

A comprehensive review of the

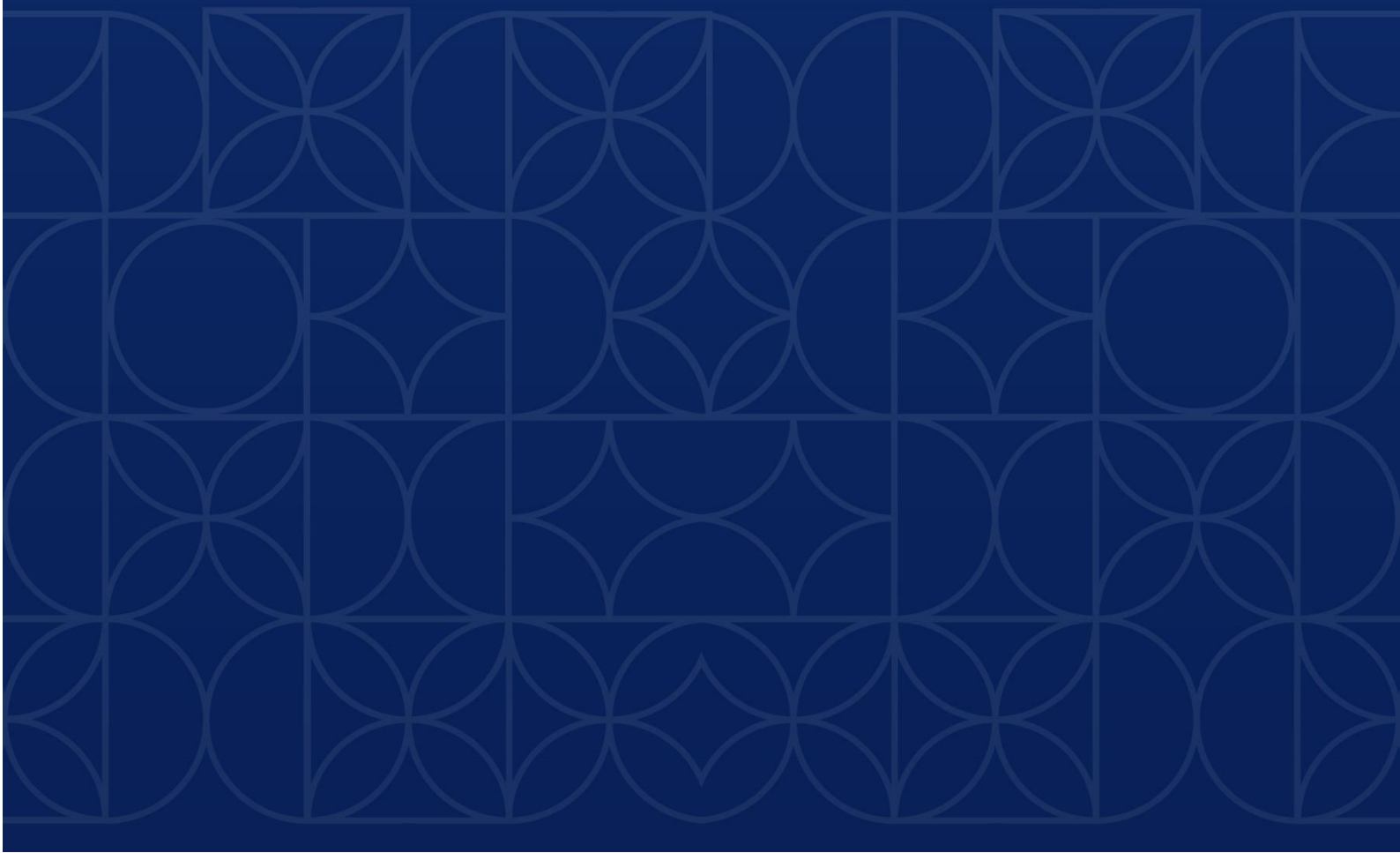
Safety Rehabilitation and Compensation Act

Getting the best outcomes for injured workers

Public consultation issues paper

21 October 2024

Prepared by the independent panel leading the review



This paper has been prepared by the independent panel to promote discussions in relation to the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) Review. The panel has been supported by staff of the Department of Employment and Workplace Relations. It does not represent the concluded views of the independent panel or the department.



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The document must be attributed as the *Getting the Best Outcomes for Injured Workers: Public Consultation Issues Paper*.

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Glossary

Term	Definition
AAT/ or Tribunal	Administrative Appeals Tribunal* *Administrative Review Tribunal (ART) (from 14 October 2024)
CEO	Chief Executive Officer
Comcare	The organisation established under section 68 of the <i>Safety, Rehabilitation and Compensation Act 1988</i> (SRC Act) to manage the Comcare scheme
Comcare scheme	The workers' compensation scheme set up by the SRC Act
Disease	An ailment suffered by an employee, or an aggravation of such an ailment, that was contributed to, to a significant degree, by the employee's employment by the Commonwealth or a licensee (SRC Act section 5B)
Employee	A person employed by the Australian Government or a self-insurance licensee in the context of the SRC Act (see section 5)
FTE	Full time equivalent, measure of employee resources
Hanks Review	Peter Hanks KC, ' Safety, Rehabilitation and Compensation Act review, Report – February 2013 ,' Report to the Australian Government Department of Education, Employment and Workplace Relations, 2013
Hawke Review	Allan Hawke AC, ' Safety, Rehabilitation and Compensation Act review, Report of the Comcare scheme's performance, governance and financial framework ,' Report to the Australian Government Department of Education, Employment and Workplace Relations, 2013
IME	Independent medical examination
IME Guide	<i>Guide for Arranging Rehabilitation Assessments and Requiring Examinations</i> prepared by Comcare in conjunction with the Safety, Rehabilitation and Compensation Commission
Injury	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; or an aggravation of a physical or mental injury (other than a disease) suffered by an employee, that is an aggravation that arose out of, or in the course of, that employment (SRC Act section 5A)
Premium	An amount to be paid for a contract of insurance
Premium payers	Australian Government agencies which pay premiums to Comcare
Regulations	Safety, Rehabilitation and Compensation Regulations 2019

Term	Definition
Rehabilitation authority	The principal officer of the organisation providing workplace rehabilitation to the employee (SRC Act section 4)
Self-insured licensee	Corporations granted power by the Safety, Rehabilitation and Compensation Commission (SRCC) to accept liability for and/or manage workers' compensation claims for their employees
Service provider	An external party providing rehabilitation and other services to employees. Service providers include workplace rehabilitation providers, medical practitioners, allied health professionals, pharmacists, independent medical examiners, attendant care service providers, household service providers, and training providers
SRC Act	<i>Safety, Rehabilitation and Compensation Act 1988</i>
SRCC	Safety, Rehabilitation and Compensation Commission
SWA	Safe Work Australia – the body which develops national policy relating to WHS and workers' compensation
ToR	Terms of reference
Worker	A person who carries out work in any capacity for a person conducting a business or undertaking. This includes workers not currently covered under the SRC Act. The term is used when discussing the future state of affairs.
WHS Act	<i>Work Health and Safety Act 2011 (Cth)</i>
WRP	Workplace rehabilitation provider

Introduction – The SRC Act Review

On 24 June 2024, the Australian Government announced the commencement of a comprehensive review of the SRC Act (review) to be undertaken by an independent panel comprising Ms Justine Ross (Chair), Professor Robin Creyke AO and Mr Gregory Isolani (members of the panel). Biographies of the members of the panel are available on the departments' website.¹ The review will make recommendations to the Government to inform future legislative reform of the Comcare scheme.

1.1 The review process

The review process consists of 4 key stages:



The terms of reference for the review (at **Appendix B**) require the panel to conduct public consultations and engage with key stakeholders including injured employees and their unions, employers (including self-insured licensees) and their associations, Comcare and the Safety, Rehabilitation and Compensation Commission (SRCC), advocacy groups, service providers (such as general practitioners, psychologists and medical professionals), claims managers, rehabilitation case managers and supervisors.

The release of the issues paper commences the engagement with stakeholders. Throughout the review the panel will consult widely to ensure that diverse perspectives inform its recommendations to government. These contributions will help the panel ensure that its recommendations to government are feasible, practicable and capable of implementation.

¹ Independent panel members, [An independent review of the Safety, Rehabilitation and Compensation Act 1988 - Department of Employment and Workplace Relations, Australian Government \(dewr.gov.au\)](https://www.dewr.gov.au).

1.2 How to respond to the issues paper

The issues paper has been prepared by the independent panel. The purpose of this paper is to invite the public to share information with the panel to help them better understand the Comcare scheme and the experience of injured workers.

The panel want to hear from:

- Injured workers or family members of injured workers who have lived experience of the Comcare scheme.
- Other participants directly involved in the workers' compensation scheme, such as employers of an injured worker, claims managers, rehabilitation providers and health care providers.
- Peak representative bodies and organisations.
- Legal representatives, insurers, actuaries and academics with experience in workers' compensation.

You can provide a submission or complete a short survey in response to this issues paper by visiting the Department of Employment and Workplace Relations' [Consultation Hub](#).

Submissions on the issues paper and responses to the survey close on **2 December 2024**.

What to submit

Submissions are your ideas or opinions about the Comcare scheme. Responses can be in writing, an audio recording or a video recording. You can also complete a short survey instead of making a submission. The issues paper sets out key issues and questions that you are invited to consider and respond to. A complete list of the questions asked throughout the issues paper is at **Appendix A** – Consolidated list of discussion questions.

Topics covered in the issues paper are not exhaustive. You are welcome to raise other issues in your submission, within the review's terms of reference at **Appendix B**. You do not need to answer every question, and you are welcome to address only the questions relevant to you.

Publishing submissions

The independent SRC Act review is a public process so submissions will generally be posted on the Department of Employment and Workplace Relations website.

Before you make your submission, the department will ask you to review and accept a Privacy Collection Statement. You will have the option to keep your response confidential. You can also choose to remain anonymous. If you share another person's story, such as a family member, we encourage you to seek their permission before doing so.

If you need support

The panel also want you to know that your wellbeing is important to them. They acknowledge that sharing your experience may bring up difficult feelings. If this is the case, please take care of yourself and reach out for support if needed.

Lifeline Australia: 13 11 14 or Text 0477 13 11 14

Suicide Call Back Service: 1300 659 467

Beyond Blue: 1300 224 636 or [chat online](#) to a trained mental health professional.

1.3 Reference Material

In undertaking the review, where appropriate, the panel will draw on the work of relevant reviews and reports on workers' compensation schemes in Australia including:

- 2004 – Productivity Commission, Inquiry report - *National Workers' Compensation and Occupational Health and Safety Frameworks*²
- 2012 – Safety, Rehabilitation and Compensation Act Review, Report of the Comcare's scheme's performance, governance and financial framework, Allan Hawke AC³ (Hawke Review)
- 2013 – *Safety, Rehabilitation and Compensation Act Review Final Report*, Peter Hanks KC⁴ (Hanks Review)
- The *National Return to Work Strategy 2020-2030*, agreed between all governments in 2019⁵
- 2021 – Improving the experience of injured workers: A review of WorkSafe Victoria's management of complex workers' compensation claims, Peter Rozen KC
- 2023 – Review of the Workers Compensation Scheme, Standing Committee on Law and Justice, Legislative Council, NSW Parliament
- 2023 – Comparison of Workers' Compensation Arrangements in Australia and New Zealand 2023 – Safe Work Australia
- 2024 – The Final Report of the Royal Commission into Defence and Veteran Suicide⁶

² Productivity Commission, *National Workers' Compensation and Occupational Health and Safety Frameworks*, accessed 17 July 2024, 2004, [Inquiry report - National Workers' Compensation and Occupational Health and Safety Frameworks](https://www.pc.gov.au/inquiry/report-national-workers-compensation-and-occupational-health-and-safety-frameworks) - Productivity Commission ([pc.gov.au](https://www.pc.gov.au)).

