolve disputes faster, provide a lower-cost option for injured workers, and be perceived as fairer and more accessible. It may reduce cases flowing to the Administrative Review Tribunal (ART).
Broaden funding for services to address psychosocial barriers to recovery and return to work, beyond the compensable condition.	Psychosocial barriers are often greater impediments to return to work and recovery than the condition for which a compensation claim has been granted. Addressing these barriers will support faster, more enduring recovery
Require employers to offer modified work during rehabilitation.	Employers have a powerful role in worker recovery. Access to modified duties or working hours can support engagement in work and reduce the chances of prolonged absence. Costs of claims will also be reduced.
Provide supports for family members who are caring for injured workers with serious or complex conditions.	Family members provide important, unpaid supports that help workers recover and return to work. Lack of this support is a barrier to recovery. Funding or service provision for family members who are primary carers can support faster, more enduring recovery.
Fund superannuation for injured workers with time loss claims.	There are potential long-term impacts of forgoing superannuation during a claim on injured or ill workers (financial stress during retirement) and the government (higher costs of aged care later).
Provide wage replacement that addresses the increased costs of being sick or injured.	Injured or ill workers face increased costs that are not covered by the scheme when they are ill. At the same time, their income may be substantially reduced, resulting in financial distress, particularly for low-income workers. Financial distress is bad for health (particularly psychological health).
Require the regulator to collect and publish data related to claims processing and outcomes by self-insurers, delegated claims organisations and Comcare-managed claims organisations.	Stakeholders report a lack of transparency and mistrust being a barrier to workers engaging with the scheme in a positive way. This includes some workers being suspicious of situations where their employer makes claims decisions. Enhancing transparency will increase trust to address this issue.

Informing our recommendations

Combined, the Monash University literature review and the user experience study informed the recommendations listed in Table 11.

Table 11: How Monash University research informed recommendations

Recommendation	How Monash University research informed the recommendation
Recommendation 1	Principles to guide the reform of the Comcare scheme
Recommendation 2	Redrafting the SRC Act to include legislated objectives
Recommendation 12	Change to the reasonable administrative action exclusion
Recommendations 16 to 18	The provision of early payments and supports
Recommendations 21 and 94	Immediate crisis payment and support for dependants upon the death of a worker; increasing compensation amounts paid for injuries resulting in death and providing reimbursement for the costs of advice and counselling services, and respite services in the case of terminally ill workers
Recommendations 16 to 39	Supporting recovery and return to work
Recommendation 40	Employers have a duty to make workers aware of their workers' compensation rights in a form and language they can understand
Recommendation 41	Streamlining the injury notification and claims-making process
Recommendations 45 and 46	Timeframes and adjustment to the stop clock
Recommendations 47 and 48	Attaching a timeframe for the determining of benefits for medical treatment
Recommendation 50	Coverage of worker costs at the reconsideration stage
Recommendation 51	Limiting the ability of the 'Commonwealth' to request Comcare to reconsider a determination
Recommendation 53	Clarifying the ability of a determining body to revoke liability
Recommendation 59	Funding of free non-legal advice and assistance
Recommendation 65	Requiring the adoption of service standards and complaints processes
Recommendation 66	The removal of delegated claims management arrangements
Recommendation 75	Simplifying the calculation of Normal Weekly Earnings (NWE)
Recommendation 76	The partial or potentially full removal of 'step-downs'
Recommendations 79 and 80	Making of superannuation contributions
Recommendation 86	The governing board having the ability to develop binding guidance on what is reasonable treatment and care, to ensure new or innovative treatments are considered
Recommendation 100	Providing access to an alternative dispute resolution specialist
Recommendations 106 and 107	Providing an exit from the scheme

It Pays to Care

As explained in Chapter 1, we drew on the work produced in 2022 by the Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care*.[15] We would like to express our gratitude to the landmark report's primary author, Dr Mary Wyatt, who has been so generous with her time and knowledge. Dr Wyatt was not contracted as part of the review.

It Pays to Care states that evidence shows values matter, and that injury insurance systems that are fair, respectful, engaging, transparent and collaborative support recovery and return to work. Systems not founded on these values, or not designed and resourced in a way that enables the implementation of these values, jeopardise recovery and return to work.[16]

The report also says that over the past decade an increasing body of research has shown that proactively managing psychosocial issues and transitioning to systems that do not themselves erect barriers to recovery substantially improves outcomes and reduces costs.[17]

It Pays to Care sets out 7 key principles of healthy injury insurance schemes, summarised below.[18]

- **Leadership:** Regulators and insurers set the tone and standard for schemes through their actions in the areas of legislation, standards, culture, scheme oversight and delivery, and dispute systems.
- **A culture of collaboration:** Encouraging a collaborative culture develops high levels of trust or social capital between workers, supervisors, return to work coordinators, doctors, unions and other stakeholder groups.
- **Fairness:** Workers who perceive they have been treated fairly have a faster recovery, improved quality of life, better health and reduced healthcare service use. This translates to a 25% higher chance of returning to work. Quality decision-making and fair processes are central to this.
- **Health of workers is the priority:** Evidence-informed management is led by healthcare providers who offer holistic and culturally sensitive care.
- **Active and responsive management of individual cases:** Procedurally fair, timely, proactive and supportive case management produces better outcomes. It should be characterised by early communication with workers and employers and embedded in strong systems and support structures.
- **Effective communication:** Positive communication practices reduce costs and measurably affect recovery and return to work. Timely access to clear and appropriately presented information (that is, in plain language and with options for non–English speakers) also increases the perception of fairness.

