THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SAFETY, REHABILITATION AND COMPENSATION LEGISLATION AMENDMENT BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Senator the Honourable Eric Abetz)
SAFETY, REHABILITATION AND COMPENSATION LEGISLATION AMENDMENT BILL 2014

OUTLINE

Consistent with the Government’s deregulation agenda, the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (the Bill) will reduce the cost of the regulatory burden on the economy by implementing recommendations of the Review of the Safety, Rehabilitation and Compensation Act 1988 (the Review) by Mr Peter Hanks QC and Dr Allan Hawke AC commissioned by the former Government in 2012.

The Safety Rehabilitation and Compensation Act 1988 (the Act) provides compensation and rehabilitation support to injured Australian Government and Australian Capital Territory employees, as well as employees of private corporations who hold a licence under the Act (licensees) (the Comcare scheme).

The Act establishes Comcare and the Safety, Rehabilitation and Compensation Commission (the Commission) as regulators of the Comcare scheme. Comcare also has responsibility for regulation of the Commonwealth Work Health and Safety Act 2011, which prescribes the work health and safety requirements for employers and employees covered by the Act.

The Act also applies to members of the Australian Defence Force who were injured before 1 July 2004 during non-operational service. The Department of Veterans’ Affairs administers those claims on behalf of the Military Rehabilitation and Compensation Commission.

The Bill will implement recommendations made by the Review relating to self-insurance through the introduction of a simple ‘national employer’ test for determining whether a corporation can join the Comcare scheme. This, and the introduction of the concept of group licences and ensuring new single and group licensees are subject to one work, health and safety regulator will combine to reduce the regulatory burden on business.

These changes will assist in reducing unnecessary and ineffective red tape for business by broadening the range of corporations that can seek to enter the Comcare scheme and allowing multi-state employers to reduce their compliance costs for maintaining workers’ compensation coverage.

Allowing the Commission to grant a single licence for self-insurance through the Comcare scheme for a related group of companies, instead of each company applying for a series of single licences as is currently provided for in the Act, will achieve efficiencies for those corporations. Costs will also be reduced by removing injuries that occur in circumstances outside the control of the employer from the coverage of the Comcare scheme.

The Government is focused on building a stronger and more prosperous economy. The Bill will assist in this aim by reducing the regulatory impact on the economy by $32.8 million each year for the next 10 years. Savings to business generated from the Bill could be used to invest in more jobs within an enterprise.

The Bill will make amendments that:

- remove the requirement for the Minister to declare a corporation to be eligible to be granted a licence for self-insurance, while retaining the ability for the Minister to give directions to the Commission;
enable corporations currently required to meet workers’ compensation obligations under two or more workers’ compensation laws of a State or Territory to apply to the Commission to join the Comcare scheme (the ‘national employer’ test);

allow a Commonwealth authority that ceases to be a Commonwealth authority to apply directly to the Commission for approval to be a self-insurer in the Comcare scheme and be granted a group licence if the former Commonwealth authority meets the national employer test;

enable the Commission to grant group licences to related corporations;

make consequential changes to extend the coverage provisions of the Work Health and Safety Act 2011 to those corporations that obtain a licence to self-insure under the Act; and

exclude access to workers’ compensation where:

(i) injuries occur during recess breaks away from an employer’s premises; or

(ii) a person engages in serious and wilful misconduct, even if the injury results in death or serious and permanent impairment.
FINANCIAL IMPACT STATEMENT

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

Regulation Impact Statement

Department of Employment

February 2014
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1. Background

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

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

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

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

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

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

¹ Comcare Annual Report 2012-2013
Stage 1: Ministerial Declaration

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

a) ongoing Commonwealth authorities; or

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

are able to apply for a licence.

Stage 2: Assessment by the SRCC

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

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

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

In 2011, the Model Work Health and Safety Act provided model laws to be enacted in each jurisdiction to harmonise work health and safety laws across Australia. The Commonwealth has enacted the WHS Model laws. Under the Commonwealth WHS laws, new entrants to the Comcare scheme will not be covered by the Commonwealth WHS regime. This limitation was introduced in anticipation of national harmonisation of work health and safety laws. However, two states, Victoria and Western Australia have not adopted the model work health and safety laws, with Queensland recently considering amendments to the model laws. Hence, currently any new licensee to the Comcare scheme will have to retain coverage and comply with the WHS laws of each jurisdiction in which they operate.
Corporations operating and employing in two or more states and territories are required to maintain workers’ compensation cover in each jurisdiction in accordance with each state or territory’s workers’ compensation legislation. Corporations are also required to comply with WHS laws in each state and territory and deal with each jurisdictional WHS regulator.

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

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

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

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

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

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Workers’ Compensation and Occupational Health and Safety Frameworks (2004 Productivity Commission Report), was also examined during this review.

Most recently in 2012-2013, a review of the SRC Act (SRC Act Review) was undertaken by Mr Peter Hanks QC and Dr Allan Hawke AC. Mr Hanks reviewed the SRC Act’s workers’ compensation benefit structure; rehabilitation and return to work provisions and Dr Hawke reviewed the Comcare scheme’s performance, in particular the governance and financial frameworks.

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

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

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

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

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

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

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

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

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

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\(^3\) ABS 8165.0 - Counts of Australian Businesses, including Entries and Exits, Jun 2003 to Jun 2007
\(^4\) The ABS definition of a large employing business is a business employing 200 workers or more
\(^5\) This (June 2007 publication) is the most recent ABS data that lists whether businesses operate in more than one state, and provides a break down on the number of states in which businesses operate. This data is no longer collected
2.1 Compliance costs and regulatory burden for multi-state corporations

According to the 2004 Productivity Commission Inquiry, multi-state employers face a problem of increased costs of compliance, sometimes amounting to millions of dollars a year, as a result of workers’ compensation coverage and OHS obligations in multiple jurisdictions. The report highlighted some estimates of the direct costs of multiple schemes:7

- **Optus** (sub. 57) estimated that, if it received a single national self-insurance licence, it would expect savings of up to $2 million per annum of its $6 million annual workers’ compensation costs. It estimated (sub. 134) that the cost of complying with multiple workers’ compensation and OHS arrangements adds about 5 to 10 per cent to the cost of workers’ compensation premiums.

- **CSR** (sub. 109) estimated the cost of maintaining and renewing five self-insurance licences at over $700 000 per annum, compared to $200 000 for a single licence.

- **Insurance Australia Group** (sub. 89) estimated that the existence of multiple schemes added $10.1 million to the (once-off) cost of setting up a single national IT platform. In total, it estimated that having to comply with multiple jurisdictions adds about $1.7 million to IT costs annually. Further, it estimated that a national scheme could offer overall operating cost savings to the group of $1.2 million per annum and reduce actuarial costs by $400 000 per annum.

- **BHP Billiton** (sub. 110) commented that it cost in the vicinity of $50 000 to purchase a system to manage and supply information for each of the jurisdictions.

- **Skilled Engineering**, (sub. 177) estimated that the annual cost saving from operating under a single set of national OHS and workers’ compensation rules would be in excess of $2.5 million, or some 15 per cent of the company’s annual costs of OHS and workers’ compensation.

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

2.2 Inequity in benefits for workers

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

The 2004 Productivity Commission Inquiry recognised that having multiple schemes across the different jurisdictions instead of the one scheme under a national framework meant that injured or ill employees of a multi-state employer could receive different benefits for the same type and

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8 Ibid – page 20
severity of injury depending upon the jurisdiction involved and that mobile workers are also faced with issues of differences in coverage and differences in the allocation of benefits.\textsuperscript{9}

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

2.3 Group licences

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

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

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

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

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

\textit{The multiplicity of OHS and workers compensation arrangements, their divergent elements and their constant change impose a significant compliance burden and cost, particularly on multi-state employers. They also present problems for an increasingly mobile workforce…}

\textsuperscript{9} Ibid – page 23
...Whether, in practice, cross-border problems arise in any numbers is, in some ways, a secondary issue. The fact is that subtle differences in wording open the opportunity for different interpretations and adds confusion and uncertainty for business...

Optus estimated that the cost of complying with multiple OHS and workers’ compensation arrangements adds about 5 to 10 per cent to its workers’ compensation premiums.\(^\text{11}\)

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

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

2.5 Off-site recess breaks

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

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

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

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

\(^\text{12}\) Ibid – page 186


2.6 Serious and wilful misconduct

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

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

a) if an employee sustains an injury because he or she voluntarily and unreasonably submitted to an abnormal risk of injury (subsection 6(3));

b) if the injury is intentionally self-inflicted (subsection 14(2)); or

c) if an injury is caused by the serious and wilful misconduct of the employee (Subsection 14(3)).

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

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

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

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

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

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

4.1 Option One – Maintain the status quo

4.1.1 Licensing process

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

4.1.2 Group licences

With the status quo, those corporations with a number of wholly owned subsidiaries or entities would need to apply and be assessed individually, firstly by the Minister for a declaration of eligibility to apply and secondly by the SRCC for a licence for each entity within that group.

As a result a group could have some companies’ eligible to apply and some not.

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

4.1.3 Work health and safety

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

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

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

4.2.1 Licensing process

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

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

4.2.2 Group licences

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

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

4.2.3 Work health and safety

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.1 Option One – Maintain the status quo

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

5.1.1 Licensing under Option One

Benefits of licensing arrangements as at the status quo

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

Costs of licensing arrangements as at the status quo

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

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

It was estimated by Insurance Australia Group (IAG) in their submission (sub. 89), that having to comply with multiple jurisdictions adds about 1.7 million to IT costs annually while given access

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to a single national system for workers’ compensation and work health and safety, their direct cost savings would be as high as $4.0 million per annum.\textsuperscript{14}

BHP Billiton (sub 110) submitted to the Productivity Commission.\textsuperscript{15}

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

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

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

\textbf{5.1.2 Group licences under Option One}

\textbf{Benefits of the lack of group licence arrangements as at the status quo}

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

\textbf{Costs of the lack of group licence arrangements as at the status quo}

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

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

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

\textsuperscript{14}Ibid – page 19
\textsuperscript{15}BHP Billiton Limited submission to 2004 Productivity Commission Inquiry into National Workers’ Compensation and Occupational Health and Safety Frameworks – page 3
5.1.3 Work health and safety under Option One

Benefits of WHS arrangements as at the status quo

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

Costs of WHS arrangements as at the status quo

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

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

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

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

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

> Workers’ Compensation and OH&S legislation is becoming increasingly complex as regulation increases. This has the effect of:

\(^{17}\) Ibid – page 20
- Consuming resources due to the degree of staff specialisation required for each set of regulations. These resources could otherwise be directed toward accident prevention.
- Prevents the establishment of national best practice, reducing the effectiveness of internal systems.
- Increases the risk to the company of non-compliance.
- Adds costs to the company. (sub. 177, p. 6).

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

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

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

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

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

5.2.1 Licensing under Option Two

Benefits of licensing arrangements under Option Two

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

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\(^{18}\) Comcare Review 2008 – submissions by K&S Freighters and John Holland Pty Limited

\(^{19}\) Explanatory Memorandum to the OHS and SRC Legislation Amendment Bill 2005
Enabling multi-state corporations to access the Comcare scheme will allow corporations to offer equity in compensation benefits for their employees working in different jurisdictions and afford the corporations the opportunity to significantly reduce their workers’ compensation and WHS compliance costs, thereby enjoying greater efficiencies and increased productivity.

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

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

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

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

Opening up the Comcare scheme to multi-state corporations will provide equity and consistent coverage for employees working for that corporation no matter which jurisdiction the business operates in. Other potential benefits to employees of being covered under the one national system for workers’ compensation will be that more attention could be given to safety and rehabilitation prevention activities rather than as currently, diverted to compliance with different
Rather than being proactive and developing better prevention and implementation strategies, internal safety management staff must spend time training and researching jurisdictional differences.

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

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

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

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

Costs of licensing arrangements under Option Two

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

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

In its submission to the 2004 Productivity Commission Inquiry, Optus estimated savings of $2.0 million per annum under a national licence scheme with a minimal saving in year one stating that the first year would need to fully provide for claims and a prudential margin.
The impact on the Commonwealth regulator, Comcare, is considered minimal, as confirmed in its submission to the Comcare Review 2008. In their submission Comcare stated:\textsuperscript{25} 

\textit{A model is already in place to address the need for ongoing human and financial resources in response to:}

- growth in the size of the Comcare scheme
- any changes in the nature of its coverage including the geographical location of the entities regulated, and
- the industry types and risk profiles of the entities regulated.

Comcare went on to say:\textsuperscript{26} 

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

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

\textbf{Impact of Option Two on remaining employers and state schemes}

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

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

\textsuperscript{24} Optus submission to the 2004 Productivity Commission Inquiry into National Frameworks for Workers’ Compensation and Occupational Health and Safety
\textsuperscript{25} Comcare’s submission to the Comcare Review 2008 – 71 - page 21
\textsuperscript{26} Comcare’s submission to the Comcare Review 2008 – 73 - page 21
The actuarial analysis undertaken for the Productivity Commission Inquiry confirmed that cross-subsidies are not expected to effect the states and territories in the privately underwritten schemes and the exit of large employers should have a relatively neutral impact on the premiums for the remaining companies in the publicly underwritten schemes.\(^{28}\)

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

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

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

\[ \text{...Even assuming that all eligible employers exit and cross subsidise the scheme at the rate of 30 per cent of their premiums, the average premium increase is 3.6 per cent...} \]

Actuarial analysis of the Victorian WorkCover Authority (VWA) data considered the impact of broadening access to national self-insurance by removing the ‘competition’ criteria and concluded:\(^{30}\)

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

In its assessment of current self-insurers for the 2004 Productivity Commission Inquiry, the actuarial reports found that even though national self-insurance in the smaller schemes as that in

\(^{28}\) Ibid – page 435  
\(^{29}\) Ibid - page 433  
\(^{30}\) Ibid – page 455
Tasmania could result in increases in the licence fee for the remaining state self-insurers, the impact on the larger schemes would not be as great.\(^{31}\) Provided sufficient state-based self-insurers remain, they are likely to cover the fixed costs of regulation while the service requirements (and hence scheme costs) are likely to reduce in a similar proportion to the number of self-insurers by reduction in the obligation to regulate, monitor and report on self-insurers under the legislation.

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

Providing information on their administration costs, the VWA reported:\(^{33}\)

\[
...if all eligible organisations elect to transfer to national self-insurance...the proportion remaining is a similar order of magnitude to that previously assessed for Tasmania...
\]

\[
...it is expected that the cost of supervising self-insurers will decrease in proportion to the number of remaining self-insurers and is unlikely to affect the finances of the scheme...
\]

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

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

**Impact on employees**

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

Workers’ compensation benefit schedules differ across the various jurisdictions. The 2004 Productivity Commission report found that variations in benefits are only one element of the many differences among jurisdictions and that a relative disadvantage in one element of a

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\(^{32}\) Ibid – page 127

\(^{33}\) Ibid – page 456

\(^{34}\) Ibid – page 448
scheme may be offset, to varying degrees, by advantages in other elements.\textsuperscript{35} The Productivity Commission did not consider that equality of benefits, assessed in isolation from other scheme elements, necessarily represents a disadvantage of multiple jurisdictions.\textsuperscript{36}

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

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

\textbf{Impact of Option Two on small business}

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

The Productivity Commission found:\textsuperscript{39}

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

\textbf{Impact of Option Two on the Commonwealth}

Removal of the competition test and consequent broadening of the Comcare scheme to allow national employers to apply for a self-insurance licence under the Comcare scheme, will place the Commonwealth as the ‘insurer of last resort’ if any of these large corporations becomes

\begin{flushright}
\textsuperscript{36} Ibid - page 23  
\textsuperscript{37} Ibid - page 34  
\textsuperscript{38} Ibid - page 115  
\textsuperscript{39} Ibid – Overview Chapter
\end{flushright}
insolvent or if bank guarantees are found insufficient or if reinsurance policies are found to be inadequate to meet outstanding liabilities. A similar threat exists for each of the State jurisdictions as well and the risk of these provisions proving to be inadequate are minimal as the protection provided in meeting any outstanding liabilities by bank guarantees and reinsurance policies are well established financial instruments used across the jurisdictions.

