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*ACCI SUBMISSION*  
*TO*  
*PRODUCTIVITY COMMISSION INQUIRY INTO WORKERS*  
*COMPENSATION AND OCCUPATIONAL HEALTH AND*  
*SAFETY FRAMEWORKS*

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# ***PRODUCTIVITY COUNCIL INQUIRY INTO WORKERS COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORKS***

## **ACCI Submission**

### **BACKGROUND**

[1] The Australian Chamber of Commerce and Industry (ACCI) is Australia's peak national body of employer associations. Members of ACCI represent employers of all sizes, in all regions and across all industry sectors. ACCI and its members have particular, but not exclusive, interest in workplace and industrial issues.

[2] Membership of ACCI is made up of State and Territory Chambers of Commerce, together with employer and industry associations. ACCI, through its member organisations, is the largest and most representative business organisation in Australia with a strong and active network including:

- Wide coverage and representation of Australian business (over 350,000 enterprises nationally);
- Coverage of all key State and Territory based Chambers of Commerce and employer associations;
- Geographical coverage, including all capital cities and major regional centres nationally;
- All sectors of Australian commerce and industry;
- Large, small and medium sized enterprises, including:
  - The top 100 companies
  - Over 55,000 enterprises employing between 20 and 100 employees; and
  - Over 280,000 enterprises employing less than 20 employees.

The ACCI employer network employs over 4 million people.

[3] All ACCI members have been consulted in the development of this response.

[4] This submission by ACCI does not limit or derogate from the position individual ACCI members may independently adopt or express. ACCI acknowledges that more detailed submissions are appropriate in some areas from some member organisations directly representing employers and contractors in their jurisdictions.

## **ACCI SUBMISSION**

The ACCI submission reflects the basic thrust and core principles of:

- ACCI Policies on Workers' Compensation and Occupational Health & Safety
- Input from ACCI members reflecting current and emerging concerns.
- ACCI pre-election survey of employer concerns

Copies of the ACCI Policies on Workers' Compensation and Occupational Health & Safety are attached to this submission at **Attachments A & B**.

The attached summary of the ACCI pre-election survey of employer concerns conducted in 2001 clearly demonstrates and articulates employers concerns that government regulations add unnecessary complexity and compliance costs to business in both the Workers' Compensation and the Occupational Health and Safety frameworks.

## **ACCI Submission Outline**

The ACCI submission addresses a number of core principles but not necessarily addressing each of the individual terms of reference.

In brief ACCI advocates and supports the following core principles:

- Nationally consistent workers' compensation schemes including premium setting, benefits structures and insurance regulations.
- Nationally consistent OHS regulatory framework underpinned by practical guidance materials.
- Regulatory frameworks and systems to also be nationally consistently administered and interpreted.
- A regulatory approach which seeks to raise awareness, to inform and to educate with compliance and enforcement as a last resort.
- An OHS Workplace culture of working together with mutual responsibilities

## **Workers' Compensation framework**

### **Overview**

#### **The National Policy Framework**

ACCI Workers Compensation and Occupational Health & Safety Policies states that it believes there is considerable scope to further reduce the human and economic loss that arises from injury and disease at work. The total cost of work related injury and disease is borne by workers, employers and the community at large.

Workers' compensation and complementary arrangements can play a vital role in improving workplace health and safety. They can encourage prevention of work related injury and disease, compensate for such disabilities when they occur and make provision for rehabilitation and early return to work as a normal expectation.

#### **Fundamental principles and objectives**

A Nationally Consistent Workers Compensation system incorporating a range of key fundamental principles, which are implemented and applied consistently in all jurisdictions is the core of the ACCI Workers' Compensation Policy.

### **1. National Consistency**

ACCI is committed to the achievement of nationally consistent workers' compensation schemes. In order to ensure equity and fairness, it is important that all workers' compensation schemes are consistent in their approach. There should be co-operation between jurisdictions in order to identify those elements that should as far as possible be consistent across all schemes.

However the pursuit of consistency should not be at the expense of achieving a proper balance between the conflicting pressures in the current systems. In order to achieve the best outcomes it is suggested that there be wide consultation with all relevant parties.

The list of issues set out below is taken direct from the ACCI Workers Compensation Policy and represents the current ACCI policy approach. The policy platform forms the basis of the ACCI submission plus other key areas of concern.

1. **Access and entitlement** - the definition of key terms such as "injury", "worker" and "independent contractor". These must be clear and take into account changes in the labour market, especially the increased contracting out of services.



2. **Premiums** - formulae for the calculation of premiums, especially integration of matters such as the definition of remuneration and experience rating. The double payment of premium by employers who operate in more than one state/territory must be avoided.
3. **Benefits** - definitions and classification of the various levels and periods of incapacity, the calculation of weekly payments, access to common law and lump sum payments.
4. **Insurance Regulation** - the licensing, monitoring and auditing of insurers, self-insurers, and other providers, self insurance arrangements or requirements and workers' compensation reporting and statistics requirements.
5. **Rehabilitation** - employers' and employees' obligations on rehabilitation and return to work and accreditation and monitoring of occupational rehabilitation providers.
6. **Dispute Resolution** - the use of cost-effective alternative dispute resolution mechanisms is critical to the maintenance of an affordable workers' compensation system; legal costs should be kept to a minimum.

## 2. Nationally Consistent Definitions

Jurisdictions have developed definitions within their own regulatory frameworks, which often differ quite widely and lead to inconsistent application.

There is a need to develop and agree a process to develop nationally consistent definitions for a range of terms used including:

Injury  
Worker  
Workplace  
Contactor  
Independent Contactor

An example of the definition for which we would seek to achieve national consistency is:

**'In the course of Employment'**

For the "no fault" principle to work effectively it must be shown that the injury or illness truly arose out of or **in the course of employment**, or that employment played a major or significant part in the development of the injury or disease.



Examples of the inconsistent and unacceptable interpretation of out of or **in the course of employment** include:

### **Journey Accidents**

Injuries sustained by workers while travelling to and from work should not be included in any workers' compensation scheme. Such injuries or illnesses cannot properly be said to have a direct causal connection with work to qualify them as work related injuries.

There is inconsistency in the definition and application of 'in the course of employment' in such basic issues as journey accidents where some jurisdictions exclude such incidences and other include them.

Industry does not accept that an accident whilst travelling to work is the in the control or is the responsibility of employer.

### **Court Interpretations**

The courts widely and inconsistently interpret the circumstances of 'in the course of employment'.

A decision by the NSW Supreme court where an employee in his lunch break showing off to a friend by riding a motor bike up a steep grade sustained a serious injury and which the court ruled was 'in the course of employment' is an example of an interpretation.

The employer in this case claimed that he was not in control of the activity and could not be expected to take responsibly for the employee's reckless actions.

A summary of the case is at **Attachment C**.