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[15] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – Bringing evidence-informed practice to work injury schemes helps workers and their workplaces*, 2022, Royal Australasian College of Physicians.
[16] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – A values and principles based approach*, 2022, Royal Australasian College of Physicians.
[17] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – A values and principles based approach,* 2022, Royal Australasian College of Physicians.
[18] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – A values and principles based approach*, 2022, Royal Australasian College of Physicians.

- **Long-term thinking:** Considering the long term encourages broader and deeper focus on evidence-informed practice and offsets the limitations of a short-term reactive focus on key performance indicators and short-term financial results.

The report also outlines two 'shared challenges':

1. to ensure that scheme cultures, systems and processes do not create unnecessary barriers to recovery
2. to systematically capture psychosocial information for individual claims and proactively manage psychosocial risk by providing claimants, workplaces and healthcare practitioners with timely support according to need.[19]

The RACP said:

> *'We do not need to ask if scheme finances and the societal goal of aiding workers at a time of need can co-exist. We need to ask how the community that makes up work injury schemes can do things effectively, efficiently, responsibly and collaboratively across Australia …'*[20]

It Pays to Care and Dr Wyatt's insights informed the following recommendations.

Table 12: How *It Pays to Care* informed our recommendations

Recommendation	How *It Pays to Care* informed the recommendation
Recommendation 1	Principles to guide the reform of the Comcare scheme
Recommendation 2	Redrafting the SRC Act to include legislated objectives
Recommendation 26	Identifying, assessing and addressing biological, psychological and socio-economic risk factors
Recommendations 26 and 32	The roles and responsibilities of employers and insurers in relation to return to work and ensuring they have a duty to consult, cooperate and coordinate in relation to worker recovery
Recommendations 27, 28, 60 and 61	Training of return to work coordinators and claims managers
Recommendations 35 and 36	Allowing a worker to choose their Comcare-approved workplace rehabilitation provider (WRP) and having publicly available data on WRP performance
Recommendations 37 and 38	Introducing return to work inspectors and establishing penalties and incentives to facilitate return to work

[19] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – A values and principles based approach,* 2022, Royal Australasian College of Physicians.
[20] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – A values and principles based approach*, 2022, Royal Australasian College of Physicians, p.7.

Recommendation	How *It Pays to Care* informed the recommendation
Recommendation 40	Employers have a duty to make workers aware of their workers' compensation rights in a form and language they can understand
Recommendation 43	Widening the range of potential healthcare providers who can issue medical certificates
Recommendation 62	The governing board develops indicators for scheme and claim performance
Recommendation 63	Determining bodies are required to triage claims and assess the risk of a claim becoming complex
Recommendations 64 and 65	The new Act should contain a set of principles to guide claims management and require the adoption of service standards and complaints processes
Recommendation 117	Clear, transparent and accountable governance arrangements

Costing considerations

We asked Taylor Fry to provide costing estimates for a number of draft reform options to help us develop our recommendations. Taylor Fry also produced baseline forecasts (2026/27) for Commonwealth agencies, the Australian Capital Territory public sector agencies and other self-insured licensees.

Taylor Fry informed us that the cost estimates presented were intended to provide an approximate guide to the estimated financial effects and carried substantial uncertainty.[21]

Taylor Fry also informed us that key factors influencing future claims costs, such as the likelihood of claims, claimant return to work rates, compensation amounts, attitudes to settlement, and ART decisions are highly uncertain.[22]

Taylor Fry said legislative change often results in behavioural change that is difficult to predict. It can often be highly significant, particularly for proposals that would materially affect the amount of incapacity compensation payable.[23]

Given this uncertainty and the subjectivity involved in setting some key assumptions, Taylor Fry recommended we review their cost estimates for 'reasonableness'.[24]

Feedback from some of the tripartite reference group (TRG) members was that Taylor Fry's modelling seemed to focus on the 'cost' of our recommendations. They were concerned there was little

[21] Taylor Fry report, p 6.
[22] Taylor Fry report, p 6.
[23] Taylor Fry report, p 126.
[24] Taylor Fry report, p 6.

consideration of offsetting benefits such as the creation of more inclusive and productive workplaces that may flow from these costs.

