ACT AUDITOR-GENERAL'S REPORT

TRANSFER OF WORKERS' COMPENSATION ARRANGEMENTS FROM COMCARE

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ACT Audit Office

AUDITOR-GENERAL AN OFFICER OF THE ACT LEGISLATIVE ASSEMBLY

PA 20/01

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Speaker

I am pleased to forward to you a Performance Audit Report titled 'Transfer of workers' compensation arrangements from Comcare' for tabling in the Legislative Assembly pursuant to Subsection 17(5) of the *Auditor-General Act 1996*.

Yours sincerely

Michael Harris
Auditor-General
30 June 2020

The ACT Audit Office acknowledges the Ngunnawal people as traditional custodians of the ACT and pays respect to the elders; past, present and future. The Office acknowledges and respects their continuing culture and the contribution they make to the life of this city and this region.

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SUMMARY

In 2018 the Territory applied for, and was granted, a workers' compensation self-insurance licence under the *Safety, Rehabilitation and Compensation Act 1988.* Prior to this, ACT Public Service workers' compensation had been insured under the Commonwealth workers' compensation scheme through Comcare. In becoming a self-insured licensee, the Territory needed to receive the contractual rights and obligations, as well as the financial liabilities and assets, relating to ACT Public Service workers' compensation claims from Comcare.

The audit considered the effectiveness of the transfer of the ACT Public Service workers' compensation arrangements from Comcare. The audit focused on the activities of the Chief Minister, Treasury and Economic Development Directorate to prepare for, and manage, the transition to self-insurance and manage Employers Mutual Limited, which provides claims management services to the Territory.

Conclusions

ASSESSMENT OF LIABILITIES AND ASSETS

While the rights and obligations of being a self-insured licensee have transferred to the Territory, the transfer of assets (funds) from Comcare to the Territory to cover ACT Public Service workers' compensation liabilities is yet to occur. The Territory and Comcare are yet to reach an agreement on the quantum of assets to be transferred.

As a result, the Territory does not currently have sufficient assets in its Public Sector Workers' Compensation Fund to cover its workers' compensation liabilities. The Territory has been meeting its liabilities since becoming a self-insured licensee by using a partial premium refund for the 2018-19 financial year that was received from Comcare in March 2019 as well as premiums received from ACT Government agencies during 2019-20.

Although the Public Sector Workers' Compensation Fund is able to seek additional premiums from ACT Government agencies, or supplemental funding from the Territory Budget or a Treasurer's Advance to cover its workers' compensation liabilities, the continuing uncertainty associated with the transfer of the assets presents a financial risk to the Territory. The uncertainty restricts the Territory's options to manage its workers' compensation liabilities and the longer the issue remains unresolved the greater the financial risk to the Territory as it has fewer options to manage any potential increases to its workers' compensation liabilities.

TRANSFER OF CLAIMS DATA

The Chief Minister, Treasury and Economic Development Directorate, in cooperation with Comcare and Employers Mutual Limited, implemented effective governance arrangements for the Territory's transition to self-insurance. Various cross-agency committees and working groups were

established to oversee the transition and transition plans and risk registers were developed and monitored.

Claims data that is relevant to the Territory's ongoing management of its workers' compensation was transferred from Comcare in accordance with the data security requirements of the Territory. Although the data was transferred securely, there were limited data integrity processes or procedures in place. There is minimal assurance that the data was migrated accurately, i.e. that the client information was matched with the correct claims data.

GOVERNANCE AND ADMINISTRATIVE ARRANGEMENTS

The Chief Minister, Treasury and Economic Development Directorate has developed effective governance arrangements for the management and oversight of the Public Sector Workers' Compensation Fund and the Territory's compliance with its self-insurance license requirements under the *Safety, Rehabilitation and Compensation Act 1988*. These include administrative processes for the review and monitoring of the Territory's management of its workers' compensation arrangements, including findings from reviews conducted by Comcare on behalf of the Safety, Rehabilitation and Compensation Commission. In doing so, the Directorate has established effective contract management arrangements to oversee the claims administration services provided by Employers Mutual Limited.

Key findings

ASSESSMENT OF LIABILITIES AND ASSETS	Paragraph
The rights and obligations of self-insurance transitioned from Comcare to the Territory on 1 March 2019. However, the transfer of assets (funds) from Comcare to the Territory to cover its ACT Public Service workers' compensation liabilities is yet to occur. Several matters remain outstanding with Comcare and this has resulted in two extensions to the transition date. The latest extension to the transition date approved by the Safety, Rehabilitation and Compensation Commission is to 30 June 2021, approximately 28 months after the commencement of the Territory's self-insurance arrangements.	2.10
The *Safety, Rehabilitation and Compensation Act 1988* does not provide a framework or methodology for identifying and valuing assets (funds) when a Commonwealth Authority transitions to self-insurance and assumes responsibility for workers' compensation liabilities as a self-insurer. In the absence of sufficient guidance, it is up to the Territory and Comcare to negotiate on the framework and methodology to be used to calculate the assets (funds) to be transferred to the Territory.	2.19
A range of different actuarial valuations have been undertaken on behalf of Comcare and the Territory to provide an estimate of the workers' compensation outstanding claims liability amount. The timing, purpose and scope of the actuarial valuations varied and involved analysis of different datasets. On 27 February 2018, Taylor Fry,	2.28

on behalf of Comcare, provided an estimate of liabilities as at 30 June 2018. The data extract used for Taylor Fry's analysis included claims information and claim payments up to 30 September 2017. Taylor Fry's February 2018 report provided a net central estimate of $358.6 million (including claims handling expenses). Finity, on behalf of the Territory, has provided two estimates of liabilities for the purpose of financial statement reporting. On 27 September 2018 (using a data extract up to 31 March 2018), Finity provided a net central estimate of $344.0 million (including claims handling expenses) as at 30 June 2018. On 12 September 2019 (using a data extract up to 31 December 2018), Finity provided a net central estimate of $381.4 million as at 30 June 2019. The Audit Office understands that Taylor Fry has also performed an actuarial valuation using a data extract up to 28 February 2019 (i.e. the day before the 1 March 2019 transfer date) but that this valuation has not been provided to the Territory. The provision of this estimate would provide greater certainty and clarity to negotiations associated with the transfer of assets (funds).

KPMG advised the Audit Office that 'the actuarial valuation methodologies adopted by both Finity and Taylor Fry are considered standard approaches to the valuation of workers' compensation outstanding claims liabilities. The central estimate valuation results are similarly close'. KPMG further advised 'in our review, we did not identify any issue to suggest that either actuarial valuation had any significant bias. That is, the actuarial valuation methodologies and assumptions are reasonable for the purposes of valuing the net central estimate of workers' compensation outstanding claims liabilities'. A review of the estimated liability amount as at June 2018, as identified by Finity in its September 2018 report to the Territory, shows a difference of $14.5 million. 2.39

There is a lack of agreement between the Territory and Comcare on the methodology to be used for determining the financial assets (funds) to be transferred to the Territory. The Territory disagrees with Comcare's proposed methodology for identifying the quantum of assets (funds) to be transferred and has offered an alternative methodology, as well as additional items for inclusions. The Territory's preferred method would rely on Comcare providing key inputs into the calculation. Without input from Comcare, it is unclear whether the Territory's alternative approach would be fully or partially accepted, and whether the key inputs would be readily available'. 2.59

KPMG advised that 'the lack of agreement and delay is unusual and creates uncertainty'. There is a risk that the current lack of agreement between the Territory and Comcare could lead to a deterioration in the Territory's relationship with Comcare. The continuing uncertainty associated with the transfer of the financial assets (funds) also increases the financial risk to the Territory, as it impairs and restricts the Territory's options to manage its workers' compensation liabilities. 2.60

As part of its self-insurance licence requirement, the Territory is ordinarily required to hold a funding ratio for the Public Sector Workers' Compensation Fund of 95 percent to 110 percent, i.e. 95 percent to 110 percent of assets compared to liabilities. In the absence of an agreement on the transfer of assets between Comcare and the Territory, the Territory is not meeting this requirement. However, the Safety, Rehabilitation and Compensation Commission has agreed to an exemption of this requirement until 30 June 2021. In the absence of an agreement, the Territory will 2.62

need to continue seeking an exemption to this requirement from the Safety, Rehabilitation and Compensation Commission.

Comcare made a deposit payment of $55.0 million to the Territory to discharge a portion of Comcare's liability in relation the ACT workers' compensation injuries prior to the residual payment for the assets to be transferred. Both the deposit payment and a partial premium refund were paid to the Territory on the transfer date, i.e. 1 March 2019. Since the commencement of self-insurance, the Territory has been making payments to claimants using the partial premium refund and deposit payment received from Comcare, as well as using premiums received from ACT agencies covered under the self-insurance license for the 2019-20 financial year. The delays in receipt of the transfer asset from negotiations between Comcare and the Territory raises a risk that the Public Sector Workers' Compensation Fund is unable to meet its workers' compensation liabilities. The Territory has advised, however, that 'the Public Sector Workers' Compensation Fund, and hence the workers' compensation insurance coverage, should be able to maintain normal operating procedures indefinitely, paying for workers' compensation claims on a cash flow basis from annual premiums collected each year'. However, the longer that the issue of the transfer of financial assets (funds) remains unresolved the greater the financial risk to the Territory, as it has fewer options to manage increases to its workers' compensation liabilities. 2.67

The Territory reported a figure of $304.2 million as both a liability and an asset receivable for the purpose of its 30 June 2019 financial statements. This figure represented the net central estimate of claims liabilities determined by Finity at 1 March 2019 ($359.2 million) less the deposit payment of $55.0 million. Once the agreed asset receivable amount is determined, the Territory's financial statements will either record a gain (or write-off) in its profit and loss statement depending on whether the asset is higher (or lower) than the asset receivable. 2.70

TRANSFER OF CLAIMS DATA

Paragraph

A Comcare Transition-out Project Governance Framework was developed by Comcare and the Territory to facilitate and provide oversight of the Territory's transition to self-insurance within the Comcare scheme. The framework comprised a Transition-out Project Steering Committee with members from Comcare and the ACT Government as well as various operational level working groups. The Transition-out Project Steering Committee, Claims Transition Out Working Group and Data Migration Working Group met as expected and a review of meeting minutes shows that the discussions of these groups were targeted and relevant. The working groups provided written progress reports to the steering committee on matters of relevance and issues for the steering committee's consideration. While it is apparent the Governance Framework Working Group met, minutes were not kept of its meetings and it did not provide written progress reports to the steering committee. With the exception of the Governance Framework Working Group, the Comcare Transition-out Project Governance Framework and its associated steering committee and working groups provided an effective mechanism for representatives from the Territory, Employers Mutual Limited and Comcare to discuss and resolve matters in a timely manner. 3.19

As part of the Comcare Transition-out Project Governance Framework arrangements, the Workplace Safety and Industrial Relations Division and Comcare implemented and maintained transition plans (or project schedules) for various components of the transfer of workers' compensation arrangements from Comcare to the Territory. The plans were comprehensive and included information on expected deliverables, responsibilities for each deliverable, target start date and target end date. The plans were updated to reflect the status of each deliverable throughout the period and progress was reported to the Claims Transition Out Working Group. Each of the plans addressed a particular component or activity of the transition of workers' compensation arrangements to the Territory, but there was no overarching transition plan that captured the entire claims transfer process or the transfer of liabilities and assets to the Territory. 3.27

As part of the Comcare Transition-out Project Governance Framework arrangements, the Workplace Safety and Industrial Relations Division and Comcare developed and maintained a risk register. As at December 2018 the risk register identified four risks to the project and four 'emerging risks for consideration'. Although the risk register provided the Transition-out Project Steering Committee with visibility of high-level risks of the transfer of workers' compensation arrangements from Comcare to the Territory, risk ownership was allocated at the agency level rather than specific teams or individuals. Therefore, the risk register was not particularly useful in holding teams or individuals to account in managing the allocated risk. 3.35

In preparation for the migration of claims data, the Workplace Safety and Industrial Relations Division requested a system security risk assessment of Pivotal, Employers Mutual Limited's proprietary injury claims management system. The system security risk assessment resulted in the completion of a system security risk management plan to minimise the risk of system and data security breaches. 3.49

A bulk load migration of data occurred between 28 February 2019 and 8 March 2019 via a Secure File Transfer Protocol (SFTP) arrangement. This was consistent with the requirements of the *ICT Security Policy* (August 2019) and was executed as per the *ACT Government Data Migration from Comcare to EML* plan. Prior to this, sample data sets were run to ascertain the manageability of the data migration. Analysis of the number of claims records that were extracted from the Commission Data Warehouse (29,360), against the number of claims that were subsequently loaded into Pivotal (Employers Mutual Limited's system) shows there was no variance in the number of claims records; the two figures reconciled. 3.62

Notwithstanding that the number of claims loaded into Employers Mutual Limited's system Pivotal reconciled with the number of claims extracted from the Commission Data Warehouse, the ACT Government had not documented the data integrity processes or procedures that were in place to confirm that data was migrated accurately, i.e. that the client information matched with the correct claims data. The Workplace Safety and Industrial Relations Division intended to undertake 'a quality assurance of claim files to be completed, with a random sample Quality Assurance undertaken to provide assurance to the Steering Committee regarding data quality'. However, there is no evidence of what these quality assurance processes were, how 3.63

they were designed or undertaken. There is no documentation associated with the quality assurance processes and procedures that were purported to be implemented.

Comcare, Employers Mutual Limited and the Territory worked collaboratively through the Claims Transition-Out Working Group to establish clear criteria, definitions and specific hand-over conditions for cohorts of claims identified as high risk. Face-to-face handover meetings occurred between the three parties between 11 February and 15 February 2019. This risk based and collaborative approach aimed to provide a smooth transition of claims management services from Comcare to Employers Mutual Limited for these cohorts. 3.70

In September 2019, Comcare and the Territory signed a Memorandum of Understanding, the purpose of which was to 'describe the ongoing relationship and expectations between Comcare and the Territory' in relation to a range of administrative arrangements. The Memorandum of Understanding also facilitates the Territory's ongoing access to data and documents maintained by Comcare in relation to claims that were closed between 1 March 2017 and 28 February 2019 and where data held outside the Comcare claims system was not transferred at the commencement of the licence. The establishment of a Memorandum of Understanding to facilitate ongoing administrative arrangements and access to documentation is a useful governance mechanism. 3.78

GOVERNANCE AND ADMINISTRATIVE ARRANGEMENTS

Paragraph

Section 24 of the *Public Sector Workers' Compensation Fund Act 2018* established the Public Sector Workers' Compensation Fund Advisory Committee. The Advisory Committee provides advice to the Public Sector Workers' Compensation Commissioner and the Minister about public sector work health, safety and wellbeing performance and opportunities for improving that performance. Terms of reference were agreed for the Advisory Committee and since its first meeting in May 2019 it has met four times. The Advisory Committee has established a quarterly reporting regime to inform the Minister for Employment and Workplace Safety of the outcomes and minutes of its meetings. The Advisory Committee is providing effective oversight of the management of the Public Sector Workers' Compensation Fund and workers' compensation arrangements in the Territory more generally, including compliance with self-insurance licence requirements. 4.14

Comcare produces a monthly *Key Performance Indicators Report* for self-insured licensees. This report shows licensees' performance against the seven Key Performance Indicators and provides licensees with an opportunity to track and monitor compliance against each Key Performance Indicator. The *Key Performance Indicators Report* is compiled by Comcare from the claims-based data that is submitted to the Commission Data Warehouse. A review of the Territory's February 2020 monthly report shows that the Territory is not achieving two Key Performance Indicator targets (incidence of serious claims per 1000 FTE and incidence of claims per 1000 FTE). A monthly Operational Performance Monitoring meeting has been established between the Territory and Employers Mutual Limited 4.26

to discuss, amongst other things, the findings documented in the monthly *Key Performance Indicators Report* and actions in place to remedy unfavourable results.

4.32 Comcare produces a quarterly *License Compliance and Performance Report* for self-insured licensees. The quarterly reports are an expansion on the monthly *Key Performance Indicators Report* and include an assessment overview, assessment analysis and commentary from Comcare as well as recommendations as necessary. Licensees have an opportunity to provide comment with the aim of providing context for any findings. In the *License Compliance and Performance Report* produced on 1 March 2020, the Territory discussed the reasons for non-compliance with the two Key Performance Indicator targets and provided details of the initiatives in place to address these results. Comcare assessed that the response was acceptable and that no regulatory action was required.

4.60 On behalf of the Safety, Rehabilitation and Compensation Commission, Comcare has conducted 'extensive reviews' on the Territory's Claims Management System (December 2019), Rehabilitation Management System (December 2019) and Work Health and Safety (August 2019). Each of these reviews has identified areas of non-conformance. The Claims Management System review identified seven non-conformances (20 percent of the components reviewed), the Rehabilitation Management System review identified two non-conformances (eight percent of the components reviewed) and the Work Health and Safety review identified 32 non-conformances (30 percent of the components reviewed). The Territory has produced Corrective Action Plans to address the issues of non-conformance for each review, and these have been approved by Comcare. The progress of each Corrective Action Plan is intended to be monitored by the Workplace Safety and Industrial Relations Division and the Public Sector Workers' Compensation Fund Advisory Committee. Outcomes are expected to be reported to Comcare as required under the requirements of the self-insurance licence.

4.65 The Public Sector Workers' Compensation Fund is required to produce an annual report in accordance with Annual Reports Directions made under section 8 of the *Annual Reports (Government Agencies) Act 2004*. Five Accountability Indicators have been identified for the Fund, against which it will report as part of its 2019-20 Statement of Performance. The Accountability Indicators are appropriate and align with the Territory's self-insurance requirements and principles of prudential financial management. They include an indicator associated with reducing the incidence of serious workplace injury and an indicator associated with the performance of the Territory's rehabilitation management system that aligns with the self-insurance licence requirements. The Fund did not achieve the 'Maintaining a PSWC Fund asset to liability greater than or equal to 100%' Accountability Indicator in 2018-19 and will not achieve it in 2019-20 because the transfer of assets is yet to be resolved.

4.100 On 10 October 2018, a services agreement was executed between the Territory and Employers Mutual Limited for claims administration services. Through the services agreement Employers Mutual Limited has been engaged to provide services to February 2023. The services agreement is valued at up to $35.6 million (excluding GST). Through the services agreement there are a range of mechanisms in place for the Territory to oversee the performance of Employers Mutual Limited including

Operational Reporting from Employers Mutual Limited; monthly Operational Performance Monitoring meetings, Quarterly Performance Review meetings and an Annual Review meeting between the Territory and Employers Mutual Limited. The services agreement provides the Territory with an effective mechanism by which to manage Employers Mutual Limited to deliver claims administration services.	
The Territory has committed to reviewing the public sector's capability to administer claims without the assistance of a third-party administrator. The Workplace Safety and Industrial Relations Division has developed a roadmap to prepare for and undertake an assessment of the Territory's capacity to manage claims administration services internally. This work is in its infancy and will continue to be reported to and monitored by the Public Sector Workers' Compensation Fund Advisory Committee.	4.106

Response from entities

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, the Chief Minister, Treasury and Economic Development Directorate was provided with:

- a draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report; and
- a final proposed report for further comment.

In accordance with subsection 18(3) of the *Auditor-General Act 1996* other directorates and entities considered to have a direct interest in the report were also provided with extracts of the draft and final proposed report for comment.

No comments were provided for inclusion in this Summary chapter.

1 INTRODUCTION

Workers' compensation

The Comcare scheme

1.1 The *Safety, Rehabilitation and Compensation Act 1988* establishes a national workers' compensation scheme (the Comcare scheme). The scheme covers Commonwealth and ACT public servants and a number of national companies and their employees.

1.2 The Comcare scheme provides all scheme employers with standardised workers' compensation coverage and rehabilitation arrangements and provides consistent coverage for employees who work across multiple states and territories.

1.3 The Comcare scheme comprises two types of employer:

- premium payers, such as Australian Public Service agencies (and the ACT Government prior to self-insurance), that pay an insurance premium to Comcare in exchange for its underwriting and management of claims; and
- self-insurers, that are licenced to underwrite and manage their own claims, in accordance with the Comcare scheme benefit design and with regulatory oversight by Comcare.

1.4 Under the *Safety, Rehabilitation and Compensation Act 1988,* Comcare undertakes roles as an insurer and scheme manager. It also provides advice to the Safety, Rehabilitation and Compensation Commission. The Safety, Rehabilitation and Compensation Commission is a statutory body that carries out regulatory functions in relation to Comcare and other authorities that determine workers' compensation claims.

ACT Public Service workers' compensation insurance with Comcare

1.5 ACT Public Service workers' compensation had been insured under the Comcare scheme since 1994. As a Comcare policy holder, the Territory was financially accountable for the cost of work-related injury through the payment of an annual premium. The premium rate that Comcare sets for each employer reflects the employer's claim frequency and average claim cost as a percentage of their payroll.

1.6 Actual workers' compensation insurance premium expenditure for the Territory for the five years between 2014-15 and 2018-19 is shown in Table 1-1.

Table 1-1 ACT Public Service workers' compensation insurance premium expenditure (2014-15 to 2018-19)

2014-15 *Actual $'000*	2015-16 *Actual $'000*	2016-17 *Actual $'000*	2017-18 *Actual $'000*	2018-19 *Actual $'000*
78,000	81,000	75,000	58,173	45,361

Source: Whole of Government consolidated financial statements

Note: Figures for 2018-19 represent a reduced premium due to the Territory becoming a workers' compensation self-insurer from 1 March 2019.

1.7 A review of workers' compensation insurance premium expenditure for the Territory between 2014-15 and 2018-19 shows annual premiums increased to $81.0 million in 2015-16 before declining in subsequent years.

1.8 In 2018, the ACT Government applied to become a licenced self-insurer for workers' compensation under the *Safety, Rehabilitation and Compensation Act 1988*. The ACT Government advised that one of the key drivers for transitioning to a self-insured licensee arrangement was the increasing workers' compensation insurance premium payments to Comcare. The licence was granted on 28 November 2018.