## **3. Premiums setting**

Employer Workers Compensation premiums should be assessed and calculated based on claims experience in order to provide an incentive to employers to prevent workplace injuries. In addition, this will have the effect of reducing cross-subsidisation and provide a framework within which all employers pay their true-risk premium.

Claims costs relating to a particular claim should only be included in an employer's premium calculations for a defined period of time as the premiums of SMEs may be significantly affected by one incident and to maintain the effects of that incident in the form of increased premiums over a number of years only serves as a disincentive to improve performance. Containment of premiums at an affordable and stable level is vital to the continuing viability of business generally. Incentives that encourage rehabilitation assist in these aims.

Given the difficulties associated with applying a fully experience rated premium systems to small businesses, it is important that all workers' compensation schemes contain additional incentives, which will encourage

accident prevention in small businesses. These incentives need not be included in the premium system. Given that the majority of Australian businesses are small to medium-sized businesses, all workers' compensation schemes need to address the special needs of small businesses as a priority.

The efficiency of the system is a key factor in balancing the conflicting demands of risk and capacity to pay. The jurisdictions attention should be focussed on how to improve efficiency in a number of areas including:

- Fraud minimisation
- Improved claims management
- Cost effective and efficient dispute resolution systems
- Reliable and easily accessible data.

A workers' compensation scheme must be fully self-funding with experience rated premiums and incentives to prevent injuries and rehabilitate injured workers.

#### **4. Benefits Structure**

Workers' compensation systems should have a benefits structure that provides adequate compensation for injured workers but which at the same time encourages them to remain at or return to work.

Weekly benefits to injured workers should be based on the worker's pre-injury ordinary time earnings, excluding over-time. At all stages, a worker's entitlements to weekly benefits must be determined by having regard to the worker's level of incapacity. Weekly benefits should be capped at a level, which is affordable, by the scheme.

Only workers who have a permanent total or partial impairment or loss of use of any part of the body should be entitled to a lump sum payment and such payments should take into account the worker's pain and suffering as a result of the injury.

#### **Accident Make –up Pay**

In some state and federal industrial awards Workers' Compensation payments are supplemented by 'make –up pay' arrangements to full salary where by the employee is paid the same salary whilst absent on Workers' Compensation as if on normal duty.

The 'make-up pay' arrangements available in some jurisdictions are a deterrent to the application of one of the core principles of the Total Injury Management program, which has a focus on rehabilitation and return to work. Such payment removes any incentive to return to work until the 'make-up pay' arrangement is exhausted.

## **5. Access to Common Law – Lump sums**

Workers' compensation schemes operate on a "no-fault" basis.

Common law, which is based on the allocation of fault or proof of negligence, is at odds with the principle of a "no-fault" workers' compensation system. Common law is based on an adversarial system, which inhibits the rehabilitation process and the normal expectation of a return to work by encouraging both parties to become entrenched in their adversarial roles in order to achieve maximum gain.

Common law is a feature of some Workers' Compensation Systems and if it is to be retained it must be restricted to those seriously injured, leading to severe disability or death and balanced against the total benefits provided to injured workers under the scheme.

The awarding of lump sum payments has taxation benefits for the claimant over regular weekly payments or annuities and as a result is attractive to claimants but also provides an incentive to undertake legal action. It also has the potential to encourage double dipping and cost transfers between State and Commonwealth when the lump sum is eroded and the claimant seeks to gain cover under the social services system.

## **6. Insurance Regulation**

Private insurers should have the right to participate in every workers' compensation scheme irrespective of whether it is a fully privatised scheme or a government monopoly.

The requirements governing the operation of private insurers should be consistent across all states. Competition amongst insurers should be encouraged as this will result in improvements in the quality of service being provided and ultimately result in lower workers' compensation premiums.

All workers' compensation schemes should provide for self-insurance of suitably credentialed employers.

Mechanisms should be developed to allow nationally consistent self-insurance licences and or national insurance coverage for national employers with operations in more than one jurisdiction.

## **7. Licensing arrangements for National Companies**

The current individual jurisdictional arrangements are complex.

These arrangements are even more complex and challenging where employers operate nationally or even across just one state border.



To address this issue we suggest that jurisdictions should enter into an agreement to develop a process and mechanism, which will allow national employers or employers operating across state borders to be licensed for Workers Compensation purposes to enter into insurance or self-insurance arrangements which are nationally consistent in application and interpretation. Many large national companies are eligible for self-insurance licenses but the arrangements and the criteria differ in each jurisdiction leading to complex individual arrangements in each jurisdiction and increased compliance costs.

The complexities of cross border issues have been addressed in arrangements between NSW and Victoria and these arrangements may be of assistance in developing a model for a national approach.

Such mechanisms, to gain the support of the jurisdictions, must be designed to achieve national consistency without financial disadvantage to any jurisdiction.

## **8. Rehabilitation and Return to Work**

One of the key objectives of any workers' compensation system must be to create an incentive for injured employees to return to work, with adequate compensation while undergoing rehabilitation.

Rehabilitation and return to work should be the cornerstone of all workers' compensation systems.

All workers' compensation schemes should incorporate a Total Injury Management System and seek to achieve a return to work culture by encouraging both employers and employees to actively participate in rehabilitation programs for their workplaces.

This can be achieved through:

- early intervention by the employer following an injury to ensure effective medical treatment leading to an early return to work by the employee.
- encouraging employers to provide, as far as practicable, suitable duties for an injured worker for an appropriate period of time, but at the same time recognising the difficulties faced by small and medium sized businesses in meeting this objective;
- encouraging employers to establish rehabilitation programs for their workplaces and implement return to work plans for injured workers;
- encouraging workplace-based rehabilitation and early referral;
- linking an injured worker's entitlement to ongoing weekly benefits to their participation in rehabilitation, including return to work;
- encouraging the re-training of injured workers to enable them to return to their pre injury employment or other employment
- emphasising the benefits of early return to work and resultant lower premiums.

## 9. Dispute Resolution

Dispute resolution mechanisms should be nationally consistent, affordable and cost effective with a minimum of legal intervention and resultant cost.

## 10. Duty of Care

The 'Duty of care' principle is designed to apply to both employer and employee though the emphasis by the jurisdictions is a focus on employers where an **absolute** 'duty of care' is administered.

This one sided and targeted approach does not meet the principles of 'no fault' or 'reasonably practicable' which are both key elements of both Workers' Compensation and Occupational Health & Safety legislation and ACCI policy approaches.

The application of an absolute duty of care is reflected in the jurisdictions and the courts approach in both Workers' Compensation and Occupational Health & Safety.

Employers are required to predict safety problems even though compliance with standards/code of practice have been achieved

Even where an employer has complied with the regulations but has not predicted an event resulting in an injury the employer has been prosecuted for not meeting 'duty of care' obligations.