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

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

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

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

5.2.2 Group licences under Option Two

Benefits of group licence arrangements under Option Two

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

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

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

The SRC Act Review recommended that:

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

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

Costs of group licence arrangements under Option Two

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

5.2.3 Work health and safety under Option Two

Benefits of WHS arrangements under Option Two

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

Costs of WHS arrangements under Option Two

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

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

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

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

5.3.1 Licensing under Option Three

Benefits of licensing arrangements under Option Three

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

Costs of licensing arrangements under Option Three

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

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

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

Benefits of group licence arrangements under Option Three

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

Costs of group licence arrangements under Option Three

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

5.3.3 Work health and safety under Option Three

Benefits of WHS arrangements under Option Three

The opportunity for national employers that apply for self-insurance under Comcare, have coverage under the Commonwealth’s national work health and safety regime assists businesses with reduction in regulatory burden and simplification of operations for the business and its employees across different jurisdictions.

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

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

Similarly, Optus42 estimated that the cost of complying with multiple OHS and workers’ compensation arrangements adds about 5 to 10 per cent to workers’ compensation premiums and Woolworths43 stated that it could save approximately $400 000 per annum if it could maintain a single OHS management system.

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42 Ibid – page 19
43 Ibid – page 21
The 2004 Productivity Commission Inquiry recommended enabling those corporations that are licensed under the SRC Act for workers’ compensation, to elect to be covered by its occupational health and safety legislation too.\textsuperscript{44} The Productivity Commission concluded\textsuperscript{45}...

\begin{quote}
...this would increase the administrative savings for multi-state firms, and enable greater coordination and feedback between the workers’ compensation and OHS regimes...
\end{quote}

\begin{quote}
...In addition, having forms operate under an OHS regime and a workers’ compensation scheme with the same jurisdictional coverage, and with related administrations, would enable improved data monitoring, feedback and reform...
\end{quote}

The Productivity Commission found that:

\begin{quote}
A uniform national regime would make it much more efficient for multi-state employers to ensure that their management and employees understand the one set of requirements and any changes to it. Also, equipment could be moved interstate and not be in contravention of local regulations. Employers could establish a single safety culture, with common associated manuals and procedures, throughout their organisations. Employees could be trained in, and understand, the one set of OHS requirements, irrespective of the locality in which they work.\textsuperscript{46}
\end{quote}

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

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

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

\textsuperscript{44} Ibid – Overview Chapter
\textsuperscript{45} Ibid - page 103
\textsuperscript{46} Productivity Commission Inquiry Report No 27, March 2004 – National Workers’ Compensation and Occupational Health and Safety Frameworks – Overview Chapter
\textsuperscript{47} Ibid - page 21
Benefits to businesses

Obtain nationally consistent OHS arrangements where the corporation operates in multiple jurisdictions; no longer be subject to multiple costs associated with State/Territory OHS legislation compliance; have the benefits of a single integrated prevention, compensation and rehabilitation scheme; and be placed in a competitively neutral environment vis-à-vis other licensees.

Benefits to licensee employees

Greater certainty for employees who work in more than one jurisdiction in relation to their OHS rights and obligations and equity in the enforcement of OHS obligations for employees of corporation across Australia.

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

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

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

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

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

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

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48 Submission to the Comcare Review 2008
49 Submission to the Comcare Review 2008
50 Submission to the Comcare Review 2008
The recently released (May 2012) Productivity Commission research report on *Impacts of COAG Reforms* analysed the impact of the Council of Australian Governments reforms including the recent work to harmonise WHS laws. The report defined the Comcare Scheme ‘as a relatively low-cost means of achieving a national approach for some large multi-state firms (that is, an opt-in approach attractive to business)’.

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

...the OHS reforms through harmonisation do not fundamentally change the way OHS regulation seeks to achieve safety outcomes...

...Instead, they revolve around improving the clarity of provisions, increasing the number of enforcement tools available to regulators and providing a more consistent approach across jurisdictions to onus of proof and union rights to entry. Such changes could increase workplace health and safety through reducing the complexity of becoming familiar with OHS laws, thereby increasing compliance...

The model WHS laws are generally based on current Victorian OHS laws with some considered changes. In fact, the model WHS laws draw on the ‘best’ aspects of pre-harmonised state and territory OHS laws. However, even with harmonised WHS laws across most of the jurisdictions, multi-state employers are faced with the complexity and additional cost of dealing with multiple regulators which is simplified if reporting to a single national regulator as in the Comcare scheme.

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

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

...Western Australia, as mentioned earlier, stated that it was unlikely to adopt certain clauses of the model Act where significant differences existed between the proposed and Western Australian legislation...

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51 Ibid - page 153
52 Ibid - page 169
53 Ibid - page 155
54 The four areas where the Western Australian Government does not support the model OHS laws relate to: the level of penalties; union rights to enter worksites where there is a suspicion of an OHS breach; powers of health and safety representatives to stop work; and the reverse onus of proof for charges of discriminatory conduct.
Victoria’s adoption of the model laws was to be subject to its own review (WorkSafe Victoria 2011). This review was released in April 2012 and suggested Victorian businesses could face additional costs over the next five years under the proposed national laws (Baillieu and Rich-Phillips 2012). Among other things, the report noted that from a Victorian perspective ‘many of the key changes reflect a general approach of the Model WHS [Workplace Health and Safety] laws to prescribe in greater detail the types of risks to be controlled and the nature of controls to be used’ (PricewaterhouseCoopers Australia 2012, p. 5)...

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

**Costs of WHS arrangements under Option Three**

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

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

**Impact on small businesses and their employees**

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

**Costs to Government**

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

**Costs to Comcare**

*Corporations are self-funded and the cost to the SRCC in monitoring the OHS components of the licensing conditions is fully covered by the licensing fees. Hence, administration of the OHS(CE) Act by the regulator is cost neutral.*
5.4 Impact of removal of coverage for off-site recess breaks

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

The Commission recommended:\(^5^5\)

‘coverage for recess breaks and work-related events to be restricted, on the basis of lack of employer control, to those at workplaces and at employer sanctioned events’.

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

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

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

The department has identified reductions in regulatory burden through the proposed legislative amendments to eligibility for workers’ compensation self-insurance and work health and safety cover. These changes will broaden the range of corporations that can seek to enter the Comcare scheme and hence provide a nationally consistent coverage to their employees for workers’ compensation and work health and safety, no matter which jurisdiction the employees work in.

These changes will also lead to a reduction in administrative costs associated with managing compliance requirements and reporting across multiple jurisdictions.

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

According to the ABS data, from 30 June 200756 (most recent) there were 5,876 large57 employing businesses in Australia of which one third (1,959) operate and employ in two or more states. Each of these 1,959 businesses could benefit from the compliance cost savings of the recommended option, and of these the least savings would be afforded to the 420 (20 per cent) businesses which operate in only two states and territories and the greatest savings would be afforded to the approximately 234 (10 per cent) businesses who operate and employ in all eight states and territories.

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

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

The administrative costs estimated by the department are based on the costs identified by multi-state companies operating in multiple jurisdictions as reported in their submissions to the 2004 Productivity Commission Inquiry. These costs have been used in several actuarial assessments

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56 ABS Data Table 80506.0—report from Businesses by Industry Division by Single State/Multi-State, by Employment Size Ranges, 2006–07. This (June 2007 publication) is the most recent ABS data that lists whether businesses operate in more than one state, and provides a break down on the number of states in which businesses operate. This data is no longer collected
57 The ABS definition of a large employing business is one employing 200 workers or more.
and reports such as the Taylor Fry report 2008 and the Deloitte Access Economics report for Safe Work Australia (2009), as they provide the best estimate of administrative costs to businesses.

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

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

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

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

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

As per the ABS data mentioned above, there are 402 (20 per cent) of large employing businesses that operate and employ in five states and territories. Using the assumption that one in five of these businesses may move to the Comcare scheme for workers’ compensation and work health and safety cover, it is estimated that about 80 large employing businesses (with operations in five

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58 CSR Limited Annual Report 2004
60 Ibid
states or territories) will seek coverage under the scheme following the removal of the competition test. It is further assumed in the estimate that on a yearly basis, on average 12 businesses of the 80, would seek a licence under the Comcare scheme. The department and Comcare have received 11 inquiries to date, since the lifting of the moratorium in Dec 2013.

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

6.1 Administrative costs related to licensing

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

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

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

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

\(^ {62}\) Ibid – Overview Chapter.
Table 1: Administrative cost savings for national employers under one workers compensation regime

<table>
<thead>
<tr>
<th>Sector/Cost Categories</th>
<th>Business</th>
<th>Not-for-profit</th>
<th>Individuals</th>
<th>Total by cost category</th>
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<td>$N/A</td>
<td>$N/A</td>
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<td>Total by Sector</td>
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<td>$19,680,000</td>
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Annual Cost Offset

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<th>Agency</th>
<th>Within portfolio</th>
<th>Outside portfolio</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business</td>
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<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Not-for-profit</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Individuals</td>
<td>N/A</td>
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<td>N/A</td>
</tr>
<tr>
<td>Total</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

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

6.2 Costs related to group licensing

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

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

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

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

\textsuperscript{63} Comcare Review 2008 and the SRC Act Review
absence of group licencing leads to an additional administrative burden. In addition to these additional administrative requirements, if one of the group of corporations does not meet the requirements to be declared eligible to seek a licence under the current two stage process, this would create inconsistency for both the group of corporation and its employees in workers compensation coverage provisions across the corporations’ operations.

In its submission to the Comcare Review CBA recommended corporate group licencing would streamline several processes of licencing such as:\(^{64}\)

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

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

6.3 Administrative costs related to work health and safety

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

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

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

\(^{64}\) Submission by the Commonwealth Bank of Australia to the Comcare Review 2008 – page 1
compensation regulator rather than maintaining and renewing five licences - as estimated by CSR Limited in its submission to the Productivity Commission (sub 109).

As mentioned previously, this saving has been attributed by CSR Limited to reduction in administration staff, administration fees and reporting costs.

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

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

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

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

<table>
<thead>
<tr>
<th>Administrative Cost Savings for national employers</th>
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</thead>
<tbody>
<tr>
<td>Sector/Cost Categories</td>
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<td>Administrative Costs</td>
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<tr>
<td>Substantive Compliance Costs</td>
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<td><strong>Total by Sector</strong></td>
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<table>
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<th>Annual Cost Offset</th>
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<tr>
<td>Agency Within portfolio Outside portfolio Total</td>
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<td>Total N/A N/A N/A N/A</td>
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</tr>
</tbody>
</table>

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

6.4 Costs to the remaining employers and state and territory schemes

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

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

*The prudential and financial requirements of licensees mean that the risk to premium payers or the Commonwealth is minimal.*

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

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

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

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

6.5 Regulatory Impact Analysis of other proposed amendments

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

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66 John Holland and K&S Freighters submissions to the Comcare Review 2008
6.5.1 Off-site recess Breaks

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

The Explanatory Memorandum for the Safety, Rehabilitation Compensation and Other Legislation Amendment Bill 2011 estimated that reinstating coverage for off-site recess breaks will cost Comcare $1.7 million for 2010/11 and the same for the forward years (adjusted for indexation of 4.5% p.a.). This cost represented the additional cost for premium funded claims caused by the re-instatement of the off-site recess breaks provision. In 2012-2013, approximately 66 per cent of the total claim costs were attributed to premium payers and 33 per cent were from licensees (i.e. half of those for premium payers). In the absence of a direct estimate of recess claim costs for self-insurance licensees (as their valuation reports do not address this issue) and assuming a consistent ratio of recess claims to that of premium payers, the licensees’ costs are estimated to be 0.5 x the premium claim payment cost. This amounts to approximately $0.85 million per annum in savings for licensees in terms of claims with the removal of coverage for off-site recess breaks.

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

6.5.2 Serious and wilful misconduct

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

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

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

<table>
<thead>
<tr>
<th>Cost Savings</th>
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<td>Administrative Cost savings for national employers under one workers’ compensation regime</td>
<td>$400 000</td>
<td>$N/A</td>
<td>$N/A</td>
<td>$19 680 000</td>
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<td>Administrative Cost savings for national employers under the Commonwealth WHS system</td>
<td>$250 000</td>
<td>$N/A</td>
<td>$N/A</td>
<td>$12 300 000</td>
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<tr>
<td>Administrative Cost savings under Group licences</td>
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<td>$N/A</td>
<td>$0</td>
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<tr>
<td>Substantive Cost savings by removal of coverage for off-site recess breaks</td>
<td>$850 000</td>
<td>$N/A</td>
<td>$N/A</td>
<td>$850 000</td>
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<tr>
<td>Cost savings by removal of coverage for injuries that occur as a result of serious and wilful misconduct</td>
<td>$0</td>
<td>$N/A</td>
<td>$N/A</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total by Sector</strong></td>
<td>$1 500 000</td>
<td>$N/A</td>
<td>$N/A</td>
<td>$32 830 000</td>
</tr>
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</table>

### Annual Cost Offset

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<th>Agency</th>
<th>Within portfolio</th>
<th>Outside portfolio</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>Business</td>
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<td>N/A</td>
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<td>N/A</td>
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<tr>
<td>Not-for-profit</td>
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<td>Individuals</td>
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<tr>
<td>Total</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

- Proposal is cost neutral? * yes
- Proposal is deregulatory * yes
- Balance of cost offsets to be banked $ N/A
7. Stakeholder Consultation

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

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

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

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

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

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

7.1 The SRC Act Review 2012-2013

Consultations commenced at the end of July 2012, and concluded in late December 2012 and included a range of face-to-face and teleconference meetings, and high level workshops to assist the reviewers in making their recommendations. Approximately 44 workshops, meetings and other consultations were held between July and November 2012. Written submissions for the Issues Paper closed on 25 October 2012 and 45 submissions were received.
On publication of the Review report in March 2013, further consultations were undertaken with key stakeholders which included feedback sessions held by the department and written submissions regarding the recommendations in the final report. 40 written submissions were received by the department during April and May 2013. Stakeholders who made submissions and participated in workshops and consultations included workers, employer organisations, unions, insurers, Comcare, Commonwealth government agencies, current licensees under the Comcare scheme and premium payers under the scheme, health practitioner bodies and legal practitioners.

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

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

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

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

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

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

The SRC Act Review noted that opening up entry to the Comcare scheme would reduce red tape and boost productivity for large employers who are required to meet workers’ compensation requirements in up to eight jurisdictions and recommended lifting of the competition test and granting of group licences in the Comcare scheme.

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

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

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

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

- the estimated reduction in premium revenue for the State and Territory schemes from exiting premium-paying employers eligible to self-insure under the Comcare scheme could range from a likely $154 million or 2.7 per cent (if one in five employers exited) to a maximum of $771 million or 13.5 per cent (if all eligible employers exited); and
- as large premium-paying employers in existing schemes tend to be charged experience-rated premiums (and thus, should not in principle be cross-subsidising other employers), their exit should have a relatively neutral impact on the schemes.

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

69 Ibid – page 127
If all eligible organisations elect to transfer to national self-insurance...this proportion (20%) is a similar magnitude to that previously assessed for Tasmania (27%). It is expected that the cost of supervising self-insurers will decrease in proportion to the number remaining self-insurers and is unlikely to affect the finances of the scheme.  

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

The 2008 Comcare Review concluded that:

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

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

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

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

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

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70 Ibid – page 455
72 Taylor Fry report to the 2008 Comcare Review – page 81
the past, and is not likely to meet those required by Comcare, as the regulator for the WHS Act, and the SRCC in the future.

Comcare historically had a non-interventionist approach to work health and safety interventions and enforcement which is due to its former role as solely the regulator for Commonwealth government employees. This has changed over the past decade as Comcare has increased its capacity to regulate non-Commonwealth licensees, including increasing its inspectorate and receiving government directions to increase its monitoring and enforcement activities.

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

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

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

- the WHS Act confers on inspectors a wider range of advisory, issue resolution, and criminal investigative functions, as well as stronger coercive powers, than was provided under previous arrangements. The functions and powers of inspectors are no longer limited to the conduct of an investigation and mandatory issue resolution tasks.
- the WHS Act confers onto Comcare new obligations for licencing and authorising workplace risk mitigation processes such as: lead-based work; asbestos removal; high risk work; underground tanks; etc.
- The WHS Act creates specific due diligence obligations for officers of organisations. These obligations are preventative and proactively engage senior officers to ensure they verify safety management systems are in place and personally engage in their organisations risk management processes.