³ Allan Hawke AC, '[Safety, Rehabilitation and Compensation Act review, Report of the Comcare scheme's performance, governance and financial framework](#),' Report to the Australian Government Department of Education, Employment and Workplace Relations, 2013, accessed 17 July 2024 (Hawke Review).

⁴ Peter Hanks KC, '[Safety, Rehabilitation and Compensation Act review, Report – February 2013](#),' Report to the Australian Government Department of Education, Employment and Workplace Relations, 2013, accessed 17 July 2024 (Hanks Reviews).

⁵ SWA, [National Return to Work Strategy 2020-2030](https://safeworkaustralia.gov.au/national-return-to-work-strategy-2020-2030) (safeworkaustralia.gov.au), accessed 17 July 2024.

⁶ Department of Veteran Affairs, Royal Commission into Defence and Veteran Suicide, *Final Report* (2024), [Final Report | Royal Commission into Defence and Veteran Suicide](#), accessed 16 September 2024.

The Comcare scheme



Full time equivalent employees
covered under the SRC Act
(FYTD as at 30 June 2024)

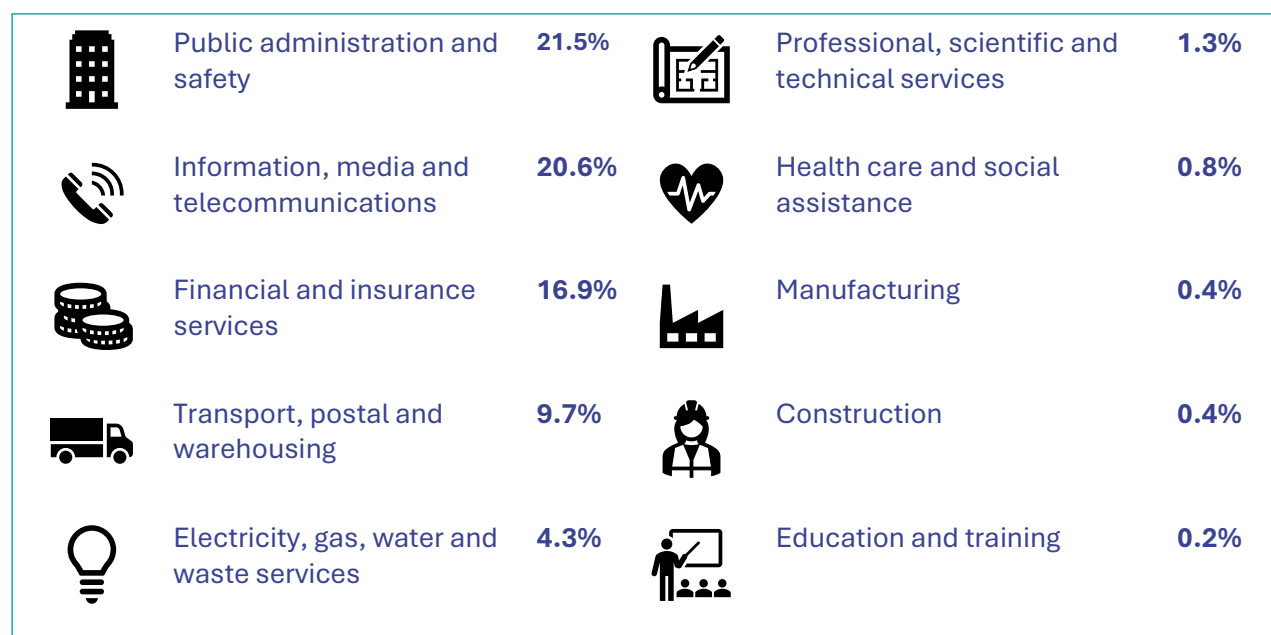
The SRC Act establishes the Comcare scheme and provides rehabilitation and workers' compensation arrangements to employers and employees in every state and territory. This includes employees of the Australian Government, the ACT Government, and around 40 private corporations who self-insure their workers' compensation obligations under the SRC Act.

Around half a million employees are covered by the scheme, representing about 3.3% of all persons employed in Australia.⁷

The profile of employees covered by the SRC Act

The SRC Act was initially designed to cover Australian Government employees only. The scheme was expanded in 1992 and 2002 to allow Commonwealth Authorities and private sector employers to join the scheme as self-insured licensees. Since 2018-19,⁸ the scheme has covered more private sector (57%) than Australian Government employees.⁹

The infographic shows an approximate proportion of the Australian workforce in industries covered by the SRC Act as at 30 June 2024.¹⁰



⁷ Comcare, Scheme overview, Comcare, <https://www.comcare.gov.au/scheme-legislation/scheme-performance/overview>, accessed 22 July 2024.

⁸ Comcare, Annual Report 2018-2019, p 4, [accessed 22 July 2024](#).

⁹ Comcare, [Comcare and SRCC Annual Report 2022-23](#), pp17-18, accessed 22 July 2024.

¹⁰ The coverage percentage of the Australian workforce is approximate as industry figures sourced from the Australian Bureau of Statistics data are headcounts, not FTE. Source: data provided by Comcare.

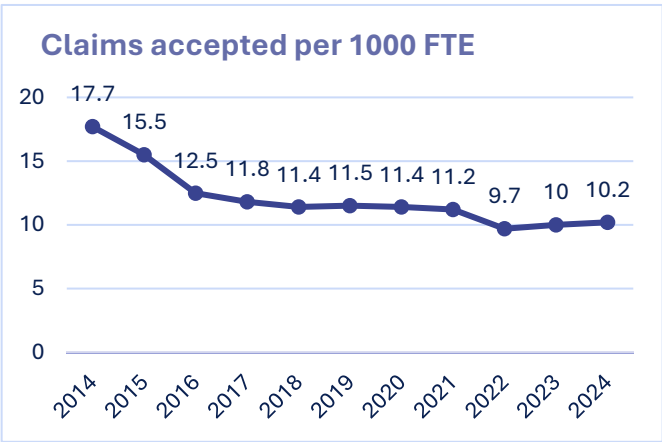
2.1 Key statistics

The most recent publicly available data from Comcare provides an overview of the nature of claims in the Comcare scheme.^{11 12}

Number of claims: Over the last 10 years the number of claims accepted has decreased. Accepted claims declined from 2014 to 2022, increasing since that time.

Claims for Australian Government employees are generally lower (4.7 claims accepted for 1000 FTE in 2023-24) than claims for self-insurance licensee employees (14.5 per 1000 FTE in 2023-24).

Source: Comcare, 2024 unpublished data, September 2024



Type of claim: injuries (other than diseases) account for 61% of all claims. There were less claims for injury (43%) for Australian Government employees in 2023-24 than for self-insured licensee (65%).

Psychological claims: accounted for around 12% of all claims in 2023-24. However, they make up a higher proportion of claims for Australian Government employees (around 30%).

Source: Comcare, [The Comcare scheme](#), Comcare website, 2024 accessed September 2024

Types of claims



Injury

61%



Disease

27%

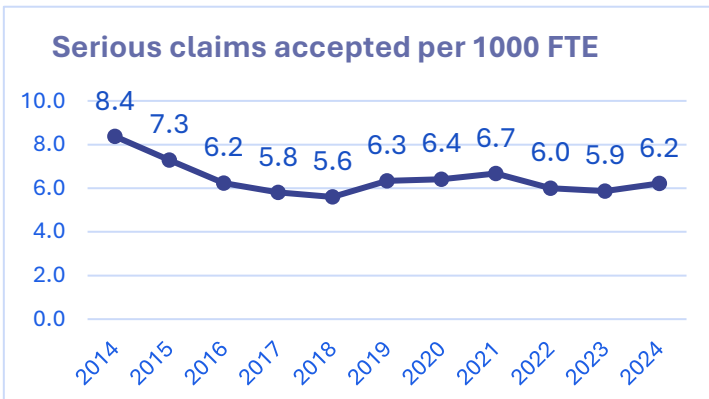


Psychological

12%

Serious claims: the rate of serious claims has improved over the last 10-15 years. The rate was 6.2 in 2023-24 per 1000 FTE. For Australian Government employees it was lower at 3.2 per 1000 FTE, while for self-insured licensee employees it was 8.7 per 1000 FTE.

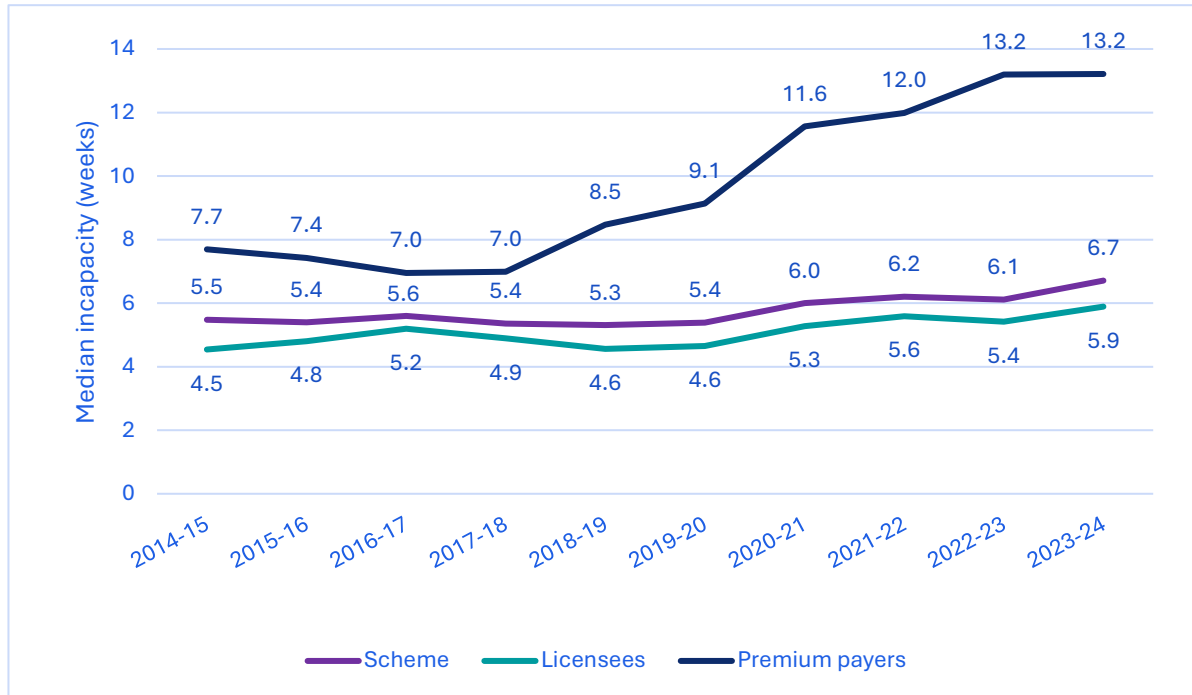
Source: Comcare, 2024 unpublished data, September 2024