In the case of psychosocial issues resulting in claims including stress, bullying and fatigue where the employer may have no knowledge of the workplace relatedness of the claim or of the employee's personal life style or circumstances or activities which are claimed to have given rise to such claims the employer is deemed to have breached 'duty of care' requirements as the employer had not foreseen the effect on the employee.

This is further complicated by the issue of privacy.

The challenge facing employers is to have enough knowledge of an employee's personal circumstances which are claimed to have caused the allegedly work related claim without breaching privacy issues. A difficult if not impossible balance to achieve.

In addition to a change in the regulatory approach taken by jurisdictions there is a need for a legal framework, which will recognize and enforce 'contributory negligence' in workers compensation cases before the courts or the tribunals based on the concept of 'mutual responsibility'.

In a recent case before the NSW Industrial Relations Commission the interpretation of 'Duty of Care' reached new heights where the Commission er stated that the duty to provide a risk free work environment

‘.....is a duty owed not only to the careful and observant employee but also to the hasty, careless, inadvertent, inattentive, unreasonable or disobedient employee in respect of conduct that is reasonably foreseeable’

The issue of ‘reasonably foreseeable’ and employee behaviour are major issues for employers. A summary of the case is at **Attachment D**.

## **11. Total Injury Management**

In order to achieve an affordable, efficient, workers’ compensation system which is not subject to abuse the system should incorporate the features of a Total Injury Management approach including:

- injury prevention, with a view to minimising work related injuries;
- rehabilitation, with a view to ensuring early return to work by injured or ill workers;
- employee responsibility to co-operate with their employers in injury prevention and return to work; and
- the identification and recognition of costs which should properly be borne by the general community rather than only employers.

## **12. Funding arrangements**

Workers’ compensation scheme should incorporate as a fundamental principle and objective a commitment to be fully self-funded and effectively managed to provide stable long-term premium arrangements which are predictable for both employers and governments.

Stable predictable funding arrangements are an essential element of business planning.

Employers in the ACCI 2001 pre-election survey list the cost of Workers’ Compensation premiums in the top 10 of their concerns. (See attached survey). **Attachment E**.

## **Occupational Health & Safety framework**

The Occupational Health & Safety framework is a challenging policy an operational environment for employers where OHS is regulated by eight (8) different jurisdictions using performance based regulations with a high level of enforcement powers and penalties.

Each jurisdiction has its own regulations and even where individual matters appear to be consistent the application and interpretation may differ widely for example in such areas as 'duty of care'.

There is a clear case for national consistency and this submission seeks to find mechanisms to achieve that objective.

### **The National OHS framework**

ACCI has been an active member of the tri-partite National Occupational Health and Safety Commission (NOHSC) since its inception in 1985.

The development by NOHSC of the National OHS Framework followed closely by the development and endorsement of the National OHS Strategy has strengthened the working partnership of the NOHSC stakeholders.

NOHSC is now recognised by the stakeholders as having a central role to play in the implementation of a national consistent OHS framework through the development of a package of national standards and codes of practice underpinned by guidance materials endorsed by the Workplace Relations Minister's Council. (WRMC)

Endorsement of National standards packages at WRMC is now supported by a requirement for an annual report on the implementation, monitoring and reporting process on the status of adoption by the jurisdictions.

Whilst this reporting on the adoption of national standards is step forward towards national consistency there are still issues of inconsistent adoption and a mechanism to hold the jurisdiction to account is required.

The commitment to the National OHS Strategy is seen as a catalyst for such a mechanism.

NOHSC now has the opportunity to use the WRMC endorsed National OHS Strategy to provide greater national leadership and coordination of national OHS resources through the jurisdictions, leading to improved national consistency and improved national OHS performance.

ACCI proposal that NOHSC develop an integrated national package for each national standard would which would include:

- A Model Regulation
- Code of Practice - Generic
- A Suite of industry sector risk/hazard guidance materials

These packages would be implemented nationally consistently through the WRMC framework to achieve a truly nationally consistent framework.

### **NOHSC Role**

ACCI considers that the tri-partite structure and commonwealth status and national coverage of the National Occupational Health & Safety Commission (NOHSC) provides a national mechanism to advance the objective of a nationally consistent regulatory framework.

The mechanism to work effectively must have the full cooperation and commitment of each jurisdiction to the objective of a nationally consistent regulatory framework.

### **Reduce OHS incidence of injuries and fatalities**

The National OHS Strategy has set a number of action priorities and targets including accident reduction targets of:

- Injuries 40% reduction
- Fatalities 20% reduction

The national strategy has the commitment of all parties and it is anticipated that all the parties working together will meet these targets.

#### **1. Nationally Consistent Regulatory Framework**

Employers submit that the development of a nationally consistent regulatory framework which is adopted consistently by the nine (9) jurisdictions through nationally adopted standards supported by national codes of practice and underpinned by guidance materials will lead to improved OHS performance coupled with reduced costs of compliance and enforcement.

The framework would be further improved where the jurisdictions regulate through only one recognised agency in each States/Territories.

Such a framework would also result in less change in OHS and related Acts and regulations. The current regulatory framework has resulted in plethora of acts, regulations and guidance materials, which are individually changed on a

regular basis leading to added complexity and inability of SMEs to keep abreast of compliance requirements.

ACCI has attempted to take a snap shot of the volume and complexity of these materials, however we are not able to access all the information from every jurisdiction so there are some gaps in our data.

The data referred to below is therefore understated.

- Each of the jurisdictions, eight (8) in total, has its own OHS Acts and relevant regulations, which during the period 1998 to 2003 have been amended a total of 166 times including no less than 1796 amendments.
- In total, across the jurisdictions, there are 98 OHS acts and regulations and over 125 Codes of practice and advisory standards and a plethora of guidance materials the numbers for which we have not been able to accurately assess.

The full list of the Acts, regulations and guidance materials are set out in the publication Comparative Performance Monitoring – Comparison of Occupational Health & Safety Arrangements in Australia and New Zealand published in August 2002. The list is daunting for an employer seeking compliance guidelines in an effort to improve OHS performance

A summary of the number of regulatory materials and the changes to these materials is attached to demonstrate the level of complexity facing employers in meeting the ever-changing compliance requirements is at **Attachment F**.

The nationally consistent OHS regulatory framework would also include international strategies and programs designed to move towards Global Harmonisation where global developments are in the best interests of Australian Employers. An example is Chemicals, where GHS is effective in establishing internationally consistent Safety Data Sheets and Labelling requirement, which is advantageous for both OHS and trade

Any additional individual subjects would be assessed against these criteria for applicability.

## **2. Nationally Consistent Application in the Workplace**

National Consistency through national adoption of standards, regulation, guidelines and compliance strategies leading to a level playing field for industry in all states/territories across Australia will result in a range of benefits to industry including:

- Improved understanding leading to improved compliance
- Reduced complexity
- Reduced compliance costs. .

The adoption of effective evaluation of the practical effect of the national instruments in the workplace is key to the implementation of such a strategy.