We explained this reflected the limitations of the sort of modelling Taylor Fry was commissioned to conduct. We also explained it was due to Taylor Fry (and us) not having the data needed to build realistic, evidence-based assumptions on such benefits that could be fed into the modelling. We suggested that a further assessment could be conducted of our recommendations to inform government decision-making.

We used Taylor Fry's analysis to select from its costed options and to craft alternative options for our recommendations.

Some of our recommendations were assessed by Taylor Fry as having 'material impacts' on the scheme's annual incurred costs.[25] We queried Taylor Fry's assumptions or sought to better understand their costings in relation to 4 of our recommendations, relating to:

- restoring journey claims
- removing delegated claims management
- removing step-downs
- workers exiting the scheme.

These are each discussed below, outlining what Taylor Fry was commissioned to cost, the challenges they faced in calculating their costings, and the challenges we faced in interpreting and using them.

Restoring journey claims

In Chapter 2, we discuss the exclusion of coverage for injuries sustained during non-work-related journeys and recommend the partial restoration of journey claims for workers on call, or for travel from an employer-provided workplace to a home workplace to resume work.

To assist us with forming these recommendations, Taylor Fry was asked to cost the impact of restoring journey claims by providing compensation for injuries sustained while travelling to and from the workplace.

The impact of restoring journey claims was always going to be challenging to estimate. Coverage for injuries sustained during non-work-related journeys was removed by legislative amendments in 2007.[26] As a result, historical claims data is limited in quality and relevance.

In more recent years, events like the COVID-19 pandemic and the subsequent increase in work-from-home arrangements have significantly changed when and how often workers move between their 'home' and 'the office'.

[25] Taylor Fry report, p 6.
[26] *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007* (Cth).

Drawing on the historical claims data, Taylor Fry's modelling initially assumed that providing compensation for injuries sustained in travelling to and from the workplace would see journey claims under the SRC Act returning to pre-2007 levels. We queried this assumption, noting that given the extensive use of flexible work-from-home arrangements in place today, the average worker would be making fewer trips to and from work than 15–20 years ago. Taylor Fry agreed and updated its assumptions to reflect the higher prevalence of work-from-home arrangements.[27]

Taylor Fry was also asked to estimate the impact of providing compensation for injuries sustained when a worker is directed, expected or expects to resume work at home. This also was challenging to estimate because of a lack of data, and because we had no clear definitions of 'expected' or 'expects to'.

Taylor Fry assumed that '70% of Commonwealth agency workers regularly resume work once they return home at the end of the day on any given day', defining regularly as 'half of the time'.[28] While Taylor Fry could not find evidence of this behaviour, they estimated the impact by examining the prevalence of white-collar employment.[29]

In seeking this costing, we assumed it would cover situations such as when a worker leaves the workplace early and completes the remainder of the day's work at home. While we are concerned that Taylor Fry's 70% assumption may have overestimated the cost of this reform, we had no alternative assumption to confidently put forward.

There were also other challenging grey areas, such as under what circumstances a worker would be entitled to claim they were 'expecting' to work from home.

Where a worker is directed to resume work at home, Taylor Fry assumed the cost would be negligible, as this was already covered by the SRC Act. However, it noted that this assessment was uncertain due to the lack of clarity on the existing legislative position, which makes its application difficult to measure.[30]

To address these issues, we have recommended that clear guidelines be established under the new SRC Act as to when a worker is considered to be 'within employment' while working from home, to reduce ambiguity and claim disputation (Recommendation 10).

Removing delegated claims management

In Chapter 4, we outline the history of and arrangements related to delegated claims management (DCM) and recommend the ability for Comcare to delegate its claims management functions and powers to premium-paying agencies is not replicated in the new SRC Act. Taylor Fry was asked to cost the impact of this.

[27] Taylor Fry report, p 23.
[28] Taylor Fry report, p 23.
[29] Taylor Fry report, p 23.
[30] Taylor Fry report, p 23.

Taylor Fry informed us of the challenges it faced with this exercise.[31] It analysed the perceived impact of DCM on Services Australia and the Australian Taxation Office (ATO) and their claims managers when DCM was introduced, and then inferred the impact of its reversal.[32] However, Taylor Fry acknowledged that 'this approach produces an uncertain estimate because of conflating effects that may affect historical observation, but it is the best approach to produce a reasonable best estimate of the impact'.[33]

Taylor Fry estimated that removing DCM would increase scheme annual costs by $30.9 million, or 5.7%.[34] It noted that this impact is largely a 'change in claims management practices',[35] although the nature of these changes to practices was not known to Taylor Fry and could not be detailed.

