

OFFICE OF THE INFORMATION COMMISSIONER (QLD)

Application 144/06

Participants:

Mr Richard Cumpston
Applicant

WorkCover Queensland
Respondent

DECISION AND REASONS FOR DECISION

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REASONS FOR DECISION

1. Background

- 1.1 The applicant seeks review of a decision of WorkCover Queensland (WorkCover) refusing him access to a WorkCover actuarial report for the period ending 30 June 2005 (the Report).
- 1.2 By letter dated 6 January 2006, the applicant applied to WorkCover under the *Freedom of Information Act 1992* (Qld) (the FOI Act) for access to “a copy of the actuarial report of outstanding claims at 30/6/05, including all the appendices”.
- 1.3 By letter dated 24 February 2006, Ms Schultz, Information Release Officer, WorkCover, informed the applicant of her decision to refuse access on the basis that the Report was sourced and brought into existence in the course of WorkCover’s “commercial activities” pursuant to s.475 of the *Workers’ Compensation & Rehabilitation Act 2003* (the WCR Act) and therefore, the FOI Act did not apply to the Report.
- 1.4 By letter dated 27 February 2006, the applicant sought internal review of Ms Schultz’ decision.
- 1.5 Following receipt of the internal review application, Mr Anderson, Manager, Claims and Information Management, WorkCover, telephoned the applicant and invited him to submit material in support of his freedom of information (FOI) application.
- 1.6 By letter dated 6 March 2006, the applicant provided submissions to Mr Anderson in support of his FOI application which, *inter alia*, described his intended use for the Report as follows:

“...to assist public discussion about possible changes to workers compensation benefits, in Queensland and elsewhere in Australia.”

- 1.7 On 13 March 2006, Mr Anderson made an internal review decision affirming Ms Schultz’ decision to refuse access to the Report on the grounds that the FOI Act did not apply due to the operation of s.475 of the WCR Act. Mr Anderson’s decision explained that even if the FOI Act was found to apply to the Report, WorkCover would still refuse access on the basis that the Report is subject to the exemption provided for by s.45 of the FOI Act.
- 1.8 By letter dated 23 March 2006 and received in this office on 24 March 2006, the applicant applied for external review of Mr Anderson’s decision to refuse access to the Report.

2. Steps taken in the external review process

- 2.1 On 30 March 2006, this office contacted WorkCover to discuss this external review. Ms Schultz advised that WorkCover objected to providing this office with a copy of the Report due to the highly sensitive nature of the information it contained. By letter of 30 March 2006, this office asked WorkCover to provide a written explanation of the reasons for its objection.
- 2.2 On 6 April 2006, this office contacted the applicant to discuss this external review. The applicant advised that he had recently been granted access, under FOI legislation, to the Victorian WorkCover Authority actuarial valuation of outstanding claims as at 30 June 2005 (the Victorian Report) and offered to send this office a copy. The applicant provided this office with a copy of the Victorian Report on 10 April 2006.

2.3 By letter dated 7 April 2006, Mr Anderson provided this office with an explanation of WorkCover's reasons for refusing this office access to the Report for the purposes of this external review. Essentially, WorkCover's objection was based on the contention that the FOI Act did not apply to the Report. In this letter, WorkCover submitted that:

"The report is a confidential report used as a basis for deciding the future commercial activities of Workcover. The Workers' Compensation & Rehabilitation Act 2003 requires WorkCover to 'as far as practicable, deliver insurance as a commercial enterprise'. Consistent with the activities of a commercial insurer or self-insurer and the requirements of section 383 this report is not released to any third party. Specifically, the report is not released to any member of the government or public. Maintaining the confidentiality of the report is fundamental to WorkCover meeting the requirement of section 383 and therefore, the requested report is a document that only exists so that WorkCover can undertake its commercial activities. This report is specifically excluded from FOI by section 475." [my emphasis]

2.4 By letter dated 19 April 2006, this office provided WorkCover with a further opportunity to explain its reasons for refusing this office access to the Report for the purposes of this external review.