### **3. Focus on Prevention**

Industry is seeking a change of focus and direction by the jurisdictions to a clearly defined and demonstrated focus on prevention

Industry recognises the need for regulations and the responsibility of jurisdictions to ensure compliance but in pursuing the aims and objectives and particularly the targets of the National OHS Strategy jurisdictions' should develop a more balanced approach to education and compliance.

A review of the compliance and enforcement data reveals that there has been an increase in the issue of improvement and prohibition notices by the jurisdictions with a resultant increase in prosecutions, convictions and fines awarded by the courts. This trend over the past four years clearly demonstrates that the jurisdictional focus is on regulation, compliance and enforcement. This strategy has not been effective as an incentive or motivator for employers and is not supported by hard evidence.

An analysis of CPM data and a data trends on compliance and enforcement activities by the jurisdictions compared with OHS performance is at **Attachment G**.

### **4. Fair and reasonable / Affordable and practicable**

One of the basic principles of OHS at the workplace is a culture of working together based on the core issues of what is fair and reasonable and at the same time is affordable and practicable. This workplace understanding and culture is not reflected in OHS legislation and its interpretation by the courts in the application of the legalisation.

Changes to the interpretation of 'duty of care' from absolute to reasonable and application of the legislation by the jurisdictions would assist in developing this culture.

Application of the OHS 'duty of care' in a balanced and equitable manner recognising that employers cannot predict or control every activity or event in the workplace would assist in redressing the current imbalance.

The issue of 'duty of care' is addressed in more detail in the Workers' Compensation section of this submission.

### **5. A culture of mutual responsibility - working together at the Workplace and with Governments**



In the workplace employees and employers working co-operatively together in an environment of shared responsibility to ensure a safe and healthy workplace is a shared expectation of both employers and employees.

The shared responsibility should also be reflected in the courts by the implementation of the philosophy of 'contributory negligence' in the settlement of Workers Compensation cases and in prosecutions. .

At government level, a culture, which recognises compliance as a key role but which, encourages practical relevant consultation rather than confrontation should be inbuilt as encouraged by the National OHS Strategy.

The encouragement of a workplace culture of working together to address OHS issues in a reasonable, fair, affordable and practical manner including a culture of mutual responsibility is seen by industry as one of the core principles in achieving successful outcomes in OHS.

The use of OHS as an industrial bargaining tool or as a lever to achieve industrial aims is the antithesis to a culture of working together to achieve improved OHS performance.

## **6. OHS materials to be less complex – more practical, relevant and easy to understand**

Industry supports the development of packages of nationally consistent Standards, Codes of Practice and guidelines, which are developed in, close consultation with industry, are written in plain English and have a focus on 'what to do' and 'how to' at the workplace level.

Information to be easy to understand, presented in brief segments, industry and workplace focussed and be readily accessible and available.

The current process whereby NOHSC develops National Standards, which are then endorsed by WRMC, does not include a commitment to nationally consistent guidance materials, which are the key to educating employers.

Current guidance materials prepared by jurisdictions are often generic rather than industry specific are written in a bureaucratic legalistic style rather in plain English and as a result are not as effective as they could be.

Industry seeks the development of nationally consistent guidance materials, which meets the needs of the workplace.

## **7. Culture of education, training and assistance – not punishment**

The jurisdictions to develop a prime focus on prevention and on assisting employers to improve OHS performance through education, training and assistance rather than the current focus on compliance and enforcement, which is administered in a threatening environment.





A more personalised non-threatening approach to small business is required to bring about improved OHS performance

Research findings show that SMEs respond best to face to face communication delivered by a non threatening non- government agency such as an employer association or other trusted third parties.

# POLICY BRIEF

## Attachment A

### Workers' Compensation

#### Principles of Workers' Compensation Policy

ACCI is committed to the achievement of best practice workers' compensation arrangements for the protection and treatment of workers in respect of workplace injury and disease.

#### Policy objectives

ACCI's overarching policy objective is to achieve nationally consistent workers' compensation schemes with an emphasis on a Total Injury Management Approach.

Specific policy objectives include:

- reform of existing workers' compensation schemes;
- promotion of a nationally consistent benefits structure;
- promotion and encouragement of rehabilitation and early return to work.
- promotion of a positive incentive based premium system, encouraging improved performance

#### Strategies to achieve policy objectives

In order to achieve these objectives, ACCI will continue to pursue a number of specific strategies, which include:

- circulation of publications and general information which supports ACCI's proposed reforms to Workers' Compensation schemes;
- influencing policy makers towards the adoption of a nationally consistent Workers' Compensation model.
- support employers in developing an appropriate Total Injury Management approach

#### *The Policy Framework*

ACCI believes there is considerable scope to further reduce the human and economic loss that arises from injury and disease at work. The total cost of work related injury and disease is borne by workers, employers and the community at large.

The member organisations of ACCI are committed to workers' compensation environment, which seeks to reduce the incidence and cost of workplace injury and illness.

Workers' compensation and complementary arrangements can play a vital role in improving workplace health and safety. They can encourage prevention of work related injury and disease, compensate for such disabilities when they occur and make provision for rehabilitation and early return to work as a normal expectation.

One of the key objectives of any workers' compensation system must be to create an incentive for injured employees to return to work, with adequate compensation while undergoing rehabilitation.

A workers' compensation scheme must be fully self funding with experience rated premiums and incentives to prevent injuries and rehabilitate injured workers.

In order not to become expensive, inefficient and subject to abuse, a workers' compensation system must incorporate the following features within a Total Injury Management approach:

- injury prevention, with a view to minimising work related injuries;
- rehabilitation, with a view to ensuring early return to work by injured or ill workers;
- employee responsibility to co-operate with their employers in injury prevention and return to work; and
- the identification and recognition of costs which should properly be borne by the general community rather than only employers.

In pursuing these fundamental principles and objectives, ACCI believes that the following elements must be contained in every workers' compensation scheme.

#### *Employer Responsibility*

In order that workers are adequately protected, all workers' compensation schemes must operate on a "no-fault" basis.

For the "no fault" principle to work effectively however, it must be shown that the injury or illness truly arose out of or in the course of employment, or that employment played a major or significant part in the development of the injury or disease.

Common law has no place in a "no-fault" workers' compensation system. Common law is based on an adversarial system, which inhibits the rehabilitation process and the normal expectation of a return to work by encouraging both parties to become entrenched in their adversarial roles in order to achieve maximum gain. However, if common law is to be retained it must be restricted to those seriously injured, leading to severe disability or death and balanced against the total benefits provided to injured workers under the scheme.

Injuries sustained by workers while travelling to and from work should not be included in any workers' compensation scheme. Such injuries or illnesses cannot properly be said to have a direct causal connection with work to qualify them as work related injuries.

