

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

SELECT COMMITTEE ON WORKERS COMPENSATION PROVISIONS

October 1995

RESOLUTION OF APPOINTMENT

The Select Committee on Workers Compensation Provisions was established by resolution of the Assembly on 31 May 1995 and required to report to the Assembly by the first sitting day in October 1995.

The committee's terms of reference are:

That the committee inquire into and report on the provisions of workers compensation arrangements in the ACT Government Service including Territory Owned Corporations and Statutory Authorities. The committee will include in its inquiry the following:

- (a) the adequacy of the Commonwealth Safety Rehabilitation and Compensation Act in the ACT Government context;
- (b) the management of the Act in the ACT Government context;
- (c) the value provided to the workforce and to the ACT;
- (d) the costs of the current arrangements and the underlying reasons;
- (e) the cost of possible alternative arrangements; and
- (f) any other related matters.

MEMBERSHIP OF THE COMMITTEE

Mr Wayne Berry MLA, Chair
Mr Harold Hird MLA, Deputy Chair
Mr Michael Moore MLA.

Secretary Bill Symington

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Glossary

ACTEW	ACT Electricity and Water Corporation
ACTGS	ACT Government Service
ACTION	ACT Internal Omnibus Network
ACT WorkCover	Responsible for workplace safety under the OH&S Act 1994 and the ACT Workers Compensation Act (operates the OH&S Inspectorate)
CFMEU	Construction Forestry Mining and Energy Union
Comcare	Comcare Australia
CPSU	Community and Public Sector Union ACT Branch
NWE	Normal Weekly Earnings
OH&S	Occupational Health & Safety
OH&S Act	Occupational Health & Safety Act 1994
OHSRAC	Occupational Health & Safety Rehabilitation Committee
OPAM	Office of Public Administration and Management
RTWP	Return to Work Plan
Sub	Submission accepted by the Committee and numbered
SRC	Safety Rehabilitation and Compensation Act 1992
SRCC	Safety Rehabilitation and Compensation Commission
TLC	ACT Trades and Labour Council
Transcript	Transcript of public hearings held by the committee on 15 June, 7 and 8 September 1995

SUMMARY OF RECOMMENDATIONS

- **That the Government request Comcare to:**
 - (1) **investigate the creation of a further grouping of agencies which have a clear claims record with a view to their premium rates being adjusted to reflect their extremely good performance; and**
 - (2) **recoup any reduction in premium income by increasing the premiums for those agencies which are not performing to an acceptable standard. (Paragraph 4.18)**
- **That the Government accept the Comcare offer to participate in a joint management of Comcare operations and in the development of a whole of government premium reduction strategy. (Paragraph 5.6)**
- **That in relation to the current review of compensation arrangements, the ACT Government:**
 - (1) **ensure that there is a clear ACTGS management/employee commitment to safe work practices, and healthy working environments; and**
 - (2) **there be appropriate and effective rehabilitation programs and measures designed to return injured employees to full-time effective work. (Paragraph 5.22)**
- **That the Government seek the immediate appointment of an ACT Government representative to the Safety, Rehabilitation and Compensation Commission. (Paragraph 5.28)**
- **That the Government as a matter of priority review the circumstances relative to the increase in costs associated with stress injuries suffered by ACTGS employees with a view to developing effective stress injury prevention strategies for employees. (Paragraph 7.17)**
- **That the Government as a matter of priority and in cooperation with Comcare develop effective rehabilitation strategies for ACTGS employees who suffer workplace stress related injuries. (Paragraph 8.17)**

- **That the Government legislate to establish a Statutory Authority:**
 - (1) **with responsibility for those functions performed by ACT WorkCover including the activities of the OH&S Inspectorate in relation to the ACTGS, the OH&S Act 1989, the ACTGS/TLC OH&S Agreement, the Codes of Practice and the ACTGS OH&S Policies and OH&S training;**
 - (2) **to take responsibility for all aspects of the rehabilitation of workplace injured ACTGS workers, including those functions carried out by rehabilitation case managers;**
 - (3) **to be the agency representing the ACTGS on the Safety, Rehabilitation and Compensation Commission; and**
 - (4) **to have appropriate and effective enforcement powers in relation to compliance with notices issued to ACTGS agencies. (Paragraph 9.12)**

- **That:**
 - (1) **the Government retain Comcare as the compensation and rehabilitation provider for the ACTGS for a period of at least 12 months following the establishment of the statutory authority to enable an evaluation of:**
 - (i) **the effect of the committee’s recommendations; and**
 - (ii) **Comcare’s performance including the delivery of services the ACTGS and whether the recommended arrangements are working effectively; and**
 - (2) **any consideration of the possible appointment of an alternative provider be contingent upon the outcome of that evaluation and the capacity of an alternative provider to deliver, at competitive cost, all the services currently provided to the ACTGS by Comcare. (Paragraph 9.14)**

to

1. INTRODUCTION AND OVERVIEW

1.1 The select committee was established by the Assembly following a debate on the motion of Mr Berry MLA. The debate focussed upon the adequacy of coverage for ACT workers under the Commonwealth Safety Rehabilitation and Compensation Act having regard to the relative smallness of the ACT Government Service on the one hand and the proportion of physical and technical grades of employees as against administrative employees on the other.

1.2 Foremost in the mind of the Assembly were the issues of occupational health, safety and the rehabilitation of those workers injured at work. The Assembly noted also the Government's concerns about the cost of workers' insurance under Comcare and its intention to investigate alternative insurance arrangements in the first instance by employing a consultant to advise it on these matters.

1.3 Submissions were invited from interested organisations and individuals. In total 19 submissions were received and these are listed in attachment 2. Public hearings were held on 15 June, 7 and 8 September and, again, a list of those who gave evidence to the committee at the hearings is in attachment 3.

1.4 The committee appreciates the assistance given by all those who participated in the inquiry. If there were no other conclusions to be drawn from the inquiry, the committee would have derived satisfaction from being able to acknowledge that those organisations, and particularly the representative workplace unions which participated in the inquiry, gave clear indications of concern for the welfare and well being of ACT Government workers and those who have been injured at work.

Overview

1.5 There is a direct correlation between premiums and the number of injury claims and the length of incapacity of injured workers. There have been scheme wide developments such as the significant growth in the number of stress-related claims and the longer average period of incapacity. However, factors specific to the ACTGS have meant that claims frequency and average claims duration are significantly higher than those for the Commonwealth Public Sector and those for other workers' compensation schemes in Australia.¹ This means that for the approximately 17,600 full-time equivalent ACTGS employees the average premium rate is estimated at 5.2% of wages compared to an average 1.7% for the Commonwealth.

1.6 At 1 July 1994 when the ACTGS was separated from the Commonwealth, the total outstanding liability for ACTGS employees was \$10,305 per employee and for Commonwealth public servants \$4,177 per employee. The average cost per claim for ACTGS employees is now \$24,300 compared to \$8,878 for the Commonwealth.²

1.7 Against this background the inquiry brought to light a stated ACTGS management commitment to effective OH&S management linked with minimising compensation claims. It was put to the committee that this involves a top down

¹ sub 16 p14

² ibid p15

demonstrated commitment with regard to defined roles, responsibilities and accountability at all levels. The components of the management commitment include strategic planning, hazard identification assessment and control, policy development and implementation, training and dissemination of information.³

1.8 However, the committee received a considerable amount of evidence suggesting that management commitment to workplace safety falls somewhat short of these expressed ideals. As importantly, the committee was also very concerned to learn of shortcomings in management commitment to the rehabilitation of a significant number of ACTGS employees who have suffered workplace injury necessitating prolonged medical treatment and therapy as well as absence from work for extended periods.