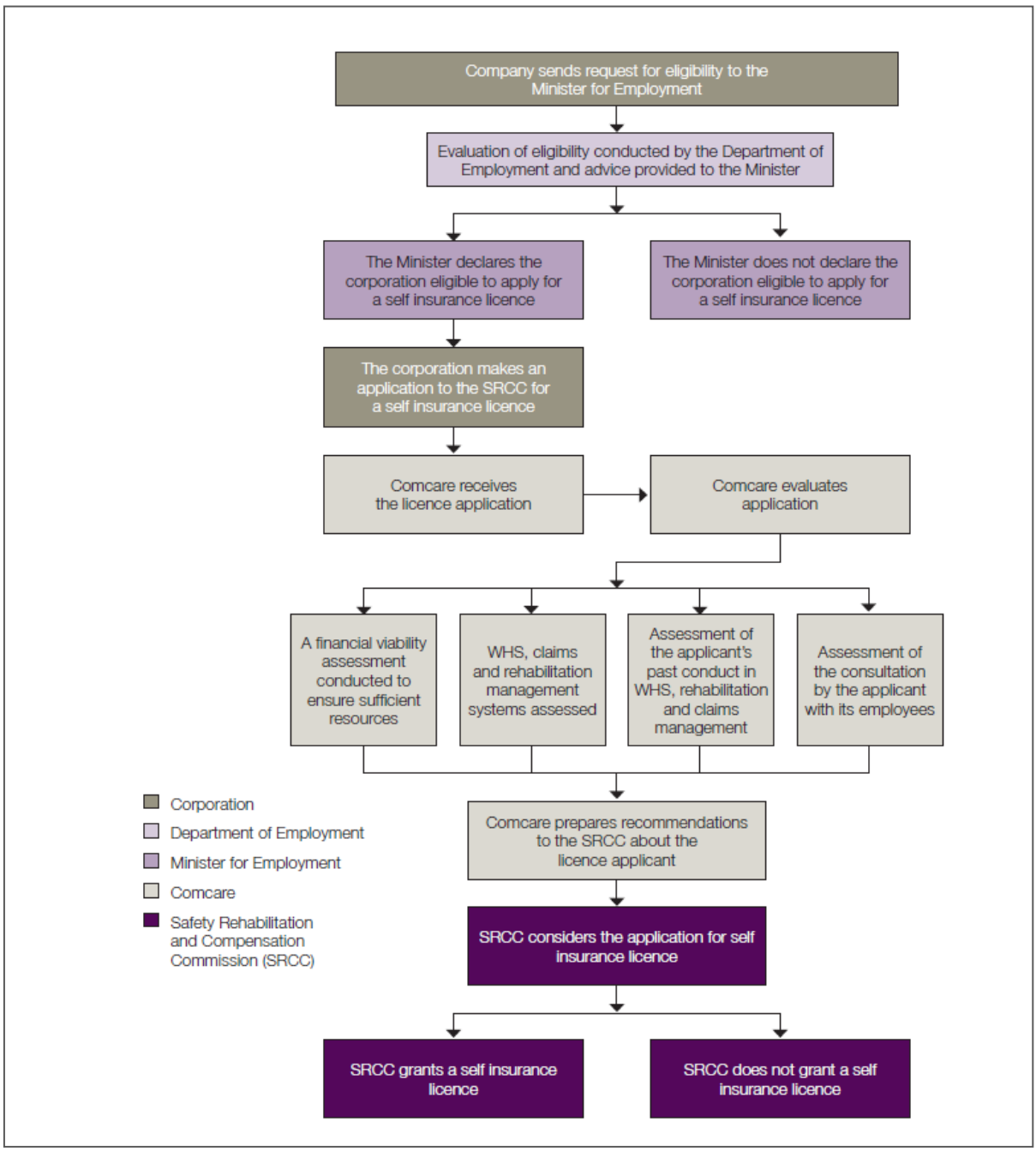
Workers' compensation and self-insurance

Self-insured licensees

1.9 *The Safety, Rehabilitation and Compensation Act 1988* identifies the Safety, Rehabilitation and Compensation Commission as the issuing authority and regulator of self-insured licensees. The Safety, Rehabilitation and Compensation Commission is responsible for granting, extending and varying self-insurance licences.

1.10 The eligibility of self-insurance applicants is assessed by the Safety, Rehabilitation and Compensation Commission in accordance with an eligibility assessment process shown at Figure 1-1.

Figure 1-1 Safety, Rehabilitation and Compensation Commission self-insurance eligibility flow-chart



Source: Safety, Rehabilitation and Compensation Commission website

1.11 An application for a self-insurance licence with the Safety, Rehabilitation and Compensation Commission requires details of how operational processes will be managed, including:

- financial management: ability to demonstrate financial capacity (i.e. adequate assets set aside) to meet claims liability;
- rehabilitation management: capability to manage rehabilitation and return to work of injured employees;

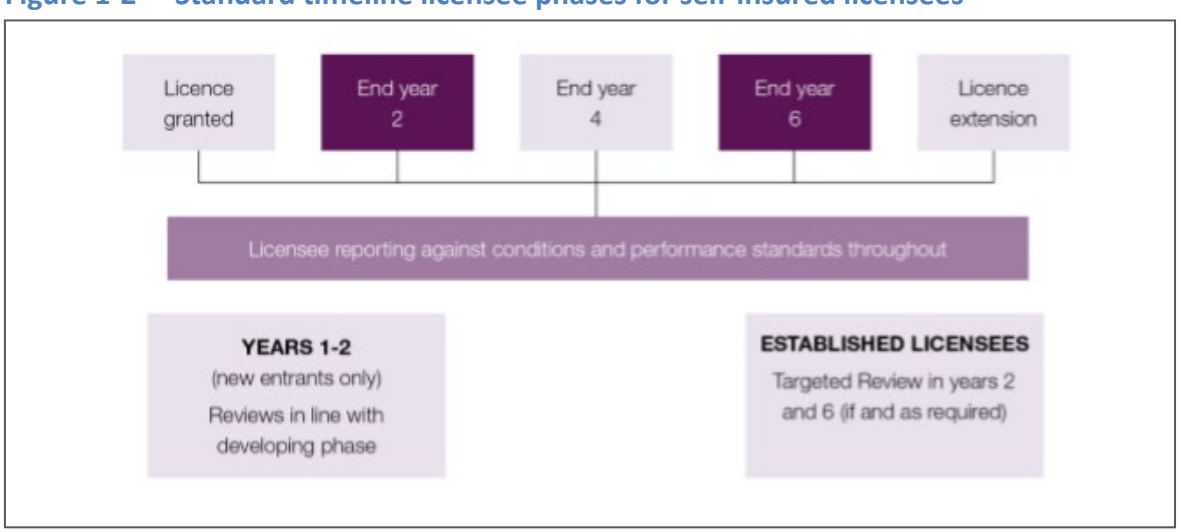
- benefit delivery: effective payment systems, ability to make timely and accurate decisions, and data management, including confidentiality;
- preventative measures: work health and safety practices; and
- claims management: details on how claims will be managed, for instance whether they will be managed in-house by the applicant or through a third-party administrator.

1.12 Self-insurance licences are granted for an eight-year period. According to the Safety, Rehabilitation and Compensation Commission, licensees may be classified according to two phases during this eight-year licence period:

- Developing/Transitioning; and
- Established.

1.13 New scheme participants (licensees in the first two years of licence) are classified as 'Developing/Transitioning'. This means that during the first two years of the licence, Comcare (on behalf of the Safety, Rehabilitation and Compensation Commission) intends to work closely with the self-insurer to assist in developing its management system capabilities. The various phases of self-insurance are shown in Figure 1-2.

Figure 1-2 Standard timeline licensee phases for self-insured licensees



Source: Safety, Rehabilitation and Compensation Commission, Licence Compliance and Performance Model (Version 4 – January 2020), page 11

1.14 As at February 2020, there were 38 self-insured licensees. Of these entities three were public sector entities - the Australian Capital Territory Public Service, the Australian National University and the Reserve Bank of Australia.

1.15 Section 108E of the *Safety, Rehabilitation and Compensation Act 1988* requires self-insured licensees to:

- pay compensation or other amounts under the Act and make those payments accurately and quickly to employees who are injured;

- determine claims accurately and quickly and to take all necessary action in respect of the subsequent management of those claims;
- maintain contact with the Safety, Rehabilitation and Compensation Commission and with Comcare to ensure that, as far as practicable, there is equity of outcomes resulting from the administrative practices and procedures used by Comcare and the licensee in the performance of their respective functions;
- do anything and meet any obligation, the doing or meeting of which is incidental to the performance of their authority, to pay compensation or other amounts or manage claims under the Act and that would be required of Comcare (as claims manager for the Australian Public Service) if Comcare had responsibility for the performance of the functions; and
- comply with the conditions to which the licence is subject to, including any performance standards set by the Safety, Rehabilitation and Compensation Commission.

Territory as a self-insured licensee

1.16 In 2018, the Territory applied to become a licenced self-insurer for workers' compensation under the *Safety, Rehabilitation and Compensation Act 1988*. A Notice of Grant of Licence was signed by the Chairperson of the Safety, Rehabilitation and Compensation Commission on 5 December 2018 for the period commencing 1 March 2019 and ending 28 February 2027.

1.17 On becoming a self-insurer, the ACT Government released a statement on the expected benefits:

> Having responsibility for the entire workers' compensation claim management process will enable greater investment in and better integration of workers' compensation, rehabilitation and health and safety services.
>
> Moving to a self-insurance model will allow us to influence how these services are delivered. For example, we will be able to reduce timeframes for decision making and provide funding for medical support as soon as an injury is reported.
>
> The ACT Government currently purchases a workers' compensation policy from a Commonwealth Government agency (Comcare). In its role as the insurer, Comcare determines which of our injured workers are eligible for workers' compensation under the relevant legislation, manages the associated health services and makes compensation payments.
>
> A consequence of this relationship is that the Territory has relied heavily on the Commonwealth to ensure our injured workers are treated well in terms of both customer service and health outcomes. As a self-insurer, we will be able to take greater responsibility for the health and recovery of our staff.
>
> In addition, the ACT Government will no longer be required to pay a premium to Comcare - approximately $68 million in 2017-18. It is anticipated that the Territory Budget would continue to benefit from a reduction in workers' compensation premium costs with additional funding to invest in work health and safety programs and injury prevention initiatives.

1.18 Under the licence and the *Safety, Rehabilitation and Compensation Act 1988*, the Territory is liable to pay compensation and other amounts under the *Safety, Rehabilitation and Compensation Act 1988* in respect of all injuries, loss or damage suffered by, or in respect of the death of, any of the employees of the ACT occurring on or after 1 July 1989.

1.19 All ACT Government directorates and agencies are responsible for implementing the principles of an integrated work health, safety and wellbeing approach. The *ACTPS Work Health, Safety and Wellbeing Policy 2019-2022* was prepared by the Chief Minister, Treasury and Economic Development Directorate and approved by the Commissioner of Public Administration. The policy aims to ensure that directorates/agencies develop, implement and monitor integrated policies and programs relevant to their risk profile.

Public Sector Workers' Compensation Fund

1.20 The Public Sector Workers' Compensation Fund seeks to facilitate the effective management of the Territory's workers' compensation assets. It is an important part of the Territory's compliance with its self-insurance licence.

1.21 The Public Sector Workers' Compensation Fund is administered by the Public Sector Workers' Compensation Commissioner, who is responsible for:

- managing the Public Sector Workers' Compensation Fund;
- advising the Minister about the administration, efficiency and effectiveness of the Public Sector Workers' Compensation Fund;
- managing the Territory's liability under the *Safety, Rehabilitation and Compensation Act 1988*; and
- managing claims under the *Safety, Rehabilitation and Compensation Act 1988*.

1.22 The Public Sector Workers' Compensation Fund is funded by the Territory from premium amounts apportioned by the Public Sector Workers' Compensation Commissioner amongst Territory directorates and agencies. Funds are invested, with earnings retained in the Public Sector Workers' Compensation Fund, to help meet workers' compensation costs.

1.23 On 14 February 2019, the Executive Group Manager, Workplace Safety and Industrial Relations, Chief Minister, Treasury and Economic Development Directorate, was appointed to the role of the Public Sector Workers' Compensation Commissioner, with effect on commencement of the Public Sector Workers Compensation Fund on 1 March 2019.

1.24 As at 30 June 2019, the Public Sector Workers' Compensation Fund Advisory Committee comprised:

- the Public Sector Workers' Compensation Commissioner (Chair);
- a representative from the Workplace Safety and Industrial Relations Division; and

- four members external to the ACT Public Service comprising representatives from Unions ACT, Community and Public Sector Union, Employer's Mutual Limited and the Australian Education Union ACT.

Administration of ACTPS workers' compensation claims

1.25 In 2018, the Chief Minister, Treasury and Economic Development Directorate undertook a procurement process to engage a claims administration service provider for the ACT Public Service's workers' compensation claims.

1.26 On 10 October 2018, a contract was executed with Employers Mutual Limited, with the contract period ending on 28 February 2023. The executed contract between the ACT Government and Employers Mutual Limited for claims management services is valued at $35.6 million (excluding GST). Employers Mutual Limited provide administrative services to manage the complete claim life cycle.

Audit objective and scope

Audit objective

1.27 The objective of this audit is to provide an independent opinion to the Legislative Assembly on the effectiveness of the transfer of the ACT Public Service workers' compensation arrangements from Comcare.

Audit scope

1.28 The audit focused on the activities of the Chief Minister, Treasury and Economic Development Directorate to prepare for, and manage, the transition to being a self-insured licensee under the *Safety, Rehabilitation and Compensation Act 1988.* This included activities for the establishment of the ACT Public Sector Workers' Compensation Fund.

1.29 The audit scope included consideration of the:

- due diligence processes associated with the transfer of existing workers' compensation assets and liabilities from Comcare; and
- governance and administrative arrangements for the management of ACT Public Service workers' compensation arrangements.

1.30 The audit recognised that the Public Sector Workers' Compensation Fund has been subject to reviews and other assurance processes that have been required by the Safety, Rehabilitation and Compensation Commission for the Territory to become a self-insurer. Where possible and practicable the conduct of the audit recognised these assurance processes.

1.31 The audit did not consider the:

- ACT Government's policy decision for the Territory to become a self-insurer;
- procurement process for the selection of Employers Mutual Limited as the provider of workers' compensation administrative services; or
- effectiveness of the Territory's management of workers' compensation arrangements, both prior and subsequent to the decision to become self-insured, including:
  - the Territory's management of Employers Mutual Limited as the provider of workers' compensation administrative services; and
  - Employers Mutual Limited's performance in providing services.

Audit criteria, approach and method

Audit criteria

1.32 To form a conclusion against the objective, the following criteria were used:

- **Criterion 1:** Were the due diligence processes associated with the transfer of the existing workers' compensation liabilities and assets from Comcare effective?
- **Criterion 2:** Have appropriate governance and administrative arrangements been established for the management of the ACTPS workers' compensation arrangements?

1.33 For Criterion 1, the audit considered the following areas of focus:

- Was the assessment and identification of the liabilities to be transferred to the Territory accurate and supported by an evidence-based assessment?
- Was the assessment and identification of the assets to be transferred to the Territory accurate and reflective of the liabilities transferred?
- Were appropriate processes in place to ensure the accurate and completed transfer of claims data?

1.34 For Criterion 2, the audit considered the following areas of focus:

- Are there effective governance and administrative arrangements in place for the oversight of the Public Sector Workers' Compensation Fund?
- Are there effective contract management arrangements in place that allow for effective management and oversight of claims management services provided by Employers Mutual Limited?

Audit approach and method

1.35 The audit approach and method consisted of:

- reviewing relevant literature, and work undertaken on this subject by other jurisdictions to identify better practices;
- identifying and reviewing relevant information and documentation including the governance and accountability framework and related policy and procedures, research documents, and relevant reports;
- identifying and documenting internal controls and procedures used to give effect to the policies and guidelines and to ensure compliance and evaluating the effectiveness of these controls;
- interviews and discussions with key staff at the Chief Minister, Treasury and Economic Development Directorate, Comcare and other stakeholders; and
- an engagement quality control review.

1.36 KPMG Financial Services Consulting Pty Ltd supported the audit team in providing professional advisory services.

1.37 The audit was performed in accordance with *ASAE 3500 – Performance Engagements.* The audit adopted the policy and practice statements outlined in the Audit Office's *Performance Audit Methods and Practices* (PAMPr) which is designed to comply with the requirements of the *Auditor-General Act 1996* and *ASAE 3500 – Performance Engagements.*

1.38 In the conduct of this performance audit, the ACT Audit Office complied with the independence and other relevant ethical requirements related to assurance engagements.

2 ASSESSMENT OF LIABILITIES AND ASSETS

2.1 This chapter considers arrangements for the assessment and identification of workers' compensation liabilities and assets (funds) to be transferred to the Territory. The chapter considers whether:

- the assessment and identification of liabilities was accurate and supported by an evidence-based assessment; and
- whether the assessment and identification of the assets was accurate and reflective of the liabilities transferred.

Summary

Conclusion

While the rights and obligations of being a self-insured licensee have transferred to the Territory, the transfer of assets (funds) from Comcare to the Territory to cover ACT Public Service workers' compensation liabilities is yet to occur. The Territory and Comcare are yet to reach an agreement on the quantum of assets to be transferred.

As a result, the Territory does not currently have sufficient assets in its Public Sector Workers' Compensation Fund to cover its workers' compensation liabilities. The Territory has been meeting its liabilities since becoming a self-insured licensee by using a partial premium refund for the 2018-19 financial year that was received from Comcare in March 2019 as well as premiums received from ACT Government agencies during 2019-20.

Although the Public Sector Workers' Compensation Fund is able to seek additional premiums from ACT Government agencies, or supplemental funding from the Territory Budget or a Treasurer's Advance to cover its workers' compensation liabilities, the continuing uncertainty associated with the transfer of the assets presents a financial risk to the Territory. The uncertainty restricts the Territory's options to manage its workers' compensation liabilities and the longer the issue remains unresolved the greater the financial risk to the Territory as it has fewer options to manage any potential increases to its workers' compensation liabilities.

Key findings

	Paragraph
The rights and obligations of self-insurance transitioned from Comcare to the Territory on 1 March 2019. However, the transfer of assets (funds) from Comcare to the Territory to cover its ACT Public Service workers' compensation liabilities is yet to occur. Several matters remain outstanding with Comcare and this has resulted in two extensions to the transition date. The latest extension to the transition date approved by the Safety, Rehabilitation and Compensation Commission is to	2.10

30 June 2021, approximately 28 months after the commencement of the Territory's self-insurance arrangements.

The *Safety, Rehabilitation and Compensation Act 1988* does not provide a framework or methodology for identifying and valuing assets (funds) when a Commonwealth Authority transitions to self-insurance and assumes responsibility for workers' compensation liabilities as a self-insurer. In the absence of sufficient guidance, it is up to the Territory and Comcare to negotiate on the framework and methodology to be used to calculate the assets (funds) to be transferred to the Territory. 2.19

A range of different actuarial valuations have been undertaken on behalf of Comcare and the Territory to provide an estimate of the workers' compensation outstanding claims liability amount. The timing, purpose and scope of the actuarial valuations varied and involved analysis of different datasets. On 27 February 2018, Taylor Fry, on behalf of Comcare, provided an estimate of liabilities as at 30 June 2018. The data extract used for Taylor Fry's analysis included claims information and claim payments up to 30 September 2017. Taylor Fry's February 2018 report provided a net central estimate of $358.6 million (including claims handling expenses). Finity, on behalf of the Territory, has provided two estimates of liabilities for the purpose of financial statement reporting. On 27 September 2018 (using a data extract up to 31 March 2018), Finity provided a net central estimate of $344.0 million (including claims handling expenses) as at 30 June 2018. On 12 September 2019 (using a data extract up to 31 December 2018), Finity provided a net central estimate of $381.4 million as at 30 June 2019. The Audit Office understands that Taylor Fry has also performed an actuarial valuation using a data extract up to 28 February 2019 (i.e. the day before the 1 March 2019 transfer date) but that this valuation has not been provided to the Territory. The provision of this estimate would provide greater certainty and clarity to negotiations associated with the transfer of assets (funds). 2.28

KPMG advised the Audit Office that 'the actuarial valuation methodologies adopted by both Finity and Taylor Fry are considered standard approaches to the valuation of workers' compensation outstanding claims liabilities. The central estimate valuation results are similarly close'. KPMG further advised 'in our review, we did not identify any issue to suggest that either actuarial valuation had any significant bias. That is, the actuarial valuation methodologies and assumptions are reasonable for the purposes of valuing the net central estimate of workers' compensation outstanding claims liabilities'. A review of the estimated liability amount as at June 2018, as identified by Finity in its September 2018 report to the Territory, shows a difference of $14.5 million. 2.39

There is a lack of agreement between the Territory and Comcare on the methodology to be used for determining the financial assets (funds) to be transferred to the Territory. The Territory disagrees with Comcare's proposed methodology for identifying the quantum of assets (funds) to be transferred and has offered an alternative methodology, as well as additional items for inclusions. The Territory's preferred method would rely on Comcare providing key inputs into the calculation. Without input from Comcare, it is unclear whether the Territory's alternative approach would be fully or partially accepted, and whether the key inputs would be readily available'. 2.59

KPMG advised that 'the lack of agreement and delay is unusual and creates uncertainty'. There is a risk that the current lack of agreement between the Territory and Comcare could lead to a deterioration in the Territory's relationship with Comcare. The continuing uncertainty associated with the transfer of the financial assets (funds) also increases the financial risk to the Territory, as it impairs and restricts the Territory's options to manage its workers' compensation liabilities. 2.60

As part of its self-insurance licence requirement, the Territory is ordinarily required to hold a funding ratio for the Public Sector Workers' Compensation Fund of 95 percent to 110 percent, i.e. 95 percent to 110 percent of assets compared to liabilities. In the absence of an agreement on the transfer of assets between Comcare and the Territory, the Territory is not meeting this requirement. However, the Safety, Rehabilitation and Compensation Commission has agreed to an exemption of this requirement until 30 June 2021. In the absence of an agreement, the Territory will need to continue seeking an exemption to this requirement from the Safety, Rehabilitation and Compensation Commission. 2.62

Comcare made a deposit payment of $55.0 million to the Territory to discharge a portion of Comcare's liability in relation the ACT workers' compensation injuries prior to the residual payment for the assets to be transferred. Both the deposit payment and a partial premium refund were paid to the Territory on the transfer date, i.e. 1 March 2019. Since the commencement of self-insurance, the Territory has been making payments to claimants using the partial premium refund and deposit payment received from Comcare, as well as using premiums received from ACT agencies covered under the self-insurance license for the 2019-20 financial year. The delays in receipt of the transfer asset from negotiations between Comcare and the Territory raises a risk that the Public Sector Workers' Compensation Fund is unable to meet its workers' compensation liabilities. The Territory has advised, however, that 'the Public Sector Workers' Compensation Fund, and hence the workers' compensation insurance coverage, should be able to maintain normal operating procedures indefinitely, paying for workers' compensation claims on a cash flow basis from annual premiums collected each year'. However, the longer that the issue of the transfer of financial assets (funds) remains unresolved the greater the financial risk to the Territory, as it has fewer options to manage increases to its workers' compensation liabilities. 2.67

The Territory reported a figure of $304.2 million as both a liability and an asset receivable for the purpose of its 30 June 2019 financial statements. This figure represented the net central estimate of claims liabilities determined by Finity at 1 March 2019 ($359.2 million) less the deposit payment of $55.0 million. Once the agreed asset receivable amount is determined, the Territory's financial statements will either record a gain (or write-off) in its profit and loss statement depending on whether the asset is higher (or lower) than the asset receivable. 2.70

Transition to self-insurance

Self-insurance licence

2.2 In 2018, the ACT Government applied to the Safety, Rehabilitation and Compensation Commission to become a licenced self-insurer for workers' compensation. A Notice of Grant of Licence was provided by the Safety, Rehabilitation and Compensation Commission on 5 December 2018 for the period commencing 1 March 2019 and ending 28 February 2027.

2.3 To effectively transition to a self-insurance arrangement the Territory was required to receive the contractual rights and obligations, as well as the financial liabilities and assets, relating to ACT Public Service workers' compensation claims from Comcare. This process was agreed to occur on 1 March 2019 (the transfer date), approximately 4 months after the Safety, Rehabilitation and Compensation Commission's approval of the Territory as a self-insurer.

2.4 A transfer date of 1 March 2019 was expected to provide Comcare with time to coordinate the transfer of claims management data from its systems to the Territory, as well as appropriately value the financial liabilities and assets to transfer. The claims information that was agreed to be transferred was for all injury, loss, damage or death claims from 1 July 1989 to 28 February 2019.