### *Benefits Structure*

All workers' compensation systems must have a benefits structure that provides adequate compensation for injured workers but which at the same time encourages them to remain at or return to work. Weekly benefits to injured workers should be based on the worker's pre-

injury ordinary time earnings, excluding over-time. At all stages, a worker's entitlements to weekly benefits must be determined by having regard to the worker's level of incapacity. Weekly benefits should be capped at a level which is affordable by the scheme.

Only workers who have a permanent total or partial impairment or loss of use of any part of the body should be entitled to a lump sum payment under the table of maims. Such payments must take into account the worker's pain and suffering as a result of the injury.

### *Premiums*

Premiums should be based on claims experience so as to provide an incentive to employers to prevent workplace injuries. In addition, this will reduce cross-subsidisation and provide a framework within which all employers pay their true-risk premium. Claims costs relating to a particular claim must only be included in an employer's premium calculations for a defined period of time. Containment of premiums at an affordable and stable level is vital to the continuing viability of business generally. Incentives that encourage rehabilitation assist in these aims.

Given the difficulties associated with applying fully experience rated premium systems to small businesses, it is important that all workers' compensation schemes contain additional incentives, which will encourage accident prevention in small businesses. These incentives need not be included in the premium system. Given that the majority of Australian businesses are small to medium-sized businesses, all workers' compensation schemes need to address the special needs of small businesses as a priority.

### *Rehabilitation and Return to Work*

Rehabilitation and return to work should be the cornerstone of all workers' compensation systems.

All workers' compensation schemes should incorporate a Total Injury Management System and seek to achieve a return to work culture by encouraging both employers and employees to actively participate in rehabilitation programs for their workplaces.

This can be done by:

- encouraging employers to provide, as far as practicable, suitable duties for an injured worker for an appropriate period of time, but at the same time recognising the difficulties faced by small and medium sized businesses in meeting this objective;
- encouraging employers to establish rehabilitation programs for their workplaces and implement return to work plans for injured workers;
- encouraging workplace-based rehabilitation and early referral;
- linking an injured worker's entitlement to ongoing weekly benefits to their participation in rehabilitation, including return to work;
- encouraging the re-training of injured workers to enable them to return to their pre injury employment or other employment
- emphasising the benefits of early return to work and resultant lower premiums.

### *Insurance Regulation*

Wherever possible, private insurers should have the right to participate in every workers' compensation scheme irrespective of whether it is a fully privatised scheme or a government monopoly. As much as possible the requirements governing the operation of private insurers should be consistent across all states. Competition amongst insurers should be encouraged as this will result in improvements in the quality of service being provided and ultimately result in lower workers' compensation premiums.

All workers' compensation schemes should provide for self insurance of suitably credentialed employers. The requirements for self insurance should as much as possible be consistent across all jurisdictions.

### *National Consistency*

ACCI is committed to the achievement of nationally consistent workers' compensation schemes. In order to ensure equity and fairness, it is important that all workers' compensation schemes are consistent in their approach. There should be co-operation between jurisdictions in order to identify those elements that should as far as possible be consistent across all schemes.

However the pursuit of consistency should, in order to achieve the best outcomes, involve consultation with all relevant parties.

In particular consistency should be sought in the following areas:

- Access and entitlement - the definition of key terms such as "injury", "worker" and "independent contractor". These must be clear and take into account changes in the labour market, especially the increased contracting out of services.

- Premiums - formulae for the calculation of premiums, especially integration to matters such as the definition of remuneration and experience rating. The double payment of premium by employers who operate in more than one state/territory must be avoided.
- Benefits - definitions and classification of the various levels and periods of incapacity, the calculation of weekly payments, access to common law and lump sum payments.
- Insurance Regulation - the licensing, monitoring and auditing of insurers, self insurers, and other providers, self insurance arrangements or requirements and workers' compensation reporting and statistics requirements.
- Rehabilitation - employers' and employees' obligations on rehabilitation and return to work and accreditation and monitoring of occupational rehabilitation providers.
- Dispute Resolution - the use of cost-effective alternative dispute resolution mechanisms is critical to the maintenance of an affordable workers' compensation system; legal costs should be kept to a minimum.

# POLICY BRIEF

## Attachment B

## Occupational Health and Safety

### Principles of OHS Policy

ACCI is committed to the achievement of an Occupational Health and Safety (OHS) outcome for Australian workplaces where every person in the workplace has the right to a safe place of work and a safe method of working.

### Policy Objectives

ACCI's overarching policy objectives are:

- to achieve improved workplace OHS performance;
- to achieve a nationally consistent OHS regime.

Specific policy objectives include:

- implementation of effective OHS management;
- implementation of effective OHS training programs through members;
- the promotion of OHS to small businesses;
- the adoption of performance based legislation in all jurisdictions;
- limiting the development and adoption of new national standards;
- effective implementation of the recognised priority national standards.

### Strategies to achieve policy objectives

In order to achieve these objectives, ACCI will continue to pursue a number of specific strategies which include:

- raising awareness amongst employers of the importance of improved OHS;
- increasing the capacity of employers to achieve improved OHS performance;
- implementation of ACCI's policies by the National Occupational Health and Safety Commission;
- circulation of publications and general information to promote a nationally consistent OHS regime;
- further development and implementation of the ACCI Small Business Strategy;
- influencing policy makers in state and territory jurisdictions to implement the recognised priority National Standards in OHS.

## **The Policy Framework**

### ***Management***

Effective OHS management should be an integral element of the role and responsibilities of all workplace managers. OHS management must be viewed with at least the same importance as production, efficiency and cost control. OHS is the responsibility of all persons at the workplace. A proactive approach to safety management is essential if industry is to achieve best practice.

Safety must be considered a corporate aim.

A management plan is essential and should incorporate the following:

- the establishment of a health and safety policy that clearly defines roles and responsibilities of workplace parties;
- a joint approach that involves all employees at the workplace;
- the provision of appropriate information and training;
- risk minimisation including the identification, assessment and control of hazards
- ongoing monitoring, evaluation and review.

### ***Training and Education***

Training and education initiatives play a vital role in ensuring that everyone in the workplace is equipped with the necessary OHS knowledge and skills. The attitudes and behaviour of workplace parties will be influenced by information and training that is directly relevant to them and which deals with the environment they operate in. Information and training programs should therefore be tailored to the needs of the enterprise.

Every opportunity should be taken to ensure that an awareness of OHS issues is incorporated into appropriate vocational education and training programs.

The effectiveness and impact of training and information which is provided should be evaluated for its ability to bring about workplace change and improved OHS performance.

Wherever practicable, training initiatives should involve both management and employees to ensure consistency of approach. The workplace parties should be provided with consistent messages to implement systems for OHS management and to constructively resolve problems as they are encountered.

### ***Reporting Systems***

Workplaces must have access to OHS reporting systems that provide timely and relevant data on their own performance and enable them to benchmark their performance against comparable workplaces. Governments at State and Federal levels should ensure that there are consistent reporting systems and performance standards to enable effective benchmarking in enterprises and across industries.