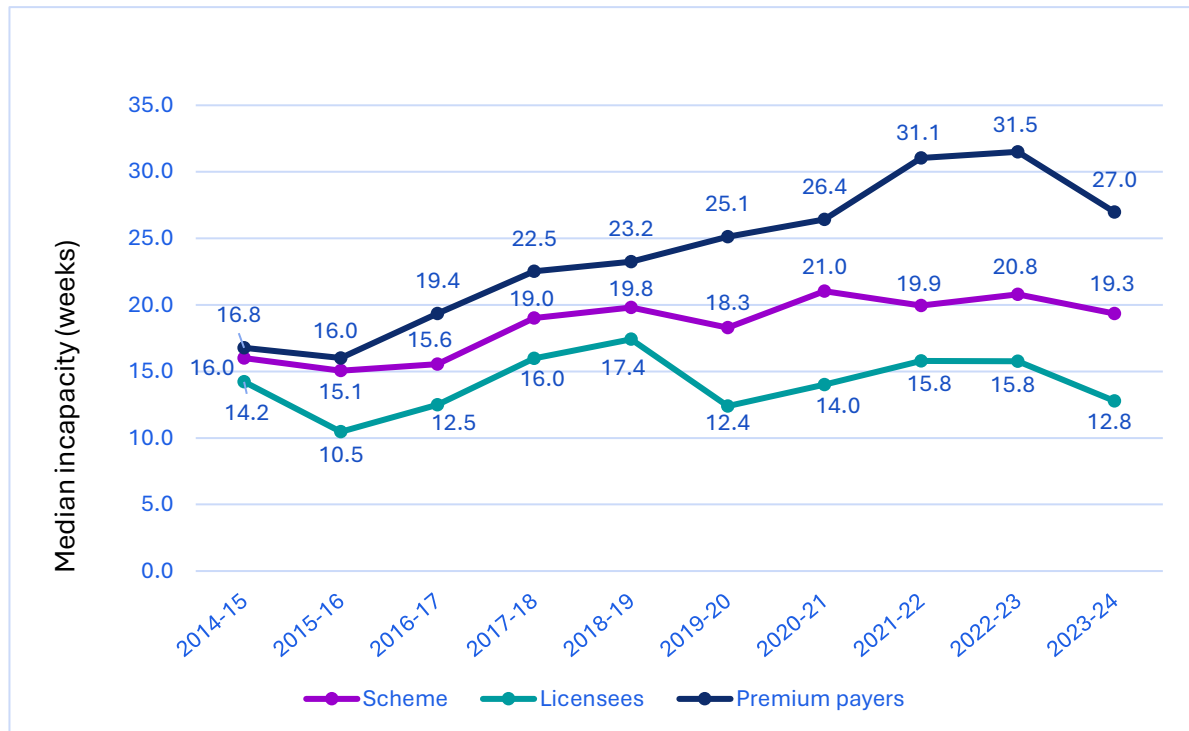
¹¹ Comcare, [Claims performance and incidence statistics | Comcare](#), accessed 23 July 2024.

¹² Note: Australian Government data refers to entities who pay a premium to Comcare. Self-insured licensee data includes the ACT Government.

Time off work: The typical duration of time spent off work for workers' compensation claims in the scheme has increased by 21.81%, from 5.5 weeks in 2014-15 to 6.7 weeks in 2023-24.



Time off work, psychological claims: Psychological claims typically require more time off work, increasing by 20.63%, from 16.0 weeks in 2014-15 to 19.3 weeks in 2023-24.



Cause of claim: The most common cause of claims is body stressing (health problems associated with repetitive and strenuous work), falls, trips and slips, being hit by moving objects and mental stress (as at 30 June 2024).

Total scheme claim cause type



Body stressing

38%



Falls, trips and slips of a person

20%



Being hit by moving objects

12%



Mental stress

11%

Australian Government workers have a higher proportion of mental stress claims with lower levels of body stressing.



Mental stress

28%



Falls, trips and slips of a person

26%



Body stressing

19%



Being hit by moving objects

5.5%

Self-insured licensees (including ACT Government) have lower proportions of mental stress claims and being hit by moving objects, however higher proportion of body stress and falls, trips and slips, as shown below:



Body stressing

42%



Falls, trips and slips of a person

18%



Being hit by moving objects

13%



Mental stress

6%

Return to work rates: The 2021 National Return to Work survey shows that the Comcare scheme's current return to work rate of 90.2% was higher than the national average (81.3%).¹

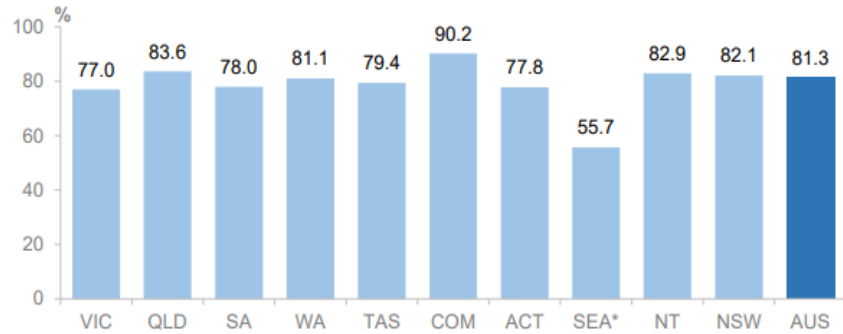
Source: National Return to Work Survey, 2021

Figure 3

2021 Current Return to Work rate: by Jurisdiction (%)

RTW1.
RTW2.

Have you returned to work at any time since your work-related injury or illness?
Are you currently working in a paid job?



Average cost of a claim: The average cost of a claim in the 2023-24 financial year was \$26,106.¹³

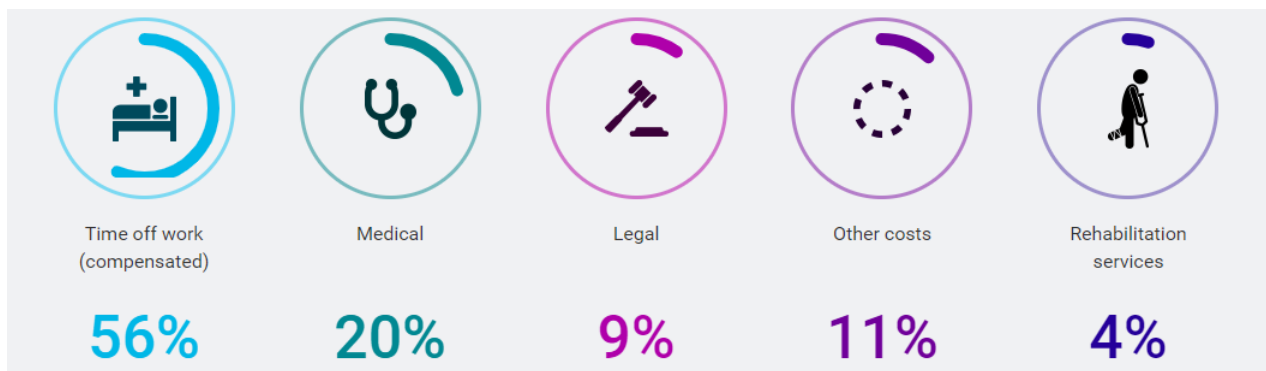


Cost of a psychological claim: The average cost of a claim in the 2023-24 financial year was \$42,603.



Source: Average cost paid per claim 2023-24 Comcare, [The Comcare scheme](#), Comcare website, 2024 accessed September 2024

Claim expenses: The majority of claim costs are for time off work (56%) and medical expenses (20%) (as at 30 June 2024). Claim expenses have remained similar since 2015.



¹³ Average costs reflect how much was paid, on average for each claim, which had payment(s) in that financial year. Costs are any payments in relation to workers compensation under the SRC Act, and can include legal, incapacity, medical, rehabilitation and other costs.

Topics for discussion in the SRC Act review

3.1 Best practice in workers' compensation (Term of reference 1)

Term of reference 1 is focused on:

- a. identifying the principles of best practice that could form the objects of the Act, and
- b. ensuring the legislative framework enables the Comcare scheme to respond to social and economic challenges.

a. Identifying the principles of best practice

Why important	The objective of the review is to make recommendations that can be used to reform the Comcare scheme to ensure that it produces fair, sustainable and optimal outcomes for injured workers and at the same time is predictable, affordable and financially sound. The SRC Act is over 35 years old. Since its commencement in 1988 there have been significant changes in Australian society and the economy. Judicial decisions and amendments to the SRC Act have increased the complexity of workers' compensation and resulted in fragmentation of the scheme.
Issues to be considered	• Identifying the Comcare scheme's objectives. • The principles that underpin scheme design to give optimal effect to those objectives. • The benefit of those objectives being expressly stated within the Act (i.e. insertion of an objects clause) to assist with understanding the purpose of the Act and provide guidance to the courts to resolve uncertainty and ambiguity. A scan of state and territory workers' compensation legislation shows that the primary objective of the schemes is to provide necessary support and assistance to injured workers to achieve restoration to health and return to work outcomes including by consultation, co-ordination and co-operation between scheme participants. Other objectives are to achieve an affordable, financially sustainable scheme; to optimise work outcomes to encourage and improve health and safety performance; and to enhance the flexibility of the scheme to allow for adaption to cater for future work and other circumstances. Examples appear in section 3 of South Australia's <i>Return to Work Act 2014</i> and section 10 of Victoria's <i>Workplace Injury Rehabilitation and Compensation Act 2013</i>. • Improving clarity and accessibility by reducing complexity and uncertainty in the existing Act. This requires consideration of whether the existing Act could be redesigned, retitled and restructured to ensure the law is better understood, complied with and administered.

Questions	1. What are the primary objectives of a workers' compensation scheme? Should those objectives be expressly stated in the Act? 2. What are best practice design principles for a workers' compensation scheme? For example, can you provide examples (from other schemes) of best practice approaches to early intervention, rehabilitation (including supporting employees with psychological injuries), vocational support and return to work? 3. Describe the areas of the scheme needing reform to help workers understand and access their entitlements. What changes are needed to enable workers better to navigate the legislative framework?
b. Ensuring the scheme is responsive to changing workforce conditions	
Why important	Since the SRC Act commenced the nature of work and workplaces have changed significantly. This aspect of the term of reference requires the panel to consider ways to ensure that the Comcare scheme's legislative framework is modern, fit for purpose and sufficiently flexible to better respond to changing needs.
Issues to be considered	The impact of: • Changes to working arrangements and conditions including remote, mobile and flexible work. • Changes to the industries covered by the scheme, for example self-insured licensees operate in higher risk industries such as construction, mining, healthcare and transport. • Technology in the workplace including the use of Artificial Intelligence (AI), automated decision-making systems and robotics. • Implications of an ageing workforce including rise in claim rates, return to work challenges and risk of scheme instability. • The rise in psychological injuries. • Climate change risks and its impact on injury types, circumstances and return to work rates.
Links to other ToR	Terms of reference 3 and 4
Questions	4. What changes are required to address workforce challenges (current and emerging: see 'Issues to be considered' above) to maintain an effective and sustainable Comcare scheme? 5. What changes are required to the Comcare scheme to better accommodate remote work and working outside 'traditional' work hours? 6. What changes are required to the Comcare scheme to better manage complex psychological claims? 7. What changes are required to the Comcare scheme to respond to climate change risks?

