

MEDIA RELEASE**30 June 2020****Transfer of workers' compensation arrangements from Comcare**

Auditor-General, Mr Michael Harris, today presented a report on the **Transfer of workers' compensation arrangements from Comcare** to the Speaker for tabling in the ACT Legislative Assembly.

In March 2019, the Territory became a self-insured licensee 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 found that 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. Although the 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. Mr Harris says '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'.

Nevertheless, the audit found that the Chief Minister, Treasury and Economic Development Directorate, in cooperation with Comcare and Employers Mutual Limited (the Territory's claims management services provider), implemented effective governance arrangements for the Territory's transition to self-insurance and the transfer of claims data, including through various cross-agency committees and working groups. The audit also found that 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*.

The summary of the **Transfer of workers' compensation arrangements from Comcare** audit, with audit conclusions and key findings are attached to this media release.

Copies of **Transfer of workers' compensation arrangements from Comcare: Report No. 06/2020** are available from the ACT Audit Office's website www.audit.act.gov.au . If you need assistance accessing the report please phone 6207 0833 or go to 11 Moore Street, Canberra City.

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

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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.

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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.

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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

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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.

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'.

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.

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.

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.

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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.

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TRANSFER OF CLAIMS DATA

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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.

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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.

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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.

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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

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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

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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 to discuss, amongst other things, the findings documented in the monthly *Key Performance Indicators Report* and actions in place to remedy unfavourable results. 4.26

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.

4.32

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.

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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.

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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

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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.