In developing these costings, Taylor Fry examined changes in claims received, claims acceptance ratios and claims payments for Services Australia and the ATO over the past decade, comparing these to changes experienced by other premium payers during the same period (see Table 13).[36] Its estimates were primarily based on claims payments, as they are the most closely related to annual incurred costs.[37]

The lack of information on claims management practices made it challenging for us to understand the different performance of DCM agencies compared to all premium-paying agencies and between the ATO and Services Australia. Taylor Fry noted that Services Australia data improved its confidence that the fall in claims payments was related to 'claims determination and claims management practices' under DCM, but the ATO experience reduced its confidence.[38]

Table 13: Observed changes in claims experience before and after delegated claims management

Cohort	Claims received	Claims accepted	Acceptance ratio	Claim payments
Other premium payers	−35%	−45%	−13%	−21%
Services Australia	−37% (1.1x)	−67% (1.5x)	−40% (3.2x)	−58% (2.7x)
ATO	−76% (2.2x)	−94% (2.1x)	−69% (5.4x)	−76% (3.6x)

Table 13 shows the fall in the acceptance ratio relative to other premium payers was 3.2x for Services Australia and 5.4x for the ATO, which, according to Taylor Fry, suggests far fewer claims received are accepted under DCM.[39]

[31] Taylor Fry report, p 61.
[32] Taylor Fry report, p 61.
[33] Taylor Fry report, p 61.
[34] Taylor Fry report, p 65.
[35] Taylor Fry report, p 61.
[36] Taylor Fry report, p 64.
[37] Taylor Fry report, p 61.
[38] Taylor Fry report, p 64.
[39] Taylor Fry report, p 64.

In its modelling, Taylor Fry did not assume more claims would be received if DCM was removed.[40] However, there is some uncertainty around this assumption. We heard during consultations, including during TRG meetings, that DCM may lead to claims suppression. The Monash user-experience study also highlighted concerns with suppression where employers are the 'gatekeepers' to workers' compensation.[41]

Removing step-downs

In Chapter 5, we outline the step-down provisions under the SRC Act and recommend at least partial or potentially full removal of step-downs. Taylor Fry was asked to cost different models for changes to step-down provisions, including their complete and partial removal, as well as an increase (Table 14).

Table 14: Estimate of impact on annual costs incurred for changes to step-down provisions

Reform	Commonwealth agencies	ACT public sector agencies	Other self-insured licensees	Total Comcare scheme
R76 Removal	↑ $48.6M (17.4%)	↑ $8.6M (16.2%)	↑ $27.6 (13.4%)	↑ $84.9M (15.8%)
R76a	↑ $3.8M (1.4%)	↑ $0.7M (1.3%)	↑ $2.2M (1%)	↑ $6.6M (1.2%)
R76b	↑ $18.1M (6.5%)	↑ $3.2M (6%)	↑ $10.3M (5%)	↑ $31.6M (5.9%)

Our Recommendation 76 is to remove all step-downs or, if the cost of doing so is unacceptable, remove step-downs where:

1. a worker has made themselves available and an employer has refused or been unable to provide suitable duties or
2. the worker has been retired (whether voluntarily or not) due to injury.

Taylor Fry advised of the challenges in reliably estimating the partial removal of step-downs for workers not provided with suitable duties (recommendation 76a), as the available data within Comcare was insufficient to identify employers who have been unable to provide suitable employment. Based on conversations with Comcare, Taylor Fry used the removal of step-downs for 10% of incapacitants as a reasonable illustration to reflect the level of unused capacity among workers.[42]

Recommendation 76b removes step-downs for workers who have been terminated or medically retired due to the absence of suitable duties or total and permanent incapacity. Taylor Fry advised that removing step-downs in these circumstances may encourage some workers to pursue retirement earlier, rather than remain on reduced payments. Taylor Fry illustrated the sensitivity of this impact by

[40] Taylor Fry report, p 62.
[41] Monash user-experience study, p 19.
[42] Taylor Fry report, p 48.

removing step-downs for these workers from 45 weeks of incapacity, rather than from the date of their retirement, and estimated this could result in up to a 13.6% increase in incapacity payments.[43]

It is important to note that in this example a worker cannot simply 'retire'; they would have to be medically retired out of the Commonwealth public service. For workers of licensees, 'medical' retirement and the potential entitlement to top-up incapacity payments may require satisfying their industry superannuation definition of being 'totally and permanently' unable to undertake any employment.

Table 14 also shows the estimated impact when step-downs are removed, with claimants compensated at 100% of NWE less actual earnings, regardless of how many hours they have worked or if they did not work. Not surprisingly, this was the most expensive option.

We think further consideration should be given to removing the step-down provisions, including additional assessment of whether the benefits of improved worker wellbeing and productivity may offset the additional financial cost to the scheme.