In response to concerns raised in relation to the number of Comcare field inspectors, the department notes that the rate of 1.0 inspector per 10,000 employees is very close to the national average of 1.1.73 Even though in 2011-12 the number of field active inspectors employed by the Australian Government decreased, there was a substantial increase in the number of ‘Other staff undertaking non-inspectorate activities’. This was due to prevention campaigns and education activities.

Duplication and overlap of WHS enforcement activity is unlikely to be a risk as multiple concurrent duties exist under model WHS laws in both the Commonwealth and state

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73 p. 27 Safe Work Australia Comparative Performance Monitoring Report - October 2013
jurisdictions, and duty holders are only required to meet these so far as is reasonably practicable. Increased education and enforcement is likely to improve safety outcomes rather than cause confusion.

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

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

### 7.2 The Comcare Review 2008

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

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

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

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

In response to the issues raised in consultations about risk to premium payers in the Comcare scheme or to the Commonwealth if employers moved to the Comcare scheme and the likely

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74 p. 27 Safe Work Australia *Comparative Performance Monitoring Report - October 2013*
impacts of corporations exiting the state scheme, the majority of employers, industry association and licensees identified this as a low risk and likely to have no significant impact.

Some of the submissions, primarily those from the unions and legal associations, suggested that the exits presented a significant threat to the viability of state and territory schemes, or would impact negatively on the employers and employees that remained in the scheme. Some of the state and territory governments submitted that as employers in like industry types exit the state or territory schemes, the average premium rating for those industries could rise, thus placing additional premium burden on those employers left in the scheme.

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

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

In examining the financial arrangements for licensees under the Comcare scheme, the Taylor Fry report found that the prudential and financial requirements for licensees are sufficient to reduce the risk to premium payers in the Comcare scheme or to the Commonwealth, to minimal levels. This is further confirmed with the Comcare scheme performance data showing that licensee performance on SRCC scheme performance measures has consistently been better than that of premium payers.

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

**The Productivity Commission concluded that the impact on state and Territories workers' compensation schemes was likely to be small. Some state schemes have introduced exit arrangements to reduce the risk that 'tail' claims left behind when an employer exits to join the Comcare scheme. Consultation with several of the state**

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75 Taylor Fry actuarial report for the Comcare Review 2008 – page 81
76 Ibid - page 80
schemes indicated that they had commissioned actuarial advice in relation to the potential for exits to impact on the financial position of the scheme, and that advice was largely consistent with the conclusions in the Productivity Commission report.  

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

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

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

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

7.3 Consultations for the OHS and SRC Legislation Amendment Bill 2005

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

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

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

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

79 Comcare’s submission to the review of the Comcare scheme

80 Explanatory Memorandum, OHS and SRC Legislation Amendment Bill 2005
7.4 Productivity Commission’s 2004 Inquiry into National Workers’ Compensation and Occupational Health and Safety Frameworks

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

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

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

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


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

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

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

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

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

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

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

The overall budgetary impact for the Government is nil.
9. Implementation and Review

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

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

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014

The Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The Safety, Rehabilitation and Compensation Act 1988 (the Act) provides rehabilitation and workers’ arrangements for Australian Government and Australian Capital Territory employees, as well as employees of a small number of private corporations who hold a licence under the Act (licensees). The Act establishes the Safety, Rehabilitation and Compensation Commission (the Commission) and Comcare as co-regulators of the Act. Comcare also has responsibility for regulation of the Commonwealth Work Health and Safety Act 2011 (WHS Act), which prescribes the work health and safety requirements for employers and employees covered by the Act. This combined work health and safety and workers’ compensation framework is referred to as the Comcare scheme.

In July 2012 the previous government announced the Safety, Rehabilitation and Compensation Act Review (the Review).

The Bill will make amendments that:

- remove the requirement for the Minister to declare a corporation to be eligible to be granted a licence for self-insurance;
- enable a corporation currently required to meet worker’s compensation obligations under two or more worker’s compensation laws of a state or territory to apply to the Commission to join the Comcare scheme (the ‘national employer’ test);
- allow a Commonwealth authority that ceases to be a Commonwealth authority to apply directly to the Commission for approval to be a self-insurer in the Comcare scheme and be granted a group licence if the former Commonwealth authority meets the national employer test;
- enable the Commission to grant group licences to related corporations;
- extend the coverage provisions of the Work Health and Safety Act 2011 to those corporations that obtain a licence to self-insure under the Act; and
- exclude access to workers’ compensation where:
  - injuries occur during recess breaks away from an employer’s premises; or
  - a person engages in serious and wilful misconduct, even if the injury results in death or serious and permanent impairment.
Human rights implications

The Bill engages the following rights:

- The right to social security, including social insurance, under Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR);
- The right to safe and healthy working conditions, under Article 7 of ICESCR;
- The right to privacy, under Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR); and
- The right to work, under Article 6 of ICESCR, in particular the rights of persons with disabilities to habilitation and rehabilitation and to work and employment, under Articles 26 and 27 of the *Convention on the Rights of Persons with Disabilities* (CRPD), respectively.

Right to social security, including social insurance

Article 9 of ICESCR states that the ‘States Parties to the present Covenant recognize the right of everyone to social security, including social insurance’. General Comment 19 by the Committee on Economic, Social and Cultural Rights elaborates on Article 9, stating that the ‘States parties should … ensure the protection of workers who are injured in the course of employment or other productive work’. 82

The Act provides support for employees who been injured at work by way of weekly compensation payments, payment of medical expenses, permanent impairment benefits and other benefits. The Act represents just one avenue of social security that is available when a person is injured in the course of their employment and, where an injury is not covered by workers’ compensation legislation, other safety nets exist to meet medical costs (such as Medicare) and living costs (such as disability support payments).

Changes to the licensing system

In Australia, there are separate but largely comparable workers’ compensation schemes in the Commonwealth, State and Territory jurisdictions. By expanding the licencing scheme under the Act and changing the eligibility criteria for licensees, the Bill will bring more employers, and so more employees, under the Comcare scheme. These employees will be moving from protections under their State or Territory’s workers’ compensation legislation to protections under the Commonwealth legislation. Because there are small variations between the Commonwealth scheme and each State or Territory scheme in terms of quantum of payments, eligibility criteria and claims process, it is possible that employees claiming under the Commonwealth scheme would receive a different amount of compensation than they would under their State’s or Territory’s scheme. However, given that each jurisdiction’s compensation scheme has been designed to provide injured workers with fair, timely and appropriate compensation and

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Statement of Compatibility with Human Rights

rehabilitation, these minor variations are not considered to impact on the human right to social security.

Moreover, the Bill allows for more multi-state employers to reduce their compliance costs by enabling them to access a single jurisdiction workers’ compensation scheme as provided by the Act. Where these employers become licensees, it will ensure that all of their employees benefit from the same compensation rights, regardless of where they are employed within Australia. This will promote the right to social security, by creating equal protection for all the employees across an organisation. Further, the reduction in regulatory burden on large employers will allow these organisations to reallocate resources to programs which promote the right to safe and healthy working conditions and to expanding their business, creating jobs and so promoting the right to work.

Changes to compensation eligibility

Under the Act, compensation is not payable for an injury that was caused by the serious and wilful misconduct of the employee. Currently, this exclusion of eligibility does not apply where the injury results in death or serious and permanent impairment. Schedule 3 of the Bill will remove this exemption, with the result that compensation will not be payable for any injury caused by the serious and wilful misconduct of the employee. These amendments will not apply to defence-related claims, an exemption required to allow for the flexible operation of the Military Rehabilitation and Compensation Commission.

Under the Act, certain injuries are treated as having arisen in the course of employment, making them, prima facie, capable of giving rise to compensation. Currently, an injury occurring during a temporary absence from work during an ordinary recess is treated as having arisen in the course of employment. Schedule 4 amends this so that only injuries occurring during an ordinary recess while at the employee’s place of work will be deemed to have arisen in the course of employment. This has the effect that an injury occurring during an ordinary recess but away from the place of work will not be compensable.

These amendments limit the right to social security, as they narrow the availability of compensation for injuries. However, the amendments are considered to be compatible with the right on two bases.

Firstly, the extent of the limitation is minimal. In the case of Schedule 3, the requirement that the injury be caused by ‘serious and wilful misconduct’ sets a high bar before the exclusion will be engaged. In particular, the term ‘wilful’ requires that the misconduct be more than merely non-accidental; it requires a purpose or intention and an understanding of the risk involved.83

In the case of Schedule 4, the exclusion relates to injuries that occur while the employee is not working and not at the workplace, a narrow category of the injuries currently covered by the Act. Moreover, for both exclusions, the Act represents only one avenue for social security and other

safety nets exist to assist individuals excluded from workplace compensation by these amendments.

Secondly, to the extent that there is a minimal limitation, it is made in pursuit of a legitimate objective and is reasonable, necessary and proportionate. One objective of the amendments in both schedules is to protect employers from liability where the employer has no control over the activities of the employee — either because they are wilfully disobeying instructions or because they are away from the workplace on a break. Another objective is to reflect shifting community expectations about personal responsibility and accountability.

The minimal limitations created on the right to social security to achieve this legitimate objective are reasonable, necessary and proportionate. For Schedule 3 the high threshold of ‘serious and wilful misconduct’ is to be maintained, ensuring that the exception will rarely be applied. For Schedule 4 only a limited category of injuries which are outside the general purpose of the scheme are excluded.

While it is acknowledged that there is a strong presumption that retrogressive measures in relation to social security are contrary to the ICESCR, these measures are being taken as part of reforms to ensure the long term sustainability of the Act’s compensation scheme as well as the effective allocation of finite resources available to promote the right. In this, the limitation is in keeping with the inherent nature of the right to social security.

Right to safe and healthy working conditions

Article 7 of ICESCR provides that everyone has the right to the ‘enjoyment of just and favourable conditions of work, which ensure, in particular … [s]afe and healthy working conditions’.

Changes to the licensing system

The Australian Government workers’ compensation and work health and safety schemes are effectively integrated. By broadening the range of corporations that can seek to enter the Comcare scheme, the Bill will extend a single set of workers’ compensation and work health and safety laws to a greater number of multi-state employers and their employees. These changes positively engage the right to safe and healthy working conditions by extending a consistent set of work health and safety laws to employees regardless of the state or territory in which they are employed and by providing equal access to compensation and rehabilitation regardless of the state or territory in which the injury occurred.

Changes to compensation eligibility

These changes engage the right to safe and healthy working conditions, but do not limit the right. This is firstly because the importance of adhering to work, health and safety laws should not be undermined by the serious and wilful misconduct of employees. Removing compensation for

injuries caused by serious and wilful misconduct will maintain the integrity of work, health and safety laws and this will ensure that all employees continue to enjoy the right to safe and healthy working conditions.

Secondly, compensation coverage for injuries sustained during ordinary recess breaks at the employee’s place of employment will remain in place. Only injuries sustained by employees while away from the workplace and not undertaking activities associated with the employee’s employment or at the request or direction of the employer would not be compensable. The right to safe and healthy working conditions is therefore not limited.

Right to privacy

Article 17 of the ICCPR provides that ‘no one shall be subjected to arbitrary or unlawful interference with [their] privacy, family, home or correspondence’. General Comment 16 by the Human Rights Committee elaborates on Article 17, stating that the ‘gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law’. 85

The Act provides for the process by which claims are lodged and assessed. Included in this process is the power of the ‘relevant authority’ to require a claimant to undergo medical examination (section 57) and request documents or further information (section 58). The ‘relevant authority’ is the organisation responsible for assessing claims; for Commonwealth authorities and entities this is Comcare; for licenced corporations it is the corporation. This vesting of statutory powers to request personal information in private organisations engages the right to privacy.

Changes to the licensing system

By expanding the licencing scheme under the Act and changing the eligibility criteria for licensees, the Bill will bring more employers, and so more employees, under the licensing scheme established by the Act. As a result, for an increased number of employees, the ‘relevant authority’ will be a private organisation. However, under the recently amended Privacy Act 1988, all licenced corporations acting as a relevant authority will be required to comply with the Australian Privacy Principles, set out in Schedule 1 to the Privacy Act. These restrict and regulate the collection, management, use and disclosure and security of personal information, among other things. Because of these protections, the amendments are consistent with the right to privacy.

Changes to compensation eligibility

These amendments do not engage the right to privacy. This is because they only affect whether compensation is payable in particular circumstances, and do not affect any processes that relate to the protection of a person’s privacy.

85 Human Rights Committee, General Comment No 16, Article 17 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation), U.N. Doc HRI/GEN/1/Rev.9 (Vol. 1), [10].
The rights of persons with disabilities to habilitation and rehabilitation and to work and employment

Article 26 of the CRPD requires States Parties to ‘organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of … employment’. Article 27 of the CRPD requires States Parties to ‘safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment’.

The Act establishes obligations for rehabilitation programs for employees who are injured in the course of work. This includes obligations on the relevant employer to provide a rehabilitation program and to take reasonable steps to provide the employee with suitable employment. These obligations engage the rights set out above.

Changes to the licensing system

The creation of a group licence system for group employers will allow large employers to centralise their rehabilitation obligations and capabilities across a corporate group. This will allow large employers to develop a more effective, centralised program for rehabilitating injured workers within the organisation, promoting these rights. Further, the broader range of roles available across large group employers will enable provisions regarding suitable employment for injured workers to function more effectively.

Changes to compensation eligibility

These amendments do not engage these rights. This is because they only affect whether compensation is payable in particular circumstances and do not alter the quality of rehabilitation services to employees injured at work.

Conclusion

The amendments are compatible with human rights because they advance the protection of human rights. To the extent that the amendments may limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Employment, Senator the Hon. Eric Abetz
NOTES ON CLAUSES

In these notes on clauses, the following abbreviations are used:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADF</td>
<td>Australian Defence Force</td>
</tr>
<tr>
<td>MRC Act</td>
<td>Military Rehabilitation and Compensation Act 2004</td>
</tr>
<tr>
<td>the Act</td>
<td>Safety, Rehabilitation and Compensation Act 1988</td>
</tr>
<tr>
<td>the Bill</td>
<td>Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014</td>
</tr>
<tr>
<td>the Commission</td>
<td>Safety, Rehabilitation and Compensation Commission</td>
</tr>
<tr>
<td>the Review</td>
<td>Safety, Rehabilitation and Compensation Act Review by Mr Peter Hanks QC and Dr Alan Hawke AC</td>
</tr>
<tr>
<td>WHS Act</td>
<td>Work Health and Safety Act 2011</td>
</tr>
</tbody>
</table>

Clause 1 – Short title
1. This is a formal provision specifying the short title.

Clause 2 – Commencement
2. The table in this clause sets out when the provisions of the Bill commence.

Clause 3 – Schedule(s)
3. Clause 3 of the Bill provides that an Act that is specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule operates according to its terms.
SCHEDULE 1 – NATIONAL EMPLOYERS ETC.

Part 1 – Amendments

Overview

4. Part 1 of Schedule 1 to the Bill amends the Act to introduce a national employer test for licence eligibility and remove the requirement for the Minister to make a declaration before a licence application can be made. In doing so, the current powers under the Act for the Minister to give directions the Safety, Rehabilitation and Compensation Commission will be retained.

5. Part 1 of Schedule 1 to the Bill also amends the WHS Act to ensure that employers who are granted a licence under the Act are also covered by the WHS Act.

Safety, Rehabilitation and Compensation Act 1988

Item 1 – Subsection 4(1) (definition of eligible corporation)

6. This item repeals the definition of eligible corporation. This term is used in the Act to refer to a corporation that the Minister has declared to be eligible to be granted a licence. As a ministerial declaration is no longer be required before a corporation can make an application to the Commission to be granted a licence, the distinction between a ‘corporation’ and an ‘eligible corporation’ is no longer required.

Item 2 – Paragraph 69(ee)

Item 3 – Subsection 98A(1)

Item 4 – Subsection 98A(3)

7. These items remove the term ‘eligible corporation’ from these provisions. This term, which distinguished between a corporation that the Minister had declared to be eligible to be granted a licence and other corporations, will no longer be used in the Act. These provisions now use the term ‘corporation’ as defined in subsection 4(1).

