

# Analysis of most recent materials from Comcare and Australia Post on SBD

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## 1. Letter from Neil Quarmby

### 1.1 Failure to apply test of practicability

The letter acknowledges that there may be increased risk from SBD but relies on AP's erroneous assertion that reading and riding will decrease to "note that there may be OHS benefits". While there is no overall statement in the letter about the level of risk resulting from SBD, it appears that Comcare have concluded that the two cancel each other out. This does not apply the test of whether the employer has taken "all reasonably practicable steps to protect the health and safety at work of the employer's employees" (Part 2, Division 1, 16(1)).

### 1.2 Failure to apply the hierarchy of control

AP has only used administrative controls for the major risks resulting from SBD, yet Comcare has concluded that AP's response is "sound and appropriate".

### 1.3 Introduction of a new regulatory standard

The letter's assertion that "the process would remain within acceptable risk thresholds" introduces a whole new regulatory standard. The employer's duty is absolute and only qualified by practicability, defined through case law as based on:

- the likelihood of harm;
- the degree of harm that might result;
- what the dutyholder knows, or ought reasonably to know, about the risk;
- the availability and suitability of ways to eliminate or minimise the risk; and
- whether the cost of control is grossly disproportionate to the risk.

This definition is provided in the National Model OHS Act.

Comcare's use of "acceptable risk thresholds" introduces a new legal test of compliance. A qualification of whether the risk is "within acceptable risk thresholds" is not made anywhere in the Act or the Regulations. If Comcare is to introduce a new set of criteria for the employers' duty under the Act, this requires more explanation. What counts as "within acceptable risk thresholds"?

### 1.4 Use of the position to deal with PINs

Given Comcare's introduction of a new legal test for compliance, the use of this position to deal with PINs requires considerable effort to train HSRs. This new standard requires that HSRs must now make judgments of whether their employer has remained "within acceptable risk thresholds" or risk having their PINs revoked by Comcare Inspectors. Comcare must now provide clear standards that state what the "acceptable risk thresholds" are for every workplace risk in Commonwealth workplaces.

## 2. **Final Risk Assessment Separate Bundle Delivery (SBD) - Comcare**

### 2.1 Status of the report

This report does not meet the requirements of the Commonwealth's OHS Regulations, which require that risk assessments must consider:

- (a) the actions and movements involved in the task;
- (b) the layout of:
  - (i) the workplace at which the task is carried out; or
  - (ii) the place, other than a workplace, at which the task is carried out;
- (c) the layout of the workstation at which the task is carried out;
- (d) the posture and position that must be taken by each individual involved in carrying out the task;
- (e) the duration of the task;
- (f) the frequency with which the task is carried out;
- (g) the location of each load involved in the task;
- (h) the distance that a load is moved as part of the task;
- (i) the weight involved in the task;
- (j) the force required to carry out the task;
- (k) the characteristics of each load involved in the task;
- (l) the characteristics of any plant that is used in the course of carrying out the task;
- (m) the organisation of work at:
  - (i) the workplace at which the task is carried out; or
  - (ii) the place, other than a workplace, at which the task is carried out;
- (n) the work environment of:
  - (i) the workplace at which the task is carried out; or
  - (ii) the place, other than a workplace, at which the task is carried out;
- (o) the skills and experience of each individual involved in carrying out the task;
- (p) the age of each individual involved in carrying out the task;
- (q) the clothing worn by each individual involved in carrying out the task;
- (r) the special needs of each individual involved in carrying out the task;
- (s) any other matter that is considered relevant following consultations required under the Act or these Regulations. (5.03 (2)).

Clearly, any risk assessment that is conducted "without work observation" would not be able to consider these risk factors and unsurprisingly the document does not adequately address them.

At our meeting, Phil Beaumont admitted that the report was not, in fact, a risk assessment, but both Comcare representatives at the meeting continued to call the report a risk assessment. Given this ambiguity, it is hard to determine the status of the report from Comcare's point of view. Is it a risk assessment? Is it a review of the risk assessments done by the different consultants? If it's not a risk assessment, what role has it played in Comcare's decision-making and what authority does it have?