An important question here is the effectiveness of step-downs. Both Taylor Fry and the literature review cite a 2020 Monash University paper, 'Step-downs reduce workers' compensation payments to encourage return to work. Are they effective?', which concluded that step-downs are generally ineffective as a return to work policy initiative.[44]

Monash University's 2020 paper said that while step-downs were promoted in Australia and around the world as an incentive for claimants to return to work, there was 'little direct empirical evidence to support this claim, and that which exists is generally inconclusive'.[45]

The paper said that, while it is likely some workers' compensation recipients anticipate step-downs and exit the system early to avoid the reduction in income, 'the effects were small and suggest step-downs have marginal practical significance'.[46] It also said that cuts in benefits may induce a negative psychological reaction in some claimants and lead to a scheme exit that is neither a return to work nor an alternative that improves financial wellbeing.[47]

The paper suggested 'policymakers may need to reconsider step-downs as a component of scheme design, or justify them according to their original purpose, which was to save costs'.[48]

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[43] Taylor Fry report, p 48.
[44] TJ Lane et al., 'Step-downs reduce workers' compensation payments to encourage return to work: are they effective?', 2020, 77(7), *Occupational and Environmental Medicine*, p 476.
[45] TJ Lane et al., 'Step-downs reduce workers' compensation payments to encourage return to work: are they effective?', 2020, 77(7), *Occupational and Environmental Medicine*, p 470.
[46] TJ Lane et al., 'Step-downs reduce workers' compensation payments to encourage return to work: are they effective?', 2020, 77(7), *Occupational and Environmental Medicine*, p 470.
[47] TJ Lane et al., 'Step-downs reduce workers' compensation payments to encourage return to work: are they effective?', 2020, 77(7), *Occupational and Environmental Medicine*, p 476.
[48] TJ Lane et al., 'Step-downs reduce workers' compensation payments to encourage return to work: are they effective?', 2020, 77(7), *Occupational and Environmental Medicine*, p 470.

We also note that some TRG participants said the burden (cost) of step-downs is currently borne by injured workers, and given the literature shows step-downs do not improve return to work outcomes, we think there is also a need to be clear about the policy rationale for step-downs.

Workers exiting the scheme

In Chapter 6, we note that the SRC Act limits access to lump sums as mechanisms to exit the scheme. To address this, we have recommended removing the common law cap for non-economic loss (Recommendation 95), the introduction of a system of commutation (Recommendation 106), and an increase in the compulsory redemption amount (Recommendation 107). Taylor Fry was asked to examine the costing implications of a range of reform options for scheme exit via redemption, commutation and common law. Because the cost implications of our common law recommendation are unlikely to be material,[49] the main focus of the following discussion is scheme exit via commutation.

Experiments

Taylor Fry conducted four 'experiments' using scheme data to inform its costing methodology. These experiments were designed to illustrate how the introduction of various scheme exit mechanics could lead to unintended outcomes and to highlight potential changes in claimant behaviour, based on schemes that have more flexible redemption/lump sum and common law benefits than the SRC Act.[50]

The experiments were:

- a prolong injury experiment, exploring the incentive to prolong injury to meet scheme exit eligibility
- an optionality experiment, exploring the exercise of an exit option when the employee believes exit is financially beneficial
- a threshold erosion experiment, exploring how impairment thresholds become easier to attain over time
- a lump sum bias experiment, exploring circumstances where severely injured workers may be motivated to take a lump sum even if not in their financial interest.[51]

When discussing the threshold erosion experiment, Taylor Fry noted that such worker behaviour could result from changing societal expectations, strained scheme resources and/or other factors related to scheme exit negotiation, such as an increased adversarial relationship with the employer and/or insurer, contributing to relationship breakdown and/or secondary psychological conditions. Noting the cost focus of actuarial modelling, these causes were not further explored.[52]

While this may be appropriate for the purposes of modelling, in practice it is important to understand the underlying causes of such behaviour. Better outcomes are more likely if the scheme is not viewed as adversarial, and workers are not assumed to manipulate the scheme for benefit. The qualitative

[49] Taylor Fry report, p 86.
[50] Taylor Fry report, p 155.
[51] Taylor Fry report, p 156.
[52] Taylor Fry report, p 156.

evidence suggests that if such behaviour is perceived to be occurring, the best way of addressing it is to remedy the underlying causes. When all scheme participants – workers, employers and treating practitioners – believe that a scheme is fair, they are more likely to act cooperatively and collaboratively. Workers who perceive they have been dealt with fairly have better health outcomes, including faster recovery.[53]

Taylor Fry advised that our recommended option of removing the statutory limit for non-economic loss damages would have negligible impact on annual incurred scheme costs because, among other things, the frequency of claims that are at risk of breaching the current statutory limit is less than one claim per year for Commonwealth agencies.[54]

Commutations

We asked Taylor Fry to estimate the effect on annual incurred scheme costs of a number of commutation options.[55]

Taylor Fry costed an option based on a model of unrestricted negotiated settlements, as well as options based on the structure of commutations in New South Wales, Victoria and Western Australia. A range of assumptions were applied for each, including eligibility thresholds, tax treatment and potential claimant behaviour. Taylor Fry concluded that the impact estimates are highly uncertain.[56]

Taylor Fry queried whether tax would be payable by workers on the lump sums they receive, because cost estimates under each option would be materially higher if payments did attract income tax.[57]

However, we consider that, consistent with ATO rulings, current redemptions under the SRC Act that allow for medical payments to continue are taxed.[58] We are proposing this type of redemption be replicated in the new Act.