Item 5 – Section 99

8. This item inserts a definition of the term Australian jurisdiction. This new term is defined to mean a State or a Territory jurisdiction. It is used in the definitions of terms inserted by the Bill of ‘workers’ compensation law’, ‘national employer’ and ‘employer obligations’, which are set out in the new section 100, inserted by items 8 and 9.

Item 6 – Section 99 (definition of eligible applicant)

9. This item repeals the definition of eligible applicant. This term is used to refer to a corporation that the Minister had declared to be eligible to be granted a licence (an ‘eligible corporation’) or to a Commonwealth authority. As a ministerial declaration is not now required before a corporation can make an application to the Commission to be granted a licence, this term is not necessary.
Item 7 – Section 99 (definition of eligible corporation)

10. This item repeals the definition of eligible corporation. This term was used to refer to a corporation that the Minister had declared to be eligible to be granted a licence. As a ministerial declaration is now not required before a corporation can make an application to the Commission to be granted a licence, the distinction between a corporation and an ‘eligible corporation’ is not necessary.

Item 8 – Section 99

11. This item inserts definitions of the terms national employer, and workers’ compensation law for Part VIII of the Act.

12. The definition of national employer directs the reader to the substantive definition of national employer which is set out in the new section 100, inserted by item 9.

13. Workers’ compensation law is defined as being a law of an ‘Australian jurisdiction’ relating to workers’ compensation. The definition of ‘Australian jurisdiction’, inserted into section 99 by item 5, means a State or Territory jurisdiction and does not include the Commonwealth.

Item 9 – Section 100

14. This item repeals section 100 and substitutes a new section 100 and section 100A.

15. Section 100 enables the Minister to declare a corporation to be eligible to granted a licence. This item repeals section 100, as there is no longer a requirement for a ministerial declaration before a corporation can make a licence application. This will streamline the approvals process but will still allow the Minister to give directions to the Commission concerning any matter relating to the grant or issue of a licence. Directions given by the Minister are legislative instruments.

16. By repealing section 100, this item implements recommendation 4.5 of the Review.

17. New section 100 sets out the test to determine if a corporation is a ‘national employer’. New subsection 104(2B), which is inserted by item 12, provides that the Commission must not grant a licence unless the applicant is; a national employer, a Commonwealth authority, a corporation that was previously a Commonwealth authority, or a corporation that held a licence immediately before the commencement of this Schedule of the Bill. Being a ‘national employer’ is the only relevant criterion for satisfying the new subsection.

18. The concept of a ‘national employer’ replaces the current requirement that the corporation must be carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority.

19. The new test provides that a corporation that operates in two or more states or territories, and thus has workers’ compensation obligations under two or more different State or Territory workers’ compensation laws, will be a national employer. Such a corporation, assuming it satisfies the other requirements of the Act, is now able to obtain a licence under the Act, bringing all of its employees under a single workers’ compensation jurisdiction.
Consequential amendments to the WHS Act ensure that these employees are also brought under a single work health and safety scheme.

20. New subsection 100(1) provides that, for the purposes of Part VIII, a **national employer** is a corporation that has employer obligations in two or more Australian jurisdictions. The definition of Australian jurisdiction, which is inserted into section 99 by item 5, provides that an Australian jurisdiction is a State or a Territory. The Commonwealth is not included in the definition of ‘Australian jurisdiction’.

21. New subsections 100(2) and 100(3) set out the test for determining if a corporation has employer obligations in an Australian jurisdiction.

22. New subsection 100(2) provides that a corporation has **employer obligations** in an Australian jurisdiction if it is, or would be apart from the Act, required to pay premiums, contributions or similar payments under a workers’ compensation law in an Australian jurisdiction.

23. New subsection 100(3) provides that a corporation has **employer obligations** in an Australian jurisdiction if it is a ‘self-insurer’ or a ‘self-insured employer’ within the meaning of a workers’ compensation law of that Australian jurisdiction. ‘Self-insurer’ is currently a defined term in the *Workers’ Compensation Act 1951* (ACT), the *Workers’ Rehabilitation and Compensation Act 1986* (NT), the *Workers’ Compensation Act 1987* (NSW), the *Workers’ Compensation and Rehabilitation Act 2003* (Qld), the *Workers’ Rehabilitation and Compensation Act 1988* (Tas), the *Accident Compensation Act 1985* (Vic), the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) and the *Workers’ Compensation and Injury Management Act 1981* (WA). ‘Self-insured employer’ is currently a defined term in the *Workers’ Rehabilitation and Compensation Act 1986* (SA).

24. By inserting new section 100, this item, in combination with item 12, implements recommendation 4.6 of the Review.

25. New section 100A enables the Commission to provide advice to a body corporate about whether the body corporate is a national employer or any other matter which is relevant to the making of the application for a licence. It allows the Commission to provide advice to a prospective applicant about their likely eligibility, prior to the making of any formal application.

**Item 10 – Subsections 102(1), (2), (3) and (4)**

**Item 11 – Subsections 103(1) and (2)**

26. These items replace the term ‘eligible applicant’ with ‘applicant’ throughout sections 102 and 103. The term ‘eligible applicant’ was used to refer to a corporation that the Minister had declared eligible to be granted a licence or to a Commonwealth authority. Because a ministerial declaration is no longer required, the term ‘eligible applicant’ is not necessary. The provisions instead simply refer to applicants.
Item 12 – After subsection 104(2A)

27. This item inserts a new subsection into section 104, identifying the applicants to which the Commission can grant a licence. The new subsection provides that the Commission can grant a licence only to applicants which are; a national employer, a Commonwealth authority, a corporation that was previously a Commonwealth authority, or a corporation that held a licence immediately before the commencement of the new subsection.

28. This new subsection replaces current declaration provisions contained in section 100 of the Act, which set out when the Minister can declare that a corporation is eligible to be granted a licence. This effectively replaces the requirement regarding competition currently in place with a requirement to be a national employer.

29. ‘Commonwealth authority’ is defined in subsection 4(1). This definition is not changed by the Bill.

Item 13 – Section 104(3)

30. This item replaces the phrase ‘does not consider it appropriate’ with the phrase ‘decides to refuse’ in subsection 104(3).

31. Currently, if the Commission decides that it is inappropriate to grant a licence application due to the considerations in subsection 104(2), subsection 104(3) requires the Commission to provide written notice to the applicant, informing the applicant of its decision and providing reasons for the decision. However, if the Commission is prevented from granting a licence due to subsection 104(2A), subsection 104(3) does not apply.

32. The effect of this item is to require the Commission to provide written notice of a decision to refuse an application and reasons for that decision to the applicant regardless of the specific provision the decision was based on. This ensures that all unsuccessful applicants are informed of the outcome of their application and of the reasons for that refusal.

Item 14 – Paragraph 108A(7)(a)

33. This item replaces the phrase ‘law of a State or Territory relating to workers’ compensation’ with ‘workers’ compensation law’ in paragraph 108A(7)(a). The new term ‘worker’s compensation law’ is defined for the purposes of Part VIII by amendments made by item 8 to section 99, to mean a law of an ‘Australian jurisdiction’ relating to workers’ compensation. ‘Australian jurisdiction’ is defined to mean a State or a Territory as a result of amendments made by item 5 to section 99. Accordingly this is a consequential amendment to ensure consistency of terminology.

Item 15 – 108B(6)

34. This item removes the term ‘eligible corporation’ from subsection 108B(6). This term, which distinguished between a corporation that the Minister had declared to be eligible to be granted a licence and other corporations, will no longer be used in the Act. Subsection 108B(6) now uses the term ‘corporation’ as defined in subsection 4(1).
35. These items remove the term ‘eligible corporation’ from these provisions and replace it with ‘corporation’. This term, which distinguished between a corporation that the Minister had declared to be eligible to be granted a licence and other corporations, will no longer be used in the Act. These provisions now refer to corporations as defined in subsection 4(1).

**Work Health Safety Act 2011**

36. The following items amend the WHS Act to extend the coverage of the WHS Act to all corporations that obtain a licence to self-insure under the Act.

37. The amendments provide for the WHS Act to apply to employers granted a licence to self-insure under the Act as amended, in addition to those who already held a licence and were covered by Commonwealth work health and safety laws at the time of commencement of the WHS Act. The amendments are consequential on the amendments to be made by the Bill enabling multi-state employers that meet the ‘national employer’ test to apply to join the Comcare scheme. Persons currently covered by the WHS Act will not have their status altered and will continue to be covered by the WHS Act.

38. The amendments also remove references to ‘transitional coverage’ or the ‘transitional period’ from section 12 of the WHS Act, providing greater ongoing certainty to employers and employees.

39. The Act and WHS Act operate in an integrated manner. There are significant benefits to both employers and employees in extending the single set of workers compensation and work health and safety laws to all corporations that hold a licence under the Act.

**Item 16 – Section 4 (definition of non-Commonwealth licensee)**

40. This item replaces the definition of *non-Commonwealth licensee* in section 4 of the WHS Act. The new definition includes all bodies corporate that hold a licence to self-insure for workers compensation under Part VIII of the Act other than Commonwealth authorities (as defined by the Act). Commonwealth authorities are currently covered by section 12(1) of the WHS Act.

**Item 17 – Subsection 12(4)**

**Item 18 – Paragraph 12(4)(a)**

**Item 19 – Paragraphs 12(4)(b) and (c)**

**Item 20 – Subsection 12(5)**

**Item 21 – Subsection 12(5)**

41. These items amend subsections 12(4) and (5) to provide that the application of the WHS Act to non-Commonwealth licensees is no longer on a transitional basis. The items remove references to the ‘transitional period’ and ‘transitional coverage’.
Item 22 – Subsection 12(6)

This item repeals subsection 12(6), which provides a regulation making power to prescribe a transitional period. This power is no longer necessary.

Part 2 – Application provisions

Item 23 – Application of amendments

42. This item sets out to which licence applications under section 102 and to which licence decisions under section 103 the amendments in Schedule 1 apply. The amendments apply to applications made after item 23 commences, and to decisions made in relation to such applications.
SCHEDULE 2 – GROUP EMPLOYER LICENCES

Part 1 – Amendments

Overview

43. Part 1 of Schedule 2 to the Bill amends the Act to introduce a licensing scheme whereby one ‘group employer licence’ can be issued to a group of corporations which are related bodies corporate, instead of requiring each corporation to apply for an individual licence. The new group employer licensing scheme has been modelled closely on the existing licensing scheme and, in general, the application process, assessment, granting and operation of a group employer licence is the same or similar to the current licensing scheme.

44. To achieve a balance of flexibility and certainty in the new group employer licensing scheme, the roles of the licensee under a group employer licence are divided into two separate roles — the ‘relevant authority(s)’ and the ‘administration manager’. A third role, the ‘key body corporate’, provides a legislative reference point for determining membership of an employer group. A licence application nominates which corporations will take on these roles and, if the licence is granted, the licence designates which corporations have been assigned to each role. There is the flexibility to allow these roles to be either given to different corporations within the group or given to a single corporation. Employer groups are able to transfer roles between corporations through an application to the Commission to vary the licence.

45. The term ‘relevant authority’ is already used throughout the Act. Where an employee is injured at work, the relevant authority is the body that must; receive notice of that injury, receive any claim for compensation, investigate and manage such a claim, determine whether and how much compensation is payable, and pay any compensation due to the employee. A group employer licence application nominates one or more corporations to be the relevant authority for all the employees of the corporations within the group. In assessing a licence application, the Commission is able to apply additional scrutiny to the nominated corporations to ensure they have sufficient resources and capacity to fulfil this essential claims management and determination role. Any liabilities accepted by, or imposed on, the designated corporations in their role as the relevant authority by the Act is imposed jointly and severally on all of the corporations in the group.

46. The ‘administration manager’ is the principal point of contact for the Commission in the management of the group employer licence. Once a licence is granted, notification of licence fees and any variation, suspension or revocation of the licence is given to the administration manager by the Commission. The administration manager also makes any application for variation, extension or revocation of the licence, including applications to add or remove a corporation from the licence or to alter which corporation is the administration manager or a relevant authority. Should circumstances arise where a licensed employer group has no relevant authority, the administration manager is the relevant authority until a new relevant authority can be designated on the licence.

47. The ‘key body corporate’ provides a stable legislative reference point for determining whether a corporation is part of an employer group. Unlike the administration manager and relevant authority(s), the designation of the key body corporate is fixed for the duration of the group employer licence. To be covered by the licence, each corporation must be a related...
body corporate of the key body corporate. This ensures that an employer group covered by a licence has a stable and continuous reference point for the duration of the licence that is unaffected by variations in the group’s membership. Should a group undergo a major restructuring or division of ownership while a licence is in force, the key body corporate provides the reference point for determining which corporations should remain under the coverage of the licence. It is anticipated that a key body corporate would normally be the ultimate holding company for an employer group; however, there is no requirement that this be the case. Because some holding companies have no employees and do not engage in trading or financial activity, the key body corporate is not required to meet the Act’s definition of corporation or be covered by the licence. The key body corporate has no duties or functions in the operation of the licence.

48. The diagrams below provide an overview of the process for a single employer licence and group employer licence.
Chart 1 – Application Process
(Division 2)

Single Employer Licence

1. The applicant makes an application.
2. The application must satisfy the requirements set out in the Act.
3. An application fee will apply.
4. Until a decision is made, the application can be withdrawn.
5. After considering the application, the Commission can grant the licence, if it considers it appropriate.
6. If the Commission decides to refuse the application it must give written notice, including reasons, to the applicant.
7. The Commission may vary a licence to:
   - vary the scope of the licence
   - extend the term of the licence
8. The Commission may:
   - suspend or revoke a licence at its own instance; or
   - revoke at the request of the licensee

Group Employer Licence

1. The applicant makes an application.
2. The application must satisfy the requirements set out in the Act.
3. An application fee will apply.
4. Until a decision is made, the application can be withdrawn.
5. After considering the application, the Commission can issue the licence, if it considers it appropriate.
6. The licence will:
   - be expressed to cover all the corporations the application proposed to designate an administration manager
   - designate one or more relevant authorities
   - designate a key body corporate
7. If the Commission decides to refuse the application it must give written notice, including reasons, to the applicant.
8. The Commission may vary a licence to:
   - cover a specified corporation
   - remove a departing corporation from the licence
   - change the administration manager, relevant authority or key body corporate
   - vary the scope of the licence
   - extend the term of the licence
9. The Commission may:
   - suspend or revoke a licence at its own instance; or
   - revoke at the request of the licensee
Chart 2 – Licence Scope (Divisions 3, 4 and 5)

**Single Employer Licence**

- If the Commission grants a licence, it must determine the scope and conditions.
- The licence may authorise the licence holder to accept liability to pay compensation and other amounts under the Act.
- If the licence authorises a licence holder to accept liability, and such liability arises:
  - the licence holder is liable
  - Comcare is not liable
  - State or Territory workers’ compensation laws will not apply
- The licence can authorise the licence holder, or a specified person acting on their behalf, to manage claims made by the licence holder’s employees.

**Group Employer Licence**

- If the Commission issues a licence, it must determine the scope and conditions.
- The licence may authorise each relevant authority to accept liability to pay compensation and other amounts under the Act. Liability is accepted on behalf of the corporations in the group.
- If the licence authorises each relevant authority to accept liability, and such liability arises:
  - the covered corporations are jointly and severally liable
  - Comcare is not liable
  - State or Territory workers’ compensation laws will not apply
- The licence can authorise each relevant authority, or a person acting on their behalf, to manage claims made by the group’s employees.

**Conditions**

- The Commission may issue the licence on conditions. A non-exhaustive list of potential matters these conditions may address is provided.

**Liability for claims**

- Subdivision A, Division 3
- Subdivision B, Division 3

**Management of claims**

- Subdivision A, Division 4
- Subdivision B, Division 4
Chart 3 – Roles under a Group Employer Licence

A group licence must designate a relevant authority, administration manager and key body corporate. It must cover 2 or more corporations.

The application determines which corporations are covered and which bodies corporate are designated to each role.