2.5 On 3 May 2006, WorkCover provided this office with a copy of the Report but did not provide any further submissions.

2.6 By letter dated 15 May 2006, the applicant informed this office that he had been granted access, under FOI legislation, to the WorkCover Authority of New South Wales (NSW) actuarial valuation of outstanding claims liability for the NSW Workers Compensation Nominal Insurer as at 31 December 2005 (the NSW Report). By letter dated 19 May 2006, I asked the applicant if he would be prepared to provide this office with a copy of the NSW Report for the purposes of deliberations in this external review. The applicant provided this office with a copy of the NSW Report on 23 May 2006.

2.7 On 2 June 2006, I held a telephone conference with Mr Anderson. Mr Anderson told me that:

- the Report is prepared for the WorkCover Board;
- the Report is not provided to a Department or Minister; and
- WorkCover does not have a statutory obligation to report upon the information contained in the Report.

2.8 Based on the content of WorkCover's letter dated 7 April 2006 (see para 2.3) and my telephone conference with Mr Anderson (see para 2.7), I informed the applicant and WorkCover (by letter dated 5 June 2006) that I had formed the preliminary view that:

- the Report was not subject to the application of the FOI Act; and
- WorkCover was entitled to refuse access to the Report.

I provided the applicant with my full reasons for forming this preliminary view and invited him to lodge written submissions by 23 June 2006 if he wished to contest this view.

2.9 By letter dated 7 June 2006, the applicant informed me that he did not accept my preliminary view and provided additional evidence in support of his case. The applicant advised that a further submission may be made before 23 June 2006.

2.10 By letter dated 19 June 2006, I informed WorkCover that the applicant contested my preliminary view. I invited WorkCover to provide any further submissions in support of its case, particularly in response to the following submissions made by the applicant in his letter of 7 June 2006:

"I do not accept ... that the report was not prepared pursuant to any statutory reporting obligation or for provision to the relevant department or Minister."

[and]

"It is clear that WorkCover has extensive statutory reporting obligations, and actuarial estimates of outstanding claims are vital in meeting these obligations ... [see sections 414 and 461 of the WCR Act]."

2.11 By letter dated 22 June 2006, the applicant provided this office with a further one-page submission in response to my preliminary view. In this submission, the applicant referred me to s.475(2) and s.475(3) of the WCR Act and stated as follows:

"As the document I seek relates to applications for compensation and proceedings for damages, it is not about excluded activities, and is not excluded from the Freedom of Information Act."

2.12 On 15 August 2006 WorkCover provided this office with a statutory declaration of Christina Karagrighou, Board Secretary of WorkCover, sworn on 15 August 2006 which constituted WorkCover's submissions for the purpose of this review. The content of the statutory declaration:

- confirmed the statements made by Mr Anderson in the telephone conference referred to in paragraph 2.7 of this decision;
- confirmed the content of WorkCover's letter dated 7 April 2006; and
- addressed the issues raised by the applicant referred to in paragraph 2.10 of this decision.

2.13 By letter dated 15 August 2006, I provided the applicant with a copy of the statutory declaration of Ms Karagrighou and invited any submissions in response to be made by 25 August 2006.

2.14 On 25 August 2006, the applicant provided me with his response to WorkCover's submissions in which he stated:

"None of the declaration affects the view in my letter of 7/6/05 that 'it is clear that WorkCover has extensive statutory reporting obligations, and actuarial estimates of outstanding claims are vital in meeting these obligations'."

2.15 In making this decision, I have taken into account the following material:

- the Report;
- the applicant's FOI access application dated 6 January 2006;
- Ms Schultz' initial decision dated 24 February 2006;
- the applicant's application for internal review dated 27 February 2006;
- the applicant's further submissions to WorkCover dated 6 March 2006;
- Mr Anderson's internal review decision dated 13 March 2006;
- the applicant's external review application dated 23 March 2006;
- letter from WorkCover to this office dated 7 April 2006;
- file notes of telephone consultations held between staff members of this office and Ms Schultz on 30 March 2006 and Mr Anderson on 5 April 2006, 25 May 2006, 31 May 2006 and 2 June 2006;
- the applicant's submissions dated 7 June 2006, 22 June 2006 and 25 August 2006;
- statutory declaration of Ms Karagrighou sworn 15 August 2006;
- WorkCover's 2004-2005 annual report;
- the NSW Report and Victorian Report; and
- relevant legislation, case law and extrinsic material.

