

## *Change the Rules for Working People*

### **5. COMCARE AND THE SRCC**

1. Occupational health and safety and workers' compensation outcomes are maximised when the regulatory framework has the following principle features –strong laws, strong and active unions and a strong and proactive regulator.
2. Given this, this policy sets out how ways in which unions and Comcare should work together to maximise OHS and workers' compensation outcomes consistent with Comcare's statutory functions. Specifically, this policy sets out initiatives to ensure:
  - a) Comcare co-operatively and proactively interacts with unions and Health and Safety Representatives (HSRs) given their role enunciated in OHS law;
  - b) That unions are able and encouraged to perform their role in helping to ensure compliance of OHS laws;
  - c) Unions be able to have elected HSRs in workplaces and in turn support HSRs;
  - d) Unions be able to effectively represent injured workers before and during the workers' compensation process;
  - e) As far as is permissible by law, Comcare shares with unions data on claims, notifiable incidents, HSR engagement and other information relevant to hazards' management and intervention programmes;
3. Require Comcare to develop a stakeholder engagement policy which mandates regular consultation with stakeholders, including union stakeholders on matters, including, but not limited to:
  - a. Regulatory approach
  - b. Campaigns
  - c. Resource allocation
4. Given the SRC Act does not include objectives, insert objectives which address the interest of workers;
5. The Comcare scheme apply to workers performing work as part of "Work for the Dole" and other like schemes (amend s.631(c)) of the *Social Security Act 1991*;

### **Comcare as an OHS Regulator**

6. That Comcare shall ensure its OHS regulatory functions are adequately resourced and to this end, shall:
  - a. In state and territories where Comcare does not have staff permanently based, conclude shared resources agreements with the relevant state and territory regulator and appoint nominated state and territory Inspectors as Comcare Inspectors with dual appointment;
  - b. Regularly review the number, training requirement and placement of Inspectors in consultation with stakeholders;
7. Require Comcare to have a proactive approach in relation to unannounced workplace visits in substitute for their current regulatory model which is principally audit focused and reactive (incident based);
8. Require Comcare to maintain separation between compliance and business engagement activities;
9. Require Comcare to develop a Workforce Engagement Policy with the following features:
  - a. Regular and active engagement by Comcare with Health and Safety Representatives (HSRs), including but not limited to industry-specific campaigns and an emphasis on HSR training;
  - b. Provision by Comcare of a dedicated HSR support officer and HSR resources including web-based resources;;
  - c. Comcare undertaking industry specific communications and consultations with HSRs;
  - d. The convening by Comcare of an annual one day training conference for HSRs in each state and territory;
10. Amend the *Safety, Rehabilitation and Compensation Act 1988* (“SRC Act” or “Act”) to make state and territory regulators the OHS regulator for all private sector licensees;
11. Create a new statutory position of Director of Work Health and Safety Prosecutions whom shall be appointed by the Minister;
12. That prosecution guidelines be mandated under the WHS Act;
13. Following consultation with the SRCC, that the Minister issue written directions to Comcare regarding the funding formula to be applied to OHS enforcement activities;
14. That the Comcare Deputy CEO be given day to day management responsibility for Comcare’s OHS functions and activities.

#### **Comcare as a workers’ compensation scheme**

15. Make such changes that are necessary to the Comcare scheme so that it reflects the 12 Guiding Principles, and in particular, implement the following:

- a. Amend the SRC Act to provide for the provisional liability of claims;
  - b. Comcare's liability dispute resolution system in Comcare is bureaucratic and notoriously slow. Given the increased number of scheme participants in various non-public sector workplaces, the claims resolutions provisions of the SRC Act be amended as follows:
    - The claims process is based on a single decision about liability being made within 21 days of the claim being lodged and;
    - Claim disputes are determined by a dedicated compensation tribunal / Fair Work Commission resourced to ensure early mediation and prompt dispute resolution.
16. To reduce and manage the conflict between self insurance and the desire of businesses to make a profit and/or reduce costs, the SRCC should have sufficient power to ensure all claims management functions are undertaken by direct employees of the direct employer;
  17. Comcare early intervention initiatives should be limited to those that are supported by medical advice and involve injured workers in meaningful work.