3.2 Employee's experience of the scheme (Term of reference 2)

Term of reference 2 is focused on:

- a. understanding the worker experience to ensure the Comcare scheme promotes a person-centred approach, reduces harm and improves outcomes for injured workers and their families, and embeds best practice approaches to early intervention, rehabilitation, vocational and economic support and return to work, and
- b. improving the experience of workers' compensation for workers from diverse backgrounds and workers with life-altering long-term injuries and illnesses and the families of workers who suffer a serious illness or injury or death.

a. Improving health outcomes for injured workers	
Why important	A strong body of evidence indicates that: • Health outcomes for a compensable injury are less effective than for the same injury in a non-compensable setting. • Employees who suffer psychological injuries have poorer outcomes than employees who suffer physical injuries. • A combination of physical and psychological injuries produces worse outcomes. • The longer an employee is away from work the less likely it is they will return to work. Evidence also suggests that better health outcomes are achieved from a person-centric approach. This is where an employee is treated fairly, and their social and economic wellbeing is prioritised.
Issues to be considered	• The experience of making a workers' compensation claim, including how to navigate the system's requirements and processes. • The experience of claims management relating to the: ○ Skills and qualifications of claims managers. ○ Employees' involvement in the decision-making process. • The experience of rehabilitation and return to work processes (RTW) including workplace and employer support. • How to reduce stigma and ensure fairness. • Best practice approaches to supporting workers with psychological injuries and illnesses. • Access to and the experience of health care. • Access to and the experience with workplace rehabilitation providers.
Links to other ToR	Specific issues related to rehabilitation, return to work and early intervention are detailed separately under term of reference 5.
Questions	8. What is your claim experience? Positive, negative or neutral? 9. Explain what aspects of the Comcare scheme work well? For example, early intervention initiatives, the claim-making process, rehabilitation, return to work support. 10. What changes to the Comcare scheme would better support recovery and wellbeing and improve return to work outcomes? 11. What changes to the Comcare scheme would better support workers with life-changing injuries and illnesses?

12. What changes to the Comcare scheme would better support workers with psychological injuries and illnesses?
13. What changes to the Comcare scheme would better support families of workers who have suffered serious injury, illness or death?
14. Do you have any suggestions for improving and building the competencies of claims managers?

b. Experiences and outcomes of specific groups

Why important

Research shows multiple stigmatised identities (e.g. a person with an illness or injury who is also a member of a minority group), intensify the potential for prejudice and discrimination of the employee in the workplace.¹⁴

Australian Bureau of Statistics data shows the age group with the highest work-related injury or illness are people aged 55 to 59 years.¹⁵

In 2022-23, the premium rate for the Comcare scheme was 0.73%.¹⁶ Comcare's premium performance data for employers with over 100 FTE, indicates that workplace injuries and workers' compensation may disproportionately affect certain groups. In 2023-24, the 5 agencies with the highest premium rates were:

1. Australian Federal Police (6.26%),
2. Aboriginal Hostels Limited (2.62%),
3. Australian Fisheries Management Authority (2.61%),
4. Anindilyakwa Land Council (2.47%) and the
5. National Indigenous Australian Agency (2.07%).¹⁷

The high premium of the Australian Federal Police (AFP) reflects the number of claims and high-risk nature of the work. A report commissioned by the AFP in 2019 demonstrated that the claims process could be complex for employees, particularly those suffering from psychological injuries.¹⁸

Notably, 3 of these top 5 agencies are organisations that employ a significant proportion of First Nations employees.^{19 20}

¹⁴ Griffith University, '[Stigma towards injured or ill workers: Research on the causes and impact of stigma in workplaces, and approaches to creating positive workplace cultures that support return to work](#)', SWA, 2021, accessed 4 July 2024.

¹⁵ Australian Bureau of Statistics, *Work Related Injuries*, ABS, 2021-22, accessed July 17, 2024.

¹⁶ Comcare, [Scheme Performance Overview](#), Comcare, accessed 26 September 2024.

¹⁷ Australian Government Comcare, [Premium performance of employers in the scheme](#), Comcare Website, 2023, accessed 17 July 2024.

¹⁸ Customer Experience Company, *The Ill and Injured Worker Experience: Australian Federal Police*, 2019.

¹⁹ Australian Government Comcare, [Premium performance of employers in the scheme](#), Comcare Website, 2023, accessed 17 July 2024.

²⁰ Comcare, [Scheme Performance Overview](#), Comcare, accessed 10 September 2024.

Issues to be considered	• Older employees – retirement provisions restricting access to incapacity payments when an employee reaches retirement age. • First Nations peoples – how to ensure culturally safe workspaces and reduce harm for First Nations Employees. • Gender – why a higher proportion of women make workers’ compensation claims for mental stress, compared to men²¹ and overall, have longer time off work. • Culturally and linguistically diverse groups – may face barriers in understanding and navigating the workers’ compensation system. Including due to lack of awareness and language barriers. • Employees with life-altering long-term injuries and illnesses and the families of employees who suffer a serious illness or injury or death – how can they best be supported under the scheme framework • First responders²² – how can they best be supported under the scheme framework.
Links to other ToR	Term of reference 1 in relation to best practice.
Questions	15. What is the claim experience for women, First Nations workers, older workers or other diverse worker groups? 16. What aspects of the Comcare scheme work well for diverse groups? 17. What changes are required to the Comcare scheme to ensure injured workers with diverse backgrounds or needs receive appropriate support?

²¹ Safe Work Australia, *Key Work Health and Safety Statistics Australia*, 2023, [Key Work Health and Safety Statistics Australia, 2023 | dataswa \(safeworkaustralia.gov.au\)](https://www.safeworkaustralia.gov.au/data-reports/key-work-health-and-safety-statistics-australia-2023) , accessed 17 July 2024.

²² Note: a Senate inquiry into the mental health conditions experienced by first responders was conducted in 2018. The report from this inquiry, [The people behind 000: mental health of our first responders](https://www.safeworkaustralia.gov.au/data-reports/the-people-behind-000-mental-health-of-our-first-responders), was released in February 2019.

3.3 Scheme coverage (Term of reference 3)

Term of reference 3 is focused on:

- a. national private sector employees being covered by the Comcare scheme, and
- b. national private sector employers being covered by the Commonwealth's *Work Health and Safety Act 2011* by virtue of being covered by the SRC Act.

It is also focused on the extent of liability (i.e. injuries and illnesses covered and the circumstances in which they are sustained) dealt with under term of reference 5.

a. National coverage of private sector employees

Why important

When first introduced in 1988, the SRC Act was designed solely for Australian Government employees as reflected in its original title, *Commonwealth Employees' Rehabilitation and Compensation Act 1988*.

Today the Comcare scheme broadly has 3 groups of employers:

- The Australian Government.
- The ACT Government (licensed by the SRCC).
- Private sector companies and former Commonwealth authorities licensed by the SRCC.

In 1992 access to the scheme was expanded to cater for Commonwealth authorities which had been corporatised or privatised. To maintain a 'level playing field' private sector corporations carrying on business in competition with a Commonwealth authority or privatised Commonwealth authorities could access the SRC Act licensing arrangements to self-insure and/or manage their workers' compensation liabilities. These arrangements saw many bodies move to the Commonwealth scheme from the state and territory schemes.

In 2004, the Productivity Commission recommended developing a national workers' compensation scheme to reduce compliance complexities and costs for multi-state employers. Part of this recommendation included actively encouraging self-insurance applications under the Comcare scheme while at the same time commencing the establishment of alternative models for national self-insurance and premium-paying insurance schemes.

In 2007 a moratorium was imposed by the Rudd Labor Government on new applications from private corporations wanting to move to the Comcare scheme. The move recognised concerns raised by the states and territories about the financial impacts to their schemes as a result of large private corporations moving to Comcare. In 2013 the Comcare moratorium was lifted by the Abbott Coalition Government.

In 2023 the Safety, Rehabilitation and Compensation Directions 2019 were amended to introduce a new direction which requires that in determining an application for a new licence under section 104 of the SRC Act, the primary criteria to be considered by the SRCC is whether it is satisfied, on reasonable grounds, that:

- a) the applicant is a member of a corporate group in which a majority of employees in the corporate group are, at the time of the application, covered by the Act.

	b) the granting of the licence would not result in an overall reduction in workers' compensation entitlements for the employees of the applicant to be covered by the Act. More private sector employees are now covered by the SRC Act than those from the public sector. As at 30 June 2024, 39 licensees (including ACT Government) have 260,876 employees or 57% of the 472,079 FTEs covered by the SRC Act.²³ As a result, employers and employees in the Comcare scheme now cover a broad range of occupations and industries, including an expansion into higher risk industries. In addition, the ABS data shows a sizeable percentage of the workforce hold 2 or more jobs.²⁴ This is likely to mean that more employees may be covered by both the SRC Act and their state or territory scheme, giving rise to cross jurisdictional issues.
Issues to be considered	• The impact the self-insurance licensing arrangements of private sector corporations moving to the Comcare scheme has on the: ○ Financial viability of state and territory schemes as the movement may impact the premium pools of other workers' compensation schemes. ○ Integrity of the Comcare scheme as the coverage of private sector employers increases the size and complexity of the scheme, while supporting the sharing of better practices. • The difference in entitlements for employees and obligations on employers for rehabilitation and return to work under the Comcare scheme as compared with the relevant state and territory schemes. • The benefits of a single scheme for multi-jurisdictional employers including issues arising from the interaction between private sector and public sector 'employment.' If the present coverage continues for the Comcare scheme, issues include: • The threshold tests for eligibility for compensation, including ministerial discretion when considering requests for declarations of eligibility. • The framework for the SRCC granting licences to self-insure, including for groups.
Links to other ToR	Term of reference 4 in relation to granting, suspending and revoking of licences to self-insure and financial management and viability. Term of reference 5 in relation to gaps in coverage arising from employees and employers transitioning between Commonwealth and state or territory schemes, employer insolvency, or winding up of a self-insurer.
Questions	18. What are the risks and issues that arise from current coverage of the Comcare scheme? 19. Is it still appropriate for the Comcare scheme to be the pathway to a national scheme for private multi-state employers? Apart from Australian Government entities and companies who should have access to the Comcare scheme? Give reasons. 20. What criteria should apply for corporations to join the Comcare scheme?

²³ Data provided by Comcare, 2024.

²⁴ Australian Bureau of Statistics (2024) [Multiple Job-Holders](#), accessed 17 July 2024.

b. Work health and safety coverage

Why important	In 2004 the Productivity Commission recommended that corporations licensed under the Comcare scheme would also be able to be covered by the Commonwealth's <i>Occupational Health and Safety Act 1991</i> (OHS Act). This was to avoid having to comply also with multiple state and territory Acts. Harmonisation of the then OHS laws was to transfer OHS coverage for licensees to the states and territories. When the Commonwealth's Work Health and Safety Act (WHS Act) began in 2012, automatic WHS coverage with the SRC Act coverage ceased. However, 'non-Commonwealth licensees' (i.e. self-insured licensees previously covered by the OHS Act) could continue to be covered under the new WHS Act for a 'transitional period.' The transitional period was intended to operate until implementation of harmonised WHS laws across Australia. The transitional period remains in effect even though the model WHS laws have been implemented in every jurisdiction except Victoria. Victoria has similar duties and responsibilities under its <i>Occupational Health and Safety Act 2004</i> (Vic) and <i>Occupational Health and Safety Regulations 2017</i> (Vic). There are 29 licensees with transitional coverage under the WHS Act.²⁵
Issues to be considered	• The advantages and disadvantages of the link between Commonwealth work health and safety (WHS), and workers' compensation arrangements • The interaction between persons conducting a business or undertaking in the public sector and private sector. • The regulatory resource implications associated with non-Commonwealth licensees continuing to be covered by the Commonwealth's WHS Act.
Links to other ToR	Term of reference 4 in relation to the oversight of the WHS performance of self-insured licensees.
Questions	21. What are the implications for non-Commonwealth licensees in maintaining or ending the transitional period for their coverage under the WHS Act? 22. Should self-insured licensees be regulated by Comcare under Commonwealth WHS laws, or state and territory WHS laws and regulators? Please give reasons.