1.9 The committee therefore considers that major improvements are needed in the ACTGS with regard to compliance with the OH&S Act and related matters.

1.10 The focus of the committee's recommendations is upon these and related matters with the committee's principal recommendation being the establishment of an independent statutory authority with responsibility for ACTGS occupational health safety and rehabilitation of employees with workplace injuries.

³ sub7 p34

2. BACKGROUND

2.1 Workers compensation arrangements are generally a State or Territory responsibility. Prior to self-government ACT Government Service (ACTGS) employees were covered by the Commonwealth Safety Rehabilitation and Compensation Act 1988 and, as a result of a special agreement, these employees continued to be covered by the Act when the ACT achieved its separate service on 1 July 1994.

2.2 The Safety Rehabilitation and Compensation Act 1988 established Comcare Australia (Comcare) to administer the Act and, subject to the provisions of the Act, Comcare is, in essence, responsible for making determinations in relation to claims for workers compensation and arranging for the rehabilitation on injured workers.

2.3 The Act also established the Safety, Rehabilitation and Compensation Commission (SRCC) to overview the performance of Comcare and self administration agencies. SRCC responsibilities include licensing arrangements for self-administrating agencies and the annual calculation and approval of premiums for all agencies, other than self-administering agencies, covered by the Act.

2.4 The 1988 Act was changed in 1992 to the Safety, Rehabilitation and Compensation Act (SRC).

2.5 From 1 July 1994 the ACTGS was separated from the Commonwealth Public Service for purposes of the Comcare premium pool and became a client of Comcare in its own right.⁴

2.6 Comcare itself has coverage of almost a quarter of a million workers in 250 agencies within the Commonwealth and ACTGS. The wage and salary bill of almost \$10 billion generates workers compensation premiums of about \$183 million.⁵

2.7 Within the ACT, the SRC Act provides coverage, and Comcare provides administration, for some 70,000 Commonwealth and ACTGS workers of whom about 17,600 are in the ACTGS. It should be noted that for the purpose of assessing the Comcare premium the number of ACTGS employees is calculated on the basis of full-time equivalent employees. These ACTGS employees are about 7 % of Comcare's coverage.⁶

2.8 The SRC Act introduced, for the first time, a fully funded scheme which sets a premium to fully cover liabilities. That was not the case before 1989. This "pre-premium" business is not fully funded but over time will disappear. However, the "premium" business, that which is fully funded since 1989, has grown steadily and requires more in program expenditure each year.⁷

⁴ transcript p2

⁵ ibid p3

⁶ ibid

⁷ ibid pp3,4

2.9 The committee was advised that Comcare is paying out significant amounts for injuries incurred before 1989 and that the same thing is starting to happen with injuries since 1989. Comcare advised that between 1993 and 1994 there was a very significant increase in injury claims. Until 1994, Comcare estimated its liabilities with a 50% probability that its premiums were sufficient to meet those liabilities. Since 1994, Comcare has introduced a prudential margin sufficient to ensure it meets its liabilities with a 70% probability and to bring it into line with private sector standards. This has been a factor in increased premiums.⁸

⁸ *ibid*

3. ACTGS EMPLOYMENT PROFILE AND ISSUES ARISING

3.1 The employment base in the ACTGS when compared to the Commonwealth shows a high proportion of ACTGS workers in the trades and “hands on” professions. As indicated below, Comcare readily recognises this skewing as contributing to higher injury rates, costs and premiums for the ACTGS.

3.2 A break up by general type of work across the ACTGS provided by the Office of Public Administration and Management (OPAM) exemplifies this. By type of workers, clerical, administrative and professional staff comprise about 40% of the workforce while some 60% comprise health services staff, general service officers, technical officers, transport services staff, teaching services staff, custodial officers, apprentices and rangers.⁹

3.3 The committee in no way minimises the need for continuing occupational health and safety best practice in the clerical/administrative work environment. However, the fact that some 60% of the ACTGS is involved with work which puts them into real and potentially unhealthy and dangerous workplace situations is a cause for considerable concern.

3.4 The committee’s further concern is that the costs associated with the exposure of the majority of ACTGS staff to these real and potential workplace dangers may become the major focus of Government rather than the need to address workplace health and safety issues *per se*.

3.5 Clearly, best workplace health and safety practice and a focus upon the effects that agency reorganisations and other staffing policies have upon individual workloads, responsibilities and workplace stress must be prime considerations to be taken into account by ACTGS management. In other words, the costs arising from workplace injuries must be tackled at source rather than by seeking means to evade responsibility for the consequences of such injuries.

3.6 Stresses arising from management initiated workplace reform must also be recognised. The committee noted a media report based upon Comcare research which shows that stress related illness has almost doubled in the Australian Public Service since 1989/90 and that it is growing at a rate of 20% a year. The report stated that similar patterns are showing up in the private sector, that stress related illnesses keep people off work longer than other illnesses and that the cost of about \$25,000 for individual stress illness compares with \$9,000 for other illnesses. The reported Comcare research showed that stress related injuries were caused by interpersonal conflict (24%), work pressures and deadlines (24%), anxiety caused by organisational change (22%) and verbal and physical abuse (7%).¹⁰

3.7 It should be noted that claims arising from journey to work injuries are accepted as work-related injuries under the SRC Act.¹¹

⁹ sub 7 p8

¹⁰ The Canberra Times 6 September 1995 p1

¹¹ transcript p9

4. CURRENT PREMIUM RATES

4.1 Prior to 1994, Comcare's premium rates for the ACTGS were combined with the Commonwealth Public Service. The average premium had been falling from 2.6c in the salary dollar to 1.6c until 1995. With the separation of the ACTGS pool from the Commonwealth pool, Comcare advised that the average premium rate for the ACT would increase to 1.9c from 1 July 1995.

4.2 Comcare estimated an increase in premium for the ACT Government of some \$8 million.¹² For 1995/96 premiums have been set at \$33.45 million compared with \$20.6 million in 1993/94 and 28.1 million in 1994/95.¹³ The average premium rate for the ACTGS is estimated to be 5.2% of wages compared to an average 1.7% for the Commonwealth, about 2.5% for the NSW scheme and 2.0% for Victoria.¹⁴

4.3 However, as the committee has noted below, these other State premiums do not include the fact that employers pay for the first 10 days of the injured workers salary in Victoria and the first 5 days in NSW and that there are caps on the time for which benefits are paid. Further, it should be noted that NSW Workcover is facing a financial crisis with losses of some \$950 million this year.¹⁵ The effect of the NSW blow-out is likely to result in a considerable increase in premiums in that State.