We are also proposing a form of commutation where lump sum payments will cover all the injured worker's rights and see them completely exit the scheme. Consistent with the ATO ruling, we are assuming these lump sums would not be assessable income.[59]

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[53] Australasian Faculty of Occupational and Environmental Medicine, *It Pays to Care – A values and principles based approach,* 2022, Royal Australasian College of Physicians.
[54] Taylor Fry report, p. 86.
[55] Taylor Fry report, p 79.
[56] Taylor Fry report, p 80.
[57] Taylor Fry report, p 77.
[58] Australian Taxation Office, *Income tax: is a payment, being a partial commutation of weekly compensation payments, assessable income?* (TD 93/3, 21 January 1993), [4].
[59] Australian Taxation Office, *Income tax: is a payment, being a partial commutation of weekly compensation payments, assessable income?* (TD 93/3, 21 January 1993), [5].

Table 15: Estimate of impact on annual costs incurred for commutation in isolation

Reform	Commonwealth agencies	ACT public sector agencies	Other self-insured licensees	Total Comcare scheme
Unrestricted	↑ $15M (5%)	↑ $3M (6%)	↑ $7M (4%)	↑ $25M (5%)
NSW	↓ $3M (1%)	negligible	↑ $4M (2%)	negligible
VIC	negligible	negligible	negligible	negligible
WA	↑ $13M (5%)	↑ $3M (6%)	↑ $15M (7%)	↑ $31M (6%)

It is important to note that this modelling does not take into account the substantial cost savings to the scheme arising from reductions in administrative costs and potential and actual litigation. The health benefits to the worker are also not costed, as these are difficult to quantify and do not form part of scheme costs.

Impact beyond the premium

Taylor Fry noted scheme exits are also likely to have financial impacts beyond the annual incurred costs for the scheme and suggested that they could potentially be substantial depending on scheme design.[60]

These impacts included withdrawals from the Consolidated Revenue Fund (CRF). Taylor Fry advised that scheme exits bring forward the payment of future liabilities and begin to release outstanding claims liability as claimants redeem. This gives rise to the risk that any material level of scheme exits are likely to exhaust Comcare's own Retained Funds and Comcare will need to access the CRF.[61]

They reminded us of the need to understand the financial implications of any policy reform or initiative that a government might consider. However, they also advised that the actual impact would depend on the final scheme design and implementation.[62] We consider that the limitations in our recommendations in this area manage the risk of exhausting Comcare's own Retained Funds.

Conclusion

We were asked by the Australian Government to recommend changes to make the SRC Act fit for purpose for the future.

Taylor Fry costed a number of reform options for us, which informed the drafting of our recommendations. We found their actuarial modelling to be a useful tool for helping us assess the risks of potential changes.

[60] Taylor Fry report, [4.2.4].
[61] Taylor Fry report, p 88.
[62] Taylor Fry report, p 74.

However, we were also aware of the limitations of this modelling. As mentioned earlier, quality data was not always available, and actuarial analysis is not designed to quantify the qualitative impact of future changes to the regulatory and legal environment.

We found that actuarial models produce outputs that appear precise, which may obscure the uncertainty inherent in their assumptions. Unfortunately, this can entrench the status quo when what is needed is change. A model's assumptions need to be properly understood so that their reasonableness can be regularly tested and so it is possible to assess how sensitive a model's outputs, such as costings, are to changes in any individual assumption.

The Monash University reports, with their focus on the best outcomes for injured workers and for all scheme participants, provided qualitative data and insights that were very helpful in building our recommendations. But their data was unable to be fed into the actuarial models.

The lived experience of workers and the traumatic interaction they can have with the Comcare scheme were also powerfully captured in the two case studies in our review. They will leave lasting impressions on us.

We believe a broader and more holistic cost–benefit analysis should be undertaken to assist the government in weighing up the cost of implementing our recommendations against the improved outcomes for workers; the more inclusive and productive workplaces; and the scheme design efficiencies and cost savings that our recommendations aim to deliver, which were unable to be costed using actuarial modelling. It was beyond the scope of our review to put a value on these outcomes in dollars.

Panel recommendation

Recommendation 124

We recommend that when our package of recommendations is costed, before the government makes a decision, it performs a thorough quantitative and qualitative cost–benefit analysis.

Appendices

Appendix A. Panel biographies

Ms Justine Ross (Panel Chair)

Ms Ross brings over 20 years experience in relevant areas of law to the review. Ms Ross was Chief Executive Officer of the Asbestos Safety and Eradication Agency for 5 years from 2018 and has extensive public service legal and policy experience, including in work health and safety, workers' compensation and industrial relations. Ms Ross is a former member of Safe Work Australia and the Safety, Rehabilitation and Compensation Commission, and was appointed as a general member of the Administrative Review Tribunal in December 2024.