²⁵ [List of current and former self-insured licensees | Safety, Rehabilitation and Compensation Commission \(SRCC\)](#)

3.4 Governance arrangements (Term of reference 4)

Term of reference 4 is focused:

- a. best practice governance, regulation and oversight arrangements,
- b. financial management and viability, and
- c. social partner involvement and tripartism.

a. Best practice governance, regulation and oversight

Why important

The combined Comcare WHS scheme and Comcare scheme is complex. There are 2 regulators:

- **Comcare** has a role as regulator under the WHS Act and is the regulator or scheme administrator under the SRC Act. It is also the claims' manager for many but not all employees covered by the Scheme.
- The **SRCC** has broad oversight functions and powers under the SRC Act and the WHS Act. The SRCC is the issuing authority and regulator of self-insurance licences under the SRC Act. It has no staff and Comcare is required under the SRC Act to provide secretariat and administrative support to the SRCC to enable it to fulfil its functions.
- The SRCC has a role in overseeing Comcare, however the scope of this role is unclear. The SRCC can grant licences or suspend or revoke self-insurance licences for breaches of licence conditions. However, as the SRCC has no staff or resources of its own, Comcare monitors and reports to the SRCC on licensee performance including compliance with licence conditions. Apart from the power to vary, suspend or revoke licences, the SRC Act does not otherwise authorise the SRCC to regulate licensees and does not provide enforcement powers or for the imposing of sanctions.

Previous reviews have raised the concern that the governance arrangements of the scheme are not efficient, effective and suitable for current workplace conditions. For example:

- In 2004, the Productivity Commission recommended that the SRCC be established as a stand-alone regulator, separating regulatory and service functions through a clear separation of the SRCC and Comcare.²⁶
- The Hawke Review recommended enhancing the transparency of the role of Comcare and the SRCC and establishing an advisory board to support Comcare's CEO meet responsibilities. Concerns were also expressed about Comcare being a determining authority and having regulatory functions, and not being regulated by the Australian Prudential Regulation Authority.²⁷

Adding to the complexity of the Comcare scheme is the number of other participants and scheme providers. Maintaining scheme sustainability requires scheme regulators to have sufficient functions and powers to interact effectively with scheme participants to maximise scheme performance.

²⁶ Productivity Commission, [National Workers' Compensation and Occupational Health and Safety Frameworks](#), Productivity Commission, Australian Government, 2004, accessed 22 July 2024.

²⁷ Hawke Review, chapters 3-4. This recommendation was repeated in the Hanks Review.

Issues to be considered	• The effectiveness of the interaction between the functions and powers of Comcare and the SRCC. • The appropriate governance framework for oversight of Comcare and the SRCC. • The composition of the SRCC and its regulatory powers in relation to self-insurance licences and premium payers under the SRC Act. The SRCC comprises up to 11 Commissioners. Membership includes representatives from unions (3 members); one self-insured licensee; the CEO of Safe Work Australia (SWA); one member each for the Commonwealth and Commonwealth authorities, the ACT Government, the Defence Force; 2 members with expertise relevant to the SRCC functions; and a chair. • How best to regulate scheme participants and providers including: ○ Self-insured licensees. ○ Rehabilitation authorities. ○ Workplace rehabilitation providers. ○ Other provider groups including medical practitioners, allied health professionals, attendant care and household service providers and pharmacists.
Links to other ToR	Term of reference 3 in relation to the coverage of self-insured licensees.
Questions	23. Does the SRC Act suitably define the roles and responsibilities of: • Comcare? • SRCC? 24. What governance framework is needed to provide high-level oversight of Comcare? For example, a governing or advisory board? What requirements should apply to any members of such a group, for example relevant expertise or representation or both? 25. What changes are required to ensure the SRCC has the powers and responsibilities to effectively regulate self-insurance licensees and the public sector? 26. Does the existing framework provide appropriate oversight and monitoring, compliance and reporting arrangements for: • Comcare? • Self-insured licensees • Delegated claims management arrangements (see 3.7)? • Rehabilitation authorities? • Workplace rehabilitation and other service providers? 27. Are the Hawke and Hanks Review recommendations still relevant for rehabilitation governance including introducing an auditing program for rehabilitation authorities; creating a return-to-work inspectorate; penalties for failures to meet rehabilitation responsibilities under the scheme; and the ability to approve or accredit all providers operating in the scheme?

b. Financial management and viability

Why important	A key objective of a best practice scheme is to ensure that premiums charged to employers are affordable, reflect risk and can fully fund the liabilities in the scheme. As a corporate Commonwealth entity under the <i>Public Governance, Performance and Accountability Act 2013</i> Comcare is financially separate from the Commonwealth. The SRC Act authorises Comcare to manage the Comcare scheme so that the scheme is financially viable and sustainable. The Comcare scheme generally operates on a user-funded model, through the charging of premiums to Australian Government agencies, by regulatory contributions, licence fees, provider approval fees and through charging for other services, such as training courses. Comcare is responsible for the claims liabilities and claims administration costs of Australian Government agencies.²⁸ Comcare must pay all compensation liabilities, damages and expenses from Comcare retained- funds.²⁹ If there are insufficient Comcare-retained funds, costs can be met by appropriation from a Consolidated Revenue Fund up to a prescribed maximum amount. Since the Hawke Review in 2013 the financial performance of the Comcare scheme has shown significant improvement: • The standardised premium rate for 2021-22 was 0.76% of payroll - the lowest of any Australian jurisdiction with the average being 1.30%.³⁰ • On 30 June 2023, the scheme had liabilities of \$1,698 million and a funding ratio of 117%³¹ - compared to 65% as at 30 June 2012. The Comcare scheme was the only workers' compensation jurisdiction to experience a decrease in scheme costs between 2016-17 to 2020-21 (down 18%). During these 5 years, the Comcare scheme recorded a decrease in all the scheme expenditure categories except for Other Administration.³² In 2024, the total claims cost for the scheme was \$416.2 million. Total claims costs have increased in recent years due to the time that ill and injured employees are away from work and the costs of psychological injury.³³ Self-insured licensees under the SRC Act are subject to annual licence fees.
Issues to be considered	• How best to ensure the Comcare scheme can meet its projected claims liability. • The reasons for the Comcare scheme's financial improvements since the Hanks and Hawkes reviews. • The adequacy of the provisions in the SRC Act for the supervision of Comcare's prudential management of premium payers (i.e. focus on financial stability and managing risks). • How to ensure Comcare can fund proactive activities aimed at prevention to reduce injuries. • The transparency of the licence fee setting provision.

²⁸ Comcare, [Comcare and SRCC Annual Report 2022-23](#), Comcare, 2023, accessed 10 September 2024.

²⁹ SRC Act, section 90C(1).

³⁰ SWA, [Comparative Performance Monitoring Report 24 – Workers' Compensation Premiums – 24th edition](#), SWA, 2022, accessed 30 August 2024.

³¹ Comcare, [Comcare and SRCC Annual Report 2022-23](#), Comcare, 2023, accessed 30 August 2024.

³² SWA, [Comparative Performance Monitoring Report 24 – Workers' Compensation Funding – 24th edition](#), SWA, 2022, accessed 30 August 2024.

³³ Comcare, [Scheme Performance Overview](#), Comcare, accessed 30 August 2024.

Links to other ToR	Reducing the length of time ill and injured workers are off work and better management of psychological injury claims are dealt with under terms of reference 1 and 5.
Questions	28. What changes are required to the Comcare scheme to ensure future scheme financial sustainability? 29. Is the scheme's approach to prudential management adequate for Comcare's compensation liabilities? If not, what alternatives do you suggest? 30. Should Comcare be able to access, invest and use money from premiums to fund proactive activities? 31. Are changes required to the licence fee setting provisions under the SRC Act to allow for effective and efficient cost recovery?
c. Social partner involvement and tripartism	
Why important	Tripartism has been a feature of the Comcare scheme since its inception. When the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees (known as 'Comcare') was first established it consisted of 3 members; the CEO and 2 commissioners – one representing employees and one the Commonwealth (i.e. employers). Administrative restructuring of the Comcare scheme resulted in Comcare becoming responsible for claims management and the 'Commission' (which became known as the SRCC) was given a regulatory role in relation to Comcare and other relevant authorities. As outlined above, the SRCC comprises up to 11 Commissioners. Membership includes representatives from unions (3 members); one self-insured licensee; the CEO of Safe Work Australia (SWA); one member each for the Commonwealth and Commonwealth authorities, the ACT Government, the Defence Force; 2 members with expertise relevant to the SRCC functions; and a chair. There are concerns about the effectiveness and appropriateness of the SRCC as a tripartite forum. This is because its powers and functions have increasingly become limited and obscure and it has increased reliance on Comcare (a body it oversees) to provide advice and secretariat support. Also, the only legislative reference to the SRCC's function as a tripartite consultative forum appears in Schedule 2 of the WHS Act which provides that the SRCC is a forum for consultation between the regulator (Comcare) and relevant parties.
Issues to be considered	• How best to promote tripartism within the Comcare scheme across the continuum of WHS and workers' compensation. • How best to ensure genuine social partner involvement within the Comcare scheme. • How the workers' compensation and WHS performance of self-insured licensees and premium payers can be improved by more effective tripartite consultation arrangements.
Links to other ToR	Term of reference 1 in relation to best practice.
Questions	32. Are the requirements under the SRC Act for membership of the SRCC appropriate? 33. Are the arrangements for tripartite involvement under the WHS Act and SRC Act adequate? If not, what additional arrangements are required under the SRC Act? 34. Do you have suggestions for improvements to facilitate tripartism within the Comcare scheme? If so, what are they?

3.5 Scheme entitlements (Terms of reference 3 and 5)

Terms of reference 3 and 5 are focused on:

- a. eligibility for compensation,
- b. structure of entitlements,
- c. interaction between workers' compensation payments and common law, statutory claims and other sources of income, and
- d. rehabilitation and return to work including provisional payments.