4.4 In explanation of the premium increase for the ACTGS, Comcare advised that for the first 5 years of the scheme there was a very high degree of cross-subsidisation. The Commonwealth Government with lower claims, and claim size, was cross-subsidising the ACT Government which had higher frequency of claims and higher claim size. Comcare advised that with the split in pools there has been cross-subsidisation within the ACT Government between well performing agencies and poorly performing agencies and that this has acted as a disincentive to the well performing agencies.¹⁶

4.5 Comcare readily agreed with the committee that this performance difference could be put down to the employment base in the ACTGS when compared to the Commonwealth with a high proportion of ACTGS workers being nurses, teachers and "blue collar" workers in forestry, firefighting, bus driving, gardening and so on.¹⁷ Nevertheless, Comcare acknowledged that, while this was part of the story, other differences such as the standards of management between Commonwealth and ACTGS agencies may be a factor.

4.6 Without putting too fine a point on things, the committee is prepared to say that there may well be differences in approach between the Commonwealth and the ACTGS to occupational health and safety issues, and that in respect to the size of claims in the ACTGS there is less emphasis upon rehabilitation of injured workers with longer average periods of incapacity. The committee notes also that the

¹² ibid p5

¹³ sub 16 p14

¹⁴ ibid pp 14/15

¹⁵ transcript p12 & Sydney Morning Herald 14 June 1995

¹⁶ transcript p5

¹⁷ ibid

increased premium reflects, in part, service wide developments such as the significant growth in the number of stress-related claims.¹⁸

4.7 The ACT Trades and Labour Council (TLC) observed that concern about the ACTGS Comcare premium missed the point that the premiums are meant to provide incentives for the employer to prevent injury and to ensure [the rapid and effective] rehabilitation of injured workers.¹⁹

Premium Pooling Arrangements

4.8 The committee accepts that in any insurance system the cost of the total risk exposure of the insurer is covered by the premiums of all those who are insured whether or not as individuals they make claims upon the insurer.

4.9 The system of premiums under the SRC Act is intended to be fully funded where the amount collected equals the actual cost plus the forward estimate of costs for all claims received or predicted to be received in the premium period. Premiums were introduced in 1989 as a tool to encourage agencies to actively manage their worker's compensation experience through being responsible for the costs as well as being able to influence the size of the premium by their own actions to either reduce the number of, or better manage, claims.

4.10 With regard to the ACT, the SRCC establishes a premium for the whole of the ACTGS but not for individual agencies within the Service. The establishment of premiums for individual agencies within the ACTGS is a service provided by Comcare at the request of the ACT Government.²⁰

4.11 The OPAM advised that the Comcare actuary predicts the total cost of all claims within the ACTGS pool and calculates the total predicted liability necessary to collect by way of premiums for the following year. The total premium pool is divided amongst agencies by establishing a "prescribed rate" for each agency. This rate is then multiplied by the total wage and salary bill of the agency to calculate a "prescribed premium" for the following year.²¹

4.12 With regard to the ACT, Comcare has established 6 groups of agencies. Of these 6 groups, ACTION, ACTEW, Department of Health and the Department of Education and Training are each a separate group because of their size and the degree of uniqueness attaching to their activities. The prescribed premium for these agencies is then based upon their claims performance.

4.13 All other agencies are grouped within two pools which are basically ACT industrial and ACT clerical. Agencies are thus grouped in terms of better and poorer in terms of claims performance.

¹⁸ sub 16 p14

¹⁹ transcript p80

²⁰ sub16 p24

²¹ sub 7 p10

4.14 Grouping does, in essence, mean that some agencies of relatively small size or which have a good claims performance attract premiums which they consider to be unreasonably high. An example of this concern was given to the committee by one such agency which has seen its premiums rise but has had no claims made by its employees.²² While the committee is sympathetic to such concerns it would be unrealistic to expect Comcare to establish individual premium rates for all agencies which, in any one year or over a period of years, were not to generate claims. The Comcare premium is, in essence, an insurance against a possible future claim which may well continue for a number of years at substantial cost.

4.15 It is instructive also to note that those agencies which have a demonstrated commitment to workplace health and safety as well as a genuine commitment to rehabilitation of injured workers, and ACTEW was nominated as an example, are showing a different trend in their premiums to the premiums of other agencies. The TLC expressed the view that those agencies whose premiums are increasing are not biting the bullet and recognising the real reasons for those increases lie in their own workplace safety records rather than incorrect Comcare calculations.²³

4.16 The committee has some sympathy for those good performing workplace safety agencies which are in a sense penalised because they are grouped with poorer performing agencies. There would therefore appear to be scope for a further grouping of those agencies which have had a good performance over a period of time and which, as a result, should be rewarded with a reduced premium rate. The committee accepts that this would mean an increase in the premium rate for agencies in those groups which embrace the poorer performing agencies, but considers this would be an appropriate further incentive for the poorer performing agencies to perform better.

4.17 Indeed, the committee sees considerable advantage in the premium as a stick to prod agencies into performing better and agrees with the view put by the TLC that it would be “disappointing if [the ACT] were to lose that [incentive] through some dodgy arrangement of manipulating the premium so we can get it down without any real reforms happening”.²⁴

Recommendations

4.18 **The committee recommends that the Government request Comcare to:**

- (1) investigate the creation of a further grouping of agencies which have a clear claims record with a view to their premium rates being adjusted to reflect their extremely good performance; and**
- (2) recoup any reduction in premium income by increasing the premiums for those agencies which are not performing to an acceptable standard.**

²² transcript pp133-139

²³ ibid p82

²⁴ ibid p83

5. COMCARE AND ALTERNATIVE ARRANGEMENTS

Comcare Cost Comparison

5.1 Comcare claimed that it provides the ACT Government with a highly cost effective service. Administrative costs for managing ACTGS claims amount to 13% of the premium paid by the ACT Government. This means that 87% of the premium is expended on benefits. By comparison, a 1995 survey by the consultancy firm Deloitte Touche Tohmatsu has shown that in 1992 and 1993 the administration or expense ratio amongst the private sector general insurers averaged 15%. Comcare noted that the cost of its ACTGS claims management has, in fact, significantly reduced from 17.79% in 1994/95 without any sacrifice in the quality of the service delivered.

5.2 Comcare advised that its ACT office has 45 claims staff who handle about 1600 new claims from ACTGS employees each year, handles around 2,500 open claims and processes 85,000 medical and 36,400 incapacity transactions and deals with around 130 reconsideration requests from claimants or agencies. The committee was advised that for simple claims, about 80% of all claims received, 94 % are determined by ACT office staff within two days. For more complex claims, 53% are determined within two days, with 68% determined within 25 days.²⁵

5.3 Comcare advised that the ACT Government has preferred that workers compensation be dealt with as a “whole of Government” approach to reflect the provision of a premium for the whole of the ACT Government. However this has limited Comcare’s ability to deliver individualised services to ACTGS agencies.²⁶

5.4 Comcare also advised that it has provided a dedicated senior manager for the ACTGS account for the past two years to act as a liaison for the provision of extensive premium information. More recently, Comcare has established a separate ACTGS Business Unit with a view to involving the ACT Government in jointly managing operations and developing a whole of government premium reduction strategy, but has been unable to secure this involvement at this stage.²⁷

5.5 The committee, in noting that the ACT Government is reviewing present workers compensation arrangements - a matter which the committee deals with in more detail below, is firmly of the view that the Government should be more closely involved in the development of Comcare premium and service delivery policy than appears to have been the case.