### 2.2 "Relative" versus "absolute" measures of risk

In the context of manual handling risk assessment, the report's implication that "absolute measures of risk" are somehow superior to "relative" measures makes no sense at all. There is no other way to assess manual handling risk other than the different techniques used or reviewed in the various reports.

Rick Dawson's claim that MODAPTS is an absolute measure of risk demonstrates that he doesn't actually know what MODAPTS is – a tool to estimate the time required to complete tasks. It is not a risk assessment method, but a tool that can provide information to a risk assessment, as both consultants have used it.

When challenged, neither Rick nor Phil Beaumont could identify any “absolute measure of risk” that would be available to assess the risk of manual tasks. Phil Beaumont agreed that the most suitable risk assessment method is the National Standard. That being the case, they should have given greater weight to our risk assessment, which used the National Standard, than LaTrobe’s, which did not. The reliance on ManTRA to accept that the risks associated with other delivery equipment are “within tolerance” is further evidence that Comcare does not understand manual handling risk assessment.

### **2.3 Reliance on AP injury statistics**

In several places, the report refers to injury statistics provided by Australia Post (AP). There are two main problems with reliance on these statistics:

- MSDs can result from both acute and cumulative exposures. In the short term, injury statistics cannot reflect cumulative exposures to the risk factors of interest.
- There is strong evidence that AP’s injury statistics understate occupational ill-health. The CEPU has demonstrated that AP’s use of injury data as a criterion for paying bonuses to managers has resulted in under-reporting of injuries. Rwth’s investigation of the impact of AP’s enforceable undertaking shows that neither the AP or the Comcare data has included all known fatalities, including one in consideration of which Comcare is currently prosecuting AP.

Any reliance on AP’s injury statistics should be qualified by these considerations.

### **2.4 Lack of clarity throughout the report**

The report is very badly written, making some of the assertions included in the report difficult to understand. There are several sentences that make no sense, eg:

“Across the three key categories, with the nature of the tasks benefiting from additional musculoskeletal breakdown, the consultants discussed the nature of the tasks, hazards and associated risk both individually and in combination.”

“Forward neck flexion effects postural endurance when neck inclination angles exceed 35 degrees, particularly in circumstances confounded by the weight of a helmet.”

### **2.5 Unfounded conclusions on practicability of modifications of the bike**

At the meeting, the Comcare representatives acknowledged that they have no expertise in vehicle design, nor any independent expertise in the ADRs. They have evidently accepted AP’s assertions about the bike design, despite AP’s failure to produce any competent risk assessment of the possible modifications, again without any consideration of the requirements for practicability as discussed above.

### **2.6 Failure to understand or apply the MODAPTS analyses**

Comcare took the conclusions of the AP-sponsored MODAPTS analysis at face value without noting that the figures (when corrected) show a considerable increase in the time required to undertake SBD. Both MODAPTS analyses show that the only way to have achieved the times recorded by AP during the trial is by short cuts, such as speeding, reading and riding, etc. The discussion about the MODAPTS analysis undertaken by the AP consultant may include a claim that “there does not appear to be any added postural hazard from using the SBD carrier”, but such a conclusion cannot be drawn from a MODAPTS analysis which is not a risk assessment process. The results from the trial are NOT consistent with the findings of the MODAPTS assessment, reinforcing our empirical observations of short cuts being taken in order to complete delivery without censure.

## 2.7 Cognitive load

The AP assessment, conducted by LaTrobe University, does not consider the issue of throwing off upside down and the consequent need to read upside down during delivery. They did not observe this part of the SBD work process and were not asked to examine the consequences of this change to the work process. Reading upside down is a totally different cognitive process and adds considerably to the cognitive load of the work. Any conclusions in relation to cognitive load reached by the LaTrobe assessment is therefore not reliable or complete. Comcare does not acknowledge the range of issues our assessment identified related to increased cognitive load.