The term of reference 5 is also focused on gaps in coverage that may arise from employees and employers transitioning between Commonwealth and state or territory schemes, employer insolvency, or winding up of a self-insurer dealt with earlier.

a. Eligibility for compensation	
Why important	An objective of the review is to make recommendations relating to the legislative framework to ensure gaps in coverage and eligibility are filled so no injured worker is denied benefits. There have been significant changes in the workforce and the nature of the work since the Comcare scheme's inception in 1988. The SRC Act has failed to keep pace with these changes resulting in the possibility of workers who should be covered falling outside coverage. The COVID-19 pandemic has accelerated the uptake of work-from-home arrangements which employers had previously been reluctant to embrace in part due to perceived concerns about increase in workers' compensation liabilities. These developments raise questions as to the clarity, adequacy and adaptability of the current legislative coverage of the scheme.
Issues to be considered	• Who is covered by the scheme – types of employees covered. • What injuries or conditions are covered by the scheme – are the 2 main categories of liability appropriate: ○ Liability for an 'ailment' (or a disease). ○ Liability for an 'injury' (other than disease), otherwise commonly referred to as a 'frank injury' or 'injury simpliciter.' ○ An aggravation of either limb above. • The current approach to linking injury or illnesses to employment: ○ Ailments must be 'contributed to, to a significant degree, by the employee's employment.' ○ Injury must be one which 'arose out of, or in the course of, the employee's employment.' • The appropriateness of deeming provisions (injuries deemed to have arisen out of or in the course of employment), and the diseases that are presumed to have been caused by employment. • The appropriateness of the exclusions (injuries deemed not to have arisen out of or in the course of employment for example, reasonable administrative action, wilful and false representations of prior health, self-inflicted injuries).

	The description of what is a ‘place of work’ given the move to working from home, the issues arising from injuries occurring during journeys and breaks.
Links to other ToR	Term of reference 3 coverage for liability including for remote and flexible work. Term of reference 1 in relation to best practice.
Questions	35. Does the definition of ‘employee’ in the SRC Act reflect contemporary working arrangements? Are the deeming provisions adequate? 36. What is best practice for determining injuries and diseases? For example, is it still appropriate to separate these conditions? Is there a different approach needed for certain injuries, for example psychological injuries? 37. Is there sufficient clarity as to when an employee sustains an injury ‘in the course of their employment’ if they are away from their usual place of employment or injured during an interval within their usual period of employment? 38. Is the current threshold for liability for diseases (significant contribution) appropriate? 39. Are the current exclusions under the SRC Act appropriate?

b. Scheme entitlements

Why important	The Comcare scheme is described as a ‘long tail’ rather than a ‘short tail’ workers’ compensation system. This means compensation is paid for injuries for the duration of a worker’s incapacity until retirement. The failure of the SRC Act to keep pace with change means that several categories of entitlements require fundamental updates to reflect contemporary settings to ensure fairness, provide best practice and proper support. Entitlements that may be payable are: - Incapacity payments (income replacement). - Medical expenses, including the provision of aids or appliances. - Permanent impairment and non-economic loss lump sum payments. - Household and attendant care services. - Rehabilitation costs, including certain alterations. - Death payments and funeral expenses.
Issues to be considered	- How incapacity entitlements can be better structured to ensure fair compensation for injured employees. For example, are there any age-related barriers that need to be removed to better support employees recover and plan for retirement? - How to improve compensation for families following the death of an employee, including how to attribute the lump sum between dependants and funeral expenses. - How to ensure best practice for managing multiple impairments. For example, by combining impairments or treating them separately to meet a threshold for a compensable injury. - How to ensure best practice in determining appropriate levels of compensation for medical treatment and rehabilitation for example, by examining the meaning of ‘treatment that was reasonable to obtain’ and compensation payable in respect of alterations and other matters ‘reasonably required.’ - How to improve the framework and eligibility for compensation for household and attendant care services for non-catastrophic injuries.

	How payments can best support an employee's recovery. For example, by providing an option for lump sum payments instead of ongoing weekly payments (redemption of entitlement), in cases where the ongoing link to employment has an adverse impact and potentially hinders the employee's recovery.
Links to other ToR	Term of reference 1 in relation to best practice.
Questions	40. How can entitlements be structured to improve outcomes for employees and their families? What changes can balance fair support while ensuring the financial viability of the Comcare scheme? For example, should changes be made to the step-down provisions or the duration of payments? 41. What changes are needed to best determine fair compensation for medical treatment and rehabilitation and household and attendant care services? 42. How should the permanent impairment provisions be improved? 43. Does the Comcare scheme sufficiently support injured employees with no potential to return to work? 44. Should the scheme allow more options to finalise claims, including lump sum payments? What safeguards should be in place?

c. Interactions with other schemes and sources of income

Why important	The 1988 Act established the Comcare scheme as a long-tail scheme. This means payments of compensation and benefits are for the life of the injury or disease. The introduction of the 1988 Act all but extinguished the right of an employee to bring a common law negligence claim against the Commonwealth as an alternative to making a workers' compensation claim. This bar does not prevent action against a liable third party, however if the employee recovers damages through such an action (in respect of the same injury) they must repay an amount to Comcare. The Hanks Review recommended maintaining the restrictions on the access to common law, however recommended the introduction of a broader ability to voluntarily redeem future entitlements to offset some of the concerns about the lack of common law access. Presently, the SRC Act only provides for compulsory redemption for those with a permanent incapacity with an entitlement below \$143.75 per week, resulting in a very small number of redemptions. Since the commencement of the SRC Act laws have developed, such as those relating to anti-discrimination, which allow for the awarding of damages for unlawful discrimination, including in a workplace setting. The recent Federal Court case of <i>Comcare v Friend</i> clarified that rights under the Comcare scheme are not impacted by the awarding of damages under discrimination laws (and potentially other similar statutory damages schemes). Further, since the SRC Act was enacted, other schemes and sources of support have developed and changed, in particular superannuation and the National Disability Insurance Scheme. Some of these schemes can be viewed as replicating or doubling up on entitlements provided under the SRC Act and raise questions about the appropriateness of the Act's mechanisms to deal with such issues.
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Issues to be considered	• The limitation on seeking compensation through a common law action for non-economic loss coupled with the limited right to redeem compensation benefits. • The right of recovery from other statutory scheme which provide compensation. • How to best integrate workers' compensation payments with other schemes, for example payments from other sources such as Centrelink, Medicare, Department of Veteran Affairs and the National Disability Insurance Scheme for the same or similar injuries. • How to enable Comcare and self-insured licensees directly to recover amounts paid by a liable third party. • Whether the reductions for superannuation received remains appropriate.
Links to other ToR	Term of reference 1 in relation to best practice.
Questions	45. Should access to common law continue to be restricted? 46. Should there be a greater right to redeem compensation benefits? In what circumstances should redemptions be available? 47. Do the provisions in the SRC Act aimed at preventing double-dipping in relation to like-remedies need changing following <i>Comcare v Friend</i>? 48. Should there be any adjustments to workers' compensation payments for compensation or support from other sources? For example, what impact should the receipt of statutory entitlements and other income have on the entitlement to, and calculation of, compensation?

d. Rehabilitation, return to work and early intervention

Why important	Early intervention aims to reduce work disability by putting supports in place as early as possible after symptoms of an illness or injury are experienced. Examples of early intervention support that employers can offer (regardless of the employee's intention to lodge a claim) may include access to a rehabilitation case manager, treatment, allied health services or workplace rehabilitation services.³⁴ Early intervention is not specifically provided for under the SRC Act. However, a significant number of employers covered by the Comcare scheme do provide early intervention support.³⁵ Early intervention initiatives can also include provisional liability payments. Unlike many state and territory schemes, the Comcare scheme does not provide for provisional liability payments. Return to work is about both helping workers to get back to work or to stay at work while they recover from work-related injury or illness. As outlined in SWA's National Return to Work Strategy the objective is to minimise the impact of work-related injury and illness and enable workers to have a timely, safe, and durable return to work. The return to work rates under the Comcare scheme are high compared with other state and territory workers' compensation schemes.³⁶ Self-insured licensees typically outperform Australian Government agencies in key return to work measures. Research has shown that employees from self-insurers are
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³⁴ Comcare, [Intervene early and know the warning signs | Comcare](#), Comcare, 20224, accessed July 2024.

³⁵ Comcare, ['2021 National Return to Work Survey factsheet'](#), Comcare, 2022, accessed September 2024.

³⁶ Comcare, ['Annual report 2022-23'](#), Comcare, 2023, accessed September 2024.

	more likely to have returned to work and to have a shorter duration of compensated time loss.³⁷ Significant differences also exist in return to work experiences across all Australian workers' compensation schemes for those with physical and psychological injury. Employees under the Comcare scheme with a mental illness claim were more likely to require additional time off (44.5%), to return to different duties (27.8%) and to work fewer hours when returning to work (55.3%).³⁸ They were also significantly more likely to have found interactions stressful with their rehabilitation case manager (23.8%).³⁹ The Hanks Review made several recommendations to improve rehabilitation and return to work under the SRC Act. These include requiring rehabilitation case managers to undertake appropriate training, improving clarity on the employer responsible for rehabilitation and mandating injury management plans and case reviews at certain timeframes.⁴⁰
Issues to be considered	• The advantages and disadvantages of establishing a framework for early intervention include ensuring early intervention does not act to dissuade workers from making a future claim and that initiatives continue once a claim for compensation has been lodged. • How to strengthen employer obligations to facilitate an injured employee's return to suitable and meaningful employment. • How to provide workers with an increased ability to participate in their recovery and return of work including in their interaction with rehabilitation providers. • The advantages and disadvantages of establishing a system of provisional liability. • How to improve the rehabilitation framework to support return to work and workers with long term incapacity.
Links to other ToR	Term of reference 1 in relation to best practice.
Questions	49. Does the Comcare scheme provide suitable criteria and arrangements to support: a. Early intervention? b. Return to work? 50. Should the Comcare scheme provide for provisional payments? If so, what should be the length and amount of any such payments, and how/whether to recover payments if ultimately the injury is not due to work? 51. What changes are needed to the SRC Act regarding oversight of rehabilitation authorities and rehabilitation providers? 52. Should the SRC Act provide Comcare with greater regulatory powers in relation to rehabilitation?

³⁷ Monash University, '[Comparison of return to work practices and outcomes in self-insured and scheme-insured organisations](#)', Monash University, 2018, accessed September 2024.

³⁸ SWA, *2021 National Return to Work Survey*, 2022, p.29, (safeworkaustralia.gov.au), accessed 23 July 2024.

³⁹ Social Research Centre, '[2021 National Return to Work Survey Report](#)', SWA, 2022, accessed 9 July 2024.

⁴⁰ Hanks Review, P.10.

3.6 Resolving disputes in the scheme (Term of reference 6)

Term of reference 6 is focused on:

- a. how arrangements for internal and administrative review can ensure disputes are resolved as quickly, efficiently, and fairly as possible, taking into account the impact of disputes on claimants.

It is also focused on whether terms in the legislation which have been the subject of significant litigation can be clarified. These matters will not be considered in isolation but within the context in which they arise.

a. Resolving disputes in the scheme

Why important	The objective is to make recommendations to ensure the process for resolving disputes results in a fair and affordable outcome for those suffering injury, returns the worker to employment as quickly as possible and does not exacerbate the impact of the injury. Achievement of these objectives would reduce the volume and costs of litigation. In 2020-21, the Comcare scheme had a higher average disputation rate (6%) than other Australian workers' compensation schemes (4.2%).⁴¹ While there is a need for caution when comparison are made between jurisdictions,⁴² the disputation rate for the Comcare scheme may be due to legislative design. Comcare disputes generally take more time to resolve than disputes in other jurisdictions.⁴³ The resolution of disputes involves internal review by Comcare and external review by the Tribunal. Internal review can be valuable but the timeliness of decision-making can result in perceptions of delayed justice. The resolution of disputes is influenced by several factors including restrictions on options for pre-litigation dispute resolution. Pre-litigation (alternative) dispute resolution processes are available under some state and territory schemes, but is only available under the SRC Act in proceedings before the AAT. Most self-insured licensees have pre-litigation dispute resolution processes including mediation or conciliation. Factors that impact the timeliness of settling disputes include lack of clarity of key terms in the SRC Act, delays due to the need to obtain medical and other expert evidence and absence of guidance for claims managers due to inconsistent tribunal and court decisions. A common complaint about the dispute resolution process for Comcare appeals is the processing time for the appeals to be finalised by the AAT. In 2022-23, 54% of the 1,175 reviews (Comcare and Seacare) were finalised within 12 months, the median time being 49 weeks.⁴⁴
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⁴¹ SWA, *Comparative Performance Monitoring Report 24, Workers' Compensation Disputes*, P.6, [CPM 24 - Disputation](#), accessed 22 July 2024.