Recommendation

5.6 **The committee recommends that the Government accept the Comcare offer to participate in a joint management of Comcare operations and in the development of a whole of government premium reduction strategy.**

²⁵ sub 16 p11

²⁶ ibid p18

²⁷ ibid p19

5.7 The committee notes that arrangements for workers compensation can take many forms and can be specifically tailored to exact requirements. At least one ACTGS agency has made general inquiries of private sector insurers and been advised that cover could be provided at premium rates which are very competitive with Comcare. However, the agency when pressed on the point had not gone into any level of detail on the benefits which would attach to employees under a private sector scheme.²⁸

5.8 In any consideration of alternative insurance schemes it should be noted that the SRC Act does not enable the Commonwealth or Comcare to make a profit from the provision of workers compensation cover to Commonwealth or ACTGS agencies. The premiums are designed to allow Comcare to operate at break-even point. Comcare advised that the Commonwealth is accepting the financial risk associated with ACTGS workers compensation on a non-profit basis and was confident in asserting that no private insurer would be able or willing to offer such a service.²⁹

ACT Government Review

5.9 The SRC Act provides for the licensing of certain (Commonwealth) authorities for the purpose of transferring to them all or part of the liability to pay compensation and, or, to transfer the function of determining certain claims for compensation. The Commonwealth Parliament has legislated via the Australian Capital Territory (Consequential Provisions) Act 1994 to declare the Australian Capital Territory to be a Commonwealth authority for the purposes of the SRC Act and a notification to this effect was given in Commonwealth Gazette No S252 on 1 July 1994.

5.10 Three classes of licence may be granted, the main criteria being whether the agency concerned has sufficient financial resources to discharge its liability to pay compensation; or whether it is able to meet the standards set by Comcare for the management of claims and the rehabilitation of employees; or whether the agency is able to comply with both these criteria. Where the agency meets all the criteria it may be granted a Class 3 licence.

5.11 Where a Class 3 licence is granted the agency (or authority as it is termed in the Act) is responsible, *inter alia*, for determining claims for compensation or for other payments under the Act and for maintaining benefits determined by Comcare at the level immediately in force before the licence is granted. Thereafter the agency replaces Comcare as the party to any proceedings although Comcare is entitled to become a party to any such proceedings.

5.12 In relation to these and other aspects of the SRC Act, there is provision for the Commonwealth to give 12 months notice of an intention to revoke the status of the ACT as a Commonwealth authority, or the Chief Minister of the ACT to request that the ACT's status be revoked on the basis of 12 months notice or, if agreed between the two Governments, a shorter time period.

²⁸ transcript p138

²⁹ sub16 p13

5.13 The committee was advised that the Deputy Chief Minister has written to the Commonwealth Minister foreshadowing that the Government may wish to alter the present arrangements without providing 12 months notice.³⁰

5.14 In this context the Government also on 13 May 1995 announced a review of workers compensation arrangements for the ACTGS. The then Department of Public Administration subsequently released details of a proposed consultancy to undertake a comprehensive review of the current arrangements including the option of a Class 3 licence under the SRC Act. The consultancy was also to be required, among other matters, to examine systems ranging from continuation of Comcare coverage through to self insurance and private sector coverage.³¹ The OPAM confirmed that the review is due for completion by the end of October 1995.³²

5.15 A later part of this report - Section 9 - develops the case for, and recommends the establishment of, an independent statutory authority with responsibility for the oversight of various workplace safety and work related injury rehabilitation matters. The committee also recommends in Section 9 the retention of Comcare as the ACTGS compensation and rehabilitation provider to enable an evaluation of the effect of the committee's recommendations and Comcare's performance.

Options for Future Compensation Arrangements

5.16 The committee notes that the responsible ACT Government Minister, Mr De Domenico MLA, has stated in the Assembly that the Government has no intention to change the compensation benefits or coverage that ACTGS workers currently have.³³

5.17 On the basis of the Minister's assurance that there will be a continuation of current compensation benefits and entitlements for ACTGS employees, the committee has assessed the implications of the various alternatives to insurance under Comcare.

5.18 As mentioned earlier in this report, NSW Workcover scheme - which the Minister has proposed the consultant consider as providing coverage for the ACTGS - has sustained heavy losses and it would seem unlikely that in its present situation that body could provide Comcare equivalent benefits at a lower cost to the ACT Government than Comcare. In fact, Comcare advised that NSW employers are facing increases in premiums of up to 70% for 1995/96 with the average increase in the order of 40%. This has happened in a scheme where the management of claims is undertaken by private sector insurers.³⁴

5.19 For there to be a significant decrease in ACTGS premiums there has to be a greater commitment to addressing the incidence of workplace injury and an improvement in the effectiveness of rehabilitation and return to work strategies and these issues are discussed in detail in following sections of this report.

³⁰ *ibid* p2

³¹ Department of Public Administration proposal 19 May 1995

³² sub7 p5

³³ Legislative Assembly Debates, 30 June 1995, p43

³⁴ sub16 p20

5.20 The committee has taken evidence in relation to four options for providing an effective framework to achieve these.³⁵ The options are:

1. Enhancement of Current Arrangements

This would require a commitment by the ACT Government and Comcare to collaborate in reducing the cost of workers compensation through a joint Comcare/ACT Government liaison committee or management group which would oversee the claims management service provided by Comcare.

The strategy could also involve the ACT seeking representation on the SRCC.

2. Self Insurance with Comcare Managing Claims

1 Under this option the ACT Government would apply to the SRCC for a Class
licence under the SRC Act. The ACT would cease to pay premiums but would
pay Comcare for the payment of benefits and payments to service providers
and would pay Comcare a fee-for-service for management of ACTGS claims.

The ACT Government would carry the underwriting risk and Comcare warned that at present levels of compensation performance in the ACTGS the Commonwealth may consider it prudent to cease underwriting the compensation risk for the ACT Government. Comcare estimated that between 1990/91 and 1993/94 the Commonwealth has made an underwriting loss on premiums collected from ACTGS agencies of over \$37 million.

3. Self-administration by the ACTGS

its The ACTGS would obtain a Class 3 licence (as outlined in paragraph 5.11
above), would continue to be covered under the SRC Act but would manage
own claims. Comcare advised that this arrangement would be similar to the
self-administration licences issued to Telstra and Australia Post.

and The ACT Government would establish its own claims management service
infrastructure. It should be noted that at present while Comcare separately
manages ACT and Commonwealth claims, major overheads such as
accommodation, information technology systems, staff training and
development and office services are shared. Comcare also offers specialist
claims management services such as the Stress Management Centre,
Fraud Prevention Unit, Quality Assurance Unit and Rehabilitation Policy Unit.
These economies of scale would be lost to the ACTGS if a class 3 licence is
issued.

As with option 2, there would need to be agreement on the issue of funds currently held to meet existing claims covered by ACTGS premiums.

4. Private Sector Claims Underwriting and Management

³⁵ ibid pp21-30

Having regard to the assurances given by the ACT Government, the ACT would need to legislate to create the ACT version of the SRC Act in order to preserve existing benefits provided under the SRC Act.

From evidential material put before the committee it has difficulty in accepting that private sector insurers would have the capacity to service ACTGS claims at SRC Act benefit levels and at the same time produce significant premium savings. In other words, the committee doubts whether this could be done without reducing benefits and entitlements.