Professor Robin Creyke AO

Professor Creyke is an Emeritus Professor at the Australian National University and has extensive practical and academic experience in administrative law. Professor Creyke previously served as Member of the Administrative Review Council of Australia, as a Senior Member of the Administrative Appeals Tribunal, and as a member of the Expert Advisory Group to Guide Reform to Australia's System of Administrative Review.

Mr Gregory Isolani

Mr Isolani has extensive experience as a legal representative in personal injury and workers' compensation matters, including in representing claimants under the Comcare scheme. In 2001, Mr Isolani founded KCI Lawyers, which specialises in military and Commonwealth compensation matters. Mr Isolani has appeared before several Senate and Australian Government committees on military and Commonwealth compensation issues.

Appendix B. Terms of reference

Purpose of the review

The nature of work and workplace injuries and illnesses has changed significantly since the introduction of the Safety, Rehabilitation and Compensation Act 1988 (SRC Act), which underpins the Commonwealth workers' compensation scheme, known as the 'Comcare scheme'. The SRC Act has not been reviewed since 2012, and there has been no substantial legislative reform of the scheme since its introduction.

The Comcare scheme was primarily designed to cover Australian Government employees, with relatively consistent employment conditions, engaged in generally similar types of work. The Comcare scheme now covers more private employees (57 per cent) than Government employees, in a wider range of specialist and high-risk industries. In addition, the scheme has seen a significant increase in claims for psychological injuries and illnesses. This review is an opportunity to identify reforms to improve outcomes for injured employees, and to ensure that the scheme has the flexibility to respond to new and emerging workplace practices, while maintaining its ongoing financial viability. The review will make recommendations to the Government to inform future legislative reform of the SRC Act.

The Comcare scheme

The Comcare scheme provides rehabilitation and workers' compensation arrangements to employees of the Commonwealth Government, the ACT Government, and a number of private corporations who self-insure their workers' compensation obligations under the SRC Act.

Comcare acts as scheme administrator, and as an insurer and claims manager for premium paying scheme employers (the Commonwealth and Commonwealth authorities). The Safety Rehabilitation and Compensation Commission (the Commission) administers some of the regulatory functions of the SRC Act, other than those ascribed to Comcare, and issues and regulates self-insurance licences under the SRC Act.

Review process

The review will be led by an independent panel, appointed by the Minister for Employment and Workplace Relations, and supported by a secretariat team in the Department of Employment and Workplace Relations. The independent panel will draw on research, data, and findings from past reviews, and be supported by specialist advice in areas such as occupational medicine, user-centred design, psychological injury and illness support, and actuarial modelling. The panel will consult with a tripartite reference group representing unions, employers and Government during the review. The panel will also conduct public consultations and engage with key stakeholders, including people with experience of workers' compensation or personal injury and illness claims, such as injured employees

and their unions and legal representatives, as well as advocacy groups, self-insured licensees and their representatives, and Comcare and the Safety, Rehabilitation and Compensation Commission.

Terms of reference

The panel will undertake a comprehensive review of the Comcare workers' compensation framework and make recommendations to Government on improvements to the framework. The recommendations will address how to better support and improve outcomes for employees while ensuring the scheme's future financial viability. The review will consider:

1. **Best practice in workers' compensation**, including:
    a. identification of the key objectives for a workers' compensation scheme that supports employees (including through financial and vocational support) to seek treatment, rehabilitate and return to work, and how these outcomes can be achieved through the scheme's legislative framework; and
    b. how the legislative framework can enable the scheme to respond to current and future workplace challenges, including the rise in reported psychological injuries and illness, an ageing workforce, and changes to working arrangements.
2. **Employees' experience of the scheme**, including:
    a. best practice approaches to early intervention, rehabilitation, vocational support, return to work, and supporting employees with psychological injuries and illnesses, and how the scheme framework can reflect these;
    b. how the legislation can promote a people-centred approach to workers' compensation, which supports employees through their recovery and promotes their wellbeing;
    c. ensuring that the scheme framework does not negatively impact injured employees' health and wellbeing;
    d. optimising return to work outcomes;
    e. how the scheme framework can best support employees with diverse needs and experiences, including consideration of the impact of gender, sexual orientation, and social, racial and ethnic backgrounds; and
    f. how employees with life-altering long-term injuries and illnesses and the families of employees who suffer a serious illness or injury or death, can best be supported under the scheme framework.
3. **Scheme coverage**, including:
    a. whether national private sector employers should have access to the Comcare scheme;
    b. whether 'non-Commonwealth licensees' should continue to have coverage under the Commonwealth Work Health and Safety Act 2011 (WHS Act) in light of substantive national harmonisation of work health and safety laws; and
    c. what a place of work is and what constitutes 'employment' for the purpose of workers' compensation, and when an injury or illness should be compensable under workers' compensation.
4. **Governance arrangements**, including:
    a. best practice governance, regulation and oversight arrangements for the scheme, including regulation and oversight of Comcare, determining authorities, rehabilitation authorities, self-