Initial transition period for transfer of assets

2.5 The self-insurance licence provided for a transition period for the transfer of assets (funds) from Comcare to the Territory. The transition period was defined as '… the period commencing at the Commencement Date (1 March 2019) and ending at the earlier of the following: 12 months after the Commencement Date, or when the Commonwealth or Comcare pay an amount to the Licensee in relation to this licence (including the grant of this licence) that results in the Fund Value reaching or exceeding the Minimum Fund Value'.

2.6 Accordingly, the self-insurance licence provided for a transition period from 1 March 2019 to 1 March 2020 for the Territory to receive the necessary funds from Comcare. The twelve-month period was intended to allow the Territory to comply with its self-insurance licensing terms and conditions.

Requests for extension

2.7 In late 2019, the Territory requested that the Safety, Rehabilitation and Compensation Commission extend the transition period for a period of six months (until 30 September 2020). This was due to the approaching end of the transition period (1 March 2020) and a recognition that the negotiations with Comcare with respect to the transfer of assets had not been resolved and were not expected to be resolved before the end of the transition period. The request for an extension to the transition period was

approved by the Safety, Rehabilitation and Compensation Commission on 9 December 2019, but only for a period of 3 months until 30 June 2020.

2.8 On 3 March 2020, the Territory requested a further extension to the transition period to '… allow time for Comcare to complete an asset transfer to the ACT Government self-insurer, consequent to the transfer of claim liabilities from the Comcare scheme to the ACT Government in March 2019'. The length of extension being requested was not nominated by the Territory. In requesting the further extension, the Public Sector Workers' Compensation Commissioner noted that:

> It seems that before a payment can be made to the ACT Government, there are several matters that still require action by Comcare. The action taken will in turn warrant some level of consequent engagement between Comcare, the ACT Government and the Commission. A further extension to the Transition Period would be required for this to occur.
>
> The ACT Government self-insurer has access to sufficient funds to operate on a cash basis. Consequently, there is no risk that injured workers would be left unsupported if an extension to the Transition Period is granted.

2.9 The request for an extension to the transition period was approved by the Safety, Rehabilitation and Compensation Commission on until 30 June 2021.

2.10 The rights and obligations of self-insurance transitioned from Comcare to the Territory on 1 March 2019. However, the transfer of assets (funds) from Comcare to the Territory to cover its ACT Public Service workers' compensation liabilities is yet to occur. Several matters remain outstanding with Comcare and this has resulted in two extensions to the transition date. The latest extension to the transition date approved by the Safety, Rehabilitation and Compensation Commission is to 30 June 2021, approximately 28 months after the commencement of the Territory's self-insurance arrangements.

Arrangements for transitioning to self-insurance

2.11 The delay in finalising the transfer of workers' compensation arrangements from Comcare is due to the lack of agreement between Comcare and the Territory on the quantum of assets (funds) to be transferred to support the liabilities that have been transferred.

2.12 The *Safety, Rehabilitation and Compensation Act 1988* includes some provisions relevant to members of the scheme intending to exit the scheme. Of relevance to the Australian Capital Territory is:

- section 97CC – Determination of exit contributions for the Australian Capital Territory if it ceases to be a Commonwealth authority;
- section 97HA – Payment of exit contribution or regulatory contribution by a former Commonwealth authority etc;
- section 97LA – Refund of exit contribution or regulatory contribution paid by a former Commonwealth authority etc;

- section 97MA – Variation of determination of exit contribution or regulatory contribution payable by a former Commonwealth authority etc;
- section 97QB – Refund of premiums to the Australian Capital Territory if it ceases to be a Commonwealth authority;
- section 97QBC – Refund of exit contributions to the Australian Capital Territory if it ceases to be a Commonwealth authority; and
- section 97QF – Remission of exit contribution payable by the Australian Capital Territory if it ceases to be a Commonwealth authority.

2.13 Of particular relevance is:

- section 97CC – Determination of exit contributions for the Australian Capital Territory if it ceases to be a Commonwealth authority; and
- section 97QB – Refund of premiums to the Australian Capital Territory if it ceases to be a Commonwealth authority.

2.14 Section 97CC of the *Safety, Rehabilitation and Compensation Act 1988* provides for the determination of exit contributions from the Territory if it ceases to be a Commonwealth authority for the purpose of the Act. Section 97CC provides that if the amount of Comcare's liability under the Act for injuries suffered by ACT Public Service workers' before the 'cessation time' exceeds the amount of premiums paid by the Territory before the 'cessation time' (including special premiums, exit contributions and interest earned) then Comcare may make a determination for an exit contribution to be paid by the Territory.

2.15 Section 97QB provides for the refund of premiums to the Australian Capital Territory if it ceases to be a Commonwealth authority for the purpose of the Act. Section 97QB provides that if premiums paid by the Territory (including special premiums and interest earned) exceeds Comcare's liability for injuries suffered by ACT Public Service workers' before the 'cessation time' then Comcare may make a determination for a refund of premiums paid to Comcare by the Territory.

2.16 Sections 97CC and 97QB of the *Safety, Rehabilitation and Compensation Act 1988* apply where the ACT Government ceases to be a Commonwealth Authority, for the purposes of the Act, and exits the Comcare scheme. In its response to the draft proposed report, Comcare advised that:

> In the present circumstances the ACT Government remains a Commonwealth Authority and has been granted a licence to self-insure under the SRC Act, remaining with the Scheme. Section 97QB does not apply in these circumstances.

2.17 Nonetheless, the Territory continues to advocate for an exit payment to be calculated using the method established by section 97QB of the *Safety, Rehabilitation and Compensation Act 1988.* This is discussed further throughout this chapter.

2.18 The *Safety, Rehabilitation and Compensation Act 1988* does not provide any further guidance on arrangements for transitioning to self-insurance within the Comcare scheme. Whilst the Act contemplates former 'Commonwealth Authorities' exiting the scheme and payments to be made to Comcare (if existing liabilities exceed premiums) or from Comcare (if premiums exceed existing liabilities) there is no guidance on how this is to be achieved, nor does it apply in this instance. Specifically, there is no guidance on how assets are to be identified and valued for the purpose of transfer when an entity exits the scheme and assumes responsibility for workers' compensation liabilities as a self-insurer.

2.19 The *Safety, Rehabilitation and Compensation Act 1988* does not provide a framework or methodology for identifying and valuing assets (funds) when a Commonwealth Authority transitions to self-insurance and assumes responsibility for workers' compensation liabilities as a self-insurer. In the absence of sufficient guidance, it is up to the Territory and Comcare to negotiate on the framework and methodology to be used to calculate the assets (funds) to be transferred to the Territory.

Valuation of liabilities and assets

Valuation of liabilities

Actuarial valuations

2.20 Taylor Fry, on behalf of Comcare, and Finity, on behalf of the Territory, independently performed actuarial valuations of the workers' compensation outstanding claims liability as at 30 June 2018.

Taylor Fry valuation (on behalf of Comcare)

2.21 Taylor Fry has been engaged as the actuarial advisor to Comcare for several years. On 27 February 2018, Taylor Fry prepared an actuarial report for Comcare titled 'Preliminary Estimate of Liability for Outstanding Claims as at 30 June 2018'. The data extract used for Taylor Fry's analysis included claims information and claim payments up to 30 September 2017. Taylor Fry provided an estimate to 30 June 2018 based on historical experience and trends.

2.22 Taylor Fry's February 2018 report provided a net central estimate of liabilities of $358.6 million (including claims handling expenses) for 30 June 2018.

2.23 The Audit Office understands that Taylor Fry has also performed an actuarial valuation using a data extract up to 28 February 2019. This valuation has not been provided to the Territory.

Finity valuation (on behalf of the Territory)

2.24 Finity was engaged by the Territory for the purpose of estimating workers' compensation liabilities for financial statement reporting purposes. On 27 September 2018, Finity prepared an actuarial report for the Territory titled 'ACT Public Service – Estimate of Pre-Licence Workers' Compensation Claim Liability at 30 June 2018'. The data extract used for Finity's analysis included claims information and claim payments up to 31 March 2018. Finity provided an estimate to 30 June 2018 based on historical experience and trends.

2.25 Finity's September 2018 report provided a net central estimate of liabilities of $344.0 million (including claims handling expenses) for 30 June 2018.

2.26 On 12 September 2019, Finity also prepared an actuarial report for the Territory titled 'ACT Public Service – Estimate of Pre-Licence Workers' Compensation Claim Liability at 30 June 2019'. Similar to Finity's earlier report, this report was prepared for the purpose of estimating workers' compensation liabilities for financial statement purposes. The data extract used for Finity's analysis included claims information and claim payments up to 31 December 2018. Finity provided an estimate to 30 June 2019 based on historical experience and trends.

2.27 Finity's September 2019 report provided a net central estimate of liabilities of $381.4 million (including claims handling expenses).

2.28 A range of different actuarial valuations have been undertaken on behalf of Comcare and the Territory to provide an estimate of the workers' compensation outstanding claims liability amount. The timing, purpose and scope of the actuarial valuations varied and involved analysis of different datasets. On 27 February 2018, Taylor Fry, on behalf of Comcare, provided an estimate of liabilities as at 30 June 2018. The data extract used for Taylor Fry's analysis included claims information and claim payments up to 30 September 2017. Taylor Fry's February 2018 report provided a net central estimate of $358.6 million (including claims handling expenses). Finity, on behalf of the Territory, has provided two estimates of liabilities for the purpose of financial statement reporting. On 27 September 2018 (using a data extract up to 31 March 2018), Finity provided a net central estimate of $344.0 million (including claims handling expenses) as at 30 June 2018. On 12 September 2019 (using a data extract up to 31 December 2018), Finity provided a net central estimate of $381.4 million as at 30 June 2019. The Audit Office understands that Taylor Fry has also performed an actuarial valuation using a data extract up to 28 February 2019 (i.e. the day before the 1 March 2019 transfer date) but that this valuation has not been provided to the Territory. The provision of this estimate would provide greater certainty and clarity to negotiations associated with the transfer of assets (funds).

Comparison of actuarial valuations

2.29 KPMG provided an assessment of the actuarial valuations, including their methodologies and approaches. In doing so, KPMG noted that while it had access to Finity's September 2019 actuarial report, which estimated claims incurred up to 30 June 2019 and was based on data up to 31 December 2018, it did not have the corresponding Taylor Fry report:

> In the absence of the corresponding Taylor Fry report … the 2019 Finity report was not used for comparison, but instead supported KMPG's understanding of Finity's approach to the actuarial valuation.

2.30 KPMG advised that the methodologies used by Taylor Fry and Finity are considered to be standard actuarial approaches to valuing workers' compensation liabilities:

> Taylor Fry and Finity use a range of actuarial methods and modelling techniques within their actuarial valuations specific to the type of claim payment, using trends and historical experience in their analysis.
>
> …
>
> The methodologies adopted by both Finity and Taylor Fry are considered standard actuarial approaches to value workers' compensation liabilities.

2.31 KPMG provided advice on the different actuarial methods used by Taylor Fry and Finity. Table 2-1 outlines the methods used by each actuarial advisor for each type of payment for the assessment of liabilities.

Table 2-1 Comparison of actuarial methods

Claim and Payment Type	Finity	Taylor Fry
Number of claims reported and accepted	Chain ladder	Chain ladder
Number of incapacity claims	Chain ladder	Chain ladder
Incapacity payments	Payments per Active Claim (PPAC)	Payments per Active Claim (PPAC)
Medical payments	Payments per Claim Incurred (PPCI)	Payments per Claim Incurred (PPCI)
Other payments (e.g. non-economic loss, permanent impairment, common law, death, redemptions)	Payments per Claim Incurred (PPCI)	Payments per Claim Incurred (PPCI)
Legal payments	Payments per Claim Incurred (PPCI)	Payments per Claim Incurred (PPCI)
Journey and Break payments	Payments per Claim Incurred (PPCI)	Payments per Claim Incurred (PPCI)
Recoveries	Payments per Claim Incurred (PPCI)	Unknown. Noting the immaterial quantum, this information is contained within Volume 1 of the Taylor Fry report (not provided).

Source: KPMG advice to Audit Office

2.32 Table 2-2 provides a description of each of the methods and its common usage.

Table 2-2 Actuarial method definitions

Method	Description and Use
Chain ladder	Projects ultimate numbers of claims and payments assuming a consistent development pattern. This is appropriate for workers' compensation claims as it usually has a stable claim reporting pattern.
Payments per Active Claim (PPAC)	Projects payments assuming a consistent pattern across the development duration for active claims (claims with payments within the last quarter), as they are more likely to continue receiving benefits. This is appropriate for Incapacity and Medical payment types as they are consistently paid each period to claimants.
Payments per Claim Incurred (PPCI)	Projects payments assuming a consistent payment pattern regardless of claims being active. It does not rely on active claims but instead the ultimate number of claims incurred. This is appropriate for Legal, Other, Journey and Recovery payments as, in aggregate, they are paid consistently but are not reliant on individual claims receiving consistent benefits.

Source: KPMG advice to ACT Audit Office

KPMG assessment

2.33 For the purpose of the audit, KPMG undertook a comparison of the estimated liability amounts that were calculated by Finity and Taylor Fry as at 30 June 2018. The results of the comparison are shown in Table 2-3. (The figures in Table 2-3 were presented in Finity's 27 September 2018 actuarial report for the Territory titled 'ACT Public Service – Estimate of Pre-Licence Workers' Compensation Claim Liability at 30 June 2018').

Table 2-3 Comparison of liabilities as at 30 June 2018

Payment Type	Finity $m	Taylor Fry $m	Difference $m
Incapacity IPD	125.8	131.5	(5.8)
Incapacity Psychological	73.0	66.6	6.4
Incapacity Total	198.8	198.1	0.7
Medical IPD	66.7	73.2	(6.5)
Medical Psychological	20.0	20.5	(0.5)
Medical Total	86.7	93.7	(7.0)
Other Payments	6.7	6.8	(0.1)
Legal	12.6	11.4	1.2
Journey claims (all payments)	1.9	2.3	(0.4)
Gross central estimate	306.7	312.3	(5.6)

Payment Type	Finity $m	Taylor Fry $m	Difference $m
Third party recoveries	(1.0)	(1.3)	0.3
Net central estimate (excl CHE)	**305.7**	**311.0**	**(5.2)**
Claims handling expenses (CHE)	38.3	47.6	(9.2)
Net central estimate (incl CHE)	**344.0**	**358.6**	**(14.5)**

Source: KPMG advice to ACT Audit Office, based on Finity's 27 September 2018 actuarial report for the Territory titled 'ACT Public Service – Estimate of Pre-Licence Workers' Compensation Claim Liability at 30 June 2018'.

2.34 KPMG advised that the two valuations were similar, although they were impacted by different assumptions and understandings:

> Overall, Finity's net central estimate of liabilities as at 30 June 2018 (excluding claims handling expenses) is $5.2 million (2 percent) lower than Taylor Fry's estimate, although some individual payment types (Incapacity and Medical) differ by a larger amount. This would be due to the additional claims experience used by Finity between 30 September 2017 and 31 March 2019, as well as different selected actuarial assumptions within each valuation.
>
> Finity adopted a 12.5 percent loading for claims handling expenses, while Taylor Fry adopted 15.3 percent. Taylor Fry used the same loading it uses for the entire Comcare scheme. Finity benchmarked against other workers' compensation schemes as this was their first valuation for the Territory.

2.35 KPMG also advised:

> The overall results are relatively close, given the level of uncertainty in the valuation. The Territory has confirmed that they are comfortable with the differences and the results are comparable.

2.36 With respect to the methodologies and approaches used for the valuation of liabilities, KPMG noted that the valuations of Taylor Fry and Finity were close and that the actuarial valuation methodologies and assumptions were reasonable:

> Actuarial estimates of outstanding claims liabilities are inherently uncertain. Different actuaries using different data, assumptions and methods can result in a range of estimates. Therefore, there may be a range of estimates that might be considered reasonable.
>
> The actuarial valuation methodologies adopted by both Finity and Taylor Fry are considered standard approaches to the valuation of workers' compensation outstanding claims liabilities. The central estimate valuation results are similarly close. The Territory advised that the central estimates from the valuation results at 30 June 2018 were similar between the two actuarial firms.
>
> In our review, we did not identify any issue to suggest that either actuarial valuation had any significant bias. That is, the actuarial valuation methodologies and assumptions are reasonable for the purposes of valuing the net central estimate of workers' compensation outstanding claims liabilities.

2.37 With respect to the different data extracts used by Taylor Fry and Finity for the purpose of valuing liabilities, KPMG advised:

> Workers' compensation portfolios are usually quite stable, in the absence of significant legislative reforms or operational developments in risk management and/or claims management. We understand there has not been any significant legislative reforms or operational developments that are expected to change the workers' compensation risk and

> exposure. Therefore, using different data extract dates (e.g. Finity up to 31 March 2018) should not significantly impact the valuation.
>
> Our review concludes that the different data extracts used by Taylor Fry and Finity would not preclude a comparably similar result between the two methodologies.

2.38 The Territory has not been provided with a valuation of the central estimate for claims up to 1 March 2019 (the transfer date). KPMG advised that as there has been a considerable amount of time since the transfer date, the uncertainty that would have been present within the actuarial valuation of the central estimate if it was valued at the transfer date could be diminished:

> Since there has been a considerable amount of time since 1 March 2019, the uncertainty that would have been present within the actuarial valuation of the central estimate if it was valued at the transfer date could be diminished. This is because Taylor Fry's analysis would now have some hindsight benefits in considering the experience since the transfer date and also the resolution of some open workers' compensation claims.

2.39 KPMG advised the Audit Office that 'the actuarial valuation methodologies adopted by both Finity and Taylor Fry are considered standard approaches to the valuation of workers' compensation outstanding claims liabilities. The central estimate valuation results are similarly close'. KPMG further advised 'in our review, we did not identify any issue to suggest that either actuarial valuation had any significant bias. That is, the actuarial valuation methodologies and assumptions are reasonable for the purposes of valuing the net central estimate of workers' compensation outstanding claims liabilities'. A review of the estimated liability amount as at June 2018, as identified by Finity in its September 2018 report to the Territory, shows a difference of $14.5 million.

Assessment of assets

2.40 While there is general agreement and consensus between Comcare and the Territory on the quantum of liability to be transferred, it is the assessment of assets to be transferred that has not yet been agreed.

Comcare approach

2.41 Comcare has offered a transfer asset quantum based on two components of value:

- a central estimate of the outstanding claims liability at the transfer date as determined by Taylor Fry; and
- a 13 percent risk margin in addition to the central estimate.

2.42 This total quantum, from Comcare's perspective, is considered to provide a 75 percent Probability of Sufficiency to cover existing liabilities, i.e. claims. This means that in three out of four times the amount is expected to be sufficient. This follows how Taylor Fry has historically valued the Comcare outstanding claims liabilities and represents the asset that Comcare holds in its financial statements in relation to its portfolio claims liabilities. For reference, the central estimate, or 50 percent Probability of Sufficiency, of a liability means that 50 percent of the time it will be sufficient to meet future obligations.

Territory approach

2.43 The Territory has not agreed to Comcare's approach to the identification and transfer of assets. The Territory has:

- disagreed with Comcare's methodology for calculating the risk margin to achieve the Probability of Sufficiency; and
- proposed an alternative approach to the valuation of the transfer of assets.

Comcare methodology

2.44 The Territory has suggested an alternative approach that is more focused and acknowledging of its specific circumstances and based on ACT-only workers' compensation liabilities. In this respect it is noted that the 13 percent risk margin proposed by Comcare was selected by Taylor Fry as the margin to ensure a 75 percent Probability of Sufficiency based on the *combined* Comcare scheme premium pool. This includes the Territory's claims and claims from other Commonwealth participants in the Comcare scheme, including other Commonwealth agencies.

2.45 The Territory has argued that if ACT Public Sector claims were to be valued independently a higher risk margin would be required to ensure the same Probability of Sufficiency due to the smaller number of claims and smaller number of employers within the ACT pool.

2.46 At 30 June 2018, Finity estimated that a risk margin of 17.5 percent would be appropriate to achieve a 75 percent Probability of Sufficiency for the ACT-only workers' compensation liabilities. This was based on benchmarking to similar workers' compensation portfolios in Australia. Finity did not perform a detailed review or analysis of risk margins in its actuarial valuation at this time due to time constraints for the valuation and because a risk margin was not required for the purposes of financial statement reporting. Finity did note in its actuarial valuation report that it was possible that this risk margin would need to change over time.

Alternative methodology for the valuation of assets to be transferred

2.47 The Territory has also proposed an alternative method to value the transfer asset quantum which is based on the historical premiums paid to Comcare since 1 July 1989. The Territory has argued that the methodology for this is provided for by section 97QB of the *Safety, Rehabilitation and Compensation Act 1988* and broadly comprises:

- premiums paid by the ACT;
- *plus* interest earned;
- *minus* payments made.

2.48 In proposing this approach, the Territory has acknowledged that section 97QB is relevant if the Territory has ceased to be a Commonwealth Authority. This is not the case in this context and the Territory has acknowledged that the use of this method is up to the

discretion of Comcare, as provided for by section 69 of the *Safety, Rehabilitation and Compensation Act 1988*. Section 69 states:

> Subject to this Act, Comcare has the following functions, in addition to its other functions under this Act:
>
> …
>
> (eca) to determine, under section 97CA, 97CB or 97CC, the amount of any exit contributions payable by bodies corporate, and by the Australian Capital Territory, and to collect such contributions;
>
> (ecb) to apply exit contributions paid under section 97CA, 97CB or 97CC as a result of a body corporate or the Australian Capital Territory ceasing to be a Commonwealth authority, together with interest earned on those exit contributions, in the same way as paragraph (ec) would have required Comcare to apply:
>
> (i) premiums paid by the body corporate or the Australian Capital Territory; and
>
> (ii) interest earned on those premiums;
>
> if the body corporate or the Australian Capital Territory had not ceased to be a Commonwealth authority;
>
> …

2.49 KPMG provided the following general observations as a way of providing additional context to the respective positions:

- A central estimate, i.e. a 50% Probability of Sufficiency, is a common building block for the transfer of insurance liabilities.
- For the transfer of insurance liabilities, buyers typically demand a return for bearing the risk of adverse development on future claims cost. Therefore, they typically demand an amount in addition to the central estimate. The amount demanded may depend on the buyer and their circumstances, as well as the broader market (e.g. other buyers and the availability of capital). At the same time, the amount a seller is willing to pay may also depend on their circumstances.
- A risk margin to achieve a 75% Probability of Sufficiency is commonly referenced, due to its use for regulatory reporting by Australian Prudential Regulation Authority licenced insurers. We note this is distinct from statutory reporting where the risk margin held for financial statements may differ from 75% Probability of Sufficiency. It is noted that neither entity is subject to Australian Prudential Regulation Authority regulation.
- Typically, in an open and competitive bidding process, the quantum of the transfer asset is narrowly defined.
- In contrast, the transfer of workers' compensation for self-insurance purposes was not an open and competitive process. This is necessarily the case and expected. We also understand that transfers of workers' compensation from Comcare to self-insurance for Commonwealth entities are rare.
- Therefore, the direct applicability of commercial practice or the use of precedents may be limited.

Additional items for consideration

2.50 In addition to the Territory's alternative approach, the Territory has requested that Comcare and Taylor Fry consider additional items as part of the transfer asset. Comcare has

not yet responded to the Territory's request. The Territory has requested additional consideration for:

- processing delays;
- incomplete payments data; and
- recoveries held by Comcare.