Traditional measures of OHS performance such as lost time injury rates are no longer considered sufficient or appropriate for a large part of industry as they are often not responsive enough to assist in the evaluation of preventive approaches. Positive performance indicators should be developed to be used internally by enterprises and for comparisons with other enterprises.

### ***Legislation***

Performance based OHS legislation provides a framework for compliance with the general duty of care. The principal focus should be to encourage and support the implementation of healthy and safe work practices, giving scope for enterprises to establish their own approaches.

Successful preventive programs will only be achieved through the full support of all those who can directly influence workplace practices. Only employers and employees working together can put into effect real workplace change. The role of Government agencies is to assist and facilitate change through the provision of guidance and advice developed in consultation with industry.

Enforcement of regulatory requirements by prosecution should not be the primary focus of policy and should only be used as a last resort.

### ***National Consistency***

There should be consistency in the regulatory and standards framework throughout Australia, and this should be achieved through appropriate consultation and co-operation.

The States and Territories have responsibility for the implementation of the regulatory and standards regime within their jurisdiction. National approaches should be directed toward encouraging States to achieve consistency between the different jurisdictions.

In this context, there should be co-ordination between the OHS prevention systems and compensation and rehabilitation systems.

### ***Costs/Benefits of Standards Implementation***

Standards must be based on a sustainable, and substantially agreed, scientific and technical appraisal of the issues involved.

To facilitate workplace implementation standards must be practical and understandable and free from industrial or political agendas.

It is imperative that in the development of standards full account must be taken of the international environment and of the need for competitiveness in Australian industry. It must be recognised that any new standards which are imposed represent costs to industry. Standards should only be adopted where it is clear that the OHS benefits justify the costs that will be incurred by industry in their implementation.

### ***Responsibilities***

The achievement of a safety culture in the workplace requires the commitment and participation of everyone in that workplace. OHS regulation should:

- recognise the obligation on all workplace parties to carry out their work activities in a safe manner
- clearly identify the roles and responsibilities of all workplace parties
- encourage a consultative and participative approach in the workplace.

**September 1998**

## Attachment C

### ***WorkCover Authority of New South Wales v Walling & Anor***

New South Wales Supreme Court NSWSC 315 (13 July 1998)

This case falls under the Workers Compensation Act, I have included it as a matter of interest as it highlights the range of incidents that an employer may be found liable for. The judgement, on which this summary is based is a Supreme Court hearing in which the employer appeals a judgment made against it in a lower Court. The appeal is based on two principles:

1. Relevance of activity not being induced or encouraged by employer
2. Gross misconduct

The worker was employed as a driller's offsider and worked in a rural area. The worker was accommodated at a cottage on large property. The cottage was leased by the employer from a local farmer. The worker worked six or seven days per week, with little time off. Meal breaks occurred when time permitted and this depended on the operation of the drill.

On the day the worker was injured, he had performed maintenance work on a drill rig at the property leased from the farmer. The worker had begun work at 6.30 am that day. A friend of the worker showed up to the property at noon. The worker offered to take his friend for a ride on his new motorbike. His friend got on the bike, but it stalled. The worker took the bike for a ride to warm it up, he chose to show off by driving down and then up a fairly steep embankment. As he went up the embankment at approximately 60km/hr he entered a rocky area obscured by long grass. He struck a mound of dirt causing the worker and the bike to leave the ground. The worker flew through the air for approximately 30m. The worker suffered a fracture to his L1 vertebra and was totally incapacitated for nearly three years, and he suffered permanent impairment of the back.

The Supreme Court found that:

*It was no impediment to an award of compensation that the activity of trail bike riding was neither induced nor encouraged by the employer. The injury occurred during an interval or interlude in the worker's employment at his place of employment, which was probably sufficient to find that the injury occurred in the course of employment*

The Supreme Court held the decision of the lower Court, dismissing the appeal in the Supreme Court.

The judge in the lower Court found that:

*By virtue of the proximity of the embankment [where the injury was incurred] to both the worker's temporary residence and place of work on the day of injury he could not be considered to be temporarily absent from either at that time.*

The judge in the lower Court found that:

*The worker suffered injury in the course of his employment and that (despite being reckless and foolish) he had not been guilty of misconduct, let alone gross misconduct.*

## Attachment D

### ***WorkCover Authority of New South Wales (Inspector William Hopkins) v Red Lea Chickens Pty Ltd and Magg Transport and Packing Pty Ltd***

New South Wales Industrial Relations Court NSWIR Comm 71 (March 2003)

Red Lea Chickens Pty Ltd, prosecuted under s16(1) of the Occupational Health and Safety Act 1983. Magg Transport and Packing Pty Ltd prosecuted under s15(1) of the Occupational Health and Safety Act 1983.

Mr Stoev was employed by Magg Transport and Packing as a fitter/electrician. Magg Transport and Packing was a wholly owned subsidiary of Red Lea. Mr Stoev worked at a maintenance workshop owned by Red Lea. The maintenance workshop was a shed clad, walls and roof, with corrugated iron, except for one section of the roof that was clad with one sheet of corrugated fibreglass. To keep the workshop cool a system of garden hoses connected to a water supply had been installed on the roof.

Mr Stoev suffered an injury as a result of climbing onto the roof to clear a blockage in the soaker hose. Mr Stoev and other workers had climbed on to the roof to undertake this task on a number of previous occasions. After being on the roof for approximately ten minutes Mr Stoev stepped on, and through, the fibreglass sheet falling to the floor. Mr Stoev sustained a fractured pelvis, a dislocated right shoulder, a wound to the left elbow and a broken thumb.

As a result of the incident the prosecutor alleged that Magg Transport and Packing had failed to ensure that the health and safety at work of its employees, in particular Mr Stoev, were not exposed to risks to their health and safety arising from the conduct of its undertaking while they were at its place of work.

The particulars of the allegation were:

1. They failed to provide a system of work for the cleaning of a sprinkler system erected on the roof of the premises that was safe and without risks to health.
2. They failed to ensure that employees carrying out the cleaning of the sprinkler system were provided with adequate fall protection.
3. They failed to carry out any adequate risk assessment concerning the risks posed to employees working on the roof to clean the sprinkler system.

As a result of the incident the prosecutor alleged that Red Lea had failed to ensure that persons not in its employment, in particular Mr Stoev, were not exposed to risks to their health and safety arising from the conduct of its undertaking while they were at its place of work. The particulars of the allegations were:

1. They failed to carry out any adequate risk assessment concerning the risks posed to persons working on the roof to clean the sprinkler system.
2. They failed to ensure that non-employees were provided with adequate information concerning the risks of working on the roof to clean the sprinkler system.

Both defendants pleaded guilty to the charges against them.