**Purpose of role**
- The key body corporate is the constant legislative reference point for the group
- To be covered, a corporation must be related to the key body corporate
- The relevant authority(s) is the principal claims management body
- The administration manager is the principal contact for the Commission

**Voluntary changes**
- The key body corporate is fixed for the duration of the licence
- Corporations can be added and removed
- A new relevant authority can be designated
- A new administration manager can be designated

**Compulsory changes**
- A corporation that is not related to the key body corporate must be removed from the licence.
- If there is no relevant authority, the administration manager must be designated as a relevant authority.
Safety, Rehabilitation and Compensation Act 1988

Item 1 – Subsection 4(1)

49. This item inserts a definition of administration manager.

50. New subsection 107B(5), inserted by item 98, requires an application to nominate a corporation within the group to be the administration manager. New subsection 107G(1), also inserted by item 98, provides that if the Commission issues a group employer licence, that licence must designate the nominated administration manager as the administration manager.

51. The role of the administration manager is described in the overview to the Part.

Item 2 – Subsection 4(1) (definition of corporation)

Item 3 – Subsection 4(1) (paragraph (d) of the definition of corporation)

Item 4 – Subsection 4(1) (definition of corporation)

52. These items amend the definition of corporation to remove the phrases ‘in Part VIII’ and ‘but does not include a Commonwealth authority’. These amendments enable the definition to apply throughout the Act to all bodies corporate that satisfy the definition as set out in paragraphs (a) to (d), including Commonwealth authorities.

53. The amendment of the definition of ‘corporation’ to include Commonwealth authorities enables the new group employer licence provisions to apply uniformly to private and public corporations. Commonwealth authorities that satisfy the eligibility requirements will be able to apply for a group employer licence in the same manner as a group of private corporations.

Item 5 – Subsection 4(1)

54. This item inserts the terms group employer licence and legislative rules. Group employer licence means a group employer licence issued under the new section 107D, inserted by item 98. Consequential amendments are made throughout the Act to set out whether a provision applies to all licences or only to single employer licences or group employer licences.

55. Legislative rules will mean rules made under the new section 122A.

Item 6 – Subsection 4(1) (definition of licence)

56. This item replaces the definition of licence. The new definition includes both a single employer licence and a group employer licence. Definitions of these terms are inserted into subsection 4(1) by items 5 and 14. Consequential amendments are made throughout the Act to provide whether a provision applies to all licences or only to single employer licences or group employer licences.
Item 7 – Subsection 4(1)

57. This item inserts a new term licence holder. The term means the holder of a single employer licence. This term is used in contrast to ‘covered corporation’, which refers to a corporation covered by a group employer licence. A definition of ‘covered corporation’ is inserted into section 99 by item 50.

Item 8 – Subsection 4(1) (definition of licenced authority)

58. This item replaces the definition of licenced authority. The new definition covers Commonwealth authorities that are either the holder of a single employer licence or covered by a group employer licence.

Item 9 – Subsection 4(1) (definition of licenced corporation)

59. This item replaces the definition of licenced corporation. The new definition covers corporations that are either the holder of a single employer licence or covered by a group employer licence.

Item 10 – Subsection 4(1) (definition of licensee)

60. This item replaces the definition of licensee. The new definition provides that a licensee is a licenced corporation or a licenced authority. This amendment is consequential on changes to the definitions of licence, licenced authority and licenced corporation made by items 6, 8 and 9, respectively.

Item 11 – Subsection 4(1) (paragraph (a) of the definition of relevant authority)

61. This item is consequential on the amendment of the definition of the term ‘licensee’ to cover all licenced authorities and corporations, including those licenced under the new group licence provisions. This amendment results from modifications made by items 8, 9 and 10 to the definitions of ‘licenced authority’, ‘licensed corporation’ and ‘licensee’. The item amends paragraph (a) of the definition of relevant authority to use the new terms ‘licence holder’ and ‘single employer licence’, which are defined by provisions inserted by items 7 and 14 to apply to single employer licences, so that the paragraph (a) of the definition applies to employees of a licence holder of a single employer licence.

Item 12 – Subsection 4(1) (after paragraph (a) of the definition of relevant authority)

62. This item inserts a new paragraph into the definition of relevant authority. The new paragraph (aa) provides that for an employee of a corporation covered by a group employer licence the relevant authority is a corporation that is designated in the licence as a relevant authority for the group licence. The role and functions of relevant authorities under the Act are described in the overview to the Part.

Item 13 – Subsection 4(1) (at the end of the definition of relevant authority)

63. This item inserts a new note at the end of the definition of relevant authority. The new note indicates that new section 108L, which is inserted by item 177, is also relevant to the definition of ‘relevant authority’. New section 108L provides an extended definition of ‘relevant authority’ for group employer licences.
Item 14 – Subsection 4(1)

64. This item inserts the new term single employer licence. Single employer licence means a licence granted under section 103. Consequential amendments replace the term ‘licence’ with ‘single employer licence’ in provisions that will apply only to single employer licences.

Item 15 – Subsection 4(1) (paragraph (a) of the definition of suitable employment)
Item 16 – Subsection 4(1) (paragraph (a) of the definition of suitable employment)

65. These items are consequential on the amendment of the definition of the term ‘licensee’ to cover all licenced authorities and corporations, including those licenced under the new group licence provisions. This results from amendments made by items 8, 9 and 10 to the definitions of ‘licensed authority’, ‘licensed corporation’ and ‘licensee’. These items amend paragraph (a) of the definition of suitable employment to use the new terms ‘licence holder’ and ‘single employer licence’, which are defined in subsection 4(1) by provisions inserted by items 7 and 14 to apply to single employer licences, so that the paragraph (a) of the definition applies to employees of a licence holder of a single employer licence.

Item 17 – Subsection 4(1) (at the end of subparagraphs (a)(i) and (ii) of the definition of suitable employment)

Item 18 – Subsection 4(1) (subparagraph (a)(iv) of the definition of suitable employment)

Item 19 – Subsection 4(1) (after paragraph (a) of the definition of suitable employment)

66. These items amend the definition of suitable employment to insert a new paragraph and make consequential amendments to allow for this insertion.

67. The new paragraph provides for a definition of suitable employment for employees of a corporation covered by a group employer licence. The definition is similar to the definition of employees of the holder of a single employer licence, except that employment can be with any of the corporations within the group. This amendment allows group employers greater scope and flexibility in arranging suitable employment for injured employees.

Item 20 – Subsection 4(1)

68. This item inserts the term working day meaning a day that is not a Saturday, Sunday or a public holiday in any State or Territory. This definition applies to ‘working day’ wherever it is used in the Act, instead of applying only to section 114B, as is currently the case. This ensures that the term is used consistently throughout the Act. Item 180 removes the definition of ‘working day’ from subsection 114B(15).

Item 21 – At the end of section 11

69. This item inserts a new note into section 11 directing the reader to new sections 108J and 108K, which deals with the liability of a relevant authority.
Item 22 – Paragraph 41A(1)(b)

70. This item replaces the phrase ‘in respect of which a licence is not in force under Part VIII’ with the phrase ‘that is not a licensee’. This amendment is consequential on changes to the definition of ‘licence’ and ‘licensee’ made by items 6 and 10, respectively.

Item 23 – After subsection 41A(1)

71. This item inserts a new subsection into section 41A. This new subsection expands the delegation power of the rehabilitation authority of a corporation covered by a group employer licence. This means that the rehabilitation authority of a corporation covered by a group employer licence is able to delegate its powers and functions as a rehabilitation authority to any officer of any of the corporations covered by the group licence. This ensures flexibility and efficiency within employer groups by allowing corporations to allocate rehabilitation responsibilities in a manner that suits their organisational structure and the needs of their employees.

Item 24 – At the end of subsection 62(2)

72. This item inserts a new paragraph into subsection 62(2) to allow a corporation covered by a group employer licence to request a determining authority to reconsider a determination it has made.

Item 25 – Subsection 62(2A)

73. This item is consequential on the amendment of the term ‘licence’ to cover both single employer licences and group employer licences, resulting from the new definition of the term inserted by item 6. This item amends subsection 62(2A) to use the new term single employer licence, which is defined by a provision inserted by item 14, so that subsection 62(2A) applies only to a determining authority that holds a single employer licence. Item 26 inserts a new subsection 62(2B), which is an equivalent provision for determining authorities covered by a group employer licence.

Item 26 – After subsection 62(2A)

74. This item inserts a new subsection into section 62. Item 25 amends subsection 62(2A) so that it only applies to determining authorities that hold a single employer licence. New subsection 62(2B) applies to determining authorities that are covered by a group employer licence in the same way as the amended subsection 62(2A) applies to determining authorities that hold a single employer licence.

Item 27 – Paragraph 64(1)(d)

75. This item is consequential on item 9 of the Bill which includes an amended definition of ‘licenced corporation’. This item amends paragraph 64(1)(d) to use the term ‘licenced corporation’ so that the paragraph applies to all licensees.
Item 28 – Paragraph 67(1A)(a)

Item 29 – Paragraph 67(1A)(b)

Item 30 – Paragraph 67(1A)(b)

Item 31 – Paragraph 67(1A)(c)

76. These items make amendments consequential on the amendment of the definition of ‘licence’ to cover both single employer licences and group employer licences, inserted by item 6. This item amends paragraphs 67(1A) (a), (b) and (c) to use the new term ‘single employer licence’, so that the paragraphs only apply to a corporation or Commonwealth authority that holds a single employer licence. Item 32 inserts a new paragraph which provides for corporations covered by a group employer licence.

Item 32 – At the end of subsection 67(1A)

77. This item inserts a new paragraph into the definition of responsible authority within section 67. The new paragraph (e), which is modelled on paragraph 67(1)(b), provides that if a determination affects a corporation that is covered by a group employer licence that authorises the acceptance of liability for claims in respect of which the determination is made, a relevant authority for the licence is the responsible authority. New paragraph (d) makes a similar change in relation to a Commonwealth authority.

Item 33 – At the end of paragraph 69(fb)

Item 34 – After paragraph 89B(b)

78. These items make minor amendments to allow for the making of legislative rules.

Item 35 – Subsection 97A(3) (paragraph (a) of the definition of estimated liability component)

79. Item 10 amends the definition of ‘licensee’ so that it applies to all licenced corporations and authorities. This item consequentially amends paragraph (a) of the definition of estimated liability component to use the term ‘licensee’ so that the paragraph continues to only be relevant in the case of entities or authorities that do not hold any form of licence under the Act.

Item 36 – Subsection 97A(3) (paragraph (b) of the definition of estimated liability component)

80. This item is consequential on the amendment of the term ‘licence’ to cover both single employer licences and group employer licences, resulting from the new definition of the term inserted by item 6. This item amends paragraph (b) of the definition of estimated liability component to use the new term ‘single employer licence’, which is defined by a provision inserted by item 14, so that the paragraph only applies to an authority that holds a single employer licence. Item 38 inserts a new paragraph into the definition which applies in relation to authorities that are covered by a group licence.
Item 37 - Subsection 97A(3) (at the end of paragraph (b) of the definition of *estimated liability component*)

Item 38 – Subsection 97A(3) (after paragraph (b) of the definition of *estimated liability component*)

81. These items insert a new paragraph into the definition of *estimated liability component* within section 97A. The new subsection, which is modelled on paragraph (b) of this definition, applies to authorities covered by a group licence in the same manner as paragraph (b) applies to authorities which hold a single employer licence.

Item 39 – Subsection 97A(3) (paragraph (a) of the definition of *estimated management component*)

82. Item 10 includes an amended definition of ‘licensee’ which covers all licenced corporations and authorities. This item consequentially amends paragraph (a) of the definition of *estimated management component* to use the term ‘licensee’ so that only entities or authorities that do not hold any form of licence under the Act are captured by that paragraph of the definition.

Item 40 – Subsection 97A(3) (at the end of paragraph (b) of the definition of *estimated management component*)

83. This item is consequential on the amendment of the term ‘licence’ to cover both single employer licences and group employer licences. This item amends paragraph (b) of the definition of *estimated management component* to use the new term ‘single employer licence’.

Item 41 – Subsection 97A(3) (at the end of paragraph (b) of the definition of *estimated management component*)

Item 42 – Subsection 97A(3) (after paragraph (b) of the definition of *estimated management component*)

84. These items insert a new paragraph into section 97A which is the definition of *estimated management component*. The new paragraph (c), which is modelled on paragraph (b) of the definition, applies to authorities covered by a group licence.

Item 43 – Subsection 97D(1)

Item 44 – Paragraph 97D(2)(b)

Item 45 – Subsection 97E(2)

85. These items are consequential on item 10 introducing an amended definition of ‘licensee’ that covers all licenced corporations and authorities. These items amend these provisions so that they apply in relation to all licensees.
Item 46 – Subparagraphs 97M(1)(e)(i) and (ii)

Item 47 – At the end of subsection 97M(1)

86. These items are consequential on the amendment of the term ‘licence’ to cover both single employer licences and group employer licences. Item 46 amends subparagraphs 97M(1)(e)(i) and (ii) to use the new term ‘single employer licence’. The subparagraph only applies to a Commonwealth authority that holds a single employer licence.

87. Item 47 inserts a new paragraph into subsection 97M(1) which applies to Commonwealth authorities that are covered by a group licence. The new paragraph applies to Commonwealth authorities covered by a group licence in the same manner as subparagraph 97M(1)(e) applies to Commonwealth authorities which hold a single employer licence.

Item 48 – Part VIII (heading)

88. This item replaces the heading of Part VIII.

Item 49 – Section 98A

89. This item inserts a new outline of Part VIII. The outline has been updated to comply with modern drafting conventions and includes a summary of the new provisions relating to group employer licences.

Item 50 – Section 99

90. This item inserts terms corporate group, covered corporation, key body corporate, national employer group and related body corporate.

91. Corporate group means a group of 2 or more bodies corporate, where each body corporate is a related body corporate of each other body corporate in the group. Related body corporate has the same meaning as it does in the Corporations Act 2001. Currently, section 50 of the Corporations Act 2001 provides that where a body corporate is a holding company or a subsidiary of another body corporate, or is a subsidiary of a holding company of another body corporate, that body corporate and the other body corporate are related to each other. ‘Subsidiary’ is defined by section 46 of the Corporations Act 2001 and ‘holding company’ by section 9 of the Corporations Act 2001.

92. Covered corporation refers to a corporation covered by a group employer licence. This term is to be distinguished from the term ‘licence holder’ which means a corporation that holds a single employer licence.

93. Key body corporate means the body corporate designated as the key body corporate on the licence. An explanation of the role of the key body corporate is provided in the overview to the Part.

94. National employer group has the meaning given by new section 100.
Item 51 – Section 100 (heading)

95. This item replaces the heading of new section 100.

Item 52 – After subsection 100(1)

96. This item inserts a definition of the term of national employer group. To be a national employer group:

- at least one of the corporations in the group must be a ‘national employer’ as defined by subsection 100(1); or
- at least one corporation in the group has employer obligations in a particular Australian jurisdiction and at least another corporation in the group has employer obligations in another Australian jurisdiction.

97. This means that a national employer group (of corporations) will have; either one of its corporations, or at least two of its corporations, covered by applicable workers’ compensation legislation in two or more States or Territories. This provides maximum flexibility for corporate groups to meet the licence requirement that they are national employers.

98. New paragraph 107C(6)(c), inserted by item 98, prevents the Commission from granting a licence to a corporate group that is not a ‘national employer group’.

Item 53 – Section 100A (heading)

99. Item 53 replaces the heading of new section 100A.

Item 54 – Paragraph 100A(b)

100. This item expands new section 100A to enable the Commission to provide advice on additional matters. In addition to the matters already provided for by new section 100A, as inserted by item 9 of Schedule 1, the Commission is able to give advice on whether a body corporate is a member of a ‘national employer group’ and on any matter relevant to making an application for the variation of a licence.

Item 55 – Before subsection 101(1)

Item 56 – Subsection 101(1)

Item 57 – Paragraph 101(1)(a)

Item 58 – Paragraph 101(1)(b)

Item 59 – Paragraphs 101(1)(c), (d), (e) and (f)

Item 60 – Subsection 101(1) (note)

101. These items are consequential on the amendment of the term ‘licence’ to cover both single employer licences and group employer licences, resulting from the new definition of the term inserted by item 6. The items amend subsection 101(1) to use the new term ‘single
employer licence’, so that the subsection only applies to matters relating to the granting of single employer licences. Item 62 inserts a new subsection into section 101 which applies to matters relating to the issuing of group employer licences.

**Item 61 – Subsection 101(1) (note)**

102. This item makes a consequential amendment to the note to subsection 101(1) to include the term ‘issued’ to reflect its use in respect of group employer licences.