Under a privatised scheme the ACT Government would be the underwriter of last resort and would be liable to meet liabilities incurred on behalf of the ACTGS by a private insurer unwilling or unable to meet them.

5.21 Noting the Government's clear commitment that its review of current compensation arrangements will not cause any diminution of benefits currently existing under the SRC Act for injured ACTGS employees, the committee further notes that future public sector employees compensation arrangements need to recognise that there is a strong relationship between the delivery of workers compensation and the framework of administrative law to which the employee/claimant has access³⁶.

Recommendations

5.22 **The committee recommends that in relation to the current review of compensation arrangements, the ACT Government:**

- (1) ensure that there is a clear ACTGS management/employee commitment to safe work practices, and healthy working environments; and**
- (2) there be appropriate and effective rehabilitation programs and measures designed to return injured employees to full-time effective work.**

5.23 Implicit in the issues explored by the committee is the need for the ACT Government to have a considerably closer relationship with its workers compensation insurer. Accordingly, the committee now develops a case for the strengthening of that relationship.

³⁶ *ibid* p29

ACT Government Representation on the SRCC

5.24 The committee noted with some concern that the ACT Government is not represented on the SRCC, especially when the Government's dissatisfaction with the cost of the ACTGS premium has been sufficient to cause it to review whether Comcare should be the compensation provider.

5.25 Comcare advised that it had been suggested to the ACT Government that it seek representation on the SRCC and that the Commonwealth Minister as well as the Chair of the SRCC had indicated in-principle support for this if the ACT Government wishes its employees to remain under coverage of the SRC Act. The committee was advised that the ACT Government recently sought representation on the Return to Work Advisory Group which is to be widened to accommodate the ACT and that Comcare would welcome closer ACT Government involvement in other advisory groups.³⁷

5.26 The committee notes that a major advantage of Comcare is that both employers and employees can have direct input and have a say about Comcare operates. It is the committee's view that the ACT Government ought to be directly represented on the SRCC to ensure that it is in a stronger position to advance the interests of both its employees and the ACT community generally.

5.27 The committee noted that the ACT Trades and Labour Council is also supportive of ACT Government representation on the SRCC taking the view that while the unions are able to air grievances and seek fair and equitable decisions by the Commission by virtue of their representation, it would be appropriate for the Government [as the employer] also to be represented.³⁸

Recommendation

5.28 **The committee recommends that the Government seek the immediate appointment of an ACT Government representative to the Safety, Rehabilitation and Compensation Commission.**

³⁷ ibid p19

³⁸ transcript p86

6. FACTORS AFFECTING THE ACT PREMIUM

6.1 Comcare advised that in comparing the ACT and the Commonwealth there are essentially four items which drive the premiums. These are the level of benefits provided, the number of accidents and injuries that occur, the number of claims and the size of claims. The longer someone does not return to work, the higher the cost.³⁹

Benefits Payable

6.2 Unlike previous legislation the SRC Act is based on no-fault system. There is no requirement to prove blame or to apportion blame on the part of the injured employee and compensation is payable if the injury, according to the technical term in the Act, “arose out of or in the course of employment”. If the injury or illness results from anything to do with what the employee is employed to do, the compensability of the injury is not in question. Under the old scheme, through common law process, a contributory negligence process came into play.⁴⁰ Within narrow constraints, Comcare pays statutory benefits if the accident happened at work.⁴¹

6.3 Common law does apply in respect of permanent impairment payments where the injured employee has rejected the permanent impairment offer made by Comcare. This does not happen often. However, where employees who are covered by the SRC Act do take action under common law there are limits to what awards can be made by the courts. Such limits do not apply in other States where injured employees seek court judgements in relation to their injuries. Any payments achieved by Commonwealth and ACTGS employees by resort to common law are capped to the maximum payable under the SRC Act.⁴²

6.4 Incapacity payments are made at the rate of 100% of the Normal Weekly Earnings (NWE) of the injured employee for the first 45 weeks of incapacity and then reduce to 75% of the NWE thereafter. The NWE includes all industry allowances, penalty rates for shift work and regularly worked overtime and adjustments are made to include seasonal allowances of these types. A period of two weeks prior to the date of injury is used as the time frame on which to base the calculation of NWE.

6.5 Where an injured employee returns to work on a graduated return to work on less than full hours, Comcare payments are reduced on sliding scale. Incapacity benefits are payable upon production of medical evidence certifying the ongoing nature of the injury until the injured employee reaches age 65. Reasonable medical costs directly related to the injury are payable throughout the life of the employee.

6.6 The SRC Act provides for rehabilitation as a requirement to assist injured employees to return to work and entitlements paid during the rehabilitation process maintain pre-injury income irrespective of the type of work being performed during rehabilitation process.⁴³

³⁹ibid p9

⁴⁰ ibid p25

⁴¹ ibid p10

⁴² ibid p26

⁴³ sub 7 p11 & p37

6.7 It was pointed out to the committee that an employee redeployed to clerical duties may, because of the nature of the previous work, be in receipt of make-up pay that includes overtime or shift penalties. There is little incentive for the employee to seek a permanent future in clerical work and little incentive to return to normal duties where overtime or shifts would be necessary to continue to receive that level of income.⁴⁴

6.8 It is useful to compare benefits under Comcare with those in other States. For example, in Victoria, the injured worker is paid for 26 weeks at 95% of the pre-injury average weekly earnings. Also in Victoria, the employer, rather than the insurer pays the first 10 days.⁴⁵ A summary of workers compensation benefit levels in the various States and Territories is at attachment 1.

6.9 As mentioned above, in the ACTGS Comcare benefits go through to age 65. At the other end of the spectrum, benefits cease in Victoria after two years for the partially incapacitated whereas in Western Australia, Tasmania and Queensland financial limits apply. In WA and Tasmania the limit is about \$100,000 and in Queensland just under \$73,000. The ACT private sector continues to pay benefits to age 65.⁴⁶

6.10 The TLC expressed a concern that Comcare benefits may be regarded as generous - a view which it suggested had been made by certain witnesses and in the media - stating that 75% of the NWE could hardly be viewed as an incentive for injured workers to not return to work. The Council noted that an injured worker who fails to undertake a rehabilitation program provided by the employer will have compensation suspended.⁴⁷

6.11 When benefits cease the cost is shifted to the Commonwealth through social security payments but, as it was pointed out to the committee, the injured worker also bears the costs because social security payments are less than workers compensation benefits.⁴⁸

6.12 Comcare advised that through the SRC Act injured ACTGS workers can get, in addition to medical and therapeutic treatment, home help, appliances, aids, remodelling of houses and kitchens and remodelling of cars to have power steering. Death benefit is \$154,000 for the ACTGS but it should be kept in mind that in other States, as distinct from the ACT, there is recourse to common law.⁴⁹

Number of Accidents

6.13 The committee was advised that the rate of injury per 100 employees is 8.7 in the ACTGS compared with 6.7 in the Commonwealth Public Service. The committee

⁴⁴ ibid p11

⁴⁵ transcript p11

⁴⁶ ibid

⁴⁷ ibid p79

⁴⁸ ibid pp11/12

⁴⁹ ibid p12

acknowledges, as previously observed, that the occupational structure in the ACTGS may help to explain the difference in the rate of accidents. However, Comcare advised that, of itself, the rate of accidents is not pushing ACT costs up. Instead the driving force is the average claims size.⁵⁰

Claim Size

6.14 From 1993/94 Comcare was able to distinguish the average claim costs for the Commonwealth and the ACTGS. In that year the average Commonwealth claim was just over \$6,000 compared with the average ACTGS claim of about \$14,000. Comcare advised that its actuary predicted that the ACTGS average claim will increase even further and this has been a major factor in assessing the ACT premium.