2.51 In relation to processing delays, KPMG advised that the Territory is requesting any investment returns that Comcare has achieved during the transition also be transferred:

> Comcare has agreed with the Territory that the payment of the transfer asset would include notional interest from the transfer date to the payment date. The rate of interest to be applied has not been confirmed.
>
> Due to the delays in negotiations and the actuarial valuation mentioned above, the Territory is requesting that any investment returns that Comcare has achieved during the delayed transition period also be included in the transfer asset, as an offset to the missed investment earnings by the Territory had it invested the transfer asset from the transfer date.

2.52 In relation to incomplete payments data, KPMG advised that payments for incapacity were not made by Comcare to claimants in this final period before transfer, but instead by the Territory and that this should be recognised:

> During the lead up to the transfer date in early 2019, Comcare ceased payments to claimants to allow time to prepare the claims information for transfer. As such, payments for incapacity were not made by Comcare to claimants in this final period before transfer, but instead by the Territory (prior to the commencement of self-insurance). These payments were effectively made by the Territory on behalf of the Comcare insurer. These payments are therefore not reflected in the list of payments used by Taylor Fry in their actuarial valuation. These payments amount to approximately $1 million. The absence of these payments would distort the recent payments experience for this period and potentially affect the final value of the liabilities.

2.53 In relation to recoveries held by Comcare, KPMG advised:

> Additionally, as part of Comcare's previous procedures as insurer to the Territory, Comcare collected recoveries from third parties and refunds from claimants for overpayments. The Territory has noted that Comcare is continuing to collect these recoveries even after the transfer, and as such it is not considered in Taylor Fry's actuarial valuation. The Territory has requested that these recoveries also be transferred to the Territory. Comcare has advised that the recoveries are kept in a general account, that is, with non-ACT claim recoveries, and may not be able to reconcile the recoveries per claimant. The Territory has further requested that Taylor Fry reduces its estimate of recoveries expected to be paid to the Territory within the actuarial valuation of the central estimate as an alternative solution.

Lack of timely agreement on transfer of assets

2.54 In its advice to the Audit Office, KPMG noted that the methodology to value the transfer asset had not yet been agreed and that 'Comcare and the Territory have separate methodologies and have not come to an agreement, noting that it is now over 12 months since the transfer date'. KPMG advised:

> We note that the ambiguity and/or lack of agreement around the methodology for determining the financial asset is not common practice for the transfer of insurance portfolios.

2.55 As discussed in paragraph 2.9 this has since been pushed out to 30 June 2021.

2.56 KPMG further advised:

> The lack of agreement and delay is unusual and creates uncertainty. It is beneficial for both the Territory and Comcare to reach an acceptable agreement, as soon as practical to resolve uncertainties articulated in this report.

2.57 KPMG advised that the risks of not agreeing to the quantum of assets to be transferred are primarily reputational and relational risks. In this respect KPMG notes:

> If claims expenses increase unexpectedly, the Territory has the ability to acquire additional funds. Therefore there is only a small financial risk to the ongoing coverage of workers' compensation insurance for the ACT Public Sector.

2.58 However, KPMG noted that further delays in negotiations could lead to a deterioration in the relationship with Comcare. Further delays in negotiations also increases the financial risk to the Territory, as it impairs and restricts the Territory's options to manage its workers' compensation liabilities.

2.59 There is a lack of agreement between the Territory and Comcare on the methodology to be used for determining the financial assets (funds) to be transferred to the Territory. The Territory disagrees with Comcare's proposed methodology for identifying the quantum of assets (funds) to be transferred and has offered an alternative methodology, as well as additional items for inclusions. The Territory's preferred method would rely on Comcare providing key inputs into the calculation. Without input from Comcare, it is unclear whether the Territory's alternative approach would be fully or partially accepted, and whether the key inputs would be readily available'.

2.60 KPMG advised that 'the lack of agreement and delay is unusual and creates uncertainty'. There is a risk that the current lack of agreement between the Territory and Comcare could lead to a deterioration in the Territory's relationship with Comcare. The continuing uncertainty associated with the transfer of the financial assets (funds) also increases the financial risk to the Territory, as it impairs and restricts the Territory's options to manage its workers' compensation liabilities.

Financial impacts

2.61 In addition to the reputational and relational risks associated with the lack of agreement on the value of assets to be transferred, there are implications for:

- the Territory's licence as a self-insurer;
- cashflow to meet workers' compensation liabilities; and
- financial statements reporting.

Self-insurance requirements

2.62 As part of its self-insurance licence requirement, the Territory is ordinarily required to hold a funding ratio for the Public Sector Workers' Compensation Fund of 95 percent to

110 percent, i.e. 95 percent to 110 percent of assets compared to liabilities. In the absence of an agreement on the transfer of assets between Comcare and the Territory, the Territory is not meeting this requirement. However, the Safety, Rehabilitation and Compensation Commission has agreed to an exemption of this requirement until 30 June 2021. In the absence of an agreement, the Territory will need to continue seeking an exemption to this requirement from the Safety, Rehabilitation and Compensation Commission.

Cashflow implications

2.63 At the beginning of the 2018-19 financial year the Territory paid Comcare an annual premium for insurance under the Comcare scheme for the year. Given that the date of transfer and commencement date of self-insurance was during the 2018-19 financial year, Comcare was required to refund a portion of the Territory's premium corresponding to the period from 1 March 2019 to 30 June 2019 that was no longer insured by Comcare ('partial premium refund'). This amount equalled $21.3 million excluding GST (of a total 2018-19 premium of $63.8 million excluding GST).

2.64 Since the commencement of self-insurance, the Territory has been making payments to claimants using the partial premium refund and deposit payment received from Comcare, as well as using premiums received from ACT agencies covered under the self-insurance license for the 2019-20 financial year. These premiums were collected based on the expected total cost of claims to be incurred between 1 July 2019 and 30 June 2020, rather than to pay for claims incurred prior to 1 March 2019. This effectively means that the Public Sector Workers' Compensation Fund is currently running on a cash flow basis, with a mismatch between assets available and liabilities to be paid, which can increase the liquidity risk of the portfolio.

2.65 In the event that claims expenses increase unexpectedly, or the funding ratio drops below 95 percent, and there are insufficient assets in the Public Sector Workers' Compensation Fund to absorb this, the *Public Sector Workers' Compensation Fund Act 2018* allows the Territory to seek an additional premium from the agencies, or supplemental funding from the Territory Budget or a Treasurer's Advance.

2.66 The Territory advised that 'the Public Sector Workers' Compensation Fund, and hence the workers' compensation insurance coverage, should be able to maintain normal operating procedures indefinitely, paying for workers' compensation claims on a cash flow basis from annual premiums collected each year'.

2.67 Comcare made a deposit payment of $55.0 million to the Territory to discharge a portion of Comcare's liability in relation the ACT workers' compensation injuries prior to the residual payment for the assets to be transferred. Both the deposit payment and a partial premium refund were paid to the Territory on the transfer date, i.e. 1 March 2019. Since the commencement of self-insurance, the Territory has been making payments to claimants using the partial premium refund and deposit payment received from Comcare, as well as using premiums received from ACT agencies covered under the self-insurance license for the 2019-20 financial year. The delays in receipt of the transfer asset from negotiations

between Comcare and the Territory raises a risk that the Public Sector Workers' Compensation Fund is unable to meet its workers' compensation liabilities. The Territory has advised, however, that 'the Public Sector Workers' Compensation Fund, and hence the workers' compensation insurance coverage, should be able to maintain normal operating procedures indefinitely, paying for workers' compensation claims on a cash flow basis from annual premiums collected each year'. However, the longer that the issue of the transfer of financial assets (funds) remains unresolved the greater the financial risk to the Territory, as it has fewer options to manage increases to its workers' compensation liabilities.

Financial statements reporting

2.68 The value of the transfer asset is still subject to agreement. For the purpose of its 30 June 2019 financial statements, the Territory reported a figure of $304.2 million as both a liability and an asset receivable. This figure represented the net central estimate of claims liabilities determined by Finity at 1 March 2019 ($359.2 million) less the deposit payment of $55.0 million.

2.69 The financial statement liability and asset receivable was valued by Finity. In contrast, the central estimate of the transfer asset will be valued by Taylor Fry. The transfer asset and financial statement asset values will not align as:

1) to the extent that Taylor Fry's actuarial valuation of the outstanding claims liability central estimate differs from the current receivable in the financial statements, this is a source of variance; and

2) the Territory is currently holding no risk margin above the central estimate. This means that any additional amount received as part of the negotiations with Comcare (this means the 13 percent risk margin or otherwise) will also be a source of variance.

2.70 The Territory reported a figure of $304.2 million as both a liability and an asset receivable for the purpose of its 30 June 2019 financial statements. This figure represented the net central estimate of claims liabilities determined by Finity at 1 March 2019 ($359.2 million) less the deposit payment of $55.0 million. Once the agreed asset receivable amount is determined, the Territory's financial statements will either record a gain (or write-off) in its profit and loss statement depending on whether the asset is higher (or lower) than the asset receivable.

3 TRANSFER OF CLAIMS DATA

3.1 This chapter considers the governance and administrative arrangements and processes that were in place for the transfer of workers' compensation claims data from Comcare to the Territory.

Summary

Conclusion

The Chief Minister, Treasury and Economic Development Directorate, in cooperation with Comcare and Employers Mutual Limited, implemented effective governance arrangements for the Territory's transition to self-insurance. Various cross-agency committees and working groups were established to oversee the transition and transition plans and risk registers were developed and monitored.

Claims data that is relevant to the Territory's ongoing management of its workers' compensation was transferred from Comcare in accordance with the data security requirements of the Territory. Although the data was transferred securely, there were limited data integrity processes or procedures in place. There is minimal assurance that the data was migrated accurately, i.e. that the client information was matched with the correct claims data.

Key findings

	Paragraph
A Comcare Transition-out Project Governance Framework was developed by Comcare and the Territory to facilitate and provide oversight of the Territory's transition to self-insurance within the Comcare scheme. The framework comprised a Transition-out Project Steering Committee with members from Comcare and the ACT Government as well as various operational level working groups. The Transition-out Project Steering Committee, Claims Transition Out Working Group and Data Migration Working Group met as expected and a review of meeting minutes shows that the discussions of these groups were targeted and relevant. The working groups provided written progress reports to the steering committee on matters of relevance and issues for the steering committee's consideration. While it is apparent the Governance Framework Working Group met, minutes were not kept of its meetings and it did not provide written progress reports to the steering committee. With the exception of the Governance Framework Working Group, the Comcare Transition-out Project Governance Framework and its associated steering committee and working groups provided an effective mechanism for representatives from the Territory, Employers Mutual Limited and Comcare to discuss and resolve matters in a timely manner.	3.19

As part of the Comcare Transition-out Project Governance Framework arrangements, the Workplace Safety and Industrial Relations Division and Comcare implemented and maintained transition plans (or project schedules) for various components of the transfer of workers' compensation arrangements from Comcare to the Territory. The plans were comprehensive and included information on expected deliverables, responsibilities for each deliverable, target start date and target end date. The plans were updated to reflect the status of each deliverable throughout the period and progress was reported to the Claims Transition Out Working Group. Each of the plans addressed a particular component or activity of the transition of workers' compensation arrangements to the Territory, but there was no overarching transition plan that captured the entire claims transfer process or the transfer of liabilities and assets to the Territory. 3.27

As part of the Comcare Transition-out Project Governance Framework arrangements, the Workplace Safety and Industrial Relations Division and Comcare developed and maintained a risk register. As at December 2018 the risk register identified four risks to the project and four 'emerging risks for consideration'. Although the risk register provided the Transition-out Project Steering Committee with visibility of high-level risks of the transfer of workers' compensation arrangements from Comcare to the Territory, risk ownership was allocated at the agency level rather than specific teams or individuals. Therefore, the risk register was not particularly useful in holding teams or individuals to account in managing the allocated risk. 3.35

In preparation for the migration of claims data, the Workplace Safety and Industrial Relations Division requested a system security risk assessment of Pivotal, Employers Mutual Limited's proprietary injury claims management system. The system security risk assessment resulted in the completion of a system security risk management plan to minimise the risk of system and data security breaches. 3.49

A bulk load migration of data occurred between 28 February 2019 and 8 March 2019 via a Secure File Transfer Protocol (SFTP) arrangement. This was consistent with the requirements of the *ICT Security Policy* (August 2019) and was executed as per the *ACT Government Data Migration from Comcare to EML* plan. Prior to this, sample data sets were run to ascertain the manageability of the data migration. Analysis of the number of claims records that were extracted from the Commission Data Warehouse (29,360), against the number of claims that were subsequently loaded into Pivotal (Employers Mutual Limited's system) shows there was no variance in the number of claims records; the two figures reconciled. 3.62

Notwithstanding that the number of claims loaded into Employers Mutual Limited's system Pivotal reconciled with the number of claims extracted from the Commission Data Warehouse, the ACT Government had not documented the data integrity processes or procedures that were in place to confirm that data was migrated accurately, i.e. that the client information matched with the correct claims data. The Workplace Safety and Industrial Relations Division intended to undertake 'a quality assurance of claim files to be completed, with a random sample Quality Assurance undertaken to provide assurance to the Steering Committee regarding data quality'. However, there is no evidence of what these quality assurance processes were, how 3.63

they were designed or undertaken. There is no documentation associated with the quality assurance processes and procedures that were purported to be implemented.

Comcare, Employers Mutual Limited and the Territory worked collaboratively through the Claims Transition-Out Working Group to establish clear criteria, definitions and specific hand-over conditions for cohorts of claims identified as high risk. Face-to-face handover meetings occurred between the three parties between 11 February and 15 February 2019. This risk based and collaborative approach aimed to provide a smooth transition of claims management services from Comcare to Employers Mutual Limited for these cohorts. 3.70

In September 2019, Comcare and the Territory signed a Memorandum of Understanding, the purpose of which was to 'describe the ongoing relationship and expectations between Comcare and the Territory' in relation to a range of administrative arrangements. The Memorandum of Understanding also facilitates the Territory's ongoing access to data and documents maintained by Comcare in relation to claims that were closed between 1 March 2017 and 28 February 2019 and where data held outside the Comcare claims system was not transferred at the commencement of the licence. The establishment of a Memorandum of Understanding to facilitate ongoing administrative arrangements and access to documentation is a useful governance mechanism. 3.78

Claims transfer governance

3.2 The Territory was granted its self-insurance licence on 28 November 2018. The licence authorises the Territory to accept liability to pay compensation and other amounts under the *Safety, Rehabilitation and Compensation Act 1988* with respect to all injuries, loss or damage suffered by employees of the Territory occurring:

- within the period of the licence (i.e. 1 March 2019 to 28 February 2027); and
- in the period between 1 July 1989 and when the licence came into force.

3.3 In order to fulfil its responsibilities under its self-insurance licence, the Territory needed data from Comcare, which had hitherto been responsible for managing workers' compensation claims on behalf of the Territory. The Territory needed Comcare to transfer data relating to claims of employees who are covered by the scope of the licence, including those claims prior to when the licence came into force. Data that was to be transferred from Comcare to the Territory included information relating to:

- all open claims and claims closed in the 24 months prior to the licence commencement (that is, data for claims prior to 1 March 2017 to 28 February 2019); and
- all ACT Government claims data held in the Comcare claims system (Pracsys) since 1 July 1989.

3.4 The effective transfer of claims data and supporting documentation was imperative to providing continuity of care and payments to claimants. The identification of claims to be transferred also has financial implications for the Territory, as the claims data is a component of the total liability calculation. To enable the Territory to fulfil its obligations under its self-insurance licence, it was important to have effective governance and administrative arrangements and processes for the transfer of claims data and supporting documentation.

Governance framework

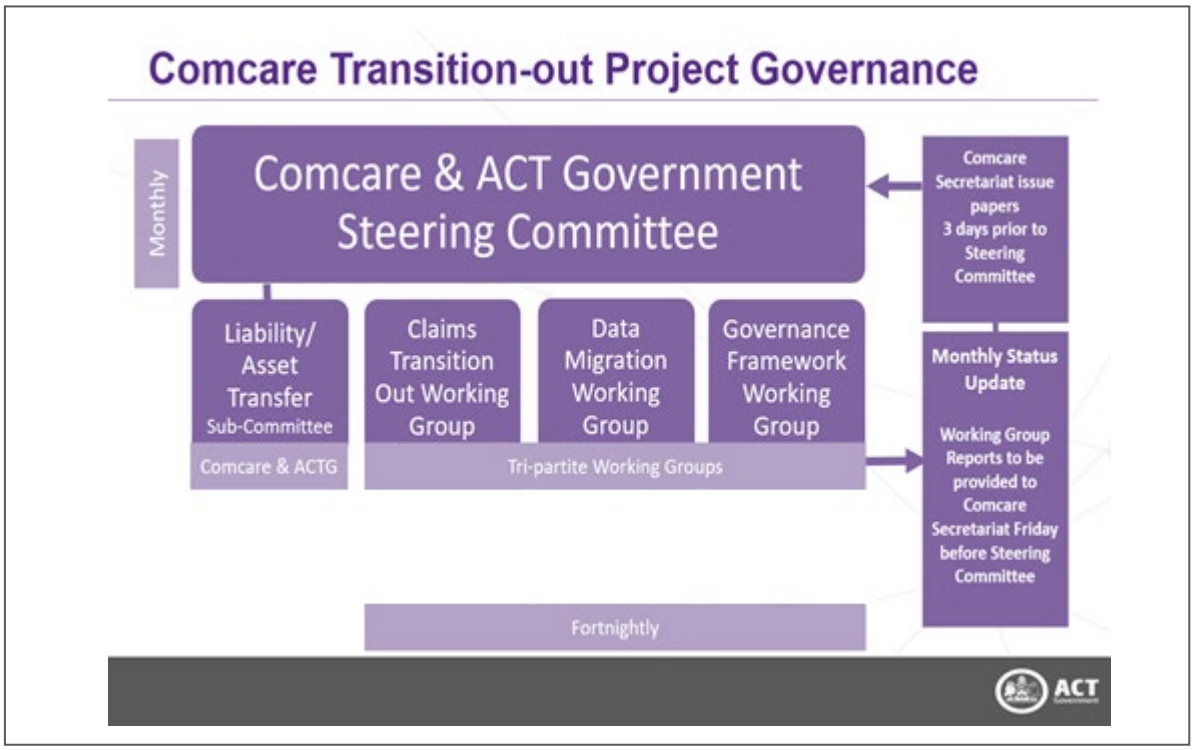
3.5 On 23 August 2018, representatives from the Workplace Safety and Industrial Relations Division met with Comcare to discuss governance arrangements for the Territory's transition to self-insurance arrangements within the Comcare scheme. Representatives from Employers Mutual Limited also attended for part of the meeting. Minutes of the meeting note:

- the importance of a shared transition plan for governance purposes;
- the need for a steering committee to meet monthly from September 2018 to facilitate the Territory's transition to self-insurance; and
- the need for three working groups to be established to support the steering committee.

3.6 In response to the discussion at this meeting a project governance framework was developed. The project governance framework comprised a Transition-out Project Steering Committee with members from Comcare and the ACT Government and various operational level working groups.

3.7 On 17 October 2018, the Governance Framework Working Group presented a diagrammatical representation of the Comcare Transition-out Project Governance Framework arrangements to the Transition-out Project Steering Committee. The governance framework, which was noted by the steering committee, is shown in Figure 3-1.

Figure 3-1 Comcare Transition-out Project Governance Framework



Source: Chief Minister, Treasury and Economic Development Directorate

Transition-out Project Steering Committee

3.8 A Transition-out Project Steering Committee (referred to as the Comcare & ACT Government Steering Committee in Figure 3-1) was established to oversee the Territory's transition to self-insurance and oversee the activities of the various working groups established to support the transition. The steering committee met on a monthly basis between September 2018 and January 2019. Minutes were maintained for the steering committee's meetings and provide a detailed record of the decisions, actions and discussions that occurred at each meeting.

3.9 A review of meeting minutes indicate that the Transition-out Project Steering Committee discussed the transition activities and the risk register for the project and received updates and advice from each of the working groups. The minutes indicate that the committee considered a variety of financial, legal and recruitment matters.

3.10 The Transition-out Project Steering Committee provided oversight of a variety of action items that were identified for the transfer of workers' compensation arrangements from Comcare to the Territory. These were tracked through a consolidated action items register.

Sub-committee and working groups

3.11 One sub-committee and three subordinate working groups were identified in the Comcare Transition-out Project Governance Framework to support the Transition-out Project Steering Committee:

- Liability/Asset Transfer Sub-Committee;
- Claims Transition Out Working Group;
- Data Migration Working Group; and
- Governance Framework Working Group.

3.12 The Liability/Asset Transfer Sub-Committee proposed in Figure 3-1 was not established. The Workplace Safety and Industrial Relations Division advised that the content expected to be covered by the Liability/Asset Transfer Sub-Committee was incorporated in the Transition-out Project Steering Committee.

3.13 A review of the Transition-out Project Steering Committee meeting minutes shows that there was little discussion related to the identification of liabilities or assets to be transferred in this forum. Notwithstanding the absence of meeting minutes, it is understood that discussions regarding the transfer of liabilities and assets occurred (and continue to occur) between Territory and Comcare representatives.

3.14 The Workplace Safety and Industrial Relations Division provided evidence that the Claims Transition Out Working Group met nine times between 25 October 2018 and 26 February 2019. In its response to the draft proposed report Comcare advised that its records indicate that an additional meeting occurred on 12 March 2019. A review of the available meeting minutes shows that the working group discussed relevant matters in detail such as a review of progress against the transition plan, actions from previous meetings that required resolution, risks and other matters as required.

3.15 The Workplace Safety and Industrial Relations Division provided evidence that the Data Migration Working Group met five times between September 2018 and December 2018. In its response to the draft proposed report Comcare advised that its records indicate that the Data Migration Working Group also met an additional five times between January 2018 and March 2019. A review of the available meeting minutes shows that the working group discussed data migration matters of relevance at each meeting in detail and actions were tracked and monitored appropriately.

3.16 While it is apparent that the Governance Framework Working Group did meet, no minutes were kept of these meetings. It is not evident that the group met as required or discussed matters of relevance.

3.17 The working groups provided progress reports to the Transition-out Project Steering Committee. The Claims Transition Out Working Group and Data Migration Working Group provided detailed written progress reports that focused on their specific subject matter and

provided detail on issues that were being escalated to the steering committee for decision. The Governance Framework Working Group provided verbal progress reports to the steering committee only.

3.18 The Claims Transition Out and Data Migration Working Groups maintained transition plans (or schedules) specific to their subject matter focus. The transition plans provided a mechanism for the working groups to track and monitor progress against the scheduled deliverable dates and milestones.

3.19 A Comcare Transition-out Project Governance Framework was developed by Comcare and the Territory to facilitate and provide oversight of the Territory's transition to self-insurance within the Comcare scheme. The framework comprised a Transition-out Project Steering Committee with members from Comcare and the ACT Government as well as various operational level working groups. The Transition-out Project Steering Committee, Claims Transition Out Working Group and Data Migration Working Group met as expected and a review of meeting minutes shows that the discussions of these groups were targeted and relevant. The working groups provided written progress reports to the steering committee on matters of relevance and issues for the steering committee's consideration. While it is apparent the Governance Framework Working Group met, minutes were not kept of its meetings and it did not provide written progress reports to the steering committee. With the exception of the Governance Framework Working Group, the Comcare Transition-out Project Governance Framework and its associated steering committee and working groups provided an effective mechanism for representatives from the Territory, Employers Mutual Limited and Comcare to discuss and resolve matters in a timely manner.