## 2.8 Read and ride behaviour

Given that the SBD work process requires that PDOs read while they are controlling their vehicle, the assertion that “read and ride behaviour was reported as almost impossible” beggars belief. We observed read and ride behaviour at each of the pilot depots and such behaviour can only be expected to increase if the times for delivery are to be less than the MODAPTS predicted increase of 40%.

## 2.9 Introduction of new regulatory standards

Comcare’s report asserts that controls are only needed “where there is an unacceptable risk to health and safety”. This is not the case. The Commonwealth OHS Act imposes a duty on employers to: “take all reasonably practicable steps to protect the health and safety at work of the employer’s employees” (Part 2, Division 1, 16(1)). This duty is absolute and only qualified by practicability, defined through case law as based on:

- the likelihood of harm;
- the degree of harm that might result;
- what the dutyholder knows, or ought reasonably to know, about the risk;
- the availability and suitability of ways to eliminate or minimise the risk; and
- whether the cost of control is grossly disproportionate to the risk.

This definition is provided in the National Model OHS Act.

The Comcare report also concludes that “the level of residual risk relating to this new work process is within threshold”, despite acknowledging that all risk assessments have found that the risks of SBD are greater than the risks of current work systems. Both of these assertions introduce new legal tests of compliance. A qualification of whether the risk is “acceptable” or “unacceptable” is not made anywhere in the Act or the Regulations, nor is the notion of a risk being “within threshold”. If Comcare is to introduce a new set of criteria for the employers’ duty under the Act, this requires more explanation. What counts as “acceptable risk”? What constitutes a risk being “within threshold”?

When asked how these new qualifications were consistent with Comcare’s enforcement policy, Phil asserted that Comcare does not and could not have an enforcement policy. This is untrue – Comcare is one of the agencies party to the *National Occupational Health and Safety (OHS) Compliance and Enforcement Policy*. This further demonstrates that the document is not consistent with sound regulatory practice.

### 3. Future Delivery Design. SBD Implementation and Management Support Plan

The plan is vague and unclear and the recent amendments have not resulted in improvements. The plan presumes that SBD will work and provides no checks or balances that would allow for changes to the work process. In particular, the plan does not provide a suitable method for ensuring that there is an effective risk control response, should the adverse outcomes we predict eventuate. In fact, the plan implies that increases in round time or fatigue could only be caused by PDO inadequacy.

The proposed arrangements for round times are of particular concern. AP instructs that "greater than expected" increase in round times should result in a PRP, ie that the increase must be a result of PDO inadequacy. Given our MODAPTS data, if rounds do not increase by 40%, the PDO should be counselled for using short cuts! Given the lack of sound data about round times, any presumptions about the causes of increased or decreased times are dangerous, other than those based on MODAPTS data.

The plan does not properly address any of the issues raised in our risk assessment. Even basic issues like shelter and nourishment are virtually ignored, with only a mention that AP "will work toward" providing shelter on rounds. It is not clear whether our concerns about cognitive load, bundle size and bag design have been addressed.

The plan provides no details about the implementation and monitoring process, eg what the surveys will cover, the criteria that are being used to evaluate the process, the content of the training courses. These details are obviously in different documents to those provided. While the joint monitoring arrangements may be valuable, without clarity about the criteria for the monitoring, they risk being merely window-dressing.

A sound process of implementation evaluation requires clear outcomes and measures, directly related to the identified potential hazards and exposures, and directed at monitoring and modifying the implementation strategies to mitigate any identified risks. Robust evaluation involves reliable, impartial and transparent data collection clearly linked to defined measures. The proposed process appears to be internally developed, measured and evaluated, using only subjective and qualitative processes without any controls or other comparative measures.

Overall, the plan belies the "I am for zero" campaign and provides clear evidence that safety does *not* come first in AP.