**Item 62 – After subsection 101(1)**

103. This item inserts a new subsection into section 101. This subsection provides that the Minister’s power to issue directions under section 89D includes the power to issue directions in relation to any matter relating to the issue of group employer licences. The new subsection provides a non-exhaustive list of matters that can be dealt with in the directions. This list has been directly modelled on the list of matters for single employer licences in subsection 101(1).

**Item 63 – Before subsection 101(2)**

104. This item inserts a heading into section 101 to reflect the purpose of subsection 101(2). Subsection 101(2) is unaffected by this amendment.

**Item 64 – Before section 102**

105. Item 64 creates a new Subdivision A in Division 2 of Part VIII. New Subdivision A covers single employer licences, while Subdivision B, inserted by item 98, covers group employer licences.

**Item 65 – Section 102 (heading)**

**Item 66 – Subsection 102(1)**

**Item 67 – Paragraph 102(1)(a)**

**Item 68 – Paragraphs 102(1)(b) and (c)**

**Item 69 – Section 103 (heading)**

**Item 70 – Subsection 103(1)**

**Item 71 – Subsection 103(2)**

**Item 72 – Paragraphs 103(2)(a) and (b)**

**Item 73 – Paragraph 104(1)(a)**

**Item 74 – Subsection 104(1)**

**Item 75 – Subsection 104(1)**
Item 76 – Subsection 104(2)

Item 77 – Paragraph 104(2)(b)

Item 78 – Paragraph 104(2)(b)

Item 79 – Paragraph 104(2)(c)

Item 80 – Subsection 104(2A)

Item 81 – Subsection 104(2B)

Item 82 – Subsections 104(3) and (4)

Item 83 – Subsection 104A(1)

Item 84 – Subsections 104A(2) and (4)

Item 85 – Section 105 (heading)

Item 86 – Subsection 105(1)

Item 87 – Subsection 105(1)

Item 88 – Subsection 105(2)

Item 89 – Section 106 (heading)

Item 90 – Subsection 106(1)

Item 91 – Subsection 106(2)

Item 92 – Section 107 (heading)

Item 93 – Section 107

Item 94 – Section 107

Item 95 – Section 107

Item 96 – Section 107A

Item 97 – Paragraphs 107A(a) and (b)

106. These items make consequential amendments through sections 102 to 107 (new Subdivision A) so that the sections only apply to single employer licences and to enable matters currently prescribed by regulation to also be prescribed by legislative rules.

107. The term ‘licence’ is defined to cover both single employer licences and group employer licences by the new definition inserted by item 6 into subsection 4(1). The new term ‘single employer licence’ is used instead of the term ‘licence’ in the new Subdivision A.
108. As the term ‘licensee’ is defined to cover all corporations and Commonwealth authorities that hold a single employer licence or are covered by a group employer licence, the new term ‘licence holder’ is used instead of the term ‘licensee’ in the new Subdivision A.

Item 98 – At the end of Division 2 of Part VIII

109. This item inserts a new Subdivision B in Division 2 of Part VIII. The new Subdivision B provides for matters concerning group employer licences.

New section 107B – Application for a group employer licence

110. New section 107B allows applications to be made for a group employer licence.

111. New subsection 107B(1) allows a corporation to apply for a group employer licence

112. New subsection 107B(2) requires the application to propose two or more corporations to be covered by the licence. As the note to the subsection indicates, subsection 107D(6), also inserted by item 98, prevents a licence from being issued unless each corporation covered by the licence is a member of the same corporate group.

113. New subsection 107B(3) provides that the applicant must be one of the proposed corporations. This is the only requirement placed on the applicant for the licence; once the licence is granted the corporation that applied for the licence is not treated any differently to the rest of the corporate group as a consequence of being the applicant. New paragraph 107M(a), also inserted by item 98, ensures that the group employer licence is not held by the applicant.

114. New subsection 107B(4) provides for the form which the application must take. This subsection will apply the same requirements as subsection 102(1) applies to single employer licences. Additional matters relating to the application are prescribed by legislative rules, rather than by regulations, as is currently the case for single licence holders. The written consent of each of the proposed covered corporations must be provided.

115. New subsection 107B(5) requires the application to nominate one of the proposed covered corporations as the administration manager for the licence and for written consent of the nominee to be provided with the application. New subsection 107B(6) provides that this can be the applicant. New subsection 107G(1), also inserted by item 98, provides that if a licence is granted, the nominated administration manager must be designated as the administration manager on the licence. The role of the administration manager is described in the overview to the Part.

116. New subsection 107B(7) requires the application to nominate one or more of the proposed covered corporations as the relevant authorities for the licence. New subsection 107B(8) provides that the applicant can be one of these corporations. New subsection 107H(1), also inserted by item 98, provides that if a licence is granted, a nominated relevant authority must be designated as a relevant authority on the licence. The role of a relevant authority is described in the overview to the Part.

117. New subsection 107B(9) requires the application to nominate a key body corporate for the licence. As the note to the subsection indicates, new section 107Q, also inserted by item
provides that to remain covered by the licence, a corporation must remain a related body corporate of the key body corporate. The key body corporate has no function or role in the operation of the licence. The purpose of designating a key body corporate is described in the overview to the Part.

118. New subsection 107B(10) provides that the key body corporate can be the applicant, one of the other proposed covered corporations or another body corporate. The key body corporate is not required to satisfy the definition of a corporation. As the note to the subsection indicates, the head company of a holding group may be a holding company whose sole purpose is to own shares in the rest of the group. Subsection 107B(10) ensures that such a body corporate can be designated as the key corporation.

119. New subsections 107B(11) and (12) provide for the application fee for a group employer licence application. These new subsections apply in the same manner as subsections 102(2) and (3) apply to single employer licences, except that the proposed covered corporations are jointly and severally liable for the application fee.

New section 107C – Withdrawal of application

120. New section 107C provides for the withdrawal of an application for a group employer licence application. Subsections 107C(1) will enable an applicant to withdraw the application at any time before a decision is made. Subsections 107C(2) and (3), which provide the alteration of application fees where the application is withdrawn, operates in the same manner that subsections 102(4) and (5) do for the withdrawal of an application for a single employer licence.

New section 107D – Issue of group employer licence

121. New section 107D provides for the issue of group employer licences.

122. New subsection 107D(1) provides that a licence can only be issued if an application has been made under section 107B.

123. New paragraphs 107D(2)(a), (b) and (c) allow the Commission to issue a group employer licence after it has considered the application, any further information provided by the applicant and any other matter the Commission considers relevant. These are the same matters that the Commission is currently required to consider in subsection 104(1) when considering single employer licences.

124. New paragraph 107D(2)(d) requires the group employer licence to be expressed to cover the corporations identified in the licence as covered corporations.

125. New paragraph 107D(2)(e) requires the group employer licence to designate one of the covered corporations as the administration manager for the licence. New subsection 107G(1) requires that the corporation nominated as the administration manager on the licence application must be designated as the administration manager on the licence.

126. New paragraph 107D(2)(f) requires the group employer licence to designate one or more of the covered corporations as a relevant authority for the licence. New subsection
107H(1) requires that a corporation nominated as the relevant authority on the licence application must be designated as a relevant authority on the licence.

127. New paragraph 107D(2)(g) requires the group employer licence to designate a body corporate as the key body corporate. New section 107J requires that the body corporate nominated as the key body corporate on the licence application must be designated as the key body corporate on the licence.

128. New subsection 107D(3) prevents the Commission from issuing a licence unless it is satisfied that it is appropriate to do so. New subsection 107D(4) sets out a number of matters that Commission must be satisfied of in order to determine that it is appropriate to grant a licence. They are:

- New paragraph 107D(4)(a) requires the Commission to be satisfied that the group as whole will have sufficient resources to fulfil the responsibility imposed on the members of the group by the licence. This is an equivalent requirement to paragraph 104(2)(a) for single employer licences.

- New paragraph 107D(4)(b) requires the Commission to be satisfied that each nominated relevant authority, or another person identified in the licence on the nominated relevant authority’s behalf, has the capacity to ensure that claims will be managed in accordance with the standards set by the Commission. This is an equivalent requirement to paragraph 104(2)(b) for single employer licences.

- New paragraph 107D(4)(c) requires the Commission to be satisfied that the issue of the licence is not contrary to the interests of the employees of a covered corporation. This is an equivalent requirement to paragraph 104(2)(c) for single employer licences.

- New paragraph 107D(4)(d) requires the Commission to be satisfied that each covered corporation has the capacity to meet the standards set by the Commission for the rehabilitation of employees of the covered corporations.

- New paragraph 107D(4)(e) requires the Commission to be satisfied that each covered corporation has the capacity to meet the standards set by the Commission for occupational health and safety of employees of the covered corporations. New paragraphs 107D(4)(d) and (e) in combination are an equivalent requirement to paragraph 104(2)(d) for single employer licences.

129. New paragraph 107D(5) prevents the Commission from issuing a licence if certain standards cannot be met. New paragraph 107D(7) allows the Commission to refuse to issue a licence because of the past occupational health and safety performance of a covered corporation. This is modelled on the requirement in paragraph 104(2A) for single employer licences.

130. New subsection 107D(6) prevents the Commission from issuing a licence unless:

- each corporation is a member of a particular corporate group;

- each body corporate in the group is a related body corporate of the key body corporate for the licence;
• the group is a national employer group; and
• each corporation covered by the licence is incorporated in Australia.

131. New subsection 107D(8) requires the Commission to give written notice of the decision to the applicant if it decides to issue the licence.

132. New subsection 108D(9) requires the Commission to give written notice of the decision, including reasons, to the applicant if it decides to refuse to issue the licence. There is no external merits review of a decision to refuse to issue a licence because in practice, negotiation between the Commission and the applicant is possible both in the initial consideration of the application as well as upon refusal of an application.

133. New subsection 108D(10) ensures that subsection 108D(9) does not prevent the Commission from issuing a licence with a different scope to the licence application, with the written agreement of the applicant.

*New section 107E – Duration of group licence*

134. New section 107E specifies the duration of a licence.

*New section 107F – Coverage of group employer licence*

135. New section 107F provides rules as to the corporations that can be covered by a licence, based on the licence application.

136. New subsection 107F(1) provides that if an application for a licence proposes that a corporation be covered by a licence, the corporation must be covered by a licence.

137. New subsection 107F(2) provides an exception to subsection 107F(1). If the Commission would have refused a corporation a single employer licence based on any of the paragraphs in subsections 104(2) and (2A) and the Commission decides the corporation should not be covered by the licence, then subsection 107F(1) does not require the corporation to be covered by the licence. Subsection 107F(2) provides the Commission with the discretion to exclude a proposed covered corporation from the licence if, for example, the corporation had a poor record in complying with work health and safety laws. The subsection does not, however, place any requirement on the Commission to exclude a corporation.

138. New subsection 107F(3) provides that if the Commission excludes a corporation under the discretion granted by subsection 107F(2), then it must provide written notice, including reasons, to the applicant. It also requires the proposed covered corporations to inform the Commission, within 5 working days, that they agree to the new scope of the licence.

139. New subsection 107F(5) ensures that subsection 107F(1) does not apply to corporations in certain circumstances.

*New section 107G – Administration Manager*

140. New section 107G contains provisions relating to the administration manager. The role of the administration manager is described in the overview to the Part.
141. New subsection 107G(1) provides that the licence must designate the nominated administration manager as the administration manager for the licence.

142. New subsection 107G(2) allows the Commission to refuse to issue a licence if the Commission is satisfied that it is not appropriate for the nominated administration manager to become the administration manager. New subsection 107G(3) requires the Commission to inform the applicant of its decision and invite the applicant to amend the application to nominate a new administration manager.

143. New subsection 107G(4) ensures that new subsection 107G(1) does not apply in certain circumstances.

*New section 107H – Relevant authority*

144. New section 107H contains provision relating to the relevant authority. The role of the relevant authority is described in the overview to the Part.

145. New subsection 107H(1) provides that the licence must designate a nominated relevant authority as a relevant authority for the licence.

146. New subsection 107H(2) provides that the Commission may refuse to issue a group employer licence if it is not appropriate for a nominated relevant authority to become a relevant authority for the licence. This subsection provides the Commission with discretion to reject a licence application if it considers a nominated relevant authority is unsuitable for the role. New subsection 107H(3) requires the Commission to inform the applicant of its decision and invite the applicant to amend the application to nominate a different relevant authority.

147. New subsection 107H(4) ensures that new subsection 107H(1) does not apply in certain circumstances.

*New section 107J – Key body corporate*

148. New section 107J provides that the group employer licence must designate the nominated key body corporate as the key body corporate for the licence. The role of the key body corporate is described in the overview to the Part.

*New section 107K – Corporation may have multiple roles*

149. New section 107K clarifies that a corporation may have multiple roles. For example a corporation may be both the administration manage and the key body corporate.

*New section 107L – Scope and conditions of group employer licence*

150. New section 107L requires the Commission to determine the scope and conditions of the group employer licence in accordance with Divisions 3, 4 and 5.

*New section 107M – Group employer licence is not held*

151. New section 107M clarifies that a group employer licence is not held by any of the corporations which it covers.
New section 107N – Licence fees

152. New section 107N provides that a corporation which is covered by a group employer licence is liable to pay licence fees each 1 July for the period that the corporation was covered by the licence during the previous financial year. Each corporation covered by a group employer licence is liable for its own individual licence fees.

153. New subsection 107N(2) provides the method by which the licence fees are calculated. As with the calculation licence fees under subsection 104A(2) for single employer licences, this is based on the cost incurred by Comcare and the Commission in carrying out their functions which is referrable to the corporation in question during the relevant period. The relevant period for group employer licences is the previous financial year, rather than the next financial year. This enables the licence fees to more accurately reflect the costs actually incurred by Comcare and the Commission which are referrable to the corporation in question.

New section 107P Variation of group employer licence—corporation becomes covered by licence

154. New section 107P provides for the variation of a group employer licence by adding a corporation to the licence.

155. New subsection 107P(1) provides that, if a group employer licence is in force, the administration manager may apply to the Commission for a specified corporation to be covered by the licence.

156. New subsection 107P(2) sets out the requirements of an application to add a corporation to the group employer licence. The application must be in writing, in a form approved by the Commission, accompanied by such information as is specified in the legislative rules, accompanied by such documents as are specified in the legislative rules, and accompanied by the written consent of the specified corporation to be covered by the licence and by the written consent of each of the existing covered corporations.

157. New subsection 107P(3) provides that the administration manager is liable to pay to Comcare an application fee. The application fee is equal to the amount estimated by the Commission to be the cost of considering the application.

158. New subsection 107P(4) requires the Commission to give notice to the administration manager of the amount of the application fee and to determine when the application fee is payable. If the notice is provided before the application is made, then the fee is to be paid with the application. If the notice is provided after the application is made, then the fee is to be paid as soon as practical after the notice is given.

159. New subsection 107P(5) allows an application to be withdrawn at any time before a decision is made. New subsections 107P(6) and (7) provide for the variation of the application fee where the application is withdrawn. These subsections operate in the same manner as subsections 102(5) and (6).

160. New paragraphs 107P(8)(a), (b) and (c) allow the Commission to vary the group employer licence after it has considered the application, any further information provided by the applicant and any other matter the Commission considers relevant. Where the licence is
varied, it must identify which corporations are covered and it must include the specified corporation which is newly covered by the licence.

161. New subsection 107P(9) prevents the Commission from varying the group employer licence unless it is satisfied that:

- the specified corporation is a related body corporate of the key body corporate. As discussed in the overview to the Part, this reflects the key purpose of the key body corporate to act as a stable reference point for determining membership of the corporate group covered by the licence, regardless of changes in membership.

- it would have issued a group employer licence to the group, had the specified corporation been included as a proposed covered corporation in the initial application. This provision requires the Commission to consider both the impact of the new member on the group as a whole, and the group’s relevant authority(s) having enough resources to fulfil their responsibilities under the licence and meet the Commission’s standards as well as the new member’s capacity to meet the standards set by the Commission for the occupational health and safety of its employees.

162. New subsection 107P(10) provides that, if the Commission decides to vary the group employer licence, it must give written notice to both the specified corporation and the administration manager of the licence.