Planning for the transfer of claims

3.20 A project plan or schedule is a tool that communicates the deliverables that need to be completed, the resources that are responsible for completing the deliverable and the start and finish dates. The development and implementation of a detailed project plan or schedule is important to the success of a project such as the transfer of workers' compensation arrangements from Comcare to the Territory.

3.21 As part of the Comcare Transition-out Project Governance Framework arrangements the Workplace Safety and Industrial Relations Division and Comcare developed and implemented transition plans (or project schedules). The transition plans related to different components of the transfer of workers' compensation arrangements from Comcare including:

- transition-out from Comcare (*Comcare and ACT Government Transition Out Plan*);
- transition-in to Employers Mutual Limited (*EML and ACT Government Partnership Plan & Transition-In Schedule*); and
- data migration (*ACT Government Data Migration from Comcare to EML*).

3.22 The *Comcare and ACT Government Transition Out Plan* and *EML and ACT Government Partnership Plan & Transition-In Schedule* followed a similar format. Each plan was comprehensive and included information on:

- expected deliverables;
- responsibilities for each deliverable;
- target start date; and
- target end date.

3.23 The plans were reported against through the period and updated to reflect the status of each deliverable. The *Comcare and ACT Government Transition Out Plan* and *EML and ACT Government Partnership Plan & Transition-In Schedule* were reported to the Claims Transition Out Working Group.

3.24 The *ACT Government Data Migration from Comcare to EML* plan was more in the nature of a risk management plan for the migration of data. It identified activities with associated target dates, responsibilities for the activities and risks and mitigation strategies associated with the activities.

3.25 Each of the plans addressed a particular component or activity of the transition of workers' compensation arrangements to the Territory, but there was no overarching transition plan that captured the entire claims transfer process or the transfer of liabilities and assets to the Territory.

3.26 In its response to the draft proposed report Comcare advised that it had 'its own migration plan that provided further detail on the migration actions required from our perspective. Comcare's records indicate that this plan was shared with the ACT Government and EML on 14 September 2018'.

3.27 As part of the Comcare Transition-out Project Governance Framework arrangements, the Workplace Safety and Industrial Relations Division and Comcare implemented and maintained transition plans (or project schedules) for various components of the transfer of workers' compensation arrangements from Comcare to the Territory. The plans were comprehensive and included information on expected deliverables, responsibilities for each deliverable, target start date and target end date. The plans were updated to reflect the status of each deliverable throughout the period and progress was reported to the Claims Transition Out Working Group. Each of the plans addressed a particular component or activity of the transition of workers' compensation arrangements to the Territory, but there was no overarching transition plan that captured the entire claims transfer process or the transfer of liabilities and assets to the Territory.

Risk management

3.28 As part of the Comcare Transition-out Project Governance Framework arrangements, the Workplace Safety and Industrial Relations Division and Comcare developed and maintained a risk register for the project. The risk register was initially prepared in November 2018 and was last updated in December 2018 as a result of review and negotiation between the Territory and Comcare.

3.29 As at December 2018, the risk register identified four risks to the project and four 'emerging risks for consideration'. The definition of 'emerging risks' was not explicitly defined in the risk register; however, it is understood that this term referred to newly developing risks that were not yet fully understood or difficult to quantify.

3.30 A summary of the four established project risks is in Table 3-1.

Table 3-1 Transition risk register (summary)

Ref	Risk	Risk Owner	Inherent Risk	Residual Risk	Treatment
1	Claims Data is not transferred as agreed by 1 March 2019.	Comcare ACT Govt EML	Extreme	Medium	Early advice to Steering Committee of potential issues.
2	Claims data not accurate at time of transfer. This includes incapacity payment data and current claims actions on files.	Comcare ACT Govt EML	Extreme	Medium	Quality Assurance of claim files to be completed and then random sample Quality Assurance undertaken to provide assurance to Steering Committee regarding data quality. Early advice to Steering Committee of potential issues.
3	Transfer of financial asset is not achieved. There are two elements to this risk: 1. Management of interim payment. 2. Management of the final payment.	Comcare ACT Govt Department of Finance	Extreme	Medium	Post liability valuation.
4	Breakdown in stakeholder relationships.	Comcare ACT Govt EML	High	Low	Nil.

Source: ACT Government Transition Risk Register (December 2018)

3.31 The risk register briefly described each risk and identified the causes and impact of the risk as well as critical controls for each risk. The inherent risk rating for three of the risks was Extreme and for the fourth risk it was High. After the application of the controls all of the risks were downgraded to Medium or Low. The risk register also identified treatments for some but not all risks.

3.32 In response to the draft proposed report Comcare advised:

> Whilst I acknowledge that Comcare would have signed off on the risks and risk owners it is not appropriate for the Department of Finance to be listed as a risk owner.
>
> In addition to the Department of Finance not being the owner of Risk 3 in Table 3-1, the Department of Finance were also not involved in the Steering Committee or any of the Working Groups further indicating that they should not have been assigned ownership of a risk.

3.33 The Governance Framework Working Group was responsible for the reporting of any additional risks identified by the working groups to the Transition-out Project Steering Committee. Focused discussions on the content of the risk register occurred as a standing agenda item at all steering committee meetings.

3.34 Overall, the risk register provided high-level detail of the risks, treatments and reporting mechanisms from the working groups to the Transition-out Project Steering Committee as required. The risk register identified the risk owners at the agency level, rather than identifying teams or individuals and in this regard, the risk register was not particularly useful in holding responsible risk owners to account in managing the allocated risk.

3.35 As part of the Comcare Transition-out Project Governance Framework arrangements, the Workplace Safety and Industrial Relations Division and Comcare developed and maintained a risk register. As at December 2018 the risk register identified four risks to the project and four 'emerging risks for consideration'. Although the risk register provided the Transition-out Project Steering Committee with visibility of high-level risks of the transfer of workers' compensation arrangements from Comcare to the Territory, risk ownership was allocated at the agency level rather than specific teams or individuals. Therefore, the risk register was not particularly useful in holding teams or individuals to account in managing the allocated risk.

Claims transfer arrangements

Data migration

3.36 Data migration is the selection, preparation, extraction, transformation and permanent movement of appropriate data that is of the right quality to the right place at the right time.

3.37 According to the *Control Objectives for Information Related Technology 2019* (COBIT) issued by the Information Systems Audit and Control Association, the primary objective of securely transferring data is to ensure that the data extracted from the originating system is exactly

the same data as that recorded/downloaded in the recipient system. There are four components to achieving this objective including the implementation of:

- verification controls;
- secure communications;
- audit functionality; and
- a managed system/methodology.

3.38 To promote data integrity, data validation controls should be determined, documented and implemented prior to the execution of data migrations. This can assist with mitigating the risk of incorrect, duplicated or incomplete data extraction and migration.

Expectations for the claims data migration

3.39 At a planning meeting on 23 August 2018 attended by Territory and Comcare officials, Comcare advised that claims data would be migrated to the Territory, but not directly to Employers Mutual Limited:

> … any release of data from Comcare for the purpose of this transition will be provided to the ACT Government and not direct to the ACT Government agent. The ACT Government would need to manage the transfer of data to the agent.

3.40 In its response to the draft proposed report, Comcare advised that 'the requirement to provide the claims data directly to the ACT Government was to satisfy privacy obligations'. While not unexpected, this added an element of double handling and risk to the claims data migration process.

3.41 Expectations for the scope of data to be migrated were discussed at an October 2018 meeting of the Transition-out Project Steering Committee. According to an October 2018 progress report to the steering committee from the Data Migration Working Group, the scope of the data migration was as follows:

> Comcare to extract data from ALL ACT Government claims from Pracsys and ACT Government.
>
> EML to load into Pivotal data for all claims that fall within the Commission Data Warehouse scope (i.e. all claims lodged under the SRC Act that have incurred activity since 1 July 2000 inclusive, irrespective of the claim determination status (e.g. includes claims that are accepted, rejected, undetermined, withdrawn etc). This includes all new claims lodged under the SRC Act with the determining authority on or after 1 July 2000.
>
> Comcare to export and EML to load letters and supporting documents for claims open at 28 February 2019 or closed 12 months prior to that date.

3.42 Pracsys is the claims management system used by Comcare and Pivotal is the claims management system used by Employers Mutual Limited. Both systems provide claims management data to the Commission Data Warehouse, a Comcare system that supports the Safety, Rehabilitation and Compensation Commission's performance monitoring functions.

Preparation for data migration

System and data security

3.43 In preparation for the migration of claims data, the Workplace Safety and Industrial Relations Division requested a system security risk assessment of Pivotal, Employers Mutual Limited's proprietary injury claims management system.

3.44 The conduct of a system security risk assessment is a requirement of the ACT Government's *ICT Security Policy* (August 2019), which requires all ICT systems that have a criticality rating of *Government Critical* or contain personal information to undergo a system security risk assessment. A system security risk assessment is expected to examine the completeness and relevance of a system's security risk management plan. A documented and approved system security risk management plan is an important control in demonstrating the effectiveness of data security controls for an ICT system. The system security risk management plan is expected to show the threats to data security for an ICT system and the controls in place to mitigate these risks.

3.45 The objective of the Pivotal system security risk assessment was to identify, record and analyse the security risks of the solution in the context of:

- business systems criticality;
- classification of data to be transmitted and stored; and
- business system owner's risk tolerance.

3.46 The system security risk assessment resulted in the completion of a system security risk management plan. The system security risk management plan documented the identified security risks and the recommended mitigation measures in accordance with the *ACT Government Risk Management Framework* and *AS/NZS ISO 3100:2009 Risk Management – Principles and Guidelines*.

3.47 According to the system security risk management plan, the Pivotal information classification was *DLM: Personal Sensitive*. Table 3-2 highlights the impact of this classification according to the ACT Government's *Protective Security, Information Security Guidelines* (2017).

Table 3-2 Pivotal data classification

Classification	Impact
Sensitive-Personal	Sensitive: Personal applies to information that contains personal information, sensitive personal information or personal health information. Thus, any breach of the cloud service data may lead to a breach of the *Information Privacy Act 2014/Health Records (Privacy and Access) Act 1997.*

Source: *Pivotal* Security Risk Management Plan – Data Classification

3.48 The system security risk assessment noted that 'Pivotal is based on a shared application and shared database with the ACT Government data segregated by data fields. As the ACT Government data is not stored in a separate database, there is a higher risk of data co-mingling and unauthorised access to sensitive data'.

3.49 In preparation for the migration of claims data, the Workplace Safety and Industrial Relations Division requested a system security risk assessment of Pivotal, Employers Mutual Limited's proprietary injury claims management system. The system security risk assessment resulted in the completion of a system security risk management plan to minimise the risk of system and data security breaches.

Executing the data migration

Data transfer

3.50 The *ICT Security Policy* (August 2019) states that 'data transfers between ACT Government and external systems such as cloud services must be performed securely, according to the sensitivity of information transferred and the criticality of the system it supports'.

3.51 The *ICT Security Policy* (August 2019) further states that approved secure data transfers include:

- Secure File Transfer Protocol (SFTP) system approved by Shared Services ICT Security;
- Application Programming Interfaces (APIs) that use a security protocol approved by Shared Services ICT Security; and
- physical transfer via encrypted media or physical safe hand if encryption to ACT Government Standard is not possible.

3.52 The bulk load migration process occurred via an SFTP arrangement. This was consistent with the requirements of the *ICT Security Policy* (August 2019) and was executed as per the *ACT Government Data Migration from Comcare to EML* plan between 28 February 2019 and 8 March 2019. Prior to this, sample data sets were run to ascertain the manageability of the data migration.

3.53 Employers Mutual Limited advised that where files were too large to be migrated via SFTP, Comcare signed over an encrypted Hard Drive to the ACT Government. This was then signed over and transported to the Employers Mutual Limited Technology Team in Sydney, New South Wales. The use of encrypted media is also consistent with the requirements of the *ICT Security Policy* (August 2019).

Data quality assurance

3.54 Analysis was undertaken on the number of claims records that were extracted from the Commission Data Warehouse (29,360), against the number of claims that were subsequently loaded into Pivotal. There was no variance in the number of claims records; the two figures reconciled.

3.55 Notwithstanding that the number of claims loaded into Employers Mutual Limited's system (Pivotal) reconciled with the number of claims extracted from the Commission Data Warehouse, there were no documented data integrity processes or procedures in place to confirm that data was migrated accurately, i.e. that the client information matched with the correct claims data.

3.56 In its response to the draft proposed report Comcare advised:

> There was a quality assurance process completed by Comcare on ACT Government files to ensure that the files being sent were accurate and contained appropriate information.
>
> Comcare quality assured every file before it was sent across and reviewed all documents on the claim file to ensure it was attached to the correct file.

3.57 The Audit Office sought to confirm the processes that were implemented to provide assurance that the data extracted from Comcare was consistent with the data received. The risk of 'claims data not being accurate at the time of transfer (migration)' was identified and documented as one of the four key risks associated with the Territory's transition to self-insurance. The inherent risk rating of the risk was identified as Extreme, but after the implementation of controls the residual risk rating was identified as Medium.

3.58 A further treatment for this risk was identified: 'a quality assurance of claim files to be completed, with a random sample Quality Assurance undertaken to provide assurance to the Steering Committee regarding data quality'. The Workplace Safety and Industrial Relations Division advised that 'the Quality Assurance processes did occur across a period of four months to ensure that the data was migrating correctly from the Commission Data Warehouse'. However, there is no evidence of what these quality assurance processes were, how they were designed or undertaken. There is no documentation associated with the quality assurance processes and procedures that were purported to be implemented.

3.59 On 19 June 2019, the risk of 'claims data not being accurate at the time of transfer (migration)' was realised. Comcare advised Employers Mutual Limited that it had identified multiple claims that had been omitted from the data migration in error and that multiple claims had been included in the migration in error. This included:

- eight claims that had incorrectly been assigned to the Commonwealth. These claims had not been included in the data migration from the Commission Data Warehouse to Pivotal. All of these claims were closed at the time and a data migration to Pivotal was subsequently completed to correct the error; and
- three claims that had been migrated to the Territory in error. One of these claims was open at the time of migration but the Territory did not make payments or additional determinations on the open claim.

3.60 In its response to the draft proposed report Comcare advised:

> The issue referenced is not a reflection of a systemic issue in relation to the data migration processes. The claims mentioned were incorrectly assigned to the ACT Government as being the liable employer in the source system.

> It was subsequently established by Comcare that the ACT Government, whilst being the current rehabilitation authority under the SRC Act, were not in fact the liable employer and the claims should not have been transferred.
>
> Once the issue was discovered Comcare worked closely with EML and the ACT Government to ensure claims were removed from their systems.

3.61 Employers Mutual Limited deleted all claims from Pivotal that were transferred in error as requested by Comcare.

3.62 A bulk load migration of data occurred between 28 February 2019 and 8 March 2019 via a Secure File Transfer Protocol (SFTP) arrangement. This was consistent with the requirements of the *ICT Security Policy* (August 2019) and was executed as per the *ACT Government Data Migration from Comcare to EML* plan. Prior to this, sample data sets were run to ascertain the manageability of the data migration. Analysis of the number of claims records that were extracted from the Commission Data Warehouse (29,360), against the number of claims that were subsequently loaded into Pivotal (Employers Mutual Limited's system) shows there was no variance in the number of claims records; the two figures reconciled.

3.63 Notwithstanding that the number of claims loaded into Employers Mutual Limited's system Pivotal reconciled with the number of claims extracted from the Commission Data Warehouse, the ACT Government had not documented the data integrity processes or procedures that were in place to confirm that data was migrated accurately, i.e. that the client information matched with the correct claims data. The Workplace Safety and Industrial Relations Division intended to undertake 'a quality assurance of claim files to be completed, with a random sample Quality Assurance undertaken to provide assurance to the Steering Committee regarding data quality'. However, there is no evidence of what these quality assurance processes were, how they were designed or undertaken. There is no documentation associated with the quality assurance processes and procedures that were purported to be implemented.

Management of the high-risk claims' cohort

3.64 In addition to the bulk load of data that was migrated, data relating to high-risk cohorts warranted specific handover conditions to allow for a comprehensive handover from Comcare to the Territory.

3.65 On 16 November 2018, the Claims Transition-Out Working Group agreed to criteria and specific hand over conditions for cohorts of claims that were to be categorised as high-risk. This provided the ACT Government, Comcare and Employers Mutual Limited with clear definitions of each cohort and the expected planning arrangements for the transition of associated claims records.

3.66 According to meeting minutes from the 16 November 2018 meeting of the Claims Transition-Out Working Group, high-risk claims were to be identified according to the following criteria:

- high-risk (rehabilitation) claims;
- high-risk (urgent action required at transition) claims;
- sensitive claims;
- litigated claims; and
- fraud matters.

3.67 It was also agreed at this meeting that the most appropriate and efficient mechanism for focusing on the key issues of each high-risk claim cohort would be face-to-face handover meetings between Comcare, the ACT Government and Employers Mutual Limited representatives. These face-to-face meetings occurred between 11 February and 15 February 2019.

3.68 The hand-over meetings progressed as scheduled in the transition plan. The outcomes of these meetings were reported to the Transition-out Project Steering Committee through the regular reporting mechanisms.

3.69 Data generated over a period of 3 months from July 2018 was used to forecast the anticipated volume as at the licence commencement date. The projected volume of matters flagged for face-to-face handover (as defined in the cohorts above) is shown in Table 3-3.

Table 3-3 Projection of expected total volume of matters flagged for face-to-face handover

Category	Forecasted Volume
High-risk (rehabilitation) claims	56
Sensitive claims	~10
Complaint claims	~10-15
Reconsiderations	<5
Litigated claims	32
Fraud claims	<5

Source: Comcare and ACT Government Transition Out Steering Committee Meeting Minutes 16 November 2018

3.70 Comcare, Employers Mutual Limited and the Territory worked collaboratively through the Claims Transition-Out Working Group to establish clear criteria, definitions and specific hand-over conditions for cohorts of claims identified as high risk. Face-to-face handover meetings occurred between the three parties between 11 February and 15 February 2019. This risk based and collaborative approach aimed to provide a smooth transition of claims management services from Comcare to Employers Mutual Limited for these cohorts.

Ongoing access to documents

3.71 On 3 September 2019, Comcare and the Territory signed a Memorandum of Understanding, the purpose of which was to 'describe the ongoing relationship and expectations between Comcare and the Territory' in relation to a range of administrative arrangements set out in the Memorandum of Understanding including:

- the reactivation of claims records that remained with Comcare;
- information relating to prior claims with Federal Government agencies;
- preservation of legal professional privilege of advice shared between the Territory and Comcare;
- management of secure claims;
- access to previous Commonwealth Ministerial requests; and
- management of claims correspondence sent to Comcare post commencement of the self-insurance licence.

3.72 The Memorandum of Understanding documented an intention that the Territory, Comcare and Employers Mutual Limited would continue to work together to ensure the best interests of injured employees for the purposes of ongoing claims management.

3.73 A key feature of the Memorandum of Understanding was its facilitation of the Territory's ongoing access to data and documents maintained by Comcare in relation to claims that were closed between 1 March 2017 and 28 February 2019. This also included data held outside the Comcare claims system was not transferred at the commencement of the licence.

3.74 The Memorandum of Understanding details various circumstances under which the Territory may require access to documents that remain with Comcare such as:

- the reactivation of closed claims;
- the Territory requiring multiple claim information where a claimant has had a prior claim with a Federal Government agency; and
- access to data that was held outside the Comcare claims system that was not transferred at the commencement of the licence.

3.75 The Memorandum of Understanding also acknowledges that Comcare has retained information regarding seven 'secure claims' which fall within the Territory's existing claim portfolio. These claims have restricted access and will continue to be maintained by Comcare on behalf of the Territory. The Memorandum of Understanding does not provide a definition of the term 'secure claim' and does not detail the criteria associated with 'secure claims'. Comcare included the claims and payment data for these secure claims in the information extracted from the Commission Data Warehouse, however the Territory

will not be required to provide ongoing reporting data to the Safety, Rehabilitation and Compensation Commission for these claims.

3.76 The Memorandum of Understanding established an ongoing 'fee for service' model should the Territory request access to information from Comcare. The agreed costs are shown in Table 3-4.

Table 3-4 Fees for accessing documentation retained by Comcare

	Non-Urgent (10 business days)				Urgent (3 business days)			
	Staff Cost	**Retrieval Cost**	**GST**	**TOTAL**	**Staff Cost**	**Retrieval Cost**	**GST**	**TOTAL**
Paper File (<250 pages)	$210	$45	$4.50	$259.50	$210	$139	$13.90	$362.90
Paper File (>250 pages)	$420	$45	$4.50	$469.50	$420	$139	$13.90	$572.90
Electronic File (<250 pages)	$108			$108	$162			$162
Electronic File (>250 pages)	$216			$216	$270			$270

Source: Memorandum of Understanding between the Australian Capital Territory and Comcare

3.77 Since the commencement of the Memorandum of Understanding, the Territory has requested access to 18 non-urgent and 3 urgent files. The Workplace Safety and Industrial Relations Division estimates that the costs associated with accessing these requested files will be approximately $2,430, however Comcare has not yet invoiced the Territory for these services.

3.78 In September 2019, Comcare and the Territory signed a Memorandum of Understanding, the purpose of which was to 'describe the ongoing relationship and expectations between Comcare and the Territory' in relation to a range of administrative arrangements. The Memorandum of Understanding also facilitates the Territory's ongoing access to data and documents maintained by Comcare in relation to claims that were closed between 1 March 2017 and 28 February 2019 and where data held outside the Comcare claims system was not transferred at the commencement of the licence. The establishment of a Memorandum of Understanding to facilitate ongoing administrative arrangements and access to documentation is a useful governance mechanism.

4 GOVERNANCE AND ADMINISTRATIVE ARRANGEMENTS

4.1 This chapter considers the governance and administrative arrangements that have been established to support the Public Sector Workers' Compensation Fund and the Territory's management of workers' compensation arrangements. This includes consideration of the Territory's contractual arrangements with Employers Mutual Limited.

Summary

Conclusion

The Chief Minister, Treasury and Economic Development Directorate has developed effective governance arrangements for the management and oversight of the Public Sector Workers' Compensation Fund and the Territory's compliance with its self-insurance license requirements under the *Safety, Rehabilitation and Compensation Act 1988*. These include administrative processes for the review and monitoring of the Territory's management of its workers' compensation arrangements, including findings from reviews conducted by Comcare on behalf of the Safety, Rehabilitation and Compensation Commission. In doing so, the Directorate has established effective contract management arrangements to oversee the claims administration services provided by Employers Mutual Limited.