3. Document in issue

- 3.1 The document in issue in this review is the Report. The Report is an actuarial valuation of outstanding claims prepared by PricewaterhouseCoopers Actuarial Pty Ltd for WorkCover as at 30 June 2005. The Report comprises 67 pages plus appendices.

4. Jurisdiction

- 4.1 This review raises a jurisdictional issue in terms of whether or not the FOI Act applies to the Report. The nature and extent of the powers and functions of the Information Commissioner in relation to jurisdictional issues of this kind are well established (see *Re Christie and Queensland Industry Development Corporation* (1993) 1 QAR 1 at para 5-13, *Re English and Queensland Law Society Inc* (1995) 2 QAR 714 at para 9-11, and *Re Hansen and Queensland Industry Development Corporation* (1996) 3 QAR 265 at para 12-13).
- 4.2 On this basis, I am satisfied that the Information Commissioner (or her delegate) has both the power, and a duty, to consider and determine issues relating to the limits of the Information Commissioner's jurisdiction when they are raised as an issue in an application for external review made under Part 5 of the FOI Act.
- 4.3 In this case, that power extends to deciding whether or not WorkCover is entitled to refuse access to the Report on the ground that it is excluded from the application of the FOI Act by s.11D of the FOI Act and s.475 of WCR Act.

5. Relevant legislation

- 5.1 Section 11D of the FOI Act provides:

*"11D (1) Schedule 3 lists provisions of other Acts that exclude or limit the operation of this Act.
(2) Schedule 3 is included for information purposes."*

- 5.2 Schedule 3 of the FOI Act relevantly provides:

"Workers' Compensation and Rehabilitation Act 2003, sections 379(2) and 475(2)"

- 5.3 Section 379(2) of the WCR Act applies to certain documents of Q-COMP, the Workers' Compensation Regulatory Authority. It has no relevance to this review.

- 5.4 Section 475 of the WCR Act relevantly provides:

"(2) The Freedom of Information Act 1992 does not apply to a document received or brought into existence by WorkCover in carrying out its excluded activities.

*(3) In this section —
community service obligations see section 409.
excluded activities means—*

- (a) commercial activities other than activities about policies, applications for compensation, proceedings for damages; or
(b) community service obligations prescribed under a regulation."*

- 5.5 Section 383 of the WCR Act relevantly provides:

*"(2) In performing its functions, WorkCover—
(a) must, as far as practicable, deliver insurance as a commercial enterprise;
..."*

- 5.6 In its internal review decision, WorkCover found that the FOI Act does not apply because the Report:

“...was sourced and brought into existence in the course of WorkCover Queensland’s ‘commercial activities’, which falls within the definition of ‘excluded activities’ in s.475.”

5.7 In deciding whether the Information Commissioner has jurisdiction to conduct this external review, I must determine whether this statement is correct.

6. **Comparison with other jurisdictions**

6.1 As stated above, the applicant has obtained copies of the following documents through FOI processes in NSW and Victoria:

1. Actuarial valuation of outstanding claims liability for the NSW Workers’ Compensation Nominal Insurer as at 31 December 2005; and
2. Victorian WorkCover Authority actuarial valuation of outstanding claims as at 30 June 2005.

6.2 The applicant has relied on the release of the NSW Report and the Victorian Report to support his argument that the Report is subject to the FOI Act and should be released to him.

6.3 The following table sets out the basic structure of the workers’ compensation and insurance statutory regimes in Queensland, NSW and Victoria. The table demonstrates that there are significant differences between jurisdictions. For example, although there are ostensibly three “WorkCover” entities, their functions differ markedly in each state.