163. New subsection 107P(11) provides that, if the Commission decides to refuse to vary the group employer licence, it must give written notice, including reasons, to both the specified corporation and the administration manager of the licence.

**New section 107Q – Variation of group employer licence—covered corporation leaves corporate group**

164. New section 107Q provides for the variation of a group employer licence when a covered corporation ceases to be a member of the corporate group. New subsection 107Q(1) provides for where this corporation is not the administration manager and new subsection 107Q(2) provides for where this corporation is the administration manager.

165. In both situations the Commission is required to vary the group employer licence by giving written notice that the departing corporation is no longer covered by the licence. When the departing corporation is not the administration manager, this notice is to be given to the administration manager. When the departing corporation is the administration manager, notice is to be given to all of the covered corporations.

166. New subsections 107Q(3) to (6) provide for legislative rules regarding the consequences of cessation under subsections 107Q(1) or (2).

**New section 107R – Variation of group employer licence—voluntary removal of covered corporation**

167. New section 107R(1) provides for the variation of a group employer licence when a covered corporation wishes to be removed from the licence and this corporation is not the administration manager or key body corporate. The section enables the corporation to request
the Commission to remove its name from the licence. On receiving such a request, the Commission may vary the licence to remove the departing corporation by giving written notice to the administration manager and the departing corporation.

168. New section 107R(3) provides for the variation of a group employer licence when the covered corporation wishing to be removed from the licence is the administration manager.

169. New subsections 107R(5) to (8) provide for legislative rules regarding the consequences of cessation under subsection 107R(1).

*New section 107S – Variation of group employer licence—expulsion of covered corporation*

170. New section 107S provides for the variation of a group employer licence when the Commission considers it appropriate to remove the name of a covered corporation from the licence and the corporation is not the administration manager or the key body corporate. The new section enables the Commission to vary the licence by giving written notice to the administration manager of the licence and the departing corporation.

171. New subsections 107S(2) to (5) provide for legislative rules regarding the consequences of variation under subsection 107S(1).

*New section 107T – Variation of group employer licence—change of administration manager*

172. New subsection 107T(1) provides for the variation of a group employer licence when the group wishes to change the corporation that is the administration manager for the licence. The section enables the administration manager to request the Commission to change the licence to designate a different corporation as the administration manager. On receipt of such a request, the Commission may vary the licence to change the designated administration manager by giving written notice to both the existing and new administration manager. New subsection 107T(2) provides for the variation of a group employer licence when the administration manager leaves the corporate group.

*New section 107U – Variation of group employer licence—new or additional relevant authority*

173. New subsection 107U(1) provides for the variation of a group employer licence where the group wishes to change the designation of a relevant authority. The subsection enables the group administration manager to request the Commission to change the licence to designate a different corporation as a relevant authority. On receipt of such a request, the Commission may vary the licence to change a designated relevant authority by giving written notice to the administration manager for the licence. New subsection 107U(2) ensures that the new relevant authority can be the administration manager.

174. New subsection 107U(3) applies where the group wishes to designate an additional relevant authority for the licence. New subsection 107U(4) ensures that the new relevant authority can be the administration manager.

175. New subsection 107U(5) applies where a situation arises that there is no relevant authority designated on the licence. This could occur if the only relevant authority designated on the licence ceased to be a related body corporate to the key body corporate. The
subsection provides that in this situation the Commission must vary the licence to designate the administration manager as a relevant authority.

**New section 107V – Variation of group employer licence with the consent of the covered corporations**

176. New section 107V allows for legislative rules to be made to cover the situation of a variation of a group employer licence so long as the covered corporations have consented in writing to the variation.

**New section 107W – Commission may vary the scope of a group employer licence or extend its term**

177. New section 107W allows for variations in the scope, and extension of the term, of group employer licences. The section enables the administration manager to request the Commission to make such variations. On receipt of such a request, the Commission is able to vary the scope of the licence, or extend its term.

**New section 107X – Suspension or revocation of a group employer licence at the instance of the Commission**

178. New subsection 107X(1) allows the Commission to suspend or revoke the group employer licence where the Commission considers it appropriate to do so. The Commission does this by giving written notice to the administration manager. New subsection 107X(2) ensures the Commission must follow any procedures given in the Minister’s directions when taking such an action.

179. New subsection 107X(3) allows the Commission to revoke the group employer licence where there is no administration manager for the licence. The Commission does this by giving written notice to all of the covered corporations. New subsection 107X(4) ensures the Commission must follow any procedures given in the Minister’s directions when taking such an action.

**New section 107Y – Revocation of group employer licence at request of administration manager**

180. New section 107Y provides for the revocation of a group employer licence where the group no longer wishes to be covered by the licence. The section enables the administration manager to request the Commission revoke the licence. On receipt of such a request, the Commission may revoke the licence.

**New section 107Z – Effect of suspension or revocation**

181. New section 107Z provides that the legislative rules can provide for the consequences of the suspension or revocation of a group employer licence under new sections 107X or 107Y.

**New section 107ZA – Group employer licence is not a legislative instrument**

182. This new section is included to assist readers as neither the licence nor a notice extending, varying, suspending or revoking the licence is a legislative instrument within the
meaning of section 5 of the *Legislative Instruments Act 2003*. A group employer licence is
administrative in nature and not a declaration of the law.

**Item 99 – Before section 108**

183. Item 99 creates a new Subdivision A in Division 3 of Part VIII. New Subdivision A is
constituted by sections 108 and 108A, which are amended by items 100 to 118. New
Subdivision A deals with the authorisation, by single employer licences, of licence holders to
accept liability in respect of certain claims.

**Item 100 – Section 108 (heading)**

**Item 101 – Subsection 108(1)**

**Item 102 – Subsection 108(1)**

**Item 103 – Subsection 108(2)**

**Item 104 – Subsection 108(3)**

**Item 105 – Subsection 108(3)**

**Item 106 – Subsection 108(3)**

**Item 107 – Subsection 108A (heading)**

**Item 108 – Paragraph 108A(1)(a)**

**Item 109 – Paragraph 108A(1)(c)**

**Item 110 – Subsection 108A(2)**

**Item 111 – Subsection 108A(2)**

**Item 112 – Subsection 108A(3)**

**Item 113 – Subsection 108A(3)**

**Item 114 – Subsection 108A(3) (note)**

**Item 115 – Subsection 108A(4)**

**Item 116 – Subsections 108A(4), (5) and (6)**

**Item 117 – Subsection 108A(7)**

**Item 118 – Paragraph 108A(7)(a)**

184. Section 108 deals with the authorisation of licensees to accept liability in respect of
certain claims and section 108A deals with the consequences of that authorisation to accept
liability.
185. The Bill introduces the new concept of ‘group employer licences’ which can be issued to a group of corporations that are related bodies corporate, instead of requiring each corporation to apply for an individual licence. As a result of these amendments, there are now two types of licences — ‘group employer licences’ and ‘single employer licences’.

186. Items 100 to 118 amend sections 108 and 108A. These amendments are made to be consistent with the new concept of a single employer licence and the new terms used in relation to them. (New sections 180AA and 108AB apply similarly to holders of group employer licences – see item 119.)

187. The amendments change references to ‘licensee’ to ‘holder of a single employer licence’ or ‘licence holder’ (item 7 makes amendments to provide that ‘licence holder’ in relation to a single employer licence means the holder of the licence). References to a ‘licence’ are amended to be references to a ‘single employer licence’ only (item 6 makes amendments to provide that ‘licence’ means a single employer licence or a group employer licence).

188. Item 117 changes a reference in subsection 108A(7) from ‘a licensee who is a corporation’ to ‘the licence holder of a single employer licence who is a corporation (other than a Commonwealth authority)’. The reference to ‘(other than a Commonwealth authority)’ is a consequential change as a result of item 4. The definition of ‘corporation’ under subsection 4(1) does not include a Commonwealth authority. Item 4 amends subsection 4(1) so that a Commonwealth authority is included in the definition of ‘corporation’. Item 117 acts to continue to exclude the application of 108A(7) to Commonwealth authorities.

189. The substantive effect of sections 108 and 108A is unchanged.

**Item 119 – At the end of Division 3 of Part VIII**

190. Item 119 creates a new Subdivision B in Division 3 of Part VIII. New Subdivision B is constituted by new sections 108AA and 108AB. New Subdivision B deals with the authorisation by group employer licences of a relevant authority to accept liability in respect of certain claims.

191. The provisions in new sections 108AA and 108AB are modelled closely on the existing sections 108 and 108A, which apply to all licences.

**New section 108AA – Group employer licence may authorise a relevant authority to accept liability**

192. New section 108AA provides that a group employer licence may authorise a relevant authority to accept liability to pay compensation and other amounts under the Act. This provision is modelled on section 108, which allows licensees under the Act to accept liability, but departs from 108 to accommodate the new concept of a ‘group employer licence’.

193. The definition of ‘relevant authority’, in relation to group employer licences, is extended by new section 108L and also by amendments inserted by item 12 to the definition in subsection 4(1).
194. New subsection 108AA(2) provides that if a liability under the section is accepted by a relevant authority, then liability is accepted on behalf of all the corporations covered by the group employer licence.

195. New subsection 108AA(4) is a deeming provision which has the effect that liability can be accepted under subsection 108AA(1) for the death of an employee of a corporation which occurs when the corporation is no longer covered by a group employer licence, if the injury which resulted in the death of the employee occurred while the corporation was covered by the group employer licence.

New section 108AB – Consequences of a relevant authority’s authorisation to accept liability

196. New section 108AB provides for the consequences of a relevant authority’s authorisation to accept liability under the Act. This provision is modelled on section 108A, but departs from 108A to accommodate the new concept of a ‘group employer licence’.

197. New paragraph 108AB(1)(c) provides that liability under the Act is jointly and severally shared by corporations which are covered by a group employer licence.

198. New paragraph 108AB(1)(e) has the effect that, where there is liability for a corporation covered by a group employer licence under the Act, no workers’ compensation law of a State or Territory applies to such a corporation in respect of that injury, loss, damage or death. (‘Workers’ compensation law’ is defined in section 99, as amended by item 8 of Schedule 1 to the Bill, to mean a law of an Australian jurisdiction relating to workers’ compensation. Section 99, as amended by item 5 of Schedule 1 to the Bill, defines ‘Australian jurisdiction’ to mean a State or a Territory.)

199. New subsection 108AB(2) is a deeming provision which has the effect that subsection 108AB(1) applies in relation to the death of an employee of a corporation covered by a group employer licence, even if the death occurs when the corporation is no longer covered by the group employer licence provided that the injury which resulted in the death of the employee occurred while the corporation was covered by the group employer licence.

Item 120 – Before section 108B

200. Item 120 creates a new Subdivision A in Division 4 of Part VIII. New Subdivision A is constituted by sections 108B and 108C, which are amended by items 121 to 153. New Subdivision A deals with the authorisation, by single employer licences, of licence holders to manage claims.

Item 121 – Section 108B (heading)

Item 122 – Subsection 108B(1)

Item 123 – Subsection 108B(1)

Item 124 – Subsection 108B(1)

Item 125 – Subsection 108B(1)

Item 126 – Subsection 108B(2)
Item 127 – Subsection 108B(2)
Item 128 – Subsection 108B(3)
Item 129 – Subsection 108B(3)
Item 130 – Subsection 108B(3)
Item 131 – Subsection 108B(4)
Item 132 – Subsection 108B(5)
Item 133 – Subsection 108B(5)
Item 134 – Subsection 108B(6)
Item 135 – Subsection 108B(6)
Item 136 – Section 108C (heading)
Item 137 – Subsection 108C(1)
Item 138 – Subsection 108C(1)
Item 139 – Subsection 108C(1)
Item 140 – Subsection 108C(2)
Item 141 – Subsection 108C(2)
Item 142 – Subsection 108C(3)
Item 143 – Subsection 108C(3)
Item 144 – Paragraph 108C(4)(a)
Item 145 – Subsection 108C(4)
Item 146 – Subsection 108C(5)
Item 147 – Subsection 108C(5)
Item 148 – Subsection 108C(6)
Item 149 – Subsection 108C(7)
Item 150 – Subsection 108C(7)
Item 151 – Subsection 108C(8)
Item 152 – Paragraph 108C(8)(a)
Item 153 – Subsection 108C(10)

201. Sections 108B and 108C deal with the authorisation by single employer licences to manage claims.

202. The Bill introduces the new concept of ‘group employer licences’ which can be issued to a group of corporations which are related bodies corporate, instead of requiring each corporation to apply for an individual licence. As a result of these amendments, there are now two types of licences – ‘group employer licences’ and ‘single employer licences’.

203. Items 121 to 153 amend sections 108B and 108C. These amendments are made to be consistent with the new concept of a single employer licence and the new terms used in relation to them. (New sections 180CA and 108CB apply similarly to holders of group employer licences — see item 154.)

204. This is done by amending references to ‘licensee’ to be references to ‘holder of a single employer licence’ or ‘licence holder’. References to a ‘licence’ are amended to be references to a ‘single employer licence’.

205. Item 135 changes a reference in subsection 108B(6) from ‘employees of an eligible corporation’ to ‘employees of an eligible corporation (other than a Commonwealth authority)’. The reference to ‘(other than a Commonwealth authority)’ is a consequential change as a result of item 4. The definition of ‘corporation’ under subsection 4(1) does not include a Commonwealth authority. Item 4 amends subsection 4(1) so that a Commonwealth authority is included in the definition of ‘corporation’. Item 135 acts to continue to exclude the application of 108B(6) to Commonwealth authorities.

206. The substantive effects of sections 108B and 108C are unchanged.

Item 154 – At the end of Division 4 of Part VIII

207. Item 154 creates a new Subdivision B in Division 4 of Part VIII. New Subdivision B is constituted by new sections 108CA and 108CB. New Subdivision B deals with the authorisation by group employer licences of a relevant authority to manage claims.

208. The provisions in new sections 108CA and 108CB are modelled closely on the provisions relating to licences in sections 108B and 108C.

New section 108CA – Group employer licence may authorise relevant authority to manage claims

209. New section 108CA provides that a group employer licence may authorise a relevant authority to manage claims. This provision is closely modelled on section 108B except to make reference to ‘relevant authority’ and ‘group employer licence’. In addition, unlike section 108B, there is no need in new section 108CA to deal with the scope of licences to authorise managing of claims which were made before the licence came into force, as there were no group employer licences in force before the commencement of this provision.

210. New section 108CA provides that a group employer licence may authorise the following persons to manage claims made under the Act:
211. New subsection 108CA(4) provides that a contract entered into by a relevant authority with another person for the management of claims does not come into force unless and until the Commission has varied the licence to note the identity of the person contracted. New subsection 108CA(2) provides that the scope of the group employer licence, so far as it authorises management by a relevant authority of claims made under the Act, may be determined by the Commission.

New section 108CB – Consequences of a relevant authority’s authorisation to manage claims

212. New section 108CB sets out the consequences of a relevant authority’s authorisation to manage claims. This section is modelled on section 108C, which applies to all licensees. Differences between new section 108CB and section 108C stem from the necessity of section 108C to provide for transitional procedures for processes and actions undertaken by Comcare in relation to a claim before a single employer licence comes into force.

213. Where a relevant authority for a group employer licence is authorised to manage claims, then, in respect of any particular claim:

- the relevant authority must determine the claim in accordance with the scope of its licence;

- any notice or claim given or made under Part V of the Act (which deals with claims for compensation) must be given or made to the relevant authority;

- any proceedings (including proceedings under Part VI which deals with reconsideration and review of determinations) in relation to a determination made or taken to have been made in managing the claim, or in relation to anything done or taken to have been done in managing the claim, must be brought against the relevant authority; and

- if there are proceedings brought against the relevant authority as described above, the relevant authority must inform Comcare as soon as practicable, and the court or tribunal before which the proceedings have been brought must, on application by Comcare, join Comcare as a party to the proceedings.

214. New subsection 108CB(5) sets out the requirements of an application by Comcare to be joined as a party to the proceedings. New subsection 108CB(6) provides that a decision by the court or tribunal is binding on the relevant authority and on Comcare, whether or not Comcare is joined as a party to the proceedings.
Item 155 – Before section 108D

215. Item 155 inserts a new Subdivision A in Division 5 of Part VIII. New Subdivision A is constituted by section 108D, which is amended by items 156 to 165. New Subdivision A deals with conditions of a licence for single employer licences.