Key findings

	Paragraph
Section 24 of the *Public Sector Workers' Compensation Fund Act 2018* established the Public Sector Workers' Compensation Fund Advisory Committee. The Advisory Committee provides advice to the Public Sector Workers' Compensation Commissioner and the Minister about public sector work health, safety and wellbeing performance and opportunities for improving that performance. Terms of reference were agreed for the Advisory Committee and since its first meeting in May 2019 it has met four times. The Advisory Committee has established a quarterly reporting regime to inform the Minister for Employment and Workplace Safety of the outcomes and minutes of its meetings. The Advisory Committee is providing effective oversight of the management of the Public Sector Workers' Compensation Fund and workers' compensation arrangements in the Territory more generally, including compliance with self-insurance licence requirements.	4.14
Comcare produces a monthly *Key Performance Indicators Report* for self-insured licensees. This report shows licensees' performance against the seven Key Performance Indicators and provides licensees with an opportunity to track and monitor compliance against each Key Performance Indicator. The *Key Performance*	4.26

Indicators Report is compiled by Comcare from the claims-based data that is submitted to the Commission Data Warehouse. A review of the Territory's February 2020 monthly report shows that the Territory is not achieving two Key Performance Indicator targets (incidence of serious claims per 1000 FTE and incidence of claims per 1000 FTE). A monthly Operational Performance Monitoring meeting has been established between the Territory and Employers Mutual Limited to discuss, amongst other things, the findings documented in the monthly *Key Performance Indicators Report* and actions in place to remedy unfavourable results.

4.32 Comcare produces a quarterly *License Compliance and Performance Report* for self-insured licensees. The quarterly reports are an expansion on the monthly *Key Performance Indicators Report* and include an assessment overview, assessment analysis and commentary from Comcare as well as recommendations as necessary. Licensees have an opportunity to provide comment with the aim of providing context for any findings. In the *License Compliance and Performance Report* produced on 1 March 2020, the Territory discussed the reasons for non-compliance with the two Key Performance Indicator targets and provided details of the initiatives in place to address these results. Comcare assessed that the response was acceptable and that no regulatory action was required.

4.60 On behalf of the Safety, Rehabilitation and Compensation Commission, Comcare has conducted 'extensive reviews' on the Territory's Claims Management System (December 2019), Rehabilitation Management System (December 2019) and Work Health and Safety (August 2019). Each of these reviews has identified areas of non-conformance. The Claims Management System review identified seven non-conformances (20 percent of the components reviewed), the Rehabilitation Management System review identified two non-conformances (eight percent of the components reviewed) and the Work Health and Safety review identified 32 non-conformances (30 percent of the components reviewed). The Territory has produced Corrective Action Plans to address the issues of non-conformance for each review, and these have been approved by Comcare. The progress of each Corrective Action Plan is intended to be monitored by the Workplace Safety and Industrial Relations Division and the Public Sector Workers' Compensation Fund Advisory Committee. Outcomes are expected to be reported to Comcare as required under the requirements of the self-insurance licence.

4.65 The Public Sector Workers' Compensation Fund is required to produce an annual report in accordance with Annual Reports Directions made under section 8 of the *Annual Reports (Government Agencies) Act 2004*. Five Accountability Indicators have been identified for the Fund, against which it will report as part of its 2019-20 Statement of Performance. The Accountability Indicators are appropriate and align with the Territory's self-insurance requirements and principles of prudential financial management. They include an indicator associated with reducing the incidence of serious workplace injury and an indicator associated with the performance of the Territory's rehabilitation management system that aligns with the self-insurance licence requirements. The Fund did not achieve the 'Maintaining a PSWC Fund asset to liability greater than or equal to 100%' Accountability Indicator in 2018-19 and will not achieve it in 2019-20 because the transfer of assets is yet to be resolved.

On 10 October 2018, a services agreement was executed between the Territory and Employers Mutual Limited for claims administration services. Through the services agreement Employers Mutual Limited has been engaged to provide services to February 2023. The services agreement is valued at up to $35.6 million (excluding GST). Through the services agreement there are a range of mechanisms in place for the Territory to oversee the performance of Employers Mutual Limited including Operational Reporting from Employers Mutual Limited; monthly Operational Performance Monitoring meetings, Quarterly Performance Review meetings and an Annual Review meeting between the Territory and Employers Mutual Limited. The services agreement provides the Territory with an effective mechanism by which to manage Employers Mutual Limited to deliver claims administration services. 4.100

The Territory has committed to reviewing the public sector's capability to administer claims without the assistance of a third-party administrator. The Workplace Safety and Industrial Relations Division has developed a roadmap to prepare for and undertake an assessment of the Territory's capacity to manage claims administration services internally. This work is in its infancy and will continue to be reported to and monitored by the Public Sector Workers' Compensation Fund Advisory Committee. 4.106

Territory governance arrangements

4.2 The Public Sector Workers' Compensation Fund was established by the *Public Sector Workers' Compensation Fund Act 2018*. The object of the *Public Sector Workers' Compensation Fund Act 2018* is to '… establish financial and prudential governance in relation to the Territory's obligations as a self-insured licensee under the SRC Act'.

Public Sector Workers' Compensation Commissioner

4.3 In accordance with section 18 of the *Public Sector Workers' Compensation Fund Act 2018,* the Executive Group Manager, Workplace Safety and Industrial Relations Division of the Chief Minister, Treasury and Economic Development Directorate was appointed to the role of the Public Sector Workers' Compensation Commissioner on 14 February 2019, with effect from 1 March 2019 (the date of commencement of the Public Sector Workers' Compensation Fund).

4.4 The Public Sector Workers' Compensation Commissioner's primary functions are to manage the Public Sector Workers' Compensation Fund, provide advice to the Minister on the administration, efficiency and effectiveness of the Public Sector Workers' Compensation Fund and manage the Territory's liabilities and claims as a self-insured licensee.

Public Sector Workers' Compensation Fund Advisory Committee

4.5 The Public Sector Workers' Compensation Fund Advisory Committee was established in accordance with section 24 of the *Public Sector Workers' Compensation Fund Act 2018* to provide advice to the Public Sector Workers' Compensation Commissioner and the Minister

about public sector work health, safety and wellbeing performance and opportunities for improving that performance with respect to workers' compensation claim management and rehabilitation and self-insurance operations.

Membership

4.6 In accordance with the *Public Sector Workers' Compensation Fund Act 2018,* the Public Sector Workers' Compensation Fund Advisory Committee is comprised of six members appointed by the Minister including:

- the Public Sector Workers' Compensation Commissioner;
- three members to represent the interests of workers; and
- two members to represent the interests of public sector bodies and territory instrumentalities.

4.7 The *2018-19 Annual Report* of the Public Sector Workers' Compensation Fund identified the membership of the Public Sector Workers' Compensation Fund Advisory Committee as at 30 June 2019 as comprising:

- the Public Sector Workers' Compensation Commissioner (Chair);
- a representative from the Workplace Safety and Industrial Relations Division; and
- four members external to the ACT Public Service comprising representatives from Unions ACT, the Community and Public Sector Union, Employers Mutual Limited and the Australian Education Union ACT.

Terms of reference

4.8 Terms of reference for the Public Sector Workers' Compensation Fund Advisory Committee were agreed to by Advisory Committee members on 19 August 2019. The terms of reference describe the purpose, roles, responsibilities, operation, tenure and obligations of the Advisory Committee.

4.9 The terms of reference establish the role of the Advisory Committee, consistent with the *Public Sector Workers' Compensation Fund Act 2018*, as follows:

> The Advisory Committee will provide advice to the PSWC Commissioner and/or the Minister about public sector work health, safety and wellbeing performance and opportunities for improving that performance, including in respect of:
>
> - workers' compensation claim management and rehabilitation;
> - the capacity of the ACT public sector to operate a workers' compensation claim administration service in support of self-insurance operations.
>
> The Advisory Committee may also exercise any other function given to it under this Act or any other territory law.
>
> The Advisory Committee will manage proceedings and may exercise the right to convene relevant sub committees.

4.10 The terms of reference provide that the Advisory Committee is to meet at least four times per year and that the Workplace Safety and Industrial Relations Division in the Chief Minister, Treasury and Economic Development Directorate is to provide secretariat support for the committee.

4.11 On 23 May 2019, the inaugural meeting of the Public Sector Workers' Compensation Fund Advisory Committee was held. As at March 2020, the Advisory Committee had met four times. The meetings included both strategic and operational discussions focusing on:

- the progress of the self-insurance licence;
- ACT Public Service workers' compensation claims and return to work data;
- scheme performance;
- premium devolution;
- in-house capability development progress;
- operational reports and updates from Employers Mutual Limited on claims administration activities; and
- updates on ACT Public Service work health and safety and wellbeing approaches.

Reporting and oversight

4.12 At its first meeting on 23 May 2019, the Advisory Committee members agreed that a quarterly reporting regime be created for the purpose of informing the Minister for Employment and Workplace Safety of the outcomes and minutes of the Advisory Committee meetings.

4.13 The first of these quarterly reports was provided to the Minister for Employment and Workplace Safety in November 2019. The report provided a high-level overview of the outcomes that were achieved from the first two meetings of the Public Sector Workers' Compensation Fund Advisory Committee and provided a copy of the meeting minutes, the agreed terms of reference of the committee and a proposed roadmap for an in-house feasibility assessment program.

4.14 Section 24 of the *Public Sector Workers' Compensation Fund Act 2018* established the Public Sector Workers' Compensation Fund Advisory Committee. The Advisory Committee provides advice to the Public Sector Workers' Compensation Commissioner and the Minister about public sector work health, safety and wellbeing performance and opportunities for improving that performance. Terms of reference were agreed for the Advisory Committee and since its first meeting in May 2019 it has met four times. The Advisory Committee has established a quarterly reporting regime to inform the Minister for Employment and Workplace Safety of the outcomes and minutes of its meetings. The Advisory Committee is providing effective oversight of the management of the Public Sector Workers' Compensation Fund and workers' compensation arrangements in the Territory more generally, including compliance with self-insurance licence requirements.

Self-insurance licence compliance monitoring

4.15 As a self-insured licensee under the *Safety, Rehabilitation and Compensation Act 1988* the Territory is subject to several monitoring and reporting requirements of the Safety, Rehabilitation and Compensation Commission. The Safety, Rehabilitation and Compensation Commission has developed a Licence and Compliance Performance Model to provide guidance to self-insured licensees. The Model '… sets performance standards and measures as a base level of performance and encourages improvement in the claims, rehabilitation and prevention performance of licensees. The Safety, Rehabilitation and Compensation Commission has set performance indicators for licensees to meet. Targets can be used to further encourage improvement in licensee performance'.

4.16 The Licence and Compliance Performance Model identifies phases through which self-insured licensees are expected to progress. There are different expectations of self-insured licensees according to the phase that they are in and each phase is commensurate with the length of time that the entity has been self-insured. The phases are described in Figure 4-1.

Figure 4-1 Self-insured licensee phases (Licence and Compliance Performance Model)

A: Entry Requirements for New Applicants
(pre-licence)

- Legislated eligibility requirements
- Assessed on its merits including the corporation's proven ability to meet the Commission's performance standards through:
  - Evidence of compliance in state or territory WHS, Rehabilitation and Compensation laws
  - Performance in claims management
  - Performance in WHS
  - Performance in rehabilitation
  - The existence or development of robust management systems
  - High level of corporate commitment
- The applicant will be able to self-evaluate their current abilities and future capacities against the ***Commission's Performance Standards*** prior to lodging an application

B: Developing/Transitioning Phase
(licence commencement/on-boarding)

- Applies to new licensees who are transitioning into the scheme
- **Two year period** from licence commencement in which to work with Comcare and the Commission to develop the necessary systems and frameworks required to meet the Commission's performance standards
- After two years, is an Established licensee.
- A licensee in the Developing/Transitioning Phase is able to assess its performance progress against the ***Commission's Performance Standards***
- **Extensive reviews** in Years one and two
- Concerns regarding performance will be considered by the Commission as and when they occur and may require a regulatory response

C: Established Licensee
(ongoing)

- Required to **maintain** the ***Commission's Performance Standards***
- Expected to maintain high standard of internal quality assurance and robust management systems
- Concerns regarding performance will be considered by the Commission as and when they occur and may require a 'regulatory response'
- An Established Licensee is able to assess its performance against the ***Performance Standards***
- **Scheduled reviews** in Years two and six of an eight year licence (if and as required)

Source: *Safety, Rehabilitation and Compensation Commission Licence Compliance and Performance Model*, page 6.

4.17 The Safety, Rehabilitation and Compensation Commission considers the Territory to be in the Developing/Transitioning phase as the Territory is now in its second year of self-insurance. This requires the Territory to work closely with Comcare to develop systems and processes by participating in, and being subject to, reviews to ensure that the Territory

can meet the conditions of its licence and the performance standards set by the Safety, Rehabilitation and Compensation Commission.

4.18 The initial period of the Developing/Transition phase is used by the Safety, Rehabilitation and Compensation Commission to closely monitor and determine whether any additional conditions or requirements should be placed on a licensee. No additional conditions or requirements have been placed on the Territory at this time.

4.19 The frequency of reviews undertaken throughout the Developing/Transitioning Phase may be reduced where a licensee can provide evidence of strong, consistent results against compliance and performance requirements. A reduction in the frequency of reviews has not yet been afforded to the Territory.

Compliance and monitoring requirements

4.20 On behalf of the Safety, Rehabilitation and Compensation Commission, Comcare receives information and other reports from self-insured licensees that assists with monitoring compliance with the general, prudential and performance conditions of the self-insurance licence.

4.21 Comcare supports the Safety, Rehabilitation and Compensation Commission to monitor self-insured licensees' compliance with their self-insurance licence. It does this through:

- the establishment of Key Performance Indicators against which self-insured licensees' performance is assessed;
- a monthly *Key Performance Indicators Report* it produces for self-insured licensees;
- a quarterly *License Compliance and Performance Report* it produces for self-insured licensees;
- an *Annual Licensee Compliance and Performance Improvement Assessment* prepared by self-insured licensees; and
- the conduct of 'extensive reviews' of aspects of self-insured licensees' workers' compensation operations including Claims Management System, Rehabilitation Management System and Work Health and Safety.

Key Performance Indicators

4.22 The Safety, Rehabilitation and Compensation Commission has identified seven Licence Key Performance Indicators against which self-insured licensee performance is assessed. The Key Performance Indicators are summarised in Table 4-1.

Table 4-1 Comcare – self-insured licensee Key Performance Indicators

LKPI 1 Number of Notified fatalities
Number of worker fatalities notified to a licensee's respective Work Health and Safety (WHS) regulator.
LKPI 2 Number of compensated fatalities
Number of compensated worker fatalities with a date of first determination in the period.
LKPI 3 Incidence of serious claims
Number of claims in the reporting period with one week or more lost time, per 1000 Full Time Equivalent (FTE) Employees.
LKPI 4 Incidence of accepted claims
Number of claims initially determined in the period, with an initial determination status of accepted, per 1000 Full Time Equivalent (FTE) Employees.
LKPI 5 Median Incapacity
The median (middle point) of incapacity weeks for accepted claims that have had one week or more lost time.
LKPI 6 Timeliness – determination of new claims
The percentage of new claims that were initially determined within set timeframes from the date of receipt by the determining authority of a compliant claim: a) 20 days injury, 60 days disease b) 30 days injury, 75 days disease c) 45 days injury, 90 days disease
LKPI 7 Timeliness – decisions on requests for reconsideration
The percentage of reconsideration requests decided, in the reporting period, within set timeframes from the date of receipt of the reconsideration request by the determining authority: a) Within 30 days b) Within 45 days c) Within 90 days

Source: Comcare Licensee Key Performance Indicator Specifications

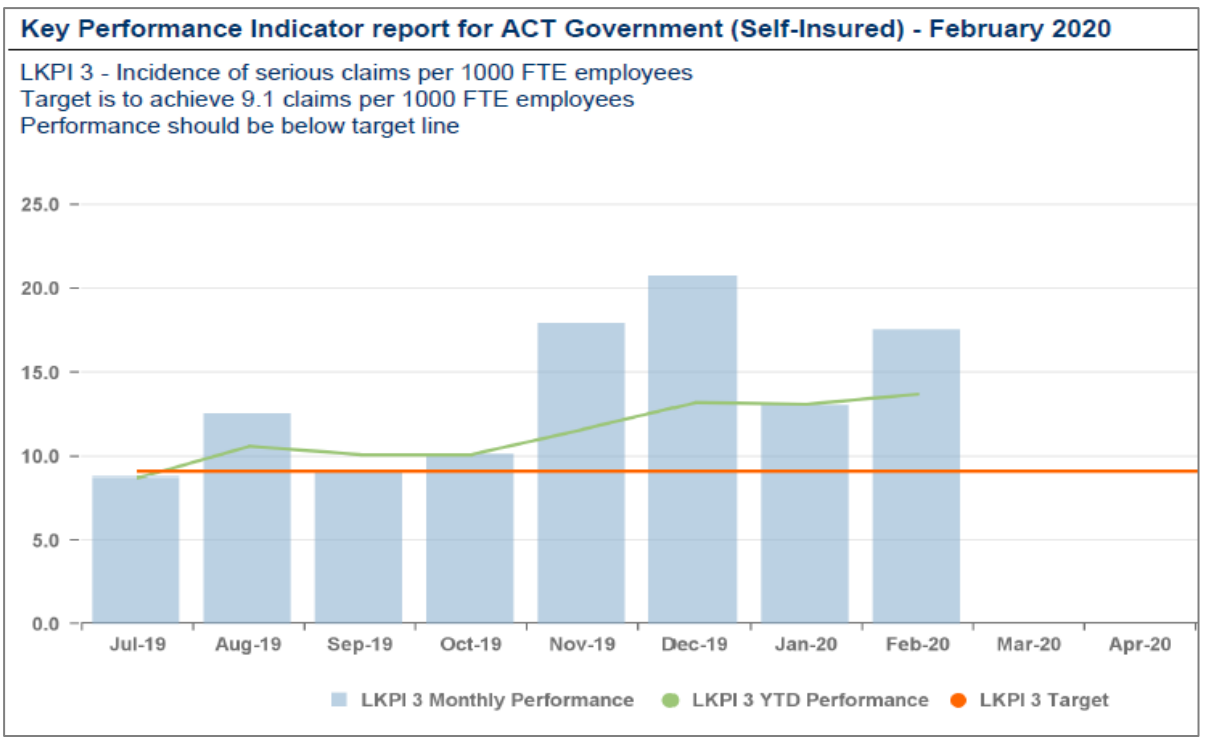
Key Performance Indicators Report (monthly)

4.23 Comcare produces a monthly *Key Performance Indicators Report* for self-insured licensees. This report shows licensees' performance against the seven Key Performance Indicators and provides licensees with an opportunity to track and monitor compliance against each Key Performance Indicator. The *Key Performance Indicators Report* is compiled by Comcare from the claims-based data that is submitted to the Commission Data Warehouse. It provides information on:

- the target that has been established for the licensee for each Key Performance Indicator; and
- monthly and year to date performance against each Key Performance Indicator.

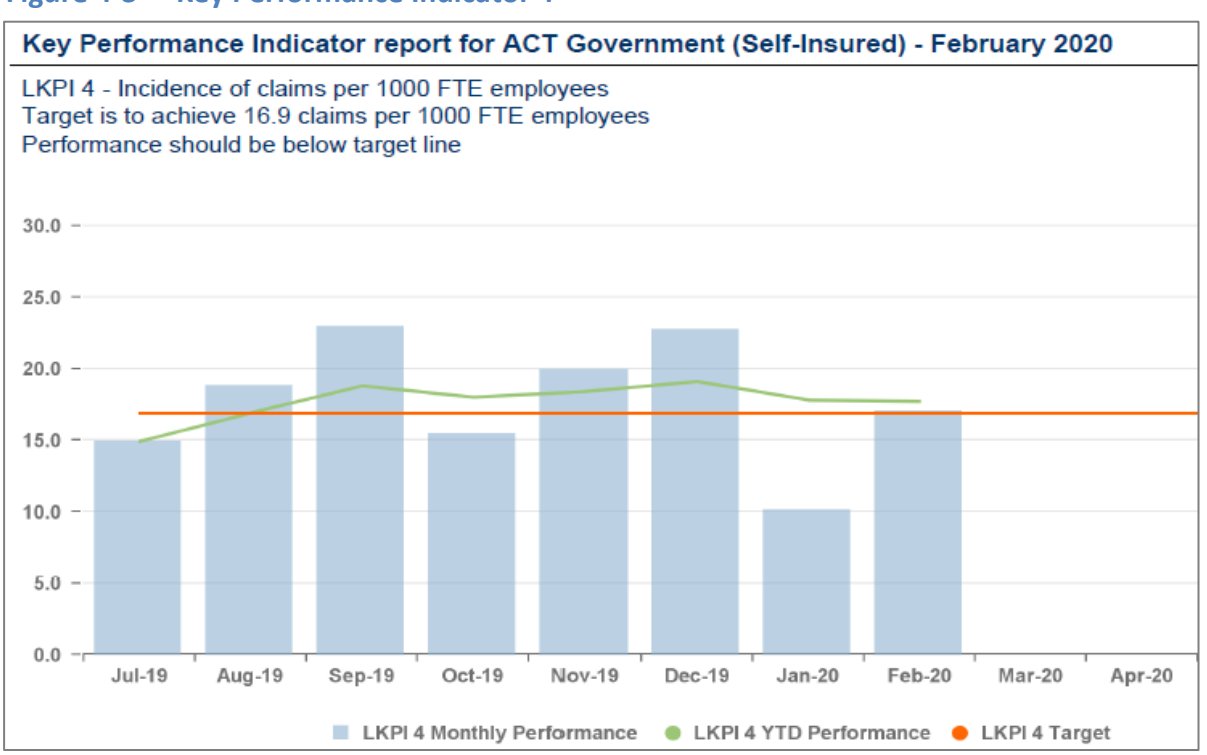
4.24 The results of the February 2020 monthly report produced by Comcare indicates that the Territory is not achieving two of the seven Key Performance Indicator targets. Extracts from the February 2020 monthly report, relating to the Key Performance Indicator targets that the Territory is not achieving, are shown in Figure 4-2 and Figure 4-3.

Figure 4-2 Key Performance Indicator 3



Source: Comcare February 2020 Monthly KPI Report for Licensees, page 2.

Figure 4-3 Key Performance Indicator 4



Source: Comcare February 2020 Monthly KPI Report for Licensees, page 3.

4.25 The data in these reports are discussed in detail at the monthly Operational Performance Monitoring meetings that have been established between the Territory and Employers Mutual Limited. This forum allows for discussion on outstanding issues or issues that require resolution.

4.26 Comcare produces a monthly *Key Performance Indicators Report* for self-insured licensees. This report shows licensees' performance against the seven Key Performance Indicators and provides licensees with an opportunity to track and monitor compliance against each Key Performance Indicator. The *Key Performance Indicators Report* is compiled by Comcare from the claims-based data that is submitted to the Commission Data Warehouse. A review of the Territory's February 2020 monthly report shows that the Territory is not achieving two Key Performance Indicator targets (incidence of serious claims per 1000 FTE and incidence of claims per 1000 FTE). A monthly Operational Performance Monitoring meeting has been established between the Territory and Employers Mutual Limited to discuss, amongst other things, the findings documented in the monthly *Key Performance Indicators Report* and actions in place to remedy unfavourable results.

Licence Compliance and Performance Report (quarterly)

4.27 Comcare produces a quarterly *License Compliance and Performance Report* for self-insured licensees. The quarterly reports are an expansion of the monthly *Key Performance Indicators Report* and include an assessment overview, assessment analysis and commentary from Comcare and recommendations. In this respect Comcare provides analysis of licensee performance, contextual information and any verification activities that have been undertaken as part of understanding the drivers of performance and improvement plans and strategies that may be in place.