⁴² Due to scheme differences in design, types of decisions that can be appealed, dispute resolution arrangements and the cost of appeals.

⁴³ SWA *Comparative Performance Monitoring Report* (23rd edition), 'Workers Compensation Dispute's at page 6.

⁴⁴ See AAT Annual Report 2022-23, these figures cover all Commonwealth workers compensation claims made to the AAT under both the SRC Act and the *Seafarers Rehabilitation and Compensation Act 1992*

	A further common complaint about the Comcare scheme is that innovation and flexibility in the alternative dispute resolution is restricted under the SRC Act, potentially preventing parties from settling claims.
Issues to be considered	• How changes to system design (including the appeals structure) can assist with resolving dispute at all stages of the process. • Whether there is a role for medical panels in the decision-making process. • Whether the structure requires supplementation, for example by more effective use of pre-litigation dispute resolution during which ‘all in’ settlements could be negotiated. • Exploring the causes for the higher average disputation rates for Comcare (6%) than for other Australian schemes (4.2%). • Exploring why resolving disputes takes more time for Comcare, than for claims managed through delegated claims management arrangements (see 3.7) and by licensees. • Considering how to reduce the time it takes to settle dispute about psychological claims. • Exploring how legal costs act as a barrier to dispute settlement. • Considering whether a provisional payment system with restrictions on amounts and length of time would deal with the adverse economic consequences for employees due to the original decision on a claim operating until the dispute is resolved.
Links to other ToR	Term of reference 5 in relation to lump sum payments, provisional payments, and the restrictions on redemption. Terms of reference 1 and 4 in relation to best practice.
Questions	53. What is your experience of dispute resolution in the scheme? What improvements would you suggest arising from that experience? 54. Should the legislative framework provide for pre-litigation dispute resolution processes prior to external review by the Tribunal? If so, at what point in the process and by whom? 55. Should the legislative framework be changed to adopt best practice in dispute resolution from other schemes? If so, please specify. 56. Is there a role for medical panels to contribute to the dispute resolution process, and if so, how should such a panel be constituted and should the panel’s opinion be binding? 57. How can dispute resolution processes be structured to limit further harm to claimants? For example, should there be dispute resolution at the reconsideration stage? Who should pay legal costs associated with the reconsideration? 58. Do you have other suggestions for improvements to the processes for resolution of disputes? For example, other avenues for the resolving of disputes or providing for ‘all in’ settlements?

3.7 Scheme administration (Term of reference 7)

Term of reference 7 is focused on improving claims administration to achieve better outcomes for injured worker and other Comcare scheme participants. It requires the panel to consider:

- a. delegated claims management, and
- b. how to ensure accurate and timely decision-making on claims.

It is also focused on funding arrangements, including the powers to set premiums, licence fees and regulatory contributions which has been dealt with under term of reference 4.

In addition, its focus is on legislative gaps or unintended consequences arising from the current legislative framework and other technical improvements to streamline the regulatory framework of the Comcare Scheme. These matters will be considered in the context in which they arise.

a. Delegated claims management

Why important	Since 2016, Comcare has delegated its decision-making powers and responsibilities in relation to claims to 2 Australian Government employers, Services Australia, and the Australian Taxation Office (ATO).⁴⁵ These are the 2 largest Australian Government employers by total number of employees. This means they take a greater role in managing workers compensation claims. To facilitate this arrangement, the Comcare CEO has issued instruments of delegation to Services Australia and the ATO.⁴⁶ Management of their own claims is restricted to certain Australian Government employers. The Australian National Audit Office (ANAO) performance audit of Comcare's administration of workers' compensation claims noted the following improved outcomes under delegated claims management arrangements: higher return to work rates, lower premiums, higher affirmation rates and improved timeframes for new claims determinations.⁴⁷
Issues to be considered	The ability and scope of the Comcare CEO to delegate Comcare's claims management powers and functions, including decision making, to trained officers in Australian Government agencies (delegates).
Links to other ToR	Term of reference 1 in relation to best practice.
Questions	59. Should the Comcare scheme continue to provide for delegated claims management arrangements? 60. What aspects of the delegated claims management arrangements should remain? What changes are needed?

⁴⁵ ANAO, [Comcare's administration of its Workers' Compensation Scheme Claims](#), ANAO, 2023, accessed 5 July 2024 at para 2.45. + moved ref 45 to previous sentence.

In 2021–22 there were 159,469 employees in the Australian Public Service, of which 20,375 were employed in the ATO and 34,294 were employed in Services Australia.

⁴⁶ ANAO, [Comcare's administration of its Workers' Compensation Scheme Claims](#), ANAO, 2023, accessed 5 July 2024.

⁴⁷ ANAO, [Comcare's administration of its Workers' Compensation Scheme Claims](#), ANAO, 2023, accessed 5 July 2024.

b. Ensuring fair, accurate and timely decision-making

Why important	Ensuring that liability is determined accurately, and compensation paid in a timely manner is fundamental to protecting workers who are injured at work. In 2023 regulations were made to support quick decisions from 1 April 2024 by prescribing the following periods for decision-making: • 20 calendar days for claims made in respect of an injury or an aggravation of an injury (other than a disease). • 60 calendar days for claims made in respect of a disease. • 30 calendar days to decide a request by a claimant to reconsider a determination. No direct sanction applies to the failure to meet the timeframes, although a failure may be non-compliance with licence conditions, a matter for the SRCC. Failure to comply with the timeframes may result in a ‘deemed decision.’ This may authorise a power to review by the Tribunal but has yet to be tested. In 2023-24 the average time to determine a claim for: • an ‘injury (other than a disease)’ was 10.5 days, with 97.5% of determinations meeting the 20-day timeframe, • a disease was 44.7 days, with 95% of determinations meeting the 60-day timeframe.⁴⁸ In 2023-24 93.6% of reconsiderations under the scheme met the 30-calendar day timeframe.⁴⁹ The tools available in the SRC Act to support accurate and quick decisions include: • Power to gather the information required to make a decision. For decisions on initial liability, the time for gathering evidence is not counted as part of the time limit. • Power to require a claimant to undergo an independent medical examination (IME): SRC Act s 57. A new legislative instrument, <i>Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024</i>, commenced on 18 September 2024 and applies from 30 October. The object of the guide is to support ethical, transparent, and accountable decision-making relating to the exercise of the power. The process of decision making is not outlined in the SRC Act and depends on the administrative decision making of claims managers and delegates.⁵⁰
Issues to be considered	• Whether better legislative guidance is required for fair, accurate and quick decisions including clarification of the deemed failure to meet statutory timeframes; and clarification and any other improvements to the section 57 IME power. • Whether steps in the process should be shorter to provide speedier outcomes for claimants. • How to ensure that timeframes do not cause unintended consequences, such as increased rejection of claims and less accurate decision making.

⁴⁸ Comcare, 2024.

⁴⁹ Comcare, 2024. These statistics represent the entire 2023-24 period, including periods both before and after the commencement of the timeframe’s regulations.

⁵⁰ Comcare, *Scheme guidance - Best-practice decision making under the SRC Act*, [Scheme guidance - Best-practice decision making under the SRC Act | Comcare](#), accessed 22 July 2024.

	• Whether more tools should be available to determining authorities to facilitate accurate and quick decisions such as better information-gathering powers. • Whether the recent introduction of the IME Guide and prescribed claims determination timeframes are achieving their aims or whether they cause unintended consequences, including delaying decisions on claims.
Links to other ToR	Term of reference 1 in relation to best practice. Term of reference 2 in relation to the competencies of claims managers.
Questions	61. Are further changes required to the claims decision-making framework to improve outcomes and ensure fair, accurate and timely decision making? If so, please specify. 62. How can unintended consequences best be avoided?

Appendix A – Consolidated list of discussion questions

Best practice workers' compensation – discussion questions	
1	What are the primary objectives of a workers' compensation scheme? Should those objectives be expressly stated in the Act?
2	What are best practice design principles for a workers' compensation scheme? For example, can you provide examples (from other schemes) of best practice approaches to early intervention, rehabilitation (including supporting employees with psychological injuries), vocational support and return to work?
3	Describe the areas of the scheme needing reform to help workers understand and access their entitlements. What changes are needed to enable workers better to navigate the legislative framework?
Workforce challenges – discussion question	
4	What changes are required to address workforce challenges (current and emerging: see 'Issues to be considered' above) to maintain an effective and sustainable Comcare scheme?
5	What changes are required to the Comcare scheme to better accommodate remote work and working outside 'traditional' work hours?
6	What changes are required to the Comcare scheme to better manage complex psychological claims?
7	What changes are required to the Comcare scheme to respond to climate change risks?
Employee experience – discussion questions	
8	What is your claim experience? Positive, negative or neutral?
9	Explain what aspects of the Comcare scheme work well? For example, early intervention initiatives or the claim-making process or rehabilitation and return to work support.
10	What changes to the Comcare scheme would better support recovery and wellbeing and improve return to work outcomes?
11	What changes to the Comcare scheme would better support workers with life-changing injuries and illnesses?
12	What changes to the Comcare scheme would better support workers with psychological injuries and illnesses?
13	What changes to the Comcare scheme would better support families of workers who have suffered serious injury, illness or death?
14	Do you have any suggestions for improving and building the competencies of claims managers?
15	What is the claim experience for women, First Nations workers, older workers or other diverse worker groups?

16	What aspects of the Comcare scheme work well for diverse groups?
17	What changes are required to the Comcare scheme to ensure injured workers with diverse backgrounds or needs receive appropriate support?
Scheme coverage – discussion questions	
18	What are the risks and issues that arise from current coverage of the Comcare scheme?
19	Is it still appropriate for the Comcare scheme to be the pathway to a national scheme for private multi-state employers? Apart from Australian Government entities and companies who should have access to the Comcare scheme? Give reasons.
20	What criteria should apply for corporations to join the Comcare scheme?
WHS Act coverage – discussion questions	
21	What are the implications for non-Commonwealth licensees in maintaining or ending the transitional period for their coverage under the WHS Act?
22	Should self-insured licensees be regulated by Comcare under Commonwealth WHS laws, or state and territory WHS laws and regulators? Please give reasons.
Governance arrangements - discussion questions	
23	Does the SRC Act suitably define the roles and responsibilities of: • Comcare? • SRCC?
24	What governance framework is needed to provide high-level oversight of Comcare? For example, a governing or advisory board? What requirements should apply to any members of such a group, for example relevant expertise or representation or both?
25	What changes are required to ensure the SRCC has the powers and responsibilities to effectively regulate self-insurance licensees and the public sector?
26	Does the existing framework provide appropriate oversight and monitoring, compliance and reporting arrangements for: • Comcare? • Self-insured licensees? • Delegated claims management arrangements (see 3.7)? • Rehabilitation authorities? • Workplace rehabilitation and other service providers?
27	Are the Hawke and Hanks Review recommendations still relevant for rehabilitation governance including introducing an auditing program for rehabilitation authorities; creating a return-to-work inspectorate; penalties for failures to meet rehabilitation responsibilities under the scheme; and the ability to approve or accredit all providers operating in the scheme?
28	What changes are required to the Comcare scheme to ensure future scheme financial sustainability?
29	Is the scheme's approach to prudential management adequate for Comcare's compensation liabilities? If not, what alternatives do you suggest?