Workers’ Compensation & Insurance Statutory Regimes			
Jurisdiction	Regulator	Insurer	Exclusion from FOI legislation
Queensland	Workers’ Compensation Regulatory Authority (Q-COMP)	WorkCover Queensland	Q-COMP: s.11D FOI Act and s.379(2) WCR Act WorkCover: s.11D FOI Act and s.475(2) WCR Act
New South Wales	WorkCover Authority of NSW (WorkCover NSW)	Workers’ Compensation Nominal Insurer (Nominal Insurer)	The Nominal Insurer is an “exempt body” in respect of certain functions under the <i>Freedom of Information Act 1989</i> (NSW): s.9 and Schedule 2
Victoria	Victorian WorkCover Authority	Victorian WorkCover Authority	None

6.4 The critical difference between WorkCover and the corresponding bodies in NSW and Victoria is that WorkCover has no public regulatory functions.

6.5 When the WCR Act was enacted in 2003, WorkCover’s regulatory, review and policy functions in relation to Queensland’s workers’ compensation scheme were removed. Q-COMP was established as the body responsible for these functions under the WCR Act. I note that documents received or brought into existence by Q-COMP in carrying out its function of monitoring the financial performance of self-insurers are also excluded from the application of the FOI Act pursuant to s.379(2) of the WCR Act.

- 6.6 Further, there are no provisions in the NSW and Victorian workers' compensation and insurance legislation which limit or exclude the application of FOI legislation to WorkCover NSW or the Victorian WorkCover Authority. I note that NSW's Nominal Insurer is an "exempt body" under the NSW FOI Act with respect to some of its functions, however, this exemption can be distinguished from the exclusions applicable to WorkCover under s.475(2) of the WCR Act.
- 6.7 Having considered each statutory scheme in detail, I am satisfied that the Queensland workers' compensation and insurance scheme and its relationship with the FOI Act can be distinguished from that found in other jurisdictions. Accordingly, I find that the FOI release of the NSW and Victorian Reports has no bearing on this external review.

7. Meaning of "commercial activities"

- 7.1 Section 475(3) of the WCR Act provides that activities about policies, applications for compensation and proceedings for damages do not come within the scope of the term "commercial activities". No other definition of "commercial" is contained in the WCR Act, or in the *Acts Interpretation Act 1954* (Qld) (the AIA). In *Re Hansen*, the Information Commissioner discussed the meaning of "commercial activities" in the context of s.11A of the FOI Act:

"25. Major dictionaries give the primary meaning of the adjective "commercial" as "of, connected with, or engaged in, commerce; mercantile" (Collins English Dictionary, Third Aust. Ed), "of, engaged in, bearing on, commerce" (Australian Concise Oxford Dictionary), "of, or of the nature of, commerce" (Macquarie Dictionary). The corresponding primary meaning of the noun "commerce" is "the activity embracing all forms of the purchase and sale of goods and services" (Collins English Dictionary, Third Aust. Ed.), "exchange of merchandise or services ... buying and selling" (Australian Concise Oxford Dictionary), "interchange of goods or commodities" (Macquarie Dictionary)." [see page 274]

Reference to extrinsic material

- 7.2 To resolve this question of statutory interpretation, regard may also be had to the meaning the legislature is taken to have intended for the term "commercial activities". In determining this, it is appropriate to have regard to extrinsic material: s.14B of the AIA and *Bropho v Western Australia* (1990) 171 CLR 1 at 20. This includes reference to the "legislative history and antecedent circumstances": *Callanan v Bush* [2004] QSC 088 at [23] and *Risk v Northern Territory of Australia and Another* (2002) 210 CLR 392 at [83] per Gummow J.
- 7.3 Explanatory Notes are "extrinsic material" to which regard may be had to the extent permitted by the AIA. Section 14B(1) of the AIA provides:

"(1) Subject to subsection (2), in the interpretation of a provision of an Act, consideration may be given to extrinsic material capable of assisting in the interpretation—
(a) if the provision is ambiguous or obscure—to provide an interpretation of it; or
(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result;
or
(c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision."

- 7.4 Section 14B(3) of the AIA relevantly provides:

"(3) In this section—
extrinsic material means relevant material not forming part of the Act concerned, including, for example —

...
 (e) an explanatory note or memorandum relating to the Bill that contained the provision, or any other relevant document, that was laid before, or given to the members of, the Legislative Assembly by the member bringing in the Bill before the provision was enacted ...”