**Safety, Rehabilitation and Compensation Commission (SRCC)**

18. That the OHS jurisdiction of the SRCC be broadened to include the Australian Public Service (APS);
19. That when the SRCC makes licensing decisions, it is required to apply a test for the protection of workers, to demonstrate that no employee would be worse off as a result of the granting of a license application;
20. That the license compliance and performance model (LCPM) be externally reviewed;
21. With respect to Comcare licensees, that the SRCC be given sufficient powers of enforcement for use in situations where license conditions are not being complied with;
22. That the SRCC has the ability to grant an initial license or a license extension for a period up to but no greater than four years;
23. That the licensing policy of the SRCC enable in practice, the revocation of the licensees of non-conforming licenses;
24. That the licensing policy (and other relevant policies) of the SRCC enable in practice, the inclusion of special conditions to a license of a licensee;
25. To ensure that licensees comply with their legal and license obligations, the SRCC shall implement a licensing policy which requires a comprehensive audit:
  - a. Prior to the granting of an initial license and the extensions of a license;
  - b. At least once during the life of each licensing period; and
  - c. At any time required by the SRCC.

26. That the licensing policy of the SRCC require licensees to report the details of any breach of a license condition and that such breaches trigger an obligation on the licensee to show cause why the license should not be terminated;
27. Broaden the scope of the powers and functions of the SRCC to enable itself to own its own motion, and to do any of the following:
  - a. Provide advice to the Minister on proposed legislative instruments, prosecution guidelines and any OHS and/or workers' compensation related matter;
  - b. Commission research;
  - c. Develop and approve Codes of Practice;
  - d. Review any aspect of the Comcare scheme;
  - e. Make submissions to Parliamentary inquiries.
28. Provide the Minister with the ability to appoint an SRCC member as Deputy Chairperson;
29. That policies of the SRCC be reviewed at least every two years;
30. Reform the practices of the SRCC so it is able to effectively discharge its functions as a consultative forum under the *Safe Work Act 2011*;
31. A function of the SRCC shall be to monitor patterns and trends in Comcare prosecutions;
32. A function of the SRCC shall be to monitor the collection, use and disclosure by Comcare of data on investigations;

#### **OHS and worker's compensation guiding principles**

33. These policies have been developed within the context of the 12 guiding principles for Australian OHS and worker's compensation system design. These principles should be the basis of all such systems. They are:
  - a) Workers' compensation should be available on a no-fault basis where an injury "arises out of or in the course of employment", even where it is the aggravation of an existing injury or disease.
  - b) Premiums must recover the costs of the system as well as encourage safe work practices.
  - c) Comcare must be adequately resourced to carry out its functions properly including an increased emphasis on prevention and compliance.
  - d) Meaningful tripartite consultation must be a central part of the system.
  - e) The system of scheme agents and self-insurers should be abolished and all workers compensation functions should be internalised within the authority.
  - f) Trade unions must have the power to enforce non-compliance with workers compensation law together with rights of entry, inspection and other investigative powers.

- g) Comcare should provide a quick, easy, effective and legally binding mechanism to resolve disputes about all aspects of the workers compensation system.
- h) Return to work should be elevated as a central tenant of workers compensation by:
  - i) placing an absolute obligation on employers to provide suitable duties;
  - j) preventing termination unless the injury management plan states that the return to work goal is a different job and a different employer; and
  - k) incentivising the employment of injured workers.
- l) Journey claims and recess claims should be covered by the system.
- m) Weekly payments should be set at a level equivalent to an injured worker's pre-injury average weekly earnings irrespective of their fitness for work and should not be subject to any caps or step-downs.
- n) Costs associated with medical and all related treatment should be covered for workers compensation purposes with no arbitrary caps or limits.
- o) Work Capacity Reviews and Decisions should be removed from the workers compensation legislation. Consideration of a worker's functionality is properly addressed as part of their rehabilitation plan.