6.15 It is instructive to note that the single major factor in claim size is the incapacity payment. Almost 75% of costs is the continuation of salary and 22% medical and travel costs.⁵¹

6.16 In the ACTGS the highest cost injury is occupational stress where the average cost is now \$47,351 compared with the Australian Public Service average cost of \$22,852. This signifies that workers with compensable occupational stress are taking a long time to return to work. Comcare estimated that there is a four times likelihood that a worker with occupational stress will still not have returned to work after 52 weeks than for all the other injuries combined.⁵²

Long Tail Cases

6.17 Comcare also advised that 8.6 % of ACTGS claims are open one year after the date of injury compared with 3.5 % of the Commonwealth claims and that 4 years after the date of injury, 5.3 % of ACTGS claims remain open compared with 1.4 % in the Commonwealth.

6.18 At 30 June 1994 the total of outstanding workers compensation liability for ACTGS employees was \$10,305 compared with \$4,177 per Commonwealth employee, the average cost pre claim for the ACTGS was \$24,300 compared with \$8,878 for the Commonwealth and the average cost for workers compensation for the ACTGS was 50 % higher than for the Commonwealth. Rehabilitation costs for ACTGS employees were 100 % higher than for Commonwealth employees located in the ACT.⁵³

6.19 A basic reason for higher premiums in the ACTGS is that injured ACT workers are away from work for longer periods. Comcare advised that of 1000 workers who are injured, more than 250 do not leave work and only medical costs are incurred. Some 738 claims are open after one hour.

⁵⁰ *ibid* p13

⁵¹ *ibid*

⁵² *ibid* p14 & sub7 p12

⁵³ sub16 p15

6.20 After one week for the Commonwealth 390 claims are open and for the ACTGS 489 are open. After 52 weeks, 3.5% of Commonwealth claims are open but the ACTGS has 8.6% still open. The Comcare actuary estimates that after 10 years 7.3 in every 1000 claims on the Commonwealth will be open whereas for the ACTGS 37.5 in every 1000 claims will remain open.⁵⁴

6.21 OPAM advised that it has been taking a special look at the 422 long tail cases still open as at 30 June 1995 and had found they represented about 85% of the ACTGS premium costs. As a result OPAM in consultation with agencies is looking in detail at about 10% of these cases to determine grouping them for various forms of action. OPAM also found that in addition there were some 31 additional cases which could be closed and that it is working with Comcare to achieve closure.⁵⁵

⁵⁴ transcript p14

⁵⁵ ibid p113

7. OCCUPATIONAL HEALTH AND SAFETY

7.1 It is clear to the committee that the ACTGS problems with Comcare premiums lie squarely in the areas of workplace safety and health and, in relation to the costs associated with employees who have suffered workplace injuries, in the area of rehabilitation.

Background

7.2 When an injury is sustained an accident report form is completed and where the injury or illness causes the employee to have time off or to incur medical expenses a separate claim for compensation is made.

7.3 The accident report is sent to the appropriate occupational health and safety section of the ACTGS agency involved which considers what investigation and corrective action is needed. Until July this year occupational health and safety was the responsibility of and was managed by a central unit within the former Department of Public Administration (which is now the OPAM within the Chief Minister's Department).⁵⁶

OH&S Unit and Devolved Functions

7.4 The OH&S Unit had an advisory function - a matter of concern to at least one major ACTGS union the Community and Public Sector Union - ACT Branch (CPSU) - which advised that the Union regarded the Unit as being ineffective because it lacked any enforcement powers. The CPSU was further disturbed that a decision of the ACT Government to devolve the OH&S Unit functions to ACTGS departments and agencies from 1 July 1995 would compound the ineffectiveness of OH&S management within the ACTGS.⁵⁷

7.5 As health, safety and rehabilitation issues are of major concern to the committee, it resolved to request the Minister for Industrial Relations to not proceed with the devolution until the committee had completed its inquiry and the Government had the opportunity to consider the committee's report.

7.6 It is a matter of regret and concern to the committee that the Minister chose not to give due regard to this clear committee resolution and that the devolution of functions went ahead. The committee's further concern was conveyed to the Minister. In the meantime, the committee proceeded with its consideration of these issues and, on the basis of its inquiry, has developed appropriate recommendations.

Commitment to Workplace Safety Standards

7.7 Prior to self government, inspection and enforcement of workplace safety and health was carried out under the relevant Commonwealth legislation which provided for an OH&S Inspectorate. That responsibility now lies with ACT WorkCover under

⁵⁶ transcript p28

⁵⁷ sub 12 p12

the ACT Occupational Health and Safety Act 1994 (OH&S Act) and the ACT Compensation Act which covers private sector employees in the ACT.

7.8 CPSU advised that prior to June 1994 WorkCover had nine OH&S inspectors to enforce legislation in respect of the 75,000 private sector employees. With the extension of its responsibility to ACTGS employees two inspectors were added but the ratio of inspectors to employees decreased from 1 for every 8,333 to 1 for every 8,909.⁵⁸

7.9 The Union drew attention to a perceived double standard with widely varying workplace health and safety standards between the private and public sectors and the situation where ACT Government agencies could not be prosecuted for breaches of the legislation. The Union argued that this is sending the wrong signals to senior ACTGS management regarding the critical importance of workplace safety and health.⁵⁹

7.10 The Construction Forestry Mining and Energy Union (CFMEU) reinforced this view by pointing out that on the current accident rate in the ACTGS, and especially within the “blue collar” area, there are a lot of bad work practices which need to be investigated and resolved and that employees and management need to understand their obligations under the OH&S Act.⁶⁰

7.11 The CFMEU asserted that the OH&S Act needs to be improved and made more pro-active and that inspectors needed to have more power to act on issues. The Union’s position is that inspectors should be able to give directions if they see problems of negligence or faulty equipment.⁶¹

7.12 The committee noted a good deal of concern particularly within those Unions which represent industrial workers in the ACTGS that agency managements regard occupational health and safety and rehabilitation as secondary issues at best and, in some cases, as more of a nuisance or inconvenience in their operations.⁶² In the light of comparative figures on ACTGS claims and costs including premiums arising from ACTGS performance in relation to workplace health and safety the committee finds it hard to refute this expressed view.

7.13 As indicated earlier there is a strong correlation between workplace injuries in the ACTGS, the weighting of the ACTGS towards industrial occupations and Comcare premiums. The question arises therefore the stated ACTGS OH&S management commitment is sufficiently strong to ensure that enough is being done to promote an awareness of the need for safety in the workplace, to engender an appropriate management workplace safety and health culture and to ensure there is adequate enforcement of workplace health and safety standards.

⁵⁸ *ibid*

⁵⁹ *ibid* p13

⁶⁰ transcript p103

⁶¹ *ibid*

⁶² transcript p99

Prevention Strategies and Compliance

7.14 OPAM advised that agencies are addressing injury prevention issues through strategies focussed on the main problem areas of back injuries, sprains and strains and stress. OPAM stated that specific preventative programs aimed at reducing workplace injuries and compensation claims and which have been implemented in agencies include quality of working life programs, a manual handling project, a pre-school manual handling project, a safe working system, defensive driving programs, risk management groups and the introduction of a violence in the workplace strategy.