insured licensees, workplace rehabilitation providers and other providers operating in the scheme;
   b. ongoing financial management and viability of the Comcare scheme; and
   c. social partner involvement and tripartism.
5. **Scheme entitlements**, including:
   a. interactions between workers' compensation payments under the no-fault Comcare scheme and common law and statutory claims and other sources of income or payments, including superannuation, and other compensation schemes;
   b. gaps in coverage that may arise from employees and employers transitioning between Commonwealth and state or territory schemes, employer insolvency, or winding up of a self-insurer;
   c. how entitlements could be structured to better support injured employees and families of employees who suffer injuries and illnesses resulting in deaths, including use of lump sum payments;
   d. use of provisional payments and payment for medical expenses before a claim is accepted;
   e. vocational support and education to support rehabilitation; and
   f. the role of the employer and service providers in rehabilitation and return to work.
6. **Resolving disputes in the scheme**, including:
   a. how arrangements for internal and administrative review can ensure disputes are resolved as quickly, efficiently and fairly as possible, taking into account the impact of disputes on claimants; and
   b. whether terms in the legislation which have been the subject of significant litigation can be clarified.
7. **Scheme administration**, including:
   a. delegated claims management;
   b. how to ensure accurate and timely decision-making on claims;
   c. funding arrangements, including powers to set premiums, licence fees and regulatory contributions;
   d. consideration of legislative gaps or unintended consequences arising from the current legislative framework; and
   e. other technical improvements to streamline the regulatory framework of the scheme.

Out of scope

Obligations under the Commonwealth WHS Act are not within the scope of this review. The WHS Act is based on national model legislation. Responsibility for reforms to the national model WHS Act sits with Safe Work Australia and is subject to agreement by relevant Commonwealth, state and territory ministers.

The review will not make recommendations for reform of other Commonwealth workers' compensation schemes such as the military compensation schemes, the Parliamentary Injury Compensation Scheme (PICS), the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005* (ARC Act) and the Seacare scheme. Evidence of the experience of injured employees and their families and of best practice arrangements in these schemes, as well as recent

reviews of these schemes, may be considered by the review in making recommendations for reform of the Comcare scheme. The final review report will be available for consideration in any future reform of other Commonwealth schemes.

The review will seek feedback from injured workers and their families within and outside the Comcare scheme to inform recommendations for reform to the legislative framework underpinning the Comcare scheme. However, the review will not make findings in relation to workers' compensation schemes other than the Comcare scheme, or findings in relation to individual claims.

Reporting period

A final report on the review's findings and recommendations will be given to Government for consideration within 12 months of the establishment of the independent review panel.[1] Information on how to engage with the review can be found on the department's website at: www.dewr.gov.au.

[1] In early 2025, the Minister for Employment and Workplace Relations agreed to extend the reporting period, allowing an additional 3 months.

Appendix C. Targeted stakeholder consultations

Stakeholder	Date
Aboriginal Hostels Limited	23 January 2025
ACT Government	11 November 2024
AON	23 January 2025
Australian Services Union	7 February 2025
Australian Bar Association	20 November 2024
Australian Chamber of Commerce and Industry	22 November 2024
Australian Council of Trade Unions	21 November 2024
Australian Education Union – ACT Branch	23 January 2025
Australian Federal Police	6 February 2025
Australian Federal Police Association	13 November 2024
Australian Industry Group	22 November 2024
Australian Lawyers Alliance	25 November 2024
Australian Psychological Society	21 November 2024
Australian Public Service Commission	12 November 2024 and 21 February 2025
Australian Taxation Office	6 February 2025
Coal Services	6 February 2025
Comcare	11 November 2024 and 14 March 2025
Commonwealth Ombudsman	15 May 2025
Community and Public Sector Union	21 November 2024
Department of Defence	14 February 2025
Department of Finance	12 June 2025
Department of Prime Minister and Cabinet	24 January 2025 and 16 May 2025
Department of Social Services	12 November 2024
EML	14 February 2025
Family and Injured Workers Advisory Committee	14 March 2025 and 28 August 2025
Gallagher Bassett	28 February 2025
John Holland	20 November 2024
K&S Corporation Limited	20 February 2025
Law Council of Australia	13 November 2024

Stakeholder	Date
National Indigenous Australians Agency	23 January 2025
National Women's Health Advisory Council	13 November 2024
ReturnToWorkSA	6 March 2025
Royal Australian and New Zealand College of Psychiatrists	21 November 2024
Safe Work Australia	29 November 2024
Safety, Rehabilitation and Compensation Commission	18 November 2024
Safety, Rehabilitation and Compensation Licensees Association	21 November 2024
Slater and Gordon	25 November 2024
State Insurance Regulatory Authority (NSW)	29 May 2025
Thales Australia	6 March 2025
WorkCover WA	14 February 2025
Workplace Incidents Consultative Committee (Vic)	22 November 2024
WorkSafe Victoria	12 December 2024