30	Should Comcare be able to access, invest and use money from premiums to fund proactive activities?
31	Are changes required to the licence fee setting provisions under the SRC Act to allow for effective and efficient cost recovery?
32	Are the requirements under the SRC Act for membership of the SRCC appropriate?
33	Are the arrangements for tripartite involvement under the WHS Act and SRC Act adequate? If not, what additional arrangements are required under the SRC Act?
34	Do you have suggestions for improvements to facilitate tripartism within the Comcare scheme? If so, what are they?

Scheme entitlement – discussion questions

35	Does the definition of ‘employee’ in the SRC Act reflect contemporary working arrangements? Are the deeming provisions adequate?
36	What is best practice for determining injuries and diseases? For example, is it still appropriate to separate these conditions? Is there a different approach needed for certain injuries, for example psychological?
37	Is there sufficient clarity as to when an employee sustains an injury ‘in the course of their employment’ if they are away from their usual place of employment or injured during an interval within their usual period of employment?
38	Is the current threshold for liability for diseases (significant contribution) appropriate?
39	Are the current exclusions under the SRC Act appropriate?
40	How can entitlements be structured to improve outcomes for employees and their families? What changes can balance fair support while ensuring the financial viability of the Comcare scheme? For example, should changes be made to the step-down provisions or the duration of payments?
41	What changes are needed to best determine fair compensation for medical treatment and rehabilitation and household and attendant care services?
42	How should the permanent impairment provisions be improved?
43	Does the Comcare scheme sufficiently support injured employees with no potential to return to work?
44	Should the scheme allow more options to finalise claims, including lump sum payments? What safeguards should be in place?
45	Should access to common law continue to be restricted?
46	If access to common law continues to be restricted, should there be a greater right to redeem compensation benefits?
47	Do the provisions in the SRC Act aimed at preventing double-dipping in relation to like-remedies need changing following <i>Comcare v Friend</i> ?
48	Should there be any adjustments to workers’ compensation payments for compensation or support from other sources? For example, what impact should the receipt of

	statutory entitlements and other income have on the entitlement to, and calculation of, compensation?
Rehabilitation and return to work – discussion questions	
49	Does the Comcare scheme provide suitable criteria and arrangements to support: a. Early intervention? b. Return to work?
50	Should the Comcare scheme provide for provisional payments? If so, what should be the length and amount of any such payments, and how/whether to recover payments if ultimately the injury is not due to work?
51	Should the SRC Act provide for greater oversight of rehabilitation authorities and rehabilitation providers?
52	Should the SRC Act provide Comcare with greater regulatory powers in relation to rehabilitation?
Dispute resolution – discussion questions	
53	What is your experience of dispute resolution in the scheme? What improvements would you suggest arising from that experience?
54	Should the legislative framework provide for pre-litigation dispute resolution processes prior to external review by the Tribunal? If so, at what point in the process and by whom?
55	Should the legislative framework be changed to adopt best practice in dispute resolution from other schemes? If so, please specify.
56	Is there a role for medical panels to contribute to the dispute resolution process, and if so, how should such a panel be constituted and should the panel's opinion be binding?
57	How can dispute resolution processes be structured to limit further harm to claimants? For example, should there be dispute resolution at the reconsideration stage? Who should pay legal costs associated with the reconsideration?
58	Do you have other suggestions for improvements to the processes for resolution of disputes? For example, other avenues for the resolving of disputes or providing for 'all in' settlements?
Scheme administration – discussion questions	
59	Should the Comcare scheme continue to provide for delegated claims management arrangements?
60	What aspects of the delegated claims management arrangements should remain? What changes are needed?
61	Are further changes required to the claims decision-making framework to improve outcomes and ensure fair, accurate and timely decision making? If so, please specify.
62	How can unintended consequences best be avoided?

Appendix B – Terms of Reference

Review of the *Safety, Rehabilitation and Compensation Act 1988*

Purpose of the review

The nature of work and workplace injuries and illnesses has changed significantly since the introduction of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), which underpins the Commonwealth workers' compensation scheme, known as the 'Comcare scheme'. The SRC Act has not been reviewed since 2012, and there has been no substantial legislative reform of the scheme since its introduction.

The Comcare scheme was primarily designed to cover Australian Government employees, with relatively consistent employment conditions, engaged in generally similar types of work. The Comcare scheme now covers more private employees (57 per cent) than Government employees, in a wider range of specialist and high-risk industries. In addition, the scheme has seen a significant increase in claims for psychological injuries and illnesses. This review is an opportunity to identify reforms to improve outcomes for injured employees, and to ensure that the scheme has the flexibility to respond to new and emerging workplace practices, while maintaining its ongoing financial viability. The review will make recommendations to the Government to inform future legislative reform of the SRC Act.

The Comcare scheme

The Comcare scheme provides rehabilitation and workers' compensation arrangements to workers of the Commonwealth Government, the ACT Government, and a number of private corporations who self-insure their workers' compensation obligations under the SRC Act.

Comcare acts as scheme administrator, and as an insurer and claims manager for premium-paying scheme employers (the Commonwealth and Commonwealth authorities). The Safety Rehabilitation and Compensation Commission (the Commission) administers some of the regulatory functions of the SRC Act, other than those ascribed to Comcare, and issues and regulates self-insurance licences under the SRC Act.

Review process

The review will be led by an independent panel, appointed by the Minister for Employment and Workplace Relations, and supported by a secretariat team in the Department of Employment and Workplace Relations. The independent panel will draw on research, data, and findings from past reviews, and be supported by specialist advice in areas such as occupational medicine, user-centred design, psychological injury and illness support, and actuarial modelling.

The panel will consult with a tripartite reference group representing unions, employers and Government during the review. The panel will also conduct public consultations and engage with key stakeholders, including people with experience of workers' compensation or personal injury and illness claims, such as injured workers and their unions and legal representatives, as well as advocacy groups, self-insured licensees and their representatives, and Comcare and the Safety, Rehabilitation and Compensation Commission.

Terms of reference

The panel will undertake a comprehensive review of the Comcare workers' compensation framework and make recommendations to Government on improvements to the framework. The recommendations will address how to better support and improve outcomes for workers while ensuring the scheme's future financial viability. The review will consider:

- 1. Best practice in workers' compensation**, including:
 - a. identification of the key objectives for a workers' compensation scheme that supports workers (including through financial and vocational support) to seek treatment, rehabilitate and return to work, and how these outcomes can be achieved through the scheme's legislative framework; and
 - b. how the legislative framework can enable the scheme to respond to current and future workplace challenges, including the rise in reported psychological injuries and illness, an ageing workforce, and changes to working arrangements.
- 2. Employees' experience of the scheme**, including:
 - a. best practice approaches to early intervention, rehabilitation, vocational support, return to work, and supporting workers with psychological injuries and illnesses, and how the scheme framework can reflect these;
 - b. how the legislation can promote a people-centred approach to workers' compensation, which supports workers through their recovery and promotes their wellbeing;
 - c. ensuring that the scheme framework does not negatively impact injured workers' health and wellbeing;
 - d. optimising return to work outcomes;
 - e. how the scheme framework can best support workers with diverse needs and experiences, including consideration of the impact of gender, sexual orientation, and social, racial and ethnic backgrounds; and
 - f. how workers with life-altering long-term injuries and illnesses and the families of workers who suffer a serious illness or injury or death, can best be supported under the scheme framework.
- 3. Scheme coverage**, including:
 - a. whether national private sector employers should have access to the Comcare scheme;
 - b. whether 'non-Commonwealth licensees' should continue to have coverage under the Commonwealth *Work Health and Safety Act 2011* (WHS Act) in light of substantive national harmonisation of work health and safety laws; and
 - c. what a place of work is and what constitutes 'employment' for the purpose of workers' compensation, and when an injury or illness should be compensable under workers' compensation.
- 4. Governance arrangements**, including:
 - a. best practice governance, regulation and oversight arrangements for the scheme, including regulation and oversight of Comcare, determining authorities, rehabilitation authorities, self-insured licensees, workplace rehabilitation providers and other providers operating in the scheme;
 - b. ongoing financial management and viability of the Comcare scheme; and
 - c. social partner involvement and tripartism.
- 5. Scheme entitlements**, including:
 - a. interactions between workers' compensation payments under the no-fault Comcare scheme and common law and statutory claims and other sources of income or payments, including superannuation, and other compensation schemes;

- b. gaps in coverage that may arise from workers and employers transitioning between Commonwealth and state or territory schemes, employer insolvency, or winding up of a self-insurer;
 - c. how entitlements could be structured to better support injured workers and families of workers who suffer injuries and illnesses resulting in deaths, including use of lump sum payments;
 - d. use of provisional payments and payment for medical expenses before a claim is accepted;
 - e. vocational support and education to support rehabilitation; and
 - f. the role of the employer and service providers in rehabilitation and return to work.
- 6. Resolving disputes in the scheme, including:**
- a. how arrangements for internal and administrative review can ensure disputes are resolved as quickly, efficiently and fairly as possible, taking into account the impact of disputes on claimants; and
 - b. whether terms in the legislation which have been the subject of significant litigation can be clarified.
- 7. Scheme administration, including:**
- a. delegated claims management;
 - b. how to ensure accurate and timely decision-making on claims;
 - c. funding arrangements, including powers to set premiums, licence fees and regulatory contributions;
 - d. consideration of legislative gaps or unintended consequences arising from the current legislative framework; and
 - e. other technical improvements to streamline the regulatory framework of the scheme.

Out of scope

Obligations under the Commonwealth WHS Act are not within the scope of this review. The WHS Act is based on national model legislation. Responsibility for reforms to the national model WHS Act sits with Safe Work Australia and is subject to agreement by relevant Commonwealth, state and territory ministers.

The review will not make recommendations for reform of other Commonwealth workers' compensation schemes such as the military compensation schemes, the Parliamentary Injury Compensation Scheme (PICS), the *Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005* (ARC Act) and the Seacare scheme. Evidence of the experience of injured workers and their families and of best practice arrangements in these schemes, as well as recent reviews of these schemes, may be considered by the review in making recommendations for reform of the Comcare scheme. The final review report will be available for consideration in any future reform of other Commonwealth schemes. The review will seek feedback from injured workers and their families within and outside the Comcare scheme to inform recommendations for reform to the legislative framework underpinning the Comcare scheme. However, the review will not make findings in relation to workers' compensation schemes other than the Comcare scheme, or findings in relation to individual claims.

Reporting period

A final report on the review's findings and recommendations will be given to Government for consideration within 12 months of the establishment of the independent review panel. Information on how to engage with the review can be found on the department's website at:

<www.dewr.gov.au>