7.15 The committee is particularly concerned at the level and costs of stress injuries and considers the matter should be given maximum attention by the Government in order to determine if there is a root cause of stress injury and what measures are necessary to eliminate the factors which give rise to such injuries.

7.16 While the committee notes that agencies are focussing on specific problem areas such as back injuries and stress, it considers the recently established Comcare Stress Claims Management Centre may be an appropriate vehicle for initiating a review of stress injury problems from the aspect of seeking ways to minimise as far as possible the potential for stress injury. The committee therefore urges the Government to put resources into such a review as a matter of priority.

Recommendation

7.17 **The committee recommends that the Government as a matter of priority review the circumstances relative to the increase in costs associated with stress injuries suffered by ACTGS employees with a view to developing effective stress injury prevention strategies for employees.**

7.18 OPAM advised that employee assistance programs are also in use in most agencies and pointed to specific guidelines and policies on specified topics.⁶³ There are, in fact, some 18 of these Policies and the CPSU advised that it is experiencing difficulty with at least seven of the Policies.⁶⁴

⁶³ sub7 p35
⁶⁴ sub12 p15

8. REHABILITATION

8.1 There is a responsibility on the ACTGS to provide employment for injured workers as part of the rehabilitation process. The committee was advised that one of the major difficulties in terms of rehabilitation outcomes in the ACTGS is the employment mix. Being largely industrial there are fewer options to rehabilitate an injured industrial worker when the nature of the injury is such that they can no longer continue to be an industrial worker. The point made was that this poses significant limits to the rehabilitation options and in getting these employees back to work.⁶⁵

8.2 The SRC Act provides for compulsory rehabilitation of injured workers. Where rehabilitation is required - normally for any injury where incapacity has exceeded or is likely to exceed 10 days - there is a requirement that there be an assessment of the injured workers capacity to undertake a rehabilitation program. For this purpose the ACT Government has engaged rehabilitation providers who are approved by Comcare under the Act. Following assessment, these providers are required to design a suitable program in conjunction with the injured employee, the work supervisor and the employee's treating medical practitioner or treatment provider.⁶⁶

Case Management Functions

8.3 Case management functions were established within departmental personnel branches in 1989 and amalgamated into a Case Management Unit within the ACT Corporate Services Bureau in 1993. The Unit was transferred to the Department of Public Administration in June 1994 and devolved back to ACTGS departments and agencies on 1 July 1995. Case managers who are officers of the ACTGS are appointed to each manage the rehabilitation of a number of injured employees.

8.4 The case manager's role is to coordinate all aspects of the rehabilitation program and to make sure that everyone involved - the injured worker, supervisors, treatment providers and others as necessary - has the information needed to enable the employee to return to work.⁶⁷

8.5 Each accident report and compensation form is considered by a case manager and where the injured worker is going to be away from work for 10 working days or more an assessment is made of rehabilitation needed to return to work and whether a Return to Work Plan (RTWP) should be developed. Specialist advice may be sought in developing a RTWP by reference of the injured worker to an Approved Rehabilitation Provider.

8.6 An RTWP is the active phase of rehabilitation while the injured worker is still undergoing medical treatment. While the injured worker is not basically back at work full-time in his or her own job, they may be in a process of modified duties, work trial, working towards permanent redeployment or full return to the pre-injury job.⁶⁸

⁶⁵ transcript p26

⁶⁶ ibid p27

⁶⁷ Rehabilitation of Injury or Illness in the ACT Government Service, DPA, May 1995, p11

⁶⁸ transcript p107

8.7 Other functions of the case manager are to keep in contact with the injured employee to monitor progress of the claim for compensation or rehabilitation and to obtain additional information to assist Comcare in assessing the claim.

Problems with Case Management

8.8 A major concern voiced by the CPSU is that case managers, based on figures as at December 1993, were dealing with between 47 and 99 cases. These figures included initial assessment, monitoring, RTWP and active cases.⁶⁹ On the other hand the OH&S Policy P14 provides that the appropriate levels should be between 15 to 20 open cases.⁷⁰

8.9 The committee noted advice that OPAM regarded case loads of 40 have achieved improved outcomes and that case loads of 30 or less have proven to be even more effective.⁷¹

8.10 OPAM advised that the CPSU figures highlighted case management workloads which were at very high levels in December 1993, but that during 1994 considerable work was done to address the problem. The number of case managers was increased with special reference to Department of Urban Services, Environment and Conservation, ACT Forests and the disability services with the result that case management loads would have been in the range 35 to 40 and that 20 to 25 would have been active RTWPs.⁷²

8.11 The CPSU concern, which the committee shares, is that case managers cannot be expected to deal effectively with very high case loads. Rehabilitation is paramount to getting injured workers back on the job. Apart from the human costs of delayed rehabilitation, delays also add significantly to the number of open Comcare cases and ultimately to the compensation and Comcare premium costs.

8.12 The human costs in terms of loss of morale and self esteem as well as the loss to the ACTGS of valuable talent was exemplified in certain cases brought to the committee's attention. Again, in what can only be regarded as lack of decisive action by senior management in certain other cases brought to the committee's attention, there is evidence of a gap between the well intentioned rehabilitation structures developed within the ACTGS and the performance of the agencies delegated to make the system work.⁷³

8.13 The TLC made the point strongly that the case manager system was the ideal which was not borne out in anecdotal evidence in a lot of cases where injured workers have no contact with their employer or agents for quite a number of months at times and that rehabilitation plans may come to nothing.⁷⁴

⁶⁹ sub12 tables after p18 & transcript pp66,67

⁷⁰ transcript p66

⁷¹ Director Occupational Rehabilitation, correspondence dated 23 May 1995

⁷² transcript p107

⁷³ see transcripts for 7 & 8 September 1995 for specific cases and broad comment by witnesses

⁷⁴ transcript p80

8.14 In fairness it should be noted that in several of the cases mentioned above the injured workers were contacted and alternative job placements offered. However, the doubt remains that there may have been insufficient account taken of the needs of some injured workers in terms of their rehabilitation. The committee is concerned that in at least one case brought to its attention there was little if any apparent attempt to contact or explain to an injured worker the avenues available in terms of rehabilitation or redundancy due possibly to a language communication barrier.⁷⁵

8.15 While the committee has noted reasons given for the large increase in stress injury claims - as outlined in paragraph 3.6 above, it has received little in the way of evidence to explain why the rehabilitation, and therefore the costs, of employees with stress injuries is far more lengthy than for employees with other work caused injuries and illnesses. The committee is even further perplexed as to why the rehabilitation rate for ACTGS employees with stress injury is substantially longer than for employees of the Commonwealth Public Service who suffer similar injury.

8.16 At this relatively early stage of what appears to be a growth in stress related injuries the committee reinforces the recommendation made in paragraph 7.19 above and urges the ACTGS in cooperation with Comcare to move quickly to develop appropriate strategies for early and effective rehabilitation of those employees who suffer stress related injuries.