- 7.5 The Explanatory Notes to the *Workers’ Compensation & Rehabilitation Bill 2003* (the WCR Bill) do not assist in confirming the interpretation of the ordinary meaning of “commercial activities”. With respect to s.475, these Explanatory Notes provide:

“Application of various other Acts

Clause 475 replaces section 423 of the WorkCover Queensland Act 1996 which outlines the application of various Acts and has not been changed.”

- 7.6 Accordingly, I consider it is appropriate for me to have regard to the legislative history in order to confirm the ordinary meaning of the term “commercial activities” as it appears in s.475 of the WCR Act.

- 7.7 In May 2003 the *WorkCover Queensland Act 1996* (Qld) (the WorkCover Act) was repealed and replaced by the WCR Act to provide for the separate delivery and regulation of the workers’ compensation scheme in Queensland. Under the WorkCover Act, s.423 provided for the application of various other Acts in exactly the same terms as s.475 of the WCR Act. Accordingly, I consider it is appropriate to have regard to the Explanatory Notes to the *WorkCover Queensland Bill 1996* pertaining to s.423 to determine the legislature’s intended scope of the term “commercial activities”. These Explanatory Notes relevantly provide:

“WorkCover will be exempt from the Freedom of Information Act 1992 for documents relating to its commercial activities and community service obligations. This is designed to protect WorkCover’s intellectual property with respect to its commercial insurance business, to prepare WorkCover for likely competition in the future.

This does not imply restricted access to personal information relating to applications for compensation under the Bill. WorkCover will continue to provide claimants with the same standard of personal information provided by the workers’ compensation board.” [my emphasis]

- 7.8 In his submissions dated 7 June 2006, the applicant contends that it is not “reasonable to use explanatory notes from a bill for an Act which has been replaced by the one now under consideration”. For the reasons given in paragraphs 7.2 – 7.7 of this decision, I find that it is appropriate for me to have regard to the Explanatory Notes to the *WorkCover Queensland Bill 1996* in determining the meaning of “commercial activities”.

- 7.9 The Explanatory Notes demonstrate that the legislature intended the term “commercial activities” to include activities relating to WorkCover’s intellectual property pertaining to its commercial insurance business and also those activities engaged in by WorkCover to prepare it for future competition. Further, the Explanatory Notes establish that it was the legislature’s intention to protect documents relating to such activities from disclosure under the FOI Act.

- 7.10 Accordingly, I find that the term “commercial activities”, as it appears in s.475 of the WCR Act, encompasses activities relating to WorkCover’s intellectual property relating to its commercial insurance business.

WorkCover’s intellectual property

- 7.11 With respect to the meaning of “commercial activities”, the applicant contends that:

“Even if WorkCover’s intellectual property is a relevant issue, I think it very unlikely that the actuarial report ... contains any ideas that would be unfamiliar to potential

competitors. The report is likely to use techniques very similar to those the same firm has used in preparing reports on outstanding claims for WorkCover NSW and Victoria, and these reports are available through FOI.”

7.12 As stated in paragraph 6.7 of this decision, I have considered the statutory schemes in each jurisdiction in detail and am satisfied that because Queensland workers’ compensation and insurance scheme and its relationship with the FOI Act differs from that found in other jurisdictions, the FOI release of the NSW and Victorian Reports has no bearing on this external review. Accordingly, I do not accept the applicant’s submission that the information contained in the Report would be familiar to competitors and that its release would, therefore, not compromise WorkCover’s intellectual property.

Policies, applications for compensation and proceedings for damages

7.13 The applicant contends that the Report does not relate to WorkCover’s “commercial activities” because it contains information about “activities relating to policies, applications for compensation and proceedings for damages”. The applicant submits that because these activities are specifically excluded from the definition of “commercial activities”, the Report should be released under the FOI Act. Specifically, the applicant contends as follows:

“I do not accept the view that the availability of information about applications for compensation and proceedings for damages should be confined to individual applications and proceedings, and should exclude statistics. If this was the meaning intended by section 473(3) of the WCR Act, then it would have been simple to word it accordingly.”

7.14 As stated in paragraphs 7.2 – 7.7 of this decision, it is appropriate in this case to have regard to extrinsic material, including the “legislative history and antecedent circumstances”, in order to confirm the meaning intended by the legislature for the term “commercial activities”.