Item 156 – Section 108D (heading)

Item 157 – Subsection 108D(1)

Item 158 – Subsection 108D(1)

Item 159 – Paragraphs 108D(1)(a), (b) and (c)

Item 160 – Paragraph 108D(1)(c)

Item 161 – Paragraph 108D(1)(d)

Item 162 – Paragraph 108D(1)(d)

Item 163 – Paragraphs 108D(1)(e), (f) and (g)

Item 164 – Subsection 108D(2)

Item 165 – Subsection 108D(2)

216. Section 108D provides that the Commission may grant a licence on conditions and sets out a non-exhaustive list of conditions which may be included on a licence. Section 108D allows the conditions to be varied, and sets out the requirements which must be met in order to vary the conditions.

217. The Bill introduces the new concept of ‘group employer licences’ which can be issued to a group of corporations which are related bodies corporate, instead of requiring each corporation to apply for an individual licence. As a result of these amendments, there are now two types of licences — ‘group employer licences’ and ‘single employer licences’.

218. Items 156 to 165 amend section 108D. These amendments are made to be consistent with the new concept of a single employer licence and the new terms used in relation to them. (New section 108DA applies in relation to conditions on group employer licences — see item 166.)

219. This is done by amending references to ‘licensee’ to be references to ‘holder of a single employer licence’ or ‘licence holder’. References to a ‘licence’ are amended to be references to a ‘single employer licence’.

220. The substantive effect of section 108D remains unchanged.
Item 166 – At the end of Division 5 of Part VIII

221. Item 166 creates a new Subdivision B in Division 5 of Part VIII. New Subdivision B is constituted by new section 108DA. New Subdivision B provides that the Commission may issue a group employer licence on conditions.

New section 108DA – Commission may issue group employer licence on conditions

222. The provisions in new section 108DA are modelled closely on the existing section 108D. The non-exhaustive list of conditions under which a licence may be issued remains the same between single employer licences and group employer licences.

223. New subsection 108DA(3) operates so that the new section does not prevent each of the corporations covered by a group employer licence from being specified in a condition relating to the maintenance of adequate funds or the obtaining of bank guarantees.

224. New subsection 108DA(4) allows the conditions to which the licence is subject to be varied, and new subsection 108DA(5) sets out the requirements which must be met in order to vary the conditions.

Item 167 – 108E (heading)

Item 168 – Section 108E

Item 169 – Section 108E

Item 170 – Section 108E

225. Section 108E sets out the functions of licence holders.

226. The Bill introduces the new concept of ‘group employer licences’ which can be issued to a group of corporations which are related bodies corporate, instead of requiring each corporation to apply for an individual licence. As a result of these amendments, there are now two types of licences — ‘group employer licences’ and ‘single employer licences’.

227. Items 167 to 170 amend section 108E. These amendments are made to be consistent with the new concept of a single employer licence and the new terms used in relation to them. (New section 108FA sets out the functions of corporations covered by group employer licences — see item 173.)

228. This is done by amending references to ‘licensee’ to be references to ‘holder of a single employer licence’ or ‘licence holder’. References to a ‘licence’ are amended to be references to a ‘single employer licence’ only.

229. Item 169 changes a reference in subsection 108E from ‘a corporation’ to ‘a corporation (other than a Commonwealth authority)’. The reference to ‘(other than a Commonwealth authority)’ is a consequential change as a result of item 4. Item 4 amends subsection 4(1) so that a Commonwealth authority can be included in the definition of ‘corporation’. Item 169 acts to continue to exclude the application of 108E to Commonwealth authorities.

230. The functions set out in section 180E are otherwise unchanged by these amendments.
Item 171 – Section 108F (heading)

Item 172 – Section 108F

231. Section 108F sets out the powers of licence holders. Items 171 and 172 amend section 108F. These amendments are made to be consistent with the new concept of a single employer licence and the new terms used in relation to them (New section 108FB sets out the powers of corporations covered by group employer licences — see item 173).

232. This is done by amending references to ‘licensee’ to ‘licence holder of a single employer licence’.

233. The powers set out in section 108F are otherwise unchanged.

Item 173 – After section 108F

234. Item 173 inserts two new sections that deal with the functions and powers of corporations covered by group employer licences.

New section 108FA – Functions of corporations covered by group employer licences

235. The functions of corporations covered by group employer licences are modelled on the functions in section 108E for the holder of a single employer licence.

New section 108FB – Powers of corporations covered by group employer licences

236. The power of corporations covered by group employer licences is modelled on powers in section 108F for the holder of a single employer licence. This means that a corporation covered by a group employer licence has power to do all things necessary or convenient to be lawfully done for, or in connection with, the performance of functions conferred by new section 108FA.

Item 174 – Paragraph 108G(a)

Item 175 – After paragraph 108G(a)

Item 176 – Section 108G

237. These items operate to provide that notice given in relation to a:

- grant, extension, suspension or revocation of a single employer licence;
- variation (other than under new section 107Q) of a group employer licence;
- extension, suspension or revocation of a group employer licence; or
- variation of the conditions to which a licence is subject

has effect on and after a date that is either specified in the notice, or is worked out pursuant to the terms of the notice. However, that date cannot be a date which is earlier than when the notice was given to the person — that is, it cannot have retrospective effect.
**Item 177 – At the end of Part VIII**

238. This item inserts new sections relating to the liabilities of corporations covered by a group employer licence. Any liabilities accepted by, or imposed on, designated corporations in their capacity as the relevant authority for the group are imposed jointly and severally on all of the corporations in the group. New section 108M requires the Commission to be notified promptly of any changes in coverage under a group employer licence.

**New section 108J – Single relevant authority for a group employer licence**

239. New section 108J provides that if there is a single relevant authority for a group employer licence, that single relevant authority is not solely responsible for any financial liability that would otherwise be imposed on it by the Act. This provision ensures that any financial liability is imposed jointly and severally on the corporations covered by the group employer licence, and not imposed solely on the single relevant authority.

240. New subsection 108J(2) is a catch-all provision to ensure that there is no circumstance where a single relevant authority would be solely liable for financial liabilities.

**New section 108K – Multiple relevant authorities for a group employer licence**

241. New section 108K provides that if there are two or more relevant authorities for a group employer licence, those relevant authorities are not solely responsible for any financial liability that would otherwise be imposed on them by the Act. This provision ensures that the any financial liability is imposed jointly and severally on the corporations covered by the group employer licence, and not imposed solely on the relevant authorities.

242. New subsection 108K(2) is a catch-all provision to ensure that there is no circumstance where two or more a relevant authorities would each be solely liable for financial liabilities.

243. New subsection 108K(3) provides that where there are two or more relevant authorities, and there is a non-financial liability imposed on a relevant authority, the liability may be discharged by any of the other relevant authorities.

244. New subsection 108K(4) ensures that if a death occurs after the corporation ceases to be covered by a licence, and the death results from an injury incurred while the corporation was covered by the licence, that death will be compensated.

**New section 108L – Extended meaning of relevant authority**

245. New section 108L clarifies that a relevant authority in relation to an injured employee is the relevant authority for the group employer licence.

246. New subsection 108L(2) ensures that if a death occurs after the corporation ceases to be covered by a licence, and the death results from an injury incurred while the corporation was covered by the licence, that death will be compensated.

**New section 108M – Notification of cessation of coverage under a group employer licence**

247. New section 108M provides that if a corporation ceases to be part of the group of corporations covered by a group employer licence, the administration manager must notify
the Commission in writing about the cessation, and do so within five working days of so becoming aware. This is to ensure that a sudden departure of a corporation will be managed promptly by the Commission.

248. New subsection 108M(2) provides for the situation when the departing corporation is the administration manager. In this situation, the remaining covered corporations must inform the Commission of the cessation. New subsection 108M(3) allows any of the covered corporations to make the notification.

_New section 108N – Grandfathering of single employer licence—transition to group employer licence_

249. New section 108N makes provision for the situation where a single employer licence transitions to group employer licence. In this situation, a single licence employer will not authorise the acceptance of liability to pay compensation or other amounts, or authorise the management of claims to be transferred to the group licence. This is because, if the liabilities were transferred, the other covered corporations would be jointly and severally liable for those transferred liabilities. This would result in an unacceptable arrangement for the covered corporations, and these provisions are designed to prevent that occurring. The corporation that was the single employer licence holder, however, continues to be the relevant authority for its employees, as this would have no adverse impact on the other covered corporations and would be beneficial to the affected employees.

250. New subsection 108N(2) allows the Commission to vary the single employer licence so that it complies with the requirements set out immediately above, and new subsection 108N(3) ensures that no other provisions of the Act can override these requirements.

251. New subsection 108N(4) ensures that for the purposes of new subsection (1), if a death occurs after the corporation ceases to be covered by a licence, and the death results from an injury incurred while the corporation was covered by the licence, that death will be compensated.

_Item 178 – Subparagraph 114(1)(a)(ii)_

_Item 179 – Subparagraph 114(1)(a)(iii)_

252. These items makes consequential amendments to section 114A of the Act to clarify how the provision will apply to a Commonwealth authority that holds a single employer licence or is covered by a group employer licence under the Act.

253. The amendments ensure that where the single employer licence or group employer licence requires Comcare to be notified of the retirement of an employee, notification is provided in accordance with the section.

_Item 180 – Subsection 114(15)_

254. This item repeals the definition of _working day_ in subsection 114B(15). This term is now defined in subsection 4(1) (see item 20). This means that the definition now applies to all of the provisions of the Act, instead of only the provisions in subsection 114B.
Item 181 – After section 121A

255. This item adds a new section that ensures that a fee under the Act must not be such as to amount to a tax. This indicates that all licence and application fees must reflect the costs incurred by Comcare or the Commission. This requirement is also set out in the substantive provisions relating to application and licence fees.

Item 182 – At the end of Part IX

256. This item inserts new section 122A. This section will empower the Minister to make legislative rules required or permitted by the Act or that are necessary or convenient to be prescribed for the carrying out or giving effect to the Act.

257. Legislative rules made under this section may provide that additional information and documents are required in an application for a group employer licence or for the variation of a licence, the consequences of the cessation of a licence and the consequences of the suspension or revocation of a licence, among other things.

Work Health and Safety Act 2011

Item 183 – Section 4 (definition of non-Commonwealth licensee)

258. This item makes a consequential amendment to the definition of non-Commonwealth licensee in the WHS Act to reflect the changes made to the Act by this Schedule. The new definition will provide that a body corporate that holds a single employer licence or is covered by a group employer licence, and is not a Commonwealth authority, will fall within the scope of the definition.

Part 2—Transitional provisions

Item 184 – Transitional—licences

259. This item provides that a licence in force before this item commences will have effect as is if it was a single employer licence.

260. Sub-item (3) requires the Commission to vary these licenses to rename them as single employer licences as soon as practicable after the commencement of this item.

261. Sub-item (4) provides that a reference in the licence to the licensee is to be read as a reference to a licence holder. ‘Licence holder’ is defined in subsection 4(1) (as amended by item 7 of this Schedule) to mean the holder of a single employer licence.

Item 185 – Transitional—application form

262. This item makes it clear that regulations about the prescribed form for applications for a licence will continue and are not affected after the commencement of this item.
SCHEDULE 3 – INJURY CAUSED BY MISCONDUCT

Part 1 – Amendments

Safety, Rehabilitation and Compensation Act 1988

Item 1 – Subsection 14(3)

264. This item removes the words ‘but is not intentionally inflicted, unless the injury results in death or serious and permanent impairment’ from the end of subsection 14(3).

265. Subsection 14(3) provides that compensation is not payable in respect of an injury that is caused by the serious and wilful misconduct of the employee. Currently this exclusion of eligibility does not apply where the injury results in death or serious and permanent impairment. This amendment to subsection 14(3) removes this exception.

266. The words ‘but is not intentionally self-inflicted’ currently ensure that the exception to subsection 14(3) does not apply to subsection 14(2) where an injury is both intentionally self-inflicted and the result of serious and willful misconduct. As the exception to subsection 14(3) is being removed, these words are no longer required. This will ensure that the high importance placed on adhering to work health and safety requirements is not demeaned by people acting in such a manner.

Item 2 – Subsection 147(2) (before table item 1)

267. This item adds an additional item to the table set out in subsection 147(2). This new item will have the effect that the amendments made by item 1 to subsection 14(3) will not apply to defence-related claims.

268. Section 4AA of the Act provides which claims by ADF members are covered by the Act. Most defence-related claims are covered by the MRC Act. However, the Act does apply to members of the ADF who were injured before 1 July 2004. The amendments made by this item will ensure that any future claims made for that period by members of the ADF will be treated consistently.

269. Although item 3 provides that these amendments only apply to injuries sustained after the schedule commences, it is possible that an injury could have been first suffered or contracted prior to 1 July 2004 but only sustained after the commencement of Schedule 3 to the Bill. This item will ensure that the amendments made by item 1 do not apply to such an injury.

Part 2 – Application provisions

Item 3 – Application of amendment

270. This item sets out which injuries the amendments in Schedule 3 will apply to. The amendments will apply to injuries sustained after the commencement of item 3. Clause 2 of the Bill provides that Schedule 3 to the Bill will commence on the day after the Bill receives the Royal Assent.
SCHEDULE 4 – RECESS IN EMPLOYMENT

Part 1 – Amendments

*Safety, Rehabilitation and Compensation Act 1988*

**Item 1 – Paragraph 6(1)(b)**

271. This item replaces paragraph 6(1)(b). The new paragraph 6(1)(b) will provide that an injury sustained by an employee while the employee was at their place of work for the purposes of their employment, including during an ordinary recess, is to be treated as arising out of, or in the course of, their employment.

272. Paragraph 5A(1)(b) defines *injury* as an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee’s employment. As such, determining whether an injury arose out of, or in the course of, the employee’s employment is a key question in determining whether compensation will be payable under the Act for the injury.

273. The effect of the amendment made by this item is that only injuries sustained by an employee who was at their place of work during a recess break will be automatically treated as arising out of, or in the course of, their employment. The current paragraph 6(1)(b) provides that an injury sustained by an employee while the employee is temporarily absent from their place of work during an ordinary recess is to be treated as arising out of, or in the course of, their employment.

274. New paragraph 6(1)(b) is modelled on a similar provision included in the Act prior to the Act’s amendment by the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011*. South Australia and Tasmania workers’ compensation laws do not provide compensation for injuries sustained away from the place of work during a recess break.

**Item 2 – Subsection 6(3)**

275. This item replaces subsection 6(3) with a new subsection 6(3) that will not include the words ‘while at a place referred to in that subsection; or during an ordinary recess in his or her employment’.

276. This amendment is consequential on the changes made by item 1 to paragraph 6(1)(b). Because subsection 6(1) will no longer apply to injuries sustained away from the place of work during a recess break, the reference to an injury sustained at a place or during an ordinary recess is no longer required.
### Illustrative Example

Max works as a carpenter at the JD Group, a licensee under the Safety, Rehabilitation and Compensation Act. JD Group is carrying out work at a construction site close to the beach. While on his lunch break, Max leaves the construction site to go surfing. While surfing, Max hits his shoulder on a rock resulting in injury. Max’s employer, the JD Group is not liable for Max’s injuries.

If Max was injured while eating his lunch at the construction site where the JD Group is carrying out work, then the JD Group would be liable for Max’s injury.

### Part 2 – Application provisions

**Item 3 – Application of amendments**

277. This item provides that amendments made by Schedule 4 will apply in relation to an injury sustain by an employee after the commencement of this item. This item will commence the day after the Act receives the Royal Assent.
SCHEDULE 5 – TECHNICAL CORRECTIONS

Work Health and Safety Act 2011

278. This Schedule includes amendments correcting drafting issues in the definitions of court and public authority in the WHS Act. The amendments replace the conjunctive ‘and’ with the disjunctive ‘or’ in each of the definitions.

Item 1 – Section 4 (paragraphs (a), (b) and (c) of the definition of court)

279. This item replaces ‘and’ with ‘or’, to make it clear that a court may be any of the entities listed in paragraphs (a) to (d).

Item 2 – Section 4 (paragraphs (a) and (b) of the definition of public authority)

280. This item replaces ‘and’ with ‘or’, to make it clear that a body may be any of the entities listed in paragraphs (a) to (c).