Recommendation

8.17 **The committee recommends that the Government as a matter of priority and in cooperation with Comcare develop effective rehabilitation strategies for ACTGS employees who suffer workplace stress related injuries.**

⁷⁵ ibid 8 September 1995

9. AN INDEPENDENT STATUTORY AUTHORITY

9.1 The committee heard strong arguments during its public hearings and was impressed by evidence presented in submissions for the establishment of an independent statutory authority which would be responsible for setting standards on workplace OH&S matters, advising agencies on those standards, monitoring compliance and, where necessary, taking action to enforce the standards.

9.2 The peak public sector OH&S and rehabilitation consultative forum is the ACT Public Sector Occupational Health and Safety Rehabilitation Advisory Committee (OHSRAC) which advises on OH&S and rehabilitation matters affecting the ACT public sector as well as receive reports on public sector investigations from ACT WorkCover.⁷⁶

9.3 There is a good deal of fragmentation in legislation, policies and Codes of Practice which bear upon ACTGS workplace safety and health. Apart from legislation, these include the 1991 ACTGS/Trades and Labour Council OH&S Agreement and some 18 OH&S Policies dealing with matters as diverse as smoke-free workplaces, hazardous substances, stress management and occupational violence.⁷⁷

9.4 Having regard to the overlay of Comcare, the recently devolved functions to agencies of the former OH&S Unit of OPAM and issues arising from the role of case managers, it is not surprising that there should be some confusion, not only at the work face but also within management, as to roles of the various organisations involved with OH&S compensation and rehabilitation.

9.5 This was exemplified to the committee by the comment by the CFMEU that the vast majority of its membership do not know how Comcare operates and do not distinguish the role of Comcare from that of the ACT Government in matters of compensation and rehabilitation. The Union proffered the view that workplace supervisors and on-line managers have very little knowledge of how the compensation system works and are unable to explain what rights employees have in relation to workplace injuries.⁷⁸

Independence of the OH&S Inspectorate

9.6 The CPSU made the point to the committee that different standards of accountability in respect to OH&S issues apply between the private sector and the ACTGS. While the OH&S Inspectorate can prosecute private sector employers for breaches of the OH&S Acts, it appears to have no power to prosecute ACTGS agencies for breaches even where the consequences may be serious injury or death.⁷⁹

9.7 With regard to the Inspectorate's prosecution powers, the committee was advised that while the legal position in relation to breaches of the legislation by

⁷⁶ sub7 p34

⁷⁷ sub 12 pp13,14,15

⁷⁸ transcript p102

⁷⁹ sub 12 p13

ACTGS and other public sector agencies is unclear, inspectors do raise issues with these agencies and those matters are addressed.⁸⁰

9.8 On the other hand, the committee received evidence that an OH&S inspection report of the John Overall Offices in March 1995 which raised major issues in relation to fire safety was not communicated by management to health and safety representatives or employees and only came to light several months later.⁸¹

9.9 The committee sees this example as exemplifying the problem which exists when OH&S inspectors have limited independent powers to require management responses to their reports.

9.10 A further problem arises in that ACT WorkCover, which is administratively responsible for the functions of the OH&S Inspectorate in the ACT public sector, is not independent of the agencies in respect of which it may need to issue improvement notices or serious breaches notices.⁸² While the committee would not suggest that WorkCover would be inhibited from taking appropriate action in such cases, the fact remains that there is a perception that the body which is financially and administratively responsible to an ACTGS agency may be compromised by that responsibility.

9.11 The committee comes to the view that it is timely and necessary for all OH&S and rehabilitation related activities of the ACTGS to be reviewed in terms of consolidating administrative oversight within one independent statutory authority which is answerable directly to the Minister and hence to the Assembly.

Recommendation

9.12 The committee recommends that the Government legislate to establish a Statutory Authority:

- (1) with responsibility for those functions performed by ACT WorkCover including the activities of the OH&S Inspectorate in relation to the ACTGS, the OH&S Act 1989, the ACTGS/TLC OH&S Agreement, the Codes of Practice and the ACTGS OH&S Policies and OH&S training;**
- (2) to take responsibility for all aspects of the rehabilitation of workplace injured ACTGS workers, including those functions carried out by rehabilitation case managers;**
- (3) to be the agency representing the ACTGS on the Safety, Rehabilitation and Compensation Commission; and**
- (4) to have appropriate and effective enforcement powers in relation to compliance with notices issued to ACTGS agencies.**

⁸⁰ transcript p108

⁸¹ ibid pp110-112

⁸² ibid p70

9.13 In paragraph 5.15 above the committee indicated that in the context of its recommendations it supports the retention of Comcare as the ACTGS compensation and rehabilitation provider to enable an evaluation of the effect of the committee's recommendations and Comcare's performance.

Recommendations

9.14 The committee recommends that:

- (1) the Government retain Comcare as the compensation and rehabilitation provider for the ACTGS for a period of at least 12 months following the establishment of the statutory authority to enable an evaluation of:**
 - (i) the effect of the committee's recommendations; and**
 - (ii) Comcare's performance including the delivery of services the ACTGS and whether the recommended arrangements are working effectively; and**
 - (2) any consideration of the possible appointment of an alternative provider be contingent upon the outcome of that evaluation and the capacity of an alternative provider to deliver, at competitive cost, all the services currently provided to the ACTGS by Comcare.**
- to

Wayne Berry MLA
Chair

Submissions Received

1. Computer & Educational Consultants
2. Construction, Forestry, Mining and Energy Union
3. Milk Authority of the ACT
4. Australian Democrats ACT Division Inc
5. Mr L Jimenez
6. Battlers Inc
7. Office of Public Administration and Management
8. Ms A Mont
9. Australian Education Union ACT Branch
10. AWU-FIME Amalgamated Union
11. Trades and Labour Council of the ACT Inc
12. Community and Public Sector Union ACT Branch
13. Safety Institute of Australia Inc ACT Division
14. Australian Manufacturing Workers' Union
15. Comcare Clients Action Group (ACT)
16. Comcare Australia
17. GIO Australia
18. Mr P Patten
19. Department of Social Security

Witnesses at Public Inquiry

15 June 1995

Dr P Shergold	Comcare Australia
Ms D Todd	Comcare Australia
Ms M Cane	Office of Public Administration and Management
Mr D Segrott	Office of Public Administration and Management

7 September 1995

Mr R Knapp	Comcare Australia
Ms S Ellis	Comcare Australia
Mr M Goldrick	Comcare Australia
Ms C Garvan	ACT Branch Community and Public Sector Union
Mr J Wilson	ACT Branch Community and Public Sector Union
Ms N Wood	Australian Education Union ACT Branch
Mr G Rodda	ACT Trades and Labour Council
Mr J Garvin	Australian Workers Union
Ms N Churchward	Australian Manufacturing Workers' Union
Mr G Larkin	
Mr G Wason	Construction Forestry Mining Energy Union
Ms M Cane	Office of Public Administration and Management
Mr D Segrott	Office of Public Administration and Management
Mr I Hotchkiss	Office of Public Administration and Management

8 September 1995

Dr P Main	Australian Democrats ACT Division
Mr C White	Milk Authority of the ACT
Ms J Evans	Comcare Clients Action Group
Ms A Mont	
Mr N Baxendell	Battlers Inc
Mr L Jimenez	
Mr S Goldsmith	Computer and Educational Consultants