7.15 The Explanatory Notes to the *WorkCover Queensland Bill 1996* establish that “activities about policies, applications for compensation and proceedings for damages” were specifically excluded from the definition of “commercial activities” to ensure that access to personal information relating to applications for compensation was not restricted so as to allow claimants the same standard of information provided by the workers’ compensation board.

7.16 In light of the meaning conveyed by the Explanatory Notes, I do not accept the applicant’s submission that the phrase “activities about policies, applications for compensation and proceedings for damages” encompasses statistical data. Rather it is limited to information relating to individual applications for compensation.

8. Was the Report received or brought into existence by WorkCover in carrying out its commercial activities?

8.1 The fundamental task in this review is the characterisation of the nature of the activity carried out by WorkCover during the course of which the Report was received or brought into existence (see *Re Readymix Holdings Pty Ltd and Port of Brisbane Corporation & Anor* (2003) 6 QAR 294 at para 21 and *Re Walsh (as agent for Qld Newspapers Pty Ltd) and Ergon Energy Corporation Limited* (2004) 6 QAR 419 at para 23).

8.2 In determining whether the Report was received or brought into existence by WorkCover in carrying out its commercial activities, the content of the Report is relevant only to the extent that it informs the proper characterisation of the nature of the activity carried out by WorkCover, during the course of which the Report was received.

8.3 To determine the nature of the activity carried out by WorkCover, I consider it necessary for me to have regard to:

- the purpose of the Report; and
- whether the Report was prepared pursuant to any statutory reporting obligations.

Purpose of the Report

8.4 In her statutory declaration sworn 15 August 2006, Ms Karagrigoriou states that:

“5. The Actuarial Report informs the Chief Executive Officer and the WorkCover Queensland Board of Directors.

6. The Actuarial Report was prepared by Price Waterhouse Coopers (PWC) pursuant to a request from WorkCover’s chief Financial Officer, Mr David Errol Heley.

7. The Actuarial Report was prepared solely for the purpose of informing WorkCover and it was never intended that the Actuarial Report would be made available to anyone other than:

(a) the individuals referred to in paragraph 6 of this declaration; and

(b) the Queensland Audit Office, in the event that it requires access pursuant to Section 46G of the Financial Administration and Audit Act 1977.”

[and]

“15. ... the purpose of the Actuarial Report is to provide WorkCover an in-depth estimate of WorkCover’s outstanding claim liabilities and also allows WorkCover to make appropriate provision for future claim and premium costs.

16. However, the purposes of the Actuarial Report extends beyond just a calculation of outstanding claim liabilities. The Report is significant in that it provides an analysis of claim patterns and future trends. WorkCover uses this information to develop internal claims management policies and to set premium costs, which in turn assist WorkCover to remain financially viable.

17. Parts of the Actuarial Report outline confidential internal policy decisions implemented by WorkCover. This commercially sensitive information is used by PWC when preparing the Actuarial Report. If these internal policy decisions were made public, WorkCover would almost certainly need to revise the way it approaches certain classes of claims.”

8.5 In relation to paragraph 16 of Ms Karagrigoriou’s statutory declaration, the applicant submits that the information in the Report would not be used to “set premium costs...because premiums are set before 30 June each year”. I have carefully considered this submission and find on the evidence before me that the setting of WorkCover premiums is an ongoing process informed by the Report.

Statutory reporting obligations

8.6 Section 414 of the WCR Act relevantly provides:

“(1) WorkCover’s board must—

(a) keep the Minister reasonably informed of the operations, financial performance and financial position of WorkCover, including the assets and liabilities, profits and losses and prospects of WorkCover; and

(b) give the Minister reports and information that the Minister requires to enable the Minister to make informed assessments of matters mentioned in paragraph (a); and

...”

8.7 Section 461 of the WCR Act provides:

“(1) As soon as practicable after the end of each financial year, WorkCover must give the Minister a report stating the extent to which WorkCover is fully funded.

(2) WorkCover must seek the advice of an appropriately qualified actuary in preparing the report.”

8.8 The applicant submits that the Report is prepared pursuant to these statutory reporting obligations. He contends as follows:

“Under section 414 ... WorkCover’s board must keep the Minister reasonably informed of the operations, financial performance and financial position of WorkCover.