It was agreed that:

- The task of cleaning the sprinkler system did not fall within Mr Stoev's formal duties, nor had he been instructed to clean the sprinkler system by the management of the defendant.
- Stoev was never instructed to clean the sprinkler system.
- Stoev did not advise his supervisor, or other person in authority with the defendant, that he was to climb onto the roof on 4 February 2000 or other occasions.
- Stoev had not been instructed to advise his supervisor, or other person in authority with the defendant, prior to climbing on the roof to clean the sprinkler system.
- At the date of the accident the defendant had not conducted a risk assessment assessing the risks to persons carrying out cleaning of the sprinkler system on the roof of the premises.
- Immediately following the accident the defendant instructed that no person was to access the roof and sprinkler system pending an investigation.
- Since the accident the defendant has removed the soaker system from the roof of the workshop.
- On a number of occasions previously Mr Stoev and other employees and contractors had unblocked holes in the soaker hose.
- Stoev had not been provided with adequate fall protection and the defendant had failed to instruct employees carrying out this task to use any form of fall protection.
- Stoev had not been adequately trained in safe working methods for the cleaning of the sprinkler system.
- As a result of the defendant's failures Stoev suffered serious injuries.
- The defendant had cooperated with the WorkCover Authority.

The judge when considering the penalty stated:

*Whilst it was no part of Mr Stoev's duty to climb up onto the roof of the workshop to unclog the soaker hose it appears that from 1997 Mr Stoev undertook the task on at least three occasions and at least one other worker did also. The contractor who installed the sprinkler system had observed other persons on the roof unclogging the hose on approximately six occasions...It beggars belief that neither defendant was aware of the practice of workers over a three year period climbing up on the workshop roof to unclog the hose, yet both failed to prevent what was obviously an unsafe practice or to take steps to ensure that the work of unclogging the hose was carried out safely.*

***Even if the defendants were unaware of the practice of workers climbing up onto the roof, they were aware that the sprinkler system had been installed. It was reasonably foreseeable that the system might become clogged over a period of time or otherwise inoperative and that workers might, on their own initiative, attempt to fix it by climbing onto the roof and, in that process, injure themselves. It was incumbent on the defendants, following the installation of the sprinkler system, to assess the risks posed to persons on the roof cleaning the sprinkler system and either prohibit workers going onto the roof or to ensure that if they did it was done safely and without risks to health. None of these measures were taken by the defendants.***

***Even if it could be said that Mr Stoev was foolish in climbing up onto the roof without proper safety equipment, ... the duty to provide a risk free work***

***environment is a duty owed not only to the careful and observant employee but also to the hasty, careless, inadvertent, inattentive, unreasonable or disobedient employee in respect of conduct that is reasonably foreseeable.***

*The existence of simple and straightforward remedial steps which could have been taken by the defendants to avoid the accident are relevant to assessing the seriousness of the offence. In this case a risk assessment would have revealed the risks to safety of a person climbing onto the roof without proper safety equipment and instruction.*

The judge took into account the following factors when sentencing the defendants. These factors are:

1. The defendants pleaded guilty at an early stage.
2. The defendants cooperated with the prosecutor in his investigations.
3. The defendants have taken steps to ameliorate the particular risks that gave rise to the charges in these matters.
4. The defendants are committed to a commendable ongoing program of occupational health and safety improvement.
5. The defendants have shown contrition and remorse.

The judge found that an appropriate penalty was \$120,000. This amount was discounted by 25% for an early guilty plea of 25 per cent, and a further 10 per cent for other factors. This resulted in an amount of \$78,000 and a fine of \$39,000 for each defendant.

## Attachment E

### ACCI Pre-Election Survey - September 2001

#### Relative Ranking of 10 most critical issues facing small businesses today

Rank	Area of Concern
1	Frequency and Complexity of Tax Changes
2	Level of Taxation
3	Telecommunications Costs
4	Complexity of Government Regulations
5	Unfair Dismissals Legislation
6	Superannuation Guarantee
7	Cost of Compliance with Government Regulations
8	Energy Costs
9	Penalties for not complying with Government Regulations
10	Workers Compensation Payments

The overriding theme within the survey results is that apart from telecommunications and energy costs, regulation of some variety dominates the concerns of Australian small businesses.

When the data is further broken down to evaluate the effect on small business and then the effect on OHS issues including OHS regulations the feedback is substantially the same with the addition of a couple of OHS specific issues for small business:

- 3 Complexity of government regulations
- 4 Cost of compliance with government regulations
- 7 Penalties for failure to comply with government regulations
- 9 Workers Compensation Payments
- 13 Compliance with Health and Safety Requirements

The outcomes of this survey supports the anecdotal evidence provided by ACCI members in general feedback from a wide range of contacts and consultation with small business.

Clearly small business sees government regulation as complex, difficult to understand, costly to manage and unproductive in the everyday running of their businesses.

How can these concerns be addressed and at the same time assist employers in complying with government regulations in cost effective manner.

Addressing OHS regulations and related issues provides a unique opportunity to involve employers in regulatory reform through the endorsement of the National OHS Strategy, the Royal Commission into Building and Construction and the Productivity Inquiry into Workers' Compensation and Occupational Health & Safety.

## Attachment F

### Summary of the amount of regulations and guidance materials for each jurisdiction

#### Amount of Regulation

Jurisdiction	Principle OHS Act	Principle OHS Regulations	Other Relevant Acts	Other Relevant Regulations	Total
ACT	1	3	5	7	16
NSW	1	1	5	2	9
NT	1	1	6	7	15
QLD	1	1	1	1	4
SA	1	1	6	4	12
TAS	1	1	5	3	10
VIC	1	11	5	7	24
WA	1	1	3	3	8
<b>Total</b>	<b>8</b>	<b>20</b>	<b>36</b>	<b>34</b>	<b>98</b>

Please note that the regulation counted above is only the regulation that falls under each jurisdiction's main OHS administering organisation, and as such this amount of regulation does not truly reflect the volume of legislation employers must comply with as other administering organisations are also responsible for issuing safety related regulation such as the Office of the Chief Electrical Inspector in Victoria that administers the Electrical Safety Act 1998 and seven Regulations.

#### Amount of relevant codes of practice/advisory standards and guidelines

Jurisdiction	Relevant Codes of Practice or Advisory Standards	Relevant Guidelines	Total
ACT	27	2	29
NSW	Not provided	Not provided	-
NT	3	6	9
QLD	31	Not provided	31
SA	11	6	17
TAS	2	31	33
VIC	20	Not provided	20
WA	31	19	50
<b>Total</b>	<b>125</b>	<b>64</b>	<b>189</b>

Please note that the code of practice/advisory standards and guidelines counted above is only the material that falls under each jurisdiction's main OHS administering organisation.