4.28 Self-insured licensees also have the opportunity to provide comment with the aim of providing context for any findings including:

- the drivers behind the performance result;
- what the licensee is doing about the result; and
- when the licensee expects that the actions will assist with improving the result.

4.29 In the *License Compliance and Performance Report* produced on 1 March 2020, the Territory discussed the reasons for non-compliance with the two Key Performance Indicator targets as shown in Figure 4-2 and Figure 4-3:

> ACT claim and serious injury rates (LKPI3 and 4) have for many years been higher than the national average and are relatively stable when adjusted for seasonality.
>
> Although the national data is informative of performance, it does not account for differences arising from factors such as the impact of public sector employment on claimant behaviour (the national data is derived from public and private sector claims, whereas ACTPS staff are all public sector employees), differences in workers' compensation scheme design and local work design factors impacting the risk profile. The initiatives above are designed to reduce the incidence of injury and serious incidents over time.

4.30 The Territory also outlined a range of initiatives that aim to address these results including:

- development and implementation of WHS strategies, policies and procedures, including specific strategies focusing on high risk areas such as occupational violence and mental health;
- medical and rehabilitation intervention programs focusing on the pre-claim and early claim development stages, with a view to limiting incapacity duration;
- workforce resilience initiatives including mental health awareness training, reasonable adjustment training for managers and health and fitness subsidies for staff;
- tailored workplace mediation and reasonable adjustment support services;
- invested in claim assessment and determination infrastructure to allow claims to be made earlier and determined faster (average determination times have reduced significantly in comparison to historic performance within the Comcare premium scheme);
- rehabilitation and medical services provided immediately upon a claim being properly made; and
- recent audits of the whole of government WHS framework are informing a range of corrective actions which should further improve injury prevention performance.

4.31 In response to context provided by the Territory, Comcare assessed the:

> ACT Government's context in relation to notifiable incidents, the incidence of serious claims and the incidence of accepted claims against the Commission's Performance Assessment Methodology as a moderate level of risk. No regulatory action is recommended because:
>
> - ACT Government are a developing licensee and are in the process of implementing corrective actions from their year 1 audit.
> - ACT Government will be subject to a year 2 work health and safety management system, claims management system, and rehabilitation management system audits in 2020.

4.32 Comcare produces a quarterly *License Compliance and Performance Report* for self-insured licensees. The quarterly reports are an expansion on the monthly *Key Performance Indicators Report* and include an assessment overview, assessment analysis and commentary from Comcare as well as recommendations as necessary. Licensees have an opportunity to provide comment with the aim of providing context for any findings. In the *License Compliance and Performance Report* produced on 1 March 2020, the Territory discussed the reasons for non-compliance with the two Key Performance Indicator targets and provided details of the initiatives in place to address these results. Comcare assessed that the response was acceptable and that no regulatory action was required.

Licensee Compliance and Performance Improvement Assessment (annually)

4.33 An annual *Licensee Compliance and Performance Improvement Assessment* provides self-insured licensees with an opportunity to review their key challenges and successes, note changes in the organisations that may have affected operations as a licensee and any other key information about licensing arrangements or business operations.

4.34 The Territory was required to submit its first annual *Licensee Compliance and Performance Improvement Assessment* to the Safety, Rehabilitation and Compensation Commission by 31 March 2020 (with information up to 28 February 2020). On 18 March 2020, Comcare

advised the Territory that the due date for the annual self-assessment had been extended to 30 April 2020 to allow for any impacts associated with the COVID-19 pandemic to be considered. The Territory's first annual *Licensee Compliance and Performance Improvement Assessment* was provided to Comcare in May 2020.

4.35 The Territory reported that 'the ACT Government has remained compliant with its prudential conditions of the licence and has been assessed by Comcare as being a low risk of failing to meet its obligations under the SRC Act. No issues have been identified with regard to legislative or licence compliance'. The Territory also addressed the two Licensee Key Performance Indicator non-conformances discussed previously from 0 of this audit report and in doing so noted that 'ACT claim and serious injury rates have, for many years, been higher than the national average and are relatively stable when adjusted for seasonality'. In its report the Territory also outlined a number of different initiatives it was implementing which were 'designed to reduce the incidence of injury and serious incidents, over time'.

4.36 The Workplace Safety and Industrial Relations Division advised that the report had been accepted by Comcare and that it is expected to be tabled for discussion at the Safety, Rehabilitation and Compensation Commission's meeting in June 2020.

Comcare 'extensive reviews'

4.37 On behalf of the Safety, Rehabilitation and Compensation Commission, Comcare conducts 'extensive reviews' on self-insured licensee claims management systems, rehabilitation management systems and work health and safety during the first year of the Developing/Transitioning phase. The results of each 'extensive review' is provided to the self-insured licensee and a Corrective Action Plan may be put in place to assist with the rectification of any non-conformances that may be identified. After the first year, self-insured licensees are expected to conduct their own reviews.

Claims Management System Extensive Review

4.38 Comcare conducted an *ACT Government Claims Management System Review* in December 2019. The review considered Employers Mutual Limited's claims management systems, processes and outcomes in order to assess whether the Territory is meeting its self-insured licence conditions and is complying with the *Safety, Rehabilitation and Compensation Act 1988.*

4.39 Comcare considered a targeted selection of 80 claims files. The review included activity across the claims management spectrum including complex entitlements, such as incapacity and initial liability. The files were selected from a list of all claims files where some activity had occurred since March 2019 (the commencement of the ACT Government's self-insurance licence).

4.40 The December 2019 report of the *ACT Government Claims Management System Review* identified seven non-conformances. This equated to 20 percent of the components reviewed. The review noted:

> Employers Mutual Limited (EML) has been authorised to manage workers' compensation claims on behalf of the ACT Government. It is noted that EML has leveraged its systems, documentation and experience operating under state and Comcare schemes and has engaged staff with extensive SRC Act experience to strengthen its knowledge base.
>
> However, unlike most licensees operating under the scheme, the ACT Government brought with them a large portfolio of active claims. As such, EML did not have the ability to ramp up their operations over time, but instead had to manage a large and complex claims portfolio from commencement.
>
> While the management system and processes are in place, as a result of this complexity some implementation issues have been identified in this report. In summary, the review found the ACT Government to be in conformance with 24 of the criteria, with observations made against eleven (11) criteria. Non-conformance was found against six (6) criteria. One (1) criterion was not applicable.

4.41 The non-conformances are summarised in Table 4-2.

Table 4-2 Claims Management System non-conformances

#	Non-conformance
1	This audit was unable to identify an ACT Government plan to achieve its objectives and targets, other than the contract with EML. For this criterion, it is expected the ACT Government should have an overarching strategic plan for achieving its claims management objectives and/or a contract management plan to assist it in holding EML accountable.
2	The file review identified issues in the timeliness of determinations and the accuracy of the terms and reasons used to support the determinations.
3	Incapacity payments where the injured worker is in receipt of superannuation and lump sum payments have not been managed appropriately, resulting in delayed determinations, manual records in Pivotal not being updated and incorrect letters being used. Incapacity determinations often decreased NWE for various periods with no reasons or legislative mechanism stated/captured.
4	Medical and allied health payments, as well as those related to household assistance, have not been managed correctly in all instances; including delayed determinations and payments.
5	Instances of Permanent Impairment Claims being calculated and paid using the incorrect date resulting in a lower statutory rate being applied and an underpayment (note that this non-conformance was addressed during the audit and is considered closed).
6	Non-specific requests for clinical records from medical practitioners have resulted in medical records, unrelated to the compensable injury, being received by EML and placed on the claim file.

Source: Comcare *Claims Management System Extensive Review Report*, page 6.

4.42 Comcare required a Corrective Action Plan be developed to address each non-conformance. The Corrective Action Plan was required to include completion/review dates and responsibilities.

4.43 On 19 February 2020, the Territory documented a Corrective Action Plan. The Corrective Action Plan was subsequently approved by Comcare. For a 6-month period commencing April 2020, Comcare will coordinate monthly meetings with the Territory and Employers Mutual Limited to monitor the progress of each activity aimed at addressing the non-conformances. The Territory has made Comcare aware that some of the initial target dates for correcting the non-conformances may need to be reviewed as a result of the COVID-19 pandemic.

Rehabilitation Management System Extensive Review

4.44 Comcare conducted an *ACT Government Rehabilitation Management System Review* in December 2019. The review considered the Territory's rehabilitation management systems, processes and outcomes in order to assess whether the Territory is meeting its self-insured licence conditions and is complying with the *Safety, Rehabilitation and Compensation Act 1988*.

4.45 As part of the review, Comcare examined 30 randomly selected rehabilitation case files where some activity had occurred since 1 March 2019 (the commencement of the ACT Government's self-insurance licence). The review encompassed a review of all relevant policies and procedures as they relate to rehabilitation and return to work management and any other relevant, supporting documentation. Interviews were also conducted with rehabilitation staff.

4.46 The December 2019 report of the *ACT Government Rehabilitation Management System Review* stated:

> In summary, the review found the ACT Government to be in conformance with 24 of the criterion, with observations made against five criterion, and one criterion that was not able to be verified. Non-conformance was found for two criterion.

4.47 The *ACT Government Rehabilitation Management System Review* identified two non-conformances. This equated to 8 percent of the components reviewed. The non-conformances are summarised in Table 4-3.

Table 4-3 Rehabilitation Management System non-conformances

#	Non-conformances
1	Currently, rehabilitation policy documents remain in draft form. The three key rehabilitation policies are: • Work Based Rehabilitation Policy • Early Intervention Policy • Suitable Employment Policy. These documents were in draft at the time of the Rehabilitation Management System pre-licence evaluation in July 2018. An observation was made on this, and it was noted that this observation must be closed out prior to the date of commencement of the licence. Given the amount of time that has passed, and the requirement for the policies to be completed prior to the date of commencement of the licence, which has not been done, a non-conformance has been issued.

#	Non-conformances
	The ACT Government should ensure that the University of Canberra and Calvary Hospital are captured under these policies to ensure consistency.
2	The ACT Government Rehabilitation and Claims Management Governance Framework (March 2019) document contains Key Performance Indicators that have been set to be used for measuring the success of the RMS. The Framework stipulates that these KPIs are to be reported to the PSWC Commissioner on a monthly and/or quarterly basis as identified in the [KPI] table. Except for some reporting by Calvary, there has not been any reporting against these KPIs by the ACT Government or the University of Canberra.

Source: Comcare *Claims Management System Extensive Review Report*, page 6.

4.48 Similar to the *ACT Government Claims Management System Review* outcomes, Comcare required a Corrective Action Plan be developed to address each non-conformance. The Corrective Action Plan was required to include completion/review dates and responsibilities to address the review findings.

4.49 On 18 February 2020, the Territory documented a Corrective Action Plan, and this was subsequently approved by Comcare. For a 6-month period commencing April 2020, Comcare will coordinate monthly meetings with the Territory and Employers Mutual Limited to monitor the progress of each activity aimed at addressing the non-conformance. The Territory has made Comcare aware that some of the initial target dates for correcting the non-conformances may need to be reviewed as a result of the COVID-19 pandemic.

Work Health and Safety Extensive Review

4.50 Comcare conducted its first *ACT Government Work Health and Safety Review* in August 2019. Comcare assessed 108 criteria across four directorates including:

- Transport Canberra and City Services;
- Environment, Planning and Sustainable Development;
- Canberra Health Services; and
- Justice and Community Safety.

4.51 The August 2019 report of the *ACT Government Work Health and Safety Review* stated:

> It was evident that the ACT Government Whole of Government WHS Team had developed a robust WHS Management Framework, with the intention for this to be leveraged by Directorates where possible. WHS Teams within the sampled Directorates had also undertaken significant work to develop WHS Management Systems and procedures.
>
> Some WHS management practices are well implemented across the Directorates and WHOG, however, there were several areas that required further development and implementation.
>
> A key issue identified through this audit was the lack of clarity regarding the role of the WHOG WHS Management Framework. While this framework had been developed for Directorates, in practice, there was limited evidence of it being consistently implemented by the Directorates. Several Directorates had developed their own WHS Management Systems, which were used more frequently than the WHOG WHS Management Framework. Additionally, it was not clear what parts of the WHOG WHS Management Framework were mandatory for Directorates to comply with and which parts they could effectively disregard.

There was limited evidence of formal documented training needs analysis being undertaken across WHOG and Directorates. While robust learning management systems had been implemented, training requirements in these systems should be driven by robust training needs analysis.

As identified in the pre-licence evaluation, another area requiring focus is contractor management, which is still inconsistently implemented across the Directorates. Similarly, there was limited evidence of internal audit programs being implemented at Directorates to drive continual improvement of the WHS Management Systems.

4.52 The results of the review are shown in Table 4-4.

Table 4-4 Work Health and Safety Review results

	Number of criteria	Percentage
Conformance	30	70
Conformance (Observations)	46	
Non-conformance	32	30

Source: Comcare *WHOG Work Health and Safety Review Report*, page 20.

4.53 Comcare also completed a separate Work Health and Safety Review of the Community Services Directorate against 77 applicable criteria. The results of this review are shown in Table 4-5.

Table 4-5 Summary of Work Health and Safety Review results – Community Services Directorate

	Number of criteria	Percentage
Conformance	4	39
Conformance (Observations)	26	
Non-conformance	47	61
Not able to be verified	1	
Not applicable	1	

Source: Comcare *CSD Work Health and Safety Review Report*, page 13.

4.54 Comcare required that Corrective Action Plans be developed to address each of the non-conformances and observations that were identified in the reports. The Corrective Action Plans were required to include completion/review dates and responsibilities to address the review findings.

4.55 In January 2020, the Workplace Safety and Industrial Relations Division produced a consolidated Corrective Action Plan identifying the corrective actions that were to be implemented by each Directorate. The corrective actions that are in progress are being monitored and tracked at a whole of government level by the Workplace Safety and Industrial Relations Division.

4.56 In April 2020, the Public Sector Workers' Compensation Fund Commissioner provided Comcare with an update of the corrective actions across the directorates. A summary of the corrective actions progress is provided in Table 4-6.

Table 4-6 Work Health and Safety Management System Audit Correction Action Plan Progress

Directorate responsible	Corrective Actions	Corrective Actions commenced	Commenced but experiencing delays	Corrective Actions completed
WSIR	17	3	3	2 (2)
CHS	17	12	1	4 (3)
CSD	39	27	-	12 (4)
EPSDD	19	6	2	4 (3)
JACS	22	8	-	4 (0)
TCCS	13	4	1	3 (3)
All Directorates	2	0	-	0
Total	129	60	7	29 (15)

Source: Letter to Comcare from the Public Sector Workers' Compensation Fund Commissioner, April 2020.

Note: Non-conformances and observations identified in Tables 4-4 and 4-5 are expected to be addressed through Corrective Actions. Corrective Actions may relate to more than one non-conformance or observation.

4.57 In the April 2020 update, the Public Sector Workers' Compensation Fund Commissioner advised that 'noting the significant changes that we are all experiencing in relation to COVID-19, some Directorates have noted delays in progress against some corrective actions'.

4.58 In their response to the draft proposed report, the Community Services Directorate and Justice and Community Safety Directorate advised that progress has been made in addressing the corrective actions.

4.59 The progress of the Corrective Action Plan will continue to be monitored by the Workplace Safety and Industrial Relations Division and the outcomes of this will be reported to Comcare as required under the requirements of the self-insurance licence.

4.60 On behalf of the Safety, Rehabilitation and Compensation Commission, Comcare has conducted 'extensive reviews' on the Territory's Claims Management System (December 2019), Rehabilitation Management System (December 2019) and Work Health and Safety (August 2019). Each of these reviews has identified areas of non-conformance. The Claims Management System review identified seven non-conformances (20 percent of the components reviewed), the Rehabilitation Management System review identified two non-conformances (eight percent of the components reviewed) and the Work Health and Safety review identified 32 non-conformances (30 percent of the components reviewed). The Territory has produced Corrective Action Plans to address the issues of non-conformance for each review, and these have been approved by Comcare. The

progress of each Corrective Action Plan is intended to be monitored by the Workplace Safety and Industrial Relations Division and the Public Sector Workers' Compensation Fund Advisory Committee. Outcomes are expected to be reported to Comcare as required under the requirements of the self-insurance licence.

External assurance and reporting

Public Sector Workers' Compensation Fund annual report

4.61 The Public Sector Workers' Compensation Fund is required to produce an annual report in accordance with the Annual Reports Directions made under section 8 of the *Annual Reports (Government Agencies) Act 2004*.

4.62 Two Accountability Indicators were established for the Public Sector Workers' Compensation Fund on its commencement. These were reported against in its *2018-19 Annual Report*, albeit for its activities for a four-month period (1 March 2019 to 30 June 2019). The two Accountability Indicators were:

1) Reducing the ACT public sector incidence of serious workplace injury

This accountability indicator covers public sector injury prevention activities and aligns with targets from the Safe Work Australia National Work Health and Safety Strategy 2012-22. This accountability indicator measures the number of ACT public servant workers' compensation claims resulting in absence from the workplace of one week or more, per 1,000 employees.

Responsibility for this indicator for the 2018-19 financial year was maintained with the Workplace Safety and Industrial Relations Division. However, as the Public Sector Workers' Compensation Fund has responsibility for the management of ACT public sector workers' compensation liabilities from 1 March 2019, the same indicator was reported for the Public Sector Workers' Fund for the 2018-19 financial year.

From 2019-20 the Budget reflects that this indicator will move to the Public Sector Workers' Compensation Fund for ongoing reporting and performance measurement.

2) Maintaining a PSWC Fund asset to liability greater than or equal to 100%

This accountability indicator aligns with the Public Sector Workers' Compensation Fund requirements under the *Public Sector Workers' Compensation Fund (Investment and Funding Ratio) Management Guidelines 2019 (No. 1)*. An asset to liability ratio of 100% or more indicates that the fund contains sufficient assets to meet the expected lifetime cost of public sector workers' compensation claims. This will need to be assessed and reported on as part of the 2019-20 Annual Report.

4.63 The *2019-20 Budget Statement* have since identified five Accountability Indicators for the Public Sector Workers' Compensation Fund. These are shown in Table 4-7.

Table 4-7 Accountability Indicators

	2018-19 Targets	2018-19 Estimated Outcome	2019-20 Targets
Reduce the ACT public sector incidence of serious workplace injury	9.84	9.84	9.46

	2018-19 Targets	2018-19 Estimated Outcome	2019-20 Targets
Achieve a conformance rating of 85 per cent or higher in the annual audit of the ACT workers' compensation self-insurance rehabilitation management system	85%	85%	85%
Maintain a PSWC fund asset to liability ratio greater than or equal to 100 per cent	≥100%	≥100%	≥100%
Achieve a conformance rating of 85 per cent or higher in the annual audit of the ACT workers' compensation self-insurance claims management system	85%	85%	85%
Investment earnings rate meets the benchmark rate	≥0	≥0	≥0

Source: *Chief Minister, Treasury and Economic Development Directorate 2019-20 Budget Statements,* page 247.

4.64 The Accountability Indicators established in the *2019-20 Budget Statements* are appropriate and align with the Territory's self-insurance requirements and principles of prudential financial management. However, it is noted that the Accountability Indicator 'Maintaining a PSWC Fund asset to liability greater than or equal to 100%' was not achieved in 2018-19 and will not be achieved again in 2019-20 because the transfer of assets is yet to be resolved.

4.65 The Public Sector Workers' Compensation Fund is required to produce an annual report in accordance with Annual Reports Directions made under section 8 of the *Annual Reports (Government Agencies) Act 2004*. Five Accountability Indicators have been identified for the Fund, against which it will report as part of its 2019-20 Statement of Performance. The Accountability Indicators are appropriate and align with the Territory's self-insurance requirements and principles of prudential financial management. They include an indicator associated with reducing the incidence of serious workplace injury and an indicator associated with the performance of the Territory's rehabilitation management system that aligns with the self-insurance licence requirements. The Fund did not achieve the 'Maintaining a PSWC Fund asset to liability greater than or equal to 100%' Accountability Indicator in 2018-19 and will not achieve it in 2019-20 because the transfer of assets is yet to be resolved.

Management of the Employers Mutual Limited contract

4.66 On 10 October 2018, a services agreement was executed between the Territory and Employers Mutual Limited for claims management services. Through the services agreement, Employers Mutual Limited has been engaged to provide services to February 2023.

4.67 The executed contract is valued at up to $35.6 million (excluding GST). This includes various fees including a base Service Fee, Transition Fee, Performance Fees and Incentive Fees. The Performance Fees and Incentive Fees are payable on Employers Mutual Limited meeting certain criteria.

Services

4.68 Clause 2.1 of Schedule 1 of the services agreement provides a high-level overview of the services to be provided by Employers Mutual Limited:

> [Employers Mutual Limited] must provide the following Services on behalf of the Territory in accordance with the Agreement, the Claims Operating Model, the SRC Act and the SRCC as well as the Operating Protocols:
>
> (a) assess liability including initial liability and ongoing liability (eg assessments of reasonable and necessary medical requirements);
>
> (b) benefits calculation, authorisation and payments, including provisional liability for medical costs;
>
> (c) case management, incorporating claims management strategies;
>
> (d) integration with the Territory's Injury Management Team to support best practice rehabilitation and return to work;
>
> (e) administration of Reactivated Claims;
>
> (f) payments to, and oversight of Service Providers (including providers of medical, allied health, rehabilitation and legal services) as advised by the Territory;
>
> (g) management of Claims data (creation, retention, updating and archiving); and (h) Injured Worker escalated matters and dispute management, including matters commenced with the Administrative Appeals Tribunal (AAT).

4.69 Clause 2.5 of Schedule 1 of the services agreement also provides that Employers Mutual Limited must provide value-add services as follows:

> [Employers Mutual Limited] must provide Value Add Services to the Territory which support the achievement of the Territory's objectives including:
>
> (i) building internal claims administration expertise;
>
> (ii) developing return to work and rehabilitation initiatives;
>
> (iii) staff health and wellbeing activities; and
>
> (iv) improving the work safety culture in the Territory.

4.70 A feature of the services agreement is its intention to build internal ACT Public Service expertise in the administration of workers' compensation. This is demonstrated through the value-add services, which include the provision of training and professional development to select ACT Public Service personnel. This is discussed further from paragraph 4.101.

Claims Operating Model

4.71 Clause 3.3 of the services agreement requires Employers Mutual Limited to provide to the Territory, for its approval, a Claims Operating Model. The Claims Operating Model was required to include:

- a description of Employers Mutual Limited's organisational structure, planning activities, responsibilities, practices, procedures, processes and dedicated resources; and

- guidance, direction and an overarching framework for Employers Mutual Limited's personnel, linked to performance standards and supported by training programs.

4.72 Clause 3.3 further requires that '[Employers Mutual Limited] will at all times during the Period of Services ensure it and its Personnel involved in the delivery of the Services comply with the Claims Operating Model'. The Claims Operating Model is to be reviewed on an annual basis.

Operating protocols

4.73 The Workplace Safety and Industrial Relations Division has developed a series of Operating Protocols that provide technical requirements, guidelines and instructions for the performance of the services. A summary of the Operating Protocols is provided in Table 4-8.