Under section 461, WorkCover must give the Minister a report stating the extent to which WorkCover is fully funded, and WorkCover must seek the advice of an appropriately qualified actuary in preparing the report. Full funding requires the value of the assets to be greater than the liabilities, and actuarial estimates of the outstanding claims made up 98.7% of the liabilities at 30/6/05.

...

It is clear that WorkCover has extensive statutory reporting obligations, and actuarial estimates of outstanding claims are vital in meeting these obligations.”

8.9 In paragraph 18 of her statutory declaration, Ms Karagrigoriou states:

“The Actuarial Report is not prepared pursuant to any statutory reporting obligations of WorkCover under the Workers’ Compensation and Rehabilitation Act.”

8.10 With respect to the reporting obligations under s.414 of the WCR Act, Ms Karagrigoriou’s statutory declaration provides:

“12. WorkCover satisfies its reporting obligations under section 414 of the Workers’ Compensation and Rehabilitation Act by providing the Minister with quarterly and annual reports.

13. The quarterly reports are based on WorkCover’s approved corporate plan and statement of corporate intent, and relates to WorkCover’s day-to-day operations.

14. The Board also meets its obligations under section 414 of the Workers’ Compensation and Rehabilitation Act by providing the Minister with WorkCover’s annual report, as required by section 412 of the Workers’ Compensation and Rehabilitation Act.”

8.11 With respect to the reporting obligations under s.461 of the WCR Act, Ms Karagrigoriou states that:

“21. The report stating the extent to which WorkCover is fully funded referred to in section 461 of the Workers’ Compensation and Rehabilitation Act is the Annual Report prepared by WorkCover and not the Actuarial Report.

...

23. WorkCover seeks the advice and assistance of PWC as the ‘appropriately qualified actuary’ under section 461 of the Workers’ Compensation and Rehabilitation Act when compiling the Annual Report, but this advice is something separate to the instructions provided to PWC to prepare the Actuarial Report.”

8.12 I have carefully considered the information contained in the Report, the relevant statutory provisions and the submissions made by the applicant and WorkCover. On the basis of the information before me, I find that the Report:

- is prepared for the purpose of informing the WorkCover Board and aiding WorkCover in:
 - analysing claim patterns and future trends;
 - developing internal claims management policies;
 - determining premium costs; and
- is not prepared pursuant to any statutory reporting obligations under the WCR Act.

8.13 I am also satisfied that the role the Report plays in WorkCover's future planning and intellectual property management is consistent with the preparation of the Report being accurately classified as a commercial activity.

8.14 Accordingly, I am satisfied that the activity carried out by WorkCover, during the course of which the Report was received or brought into existence, was commercial in nature. This activity therefore, falls within the definition of WorkCover's "excluded activities" under s.475 of the WCR Act.

9. Conclusion

9.1 I am satisfied that the Report was received by WorkCover to inform the WorkCover Board of matters relating to WorkCover's commercial insurance business and to prepare WorkCover for likely competition in the future. This finding is consistent with the meaning of "commercial activities" intended by the legislature, and the purpose and role of the Report attested to by Ms Karagrighoriou in her statutory declaration.

9.2 I am also satisfied that the activity carried out by WorkCover during the course of which the Report was received was commercial in nature and does not relate to applications for compensation and proceedings for damages.

9.3 Finally, I am satisfied that the Report was not prepared pursuant to any statutory reporting obligation or for provision to the relevant department or Minister.

9.4 Accordingly, I find that the FOI Act does not apply to the Report pursuant to s.475(2) of the WCR Act. In light of this finding, it is unnecessary for me to consider the application of s.45 of the FOI Act to the Report.

DECISION

10.1 I affirm the decision under review (being the decision dated 13 March 2006 by Mr Anderson on behalf of WorkCover) by finding that the Report is excluded from the application of the FOI Act pursuant to s.475(2) of the WCR Act.

10.2 I have made this decision as a delegate of the Information Commissioner's powers under s.90 of the FOI Act.

.....
 F Henry
Assistant Information Commissioner

Date: 31 August 2006