*This data has been sourced from the Workplace Relations Ministers' Councils Comparative Performance Monitoring Report: Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand, August 2002, 2<sup>nd</sup> Edition, pp 54 – 61.*



## Summary of OHS Legislative Change: 1998 -2003

	No. Amending instruments	No. Amendments
<b>ACT</b>		
OHS Act	13	143
OHS Regulation	6	48
<b>NSW</b>		
OHS Act	11 (1 of which was revoked and entirely replaced with a new Act)	24
OHS Regulation	3 (Information regarding revoked Regulations has not been made available by NSW.)	4
<b>NT</b>		
OHS Act	14	215
OHS Regulation	3	19
<b>QLD</b>		
OHS Act	15	22
OHS Regulation	48	651
<b>SA</b>		
OHS Act	2	42
OHS Regulation	11	129
<b>TAS</b>		
OHS Act	4	117
OHS Regulation	1	1
<b>VIC</b>		
OHS Act	5	18
OHS Regulation	12 (4 of which were revoked and replaced)	202
<b>WA</b>		
OHS Act	3	3
OHS Regulation	15	158
<b>TOTAL</b>	<b>166</b>	<b>1796</b>

This data has been collated from the history notes of the principle OHS act and regulations in each jurisdiction. These acts and regulations were sourced from each jurisdictions legislation web-pages/databases.

## Attachment G

### Analysis of Enforcement Activity

ACCI conducted a review of enforcement activity data obtained from the WRMC Comparative Performance Monitoring Report: *Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand* (August 2002, 2<sup>nd</sup> Edition) for the 98-99, 99-00, and 00-01 financial years, and the jurisdictional authorities' annual reports for the 01 – 02 financial year.

For the July 1998 – June 2001 period the enforcement activity data indicates:

- An increasing trend in the number of workplace inspections undertaken by Jurisdictional enforcement agencies.

	1998 – 1999	1999 – 2000	2000 - 2001
Workplace inspections	135,147	146,817	162,183

Workplace inspections increased by 20% from the 1998-99 financial year to the 2000 - 2001 financial year.

- An increasing trend in the number of improvement and prohibition notices issued by Jurisdictional enforcement agencies.

	1998 – 1999	1999 – 2000	2000 - 2001
Improvement notices	25,881	30,774	38,494
Prohibition notices	3,831	5,677	7,559

The number of improvement notices and prohibition notices issued increased respectively by 48% and 97% from the 1998 - 1999 financial year to the 2000 - 2001 financial year.

- A sudden decrease, followed by an increasing trend in the number of prosecutions, convictions and court awarded fines.

	1998 - 99	1999 - 00	2000 - 01	2001 – 02#
Prosecutions	988	794	685	954*
Convictions	771	632	612	612*
Court awarded fines	\$4,637,050	\$9,314,600	\$8,176,050	\$17,257,150*

\*The 2001-2002 figures exclude data values for NT and ACT as these values were not available at the time of data collation. The 2001-2002 figures have been obtained through information requests to jurisdictional enforcement agencies and their respective annual reports.

# The 2001 – 2002 data has been included due to anecdotal evidence presented to ACCI by its members indicating an increasing trend in prosecutions and fines. As stated above data has been obtained from jurisdictional sources.

The number of prosecutions increased by 20% from the 1999 – 2000 financial year to the 2001 – 2002 financial year. Interestingly, Jurisdictional performance in prosecuting employers decreased from 612 convictions from 685 prosecutions in 2000 – 2001 (a success rate of 89%) to 612 convictions from 954 prosecutions in 2001 – 2002 (a success rate of 64%).



Court awarded fines have increased nearly four fold from the 1998 – 1999 financial year, doubling from 8 million to 17million during the last two financial years despite the drop in the success rate of convictions.

In addition to reviewing enforcement activity data, ACCI reviewed OHS performance data, obtained from the NOHSC Online Statistics Interactive (NOSI) Database of National Workers' Compensation, available on the NOHSC website.

(The search variables and filters constructed in the search were: number of cases, financial year, jurisdictions, fatal/non-fatal of all nature, all claims excluding journey claims, and the default duration of absence.)

## Summary of jurisdictional enforcement activity of the Private Sector July 1998 – June 2002

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	Total
<b>Workplace inspections</b>									
1998-1999	57,254	48,859	7,106		6,111	8,777	3,770	3,270	135,147
1999-2000	46,151	63,066	8,701	5,398	7,465	9,039	3,424	3,573	146,817
2000-2001	49,598	63,519	11,300	5,879	12,385	11,866	2,877	4,759	162,183
2001-2002		50,343	8,900	10,325	10,838			5,030	80,406
Total	153,003	225,787	36,007	21,602	36,799	29,682	10,071	16,632	<b>529,583</b>
<b>Improvement notices</b>									
1998-1999	12,845	1,735	1,383	152	9,542	105	8	111	25,881
1999-2000	11,227	2,763	6,884	267	9,224	333	-	76	30,774
2000-2001	12,480	6,867	9,610	532	8,460	498	-	47	38,494
2001-2002	12,146	11,922	7,364	1,025	9,818				30,129
Total	48,698	23,287	25,241	1,976	37,044	936	8	234	<b>137,424</b>
<b>Prohibition notices</b>									
1998-1999	1,604	1,059	128	76	805	37	31	91	3,831
1999-2000	1,292	2,468	641	82	943	139	38	74	5,677
2000-2001	1,332	2,752	1,996	184	736	498	19	42	7,559
2001-2002	1,666	3,102		191	887				5,846
Total	5,894	9,381	2,765	533	3,371	674	88	207	<b>22,913</b>
<b>Prosecutions</b>									
1998-1999	672	89	129	12	65	5	1	15	988
1999-2000	586	86	43	6	56	9	4	4	794
2000-2001	467	111	55	1	37	9	3	2	685
2001-2002	550	198	135	8	55	8		4	954
Total	2,775	484	362	27	213	31	8	25	<b>3,925</b>
<b>Convictions</b>									
1998-1999	617	85	-	12	50	5	1	1	771
1999-2000	496	73	43	6	85??	9	4	1	632
2000-2001	404	107	54	1	36	9	1	0	612
2001-2002	455	112		8	>29 ?	8			612
Total	1,972	377	<b>97</b>	27	171	31	6	2	<b>2,627</b>
<b>Fines awarded by court \$</b>									
1998-1999	2970000	1076250	260,000	30,800	164,000	66,000	45,000	25,000	4,637,050
1999-2000	6200000	2134500	444,000	69,750	322,800	115,250	24,000	4,300	9,314,600
2000-2001	5400000	1622800	935,000	32,500	108,750	51,000	26,000	0	8,176,050
2001-2002	9532150	6011800	1500000	100,650	>\$77,050 ?	35,500		11,854	17,269,004
Total	24,102,150	10,845,350	3,139,000	233,700	672,600	267,750	95,000	41,154	<b>39,396,704</b>

*This data has been sourced from the Workplace Relations Ministers' Councils Comparative Performance Monitoring Report: Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand, August 2002, 2<sup>nd</sup> Edition, pp 88 – 89; and jurisdictions annual reports and information services.*