Table 4-8 Operating Protocols for the delivery of claims management services

Operating protocol reference	Operating protocol name	Purpose
A	Injury Management Protocol	Provides the framework for claims and rehabilitation management. It also provides the practices and standards (including timeframes) that Employers Mutual Limited is required to meet in providing the services under the Agreement and includes the response timeframes that the Territory's Rehabilitation Case Managers (RCM) are required to meet, to ensure that Employers Mutual Limited is able to effectively manage the claim.
B	Significant Legal Matters Protocol	Provides the processes, procedures and requirements for reporting significant legal matters to the Territory and Comcare as set out in the Comcare 'Policy on reporting of potentially scheme significant matters (December 2013)' (Comcare Scheme Significant Matters).
C	Financial Management Protocol	Describes the financial management responsibilities of Employers Mutual Limited in relation to bank accounts, payments, cash forecasting, financial reporting and taxation management. Employers Mutual Limited makes payments to certain Injured Workers and Services Providers (as appropriate). This protocol establishes the processes and procedures that must be adhered to when payments are made.
D	Records Management	This Operating Protocol was not established as it was included as part of Clause 19.2 of the services agreement.
E	Re-activated Claims Protocol	Describes the process that Employers Mutual Limited and the Territory must follow when retrieving closed paper files from Comcare for the purposes of decisions and determinations in relation to claims that are being re-activated or re-opened.
F	Complaints Handling Procedure	This Operating Protocol was not established as it was included as part of Clause 37.3 of the services agreement.
G	Investigations Protocol	Provides a framework for Employers Mutual Limited to conduct investigations related to the management of Workers'

Operating protocol reference	Operating protocol name	Purpose
		Compensation Claims, in accordance with this Agreement and relevant Laws.
H	Data Requirements	Specifies the claims data as required by, and in the form specified by the Territory.

Source: Services agreement between the Territory and Employers Mutual Limited

4.74 Clause 7.8(a) of the services agreement requires that, in the performance of the services, Employers Mutual Limited must ensure:

- it complies with any requirement, obligation or specification; and
- that its systems reflect the instructions, file structure and data definitions specified in the Operating Protocols.

4.75 Clause 7.8(b) of the services agreement allows the Territory to issue new Operating Protocols or updates to existing Operating Protocols. It also requires that that Employers Mutual Limited 'must implement the new Operating Protocols, or updates to the Operating Protocols, at no additional cost to the Territory, within the timeframes specified by the Territory'.

Performance indicators and standards

4.76 *Schedule 1 – Statement of Requirements* of the services agreement requires Employers Mutual Limited to 'operate efficiently and effectively to meet the Service Standards as described in Schedule 3 (Performance Management Framework)'.

4.77 The performance management of the services provided by Employers Mutual Limited is facilitated through Operational Key Performance Indicators and Performance Service Standards which are articulated in *Schedule 3 - Performance Management* of the services agreement. The Operational Key Performance Indicators and Performance Service Standards align and support the self-insurance licence requirements imposed on the Territory under the *Safety, Rehabilitation and Compensation Act 1988*.

Operational Key Performance Indicators

4.78 *Schedule 3 - Performance Management* of the services agreement identifies the Operational Key Performance Indicators. The Operational Key Performance Indicators are shown in Table 4-9.

Table 4-9 Operational Key Performance Indicators

#	Operational Key Performance Indicator	Reporting Period
2.1	Employers Mutual Limited will acknowledge receipt of the Claim (Notification), triage the Claim and make contact with the Territory, treating practitioner(s) and Injured Worker (Four Point Contact) in accordance with Operating Protocol A	Monthly
2.2	Employers Mutual Limited will notify the Territory of all liability determinations as defined in Operating Protocol A and in accordance with the SRC Act. Liability determinations in scope are liability for injury/disease, including secondary or subsequent determinations	Monthly
2.3	Decision are timely – Time taken to determine new Claims	Monthly
2.4	Timeliness – Decision on requests for reconsideration made by or on behalf of the injured worker	Monthly
2.5	Case conferencing review points – Employers Mutual Limited will undertake case conferencing in accordance with the Operating Protocol	Monthly
2.6	Employers Mutual Limited must submit data which is complete, timely and has integrity	Monthly submission by 6am on the first Business Day of the relevant month (per Reporting Standard)
2.7	Accurate data submissions	Monthly submission by 6am on the fifth Business Day of the relevant month (per Reporting Standard)
2.8	Claims management system – Payments for Injured Workers and Service Providers are made to Injured Workers and Service Providers are made in accordance with the Agreement and the SRC Act	Annual Audit
2.9	Claims payments – Payments to Injured Workers and Service providers are accurate and paid on time from the Operating Account	Monthly
2.10	Reports submitted in accordance with this Agreement	Monthly
2.11	Employers Mutual Limited will establish a governance structure within its organisation to effect the operation of this Agreement. This includes effective and cooperative communication with the Territory and responding to Territory requests and queries within timeframes as agreed in Operating Protocol A.	Monthly
2.12	Employers Mutual Limited will establish and maintain a complaints management procedure that complies with the relevant Australian Standard (as current). The Third-Party Administrator will make a genuine attempt to resolve escalated matters in accordance with the Claims Operating Model.	Monthly
2.13	Employers Mutual Limited will survey Injured Workers to determine their level of satisfaction with the Third-Party Administrator's services.	Annual

Source: Services agreement between the Territory and Employers Mutual Limited, Schedule 3 – Performance Management

Performance Service Standards

4.79 *Schedule 3 - Performance Management* of the services agreement identifies the Performance Service Standards. The Performance Service Standards are shown in Table 4-10.

Table 4-10 Performance Service Standards

#	Performance Service Standard	Reporting Period
3.1	Liability for all Claims determined within 5 Business Days after Claim being properly made	Annual
3.2	Reconsiderations of initial liability determinations (for injury or disease) where requested by or on behalf of the Injured Worker	Annual
3.3	Case Management Plans are provided to the Territory's Rehabilitation Team within 10 Business Days after the relevant Claim being received by Employers Mutual Limited	Annual
3.4	Percentage of determined AAT matters reaffirm Employers Mutual Limited's determination	Annual
3.5	Injured Worker satisfaction survey	Annual
3.6	Reduce the average time lost during 12 weeks from first incapacity – through improved return to work	Annual
3.7	Reduce the average lost time during 26 weeks from first incapacity – through improved return to work	Annual
3.8	Monthly financial reports are accurate and reconcile with the Territory's financial transaction reports	Quarterly
3.9	Transition from Comcare to Employers Mutual Limited is affected in accordance with the Transition Plan	As per Transition Plan
3.10	Employers Mutual Limited provides value add services in accordance with this Agreement	N/A

Source: Services agreement between the Territory and Employers Mutual Limited, Schedule 3 – Performance Management

Service fees

4.80 *Schedule 2 – Fees* of the services agreement provides for a Service Fee that is intended to cover the costs associated with the delivery of services. This is a fixed fee for providing the services in accordance with the agreement and legislative requirements.

Performance fees

4.81 *Schedule 2 - Fees* of the services agreement also provides for a Performance Fee. The Performance Fee is a variable fee that is calculated with reference to Employers Mutual Limited's performance against the Performance Service Standards.

4.82 At the time of audit fieldwork, the Performance Fee had not yet been determined. The audit did not review the performance of Employers Mutual Limited against the Performance Service Standards to verify the appropriateness of any Performance Fee payment.

Incentive Outcome

4.83 The services agreement includes an Incentive Outcome Target, for which an Incentive Fee may be payable. A proportion of the total fees that may be payable under the services agreement relate to the Incentive Outcome Target. The Incentive Outcome Target relates to efforts on the part of Employers Mutual Limited to assist the Territory to lower its workers' compensation liabilities, specifically claims dating from before 1 March 2018 (one year before the Territory became a self-insured licensee), i.e. the Tail Claim Cohort.

4.84 *Schedule 3 - Performance Management* of the services agreement identifies the Incentive Outcome Target, which is shown in Table 4-11.

Table 4-11 Incentive Outcome Target

#	Incentive Outcome Target
4.1	Reduce actuarially assessed claim liability on defined cohort of tail Claims (Tail Claim Actuarial Cost), excluding impact of external factors. The Territory carries a material financial liability in relation to the future costs of Claims transferred across as part of the move to self-insurance.

Source: Services agreement between the Territory and Employers Mutual Limited, Schedule 3 – Performance Management

4.85 *Schedule 2 - Fees* of the services agreement provides for the Incentive Fee that may be payable. Payment of the Incentive Fee is dependent on Employers Mutual Limited achieving the Incentive Outcome Target.

4.86 The calculation of the Incentive Fee payable to Employers Mutual Limited is dependent on the actuarial reports produced by Finity on behalf of the Territory. As such any Incentive Fee payable for the first year of service is expected to be calculated in November 2020.

Monitoring and reporting

4.87 The services agreement identifies the mechanisms that enable the Territory to provide oversight of the services provided by Employers Mutual Limited. These include:

- Operational Reports to be provided by Employers Mutual Limited;
- monthly Operational Performance Monitoring meetings between the Territory and Employers Mutual Limited;
- Quarterly Performance Review meetings between the Territory and Employers Mutual Limited; and
- an Annual Review meeting between the Territory and Employers Mutual Limited.

Employers Mutual Limited Operational Reporting

4.88 Clause 5 of *Section 4 – Governance* of the services agreement requires Employers Mutual Limited to provide a range of Operational Reports to the Territory.

4.89 The Operational Reports are to be provided monthly to the Workplace Safety and Industrial Relations Division and quarterly to the Public Sector Workers' Compensation Fund Advisory Committee.

4.90 Employers Mutual Limited provided the first of its Operational Reports to the Public Sector Workers' Compensation Fund Advisory Committee meeting of 26 November 2019 and the contents of the report were discussed in detail by the committee.

Operational Performance Meetings

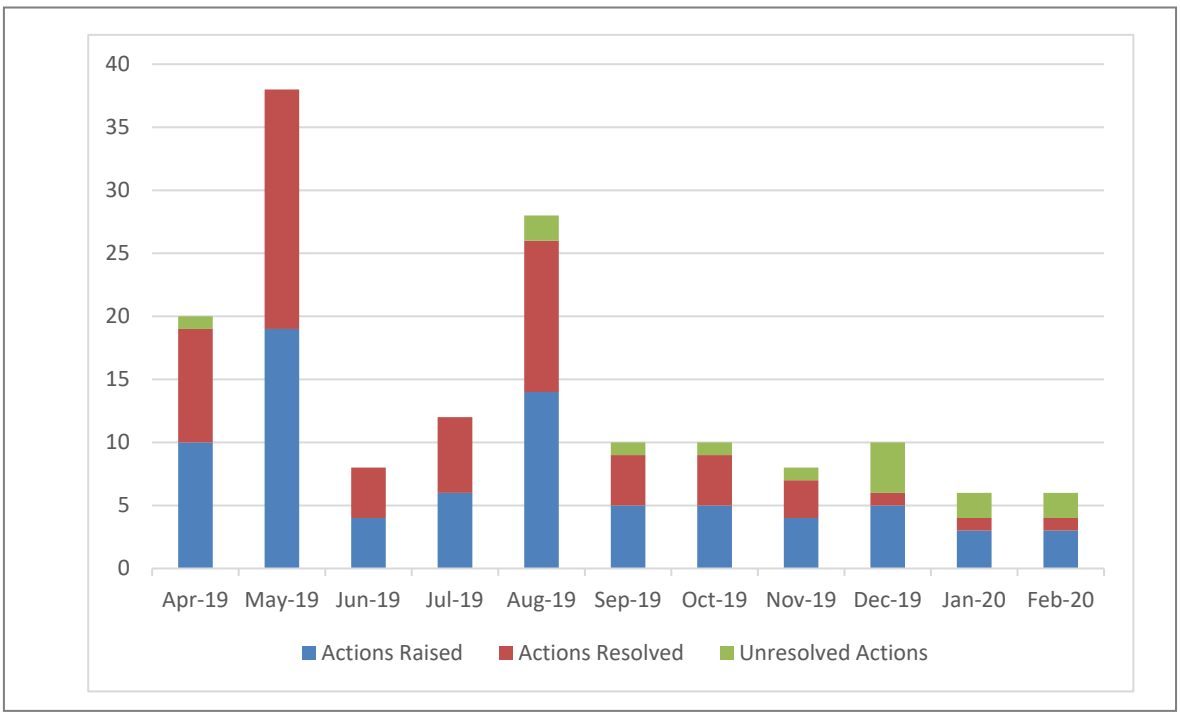
4.91 Clause 4 of *Section 4 – Governance* of the services agreement requires Operational Performance Monitoring meetings to occur on a monthly basis to 'review Operational Reports and identify areas that may require improvement'. A monthly Operational Performance meeting has been established with both ACT Government and Employers Mutual Limited representatives. Commencing in April 2019, and in compliance with the established terms of reference, the meetings have occurred and have focused on:

- reviewing the Operational Reports and identifying any areas that require improvement;
- analysing achievements against Operational Key Performance Indicators, identifying gaps; and
- agreeing improvement actions to ensure the Territory's overall objectives are met.

4.92 Discussions at each monthly Operational Performance Monitoring meeting have been documented in formal meeting minutes. Action items and the rectification of issues are managed through a *'Summary of Actions'* document for each meeting. The progress of outstanding action items is discussed at the successive meeting.

4.93 A review of the *Summary of Actions* from the 25 March 2020 meeting indicates that a total of 78 action items have been raised between April 2019 and February 2020, with 64 action items resolved and 14 action items unresolved. A summary of the actions from the Operational Performance meetings is at Figure 4-4.

Figure 4-4 Operational Performance Monitoring meetings – Actions Raised, Resolved and Unresolved



Source: Operational Performance Monitoring *Summary of Actions*, 25 March 2020

4.94 Although the progress of outstanding action items are discussed at each meeting, there are action items that have been unresolved for a considerable amount of time. One action item remains unresolved after 10 months and 10 action items remained unresolved for more than three months.

4.95 The delayed resolution of action items may place service delivery at risk or the achievement of operational Key Performance Indicators at risk. On 19 August 2019, it was identified at the Operational Performance Monitoring meeting that rehabilitation data had not been provided to Comcare in the data extract to the Commission Data Warehouse. This is a mandatory reporting mechanism that is a requirement of the self-insurance licence. Although the rectification of this issue was established as an action item from this meeting, the action item remains unresolved placing the Territory's reporting compliance at risk.

Quarterly Performance Reviews

4.96 Clause 4.2 of *Schedule 4 – Governance* of the services agreement provides for the conduct of Quarterly Performance Review meetings 'for the parties to discuss [Employers Mutual Limited's] performance against the Service Standards and progress towards achievement of the Incentive Outcome Targets. [Employers Mutual Limited] must present its performance results, including improvement opportunities, at each Quarterly Performance Review'.

4.97 Quarterly Performance Review meetings have occurred with key personnel from both the Territory and Employers Mutual Limited in attendance. In accordance with the terms of reference, the meetings have occurred on a quarterly basis. A review of the Quarterly

Performance Review meeting minutes and action items demonstrate that the meetings have been well attended by members noted in the terms of reference. The meetings have provided focused, meaningful discussion and guidance on service delivery and performance.

Annual Review

4.98 Clause 4.3 of *Schedule 4 – Governance* of the services agreement provides for the conduct of an Annual Review. The services agreement states:

> a) an annual review will be undertaken at the fourth Quarterly Performance Review in each Year during the Period of Services. The TPA must provide a report to the Territory at each annual review on how the delivery of Services are supporting the Territory's Strategic Priorities; and
>
> b) New Incentive Outcome Targets may be agreed by the parties at an annual review to ensure there is continuous improvement and alignment of the Services with the Territory's overall objectives.

4.99 At the time of audit fieldwork an Annual Review had not been conducted.

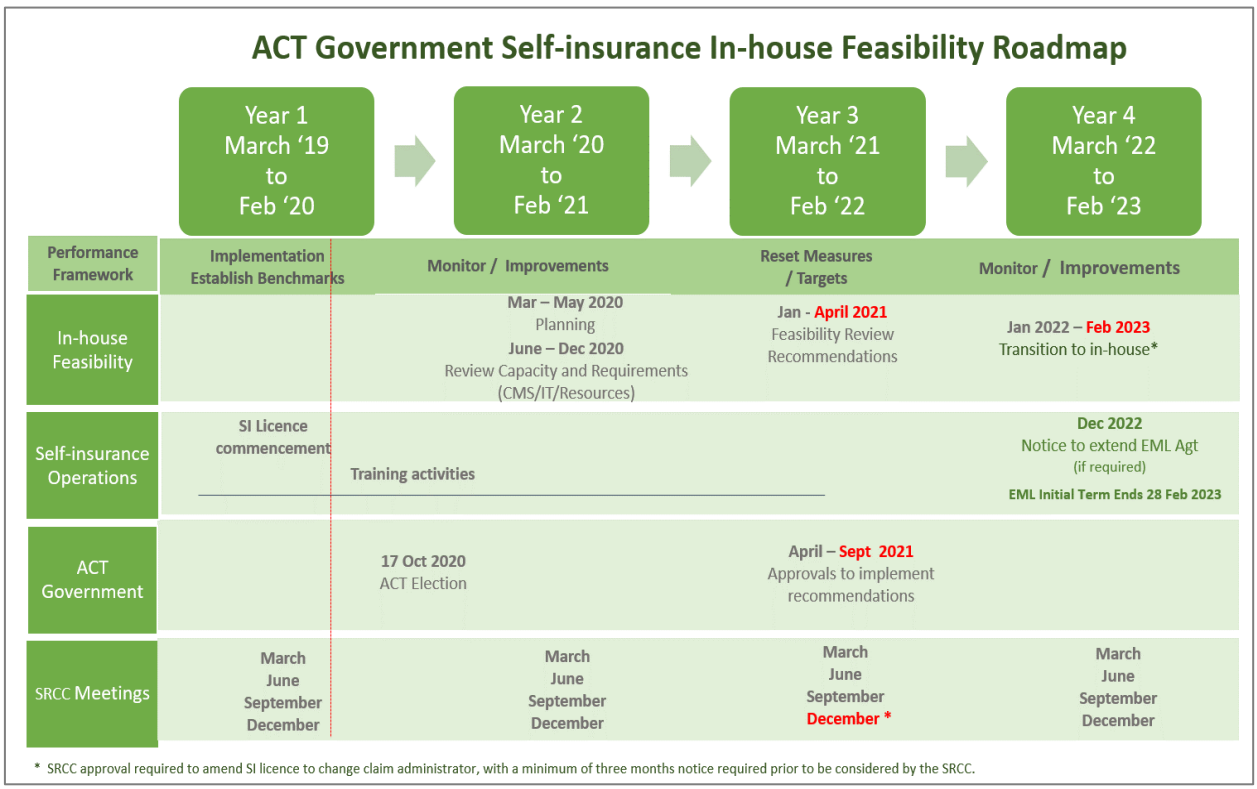
4.100 On 10 October 2018, a services agreement was executed between the Territory and Employers Mutual Limited for claims administration services. Through the services agreement Employers Mutual Limited has been engaged to provide services to February 2023. The services agreement is valued at up to $35.6 million (excluding GST). Through the services agreement there are a range of mechanisms in place for the Territory to oversee the performance of Employers Mutual Limited including Operational Reporting from Employers Mutual Limited; monthly Operational Performance Monitoring meetings, Quarterly Performance Review meetings and an Annual Review meeting between the Territory and Employers Mutual Limited. The services agreement provides the Territory with an effective mechanism by which to manage Employers Mutual Limited to deliver claims administration services.

ACT Government Self-Insurance In-House Feasibility Review

4.101 At the time of becoming a self-insured licensee, it was determined that the ACT Government did not have the capacity to undertake the claims administration role and it was not able to do so in the time required prior to the self-insurance licence being granted.

4.102 The ACT Government has committed to reviewing the public sector's capability to administer claims without the assistance of a third-party administrator. The Workplace Safety and Industrial Relations Division of the Chief Minister, Treasury and Development Directorate, has developed a roadmap to prepare for and undertake an assessment of the Territory's capacity to manage claims administration services internally. The roadmap is shown at Figure 4-5.

Figure 4-5 Self-insurance In-house Feasibility Roadmap



Source: Chief Minister, Treasury and Development Directorate ACT Government Self-Insurance In-house Feasibility Roadmap as at November 2019

4.103 In November 2019, the Workplace Safety and Industrial Relations Division presented the roadmap and a supporting paper to the Public Sector Workers' Compensation Fund Advisory Committee. The paper identified four areas fundamental to the delivery of an in-house claims management administration model. The paper advised that these areas would require additional analysis and scoping as part of the formal review process including the:

- potential increase in resourcing including the recruitment of suitably trained, qualified and experienced staff;
- development and implementation of a Claims Management System that adheres to the requirements of the Safety, Rehabilitation and Compensation Commission. This would include a framework of policies, planning activities, processes and procedures to achieve claim objectives;
- development and implementation of appropriate IT system infrastructure and reporting mechanisms to meet the required specifications of the Safety, Rehabilitation and Compensation Commission. The Directorate has noted that ideally this would be integrated with existing systems; and
- initiation, development and implementation of a training program for all claims administration staff for core areas such as case management, technical legal and compliance, claims outcome optimisation, medical terminology and medical management, motivational interactions and human behaviour and privacy.

4.104 The Workplace Safety and Industrial Relations Division also identified three additional considerations including:

- the cost impact of implementing the in-house claims administration function, in conjunction with existing injury management functions;
- access to specialised support roles and experience, including legal and technical claims knowledge; and
- access to industry specific knowledge through relationships, memberships etc.

4.105 The Workplace Safety and Industrial Relations Division reports on the progress of the in-house feasibility assessment program to the Public Sector Workers' Compensation Fund Advisory Committee as a standing agenda item.

4.106 The Territory has committed to reviewing the public sector's capability to administer claims without the assistance of a third-party administrator. The Workplace Safety and Industrial Relations Division has developed a roadmap to prepare for and undertake an assessment of the Territory's capacity to manage claims administration services internally. This work is in its infancy and will continue to be reported to and monitored by the Public Sector Workers' Compensation Fund Advisory Committee.

Audit reports

Reports Published in 2019-20	
Report No. 05 – 2020	Management of household waste services
Report No. 04 – 2020	Residential Land Supply and Release
Report No. 03 – 2020	Data Security
Report No. 02 – 2020	2018-19- Financial Audits – Computer Information Systems
Report No. 01– 2020	Shared Services Delivery of HR and Finance Services
Report No. 11 – 2019	Maintenance of ACT Government School Infrastructure
Report No. 10 – 2019	2018-19 Financial Audits – Financial Results and Audit Findings
Report No. 09 – 2019	2018-19 Financial Audits – Overview
Report No. 08 – 2019	Annual Report 2018-19
Reports Published in 2018-19	
Report No. 07 – 2019	Referral Processes for the Support of Vulnerable Children
Report No. 06 – 2019	ICT Strategic Planning
Report No. 05 – 2019	Management of the System-Wide Data Review implementation program
Report No. 04 – 2019	2017-18 Financial Audits Computer Information Systems
Report No. 03 – 2019	Access Canberra Business Planning and Monitoring
Report No. 02 – 2019	Recognition and implementation of obligations under the *Human Rights Act 2004*
Report No. 01 – 2019	Total Facilities Management Procurement
Report No. 12 – 2018	2017-18 Financial Audits – Financial Results and Audit Findings
Report No. 11 – 2018	2017-18 Financial Audits – Overview
Report No. 10 – 2018	Annual Report 2017-18
Report No. 09 – 2018	ACT Health's management of allegations of misconduct and complaints about inappropriate workplace behaviour

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