

**SUBMISSION
TO
PRODUCTIVITY COMMISSION
NATIONAL WORKERS' COMPENSATION AND
OCCUPATIONAL HEALTH & SAFETY FRAMEWORKS
JUNE 2003**



BACKGROUND

BHP Billiton is the largest diversified resources company in the world with 38,000 employees working in more than 100 operations in approximately 20 countries. Reflecting our aim to be a premier global company, BHP Billiton occupies industry leader or near industry leader positions in major commodity businesses, including aluminium, energy coal, metallurgical coal, copper, ferro-alloys, iron ore and titanium minerals, and have substantial interests in oil, gas, liquefied natural gas, nickel, diamonds and silver.

In Australia, BHP Billiton has approximately 16,000 employees in various operations covering Northern Territory, Western Australia, South Australia, Victoria, Tasmania, New South Wales and Queensland. BHP Billiton has self insurer licences in Western Australia, South Australia, Victoria, New South Wales and Queensland. On a day to day basis, BHP Billiton interprets and has legislative compliance with nine different legislative jurisdictions for Occupational Health & Safety and Workers Compensation.

BHP BILLITON SUBMISSION SUMMARY

NATIONAL FRAMEWORKS

Having operated for many years as a self insurer across Australia, BHP Billiton believes it is time for a new national regime. BHP Billiton supports the establishment of a national (Federal) workers compensation scheme and a national (Federal) Occupational Health & Safety (OHS) framework to replace all state statutory WorkCover authorities and state legislation. That is, one federally administered body for Workers Compensation administering one piece of federal legislation for workers compensation and one federally administered body for Occupational Health and Safety administering one federal piece of OHS legislation.

PART 1 - WORKERS COMPENSATION FRAMEWORK

NATIONAL WORKERS COMPENATION FRAMEWORK WITH ACCESS TO SELF INSURANCE

BHP Billiton's preferred model is a national workers compensation framework administered by a single national body. In addition, BHP Billiton supports the option to have a national self insurance licence under this national framework. The criteria for self insurance Australia wide should be based on the financial and prudential capacity of a company to administer the liability of self insurance rather than the number of staff that are employed.

A national workers compensation framework will avoid the need for BHP Billiton to pay duplicate actuarial valuations and bank guarantees for the various statutory authorities across Australia. Companies could instead obtain a single national actuarial valuation and lodge a single bank guarantee at a reduced cost. Being self insured under a single national body would bring about significant savings in audit costs that exists in our 5 self insured states. Each of our state operations could be audited against a single set of audit criteria for Claims mangement and OHS instead of the current situation where each state has their own standards. There is currently a lack of consistancy in the approaches used by Statutory Authorities in each state for OHS audits.

The current varience in eligibility criteria to self insure under the State Regimes is inconsistent and, in the case of Queensland, harsh. In 2002, when BHP Steel Limited demerged from BHP Billiton, they were unable to gain a self insurer licence in Queensland, even though the business was previously self insured under the BHP Billiton self insurance licence prior to demerger, due to the minimim 500 employee requirement. This meant this business had to return to commercial insurance with the Queensland state insurer at a substantial cost of \$500,000 in premiums to do business in that state.

BHP Billiton is a duel listed company and is unable to self insure all businesses in Queensland due to the Corporations Law definition of "related bodies corporate" being used as criteria for "related bodies corporate group employer" status. The Queensland

legislation precludes the inclusion into our licence of the businesses that belonged to the Billiton group of companies prior to our merger. We are forced to insure these businesses with WorkCover and pay high premiums. Common board management should be the criteria used to include businesses into a related bodies corporate group employer licence.

ACCESS AND COVERAGE

At present self insurers provide data transfers to the various state WorkCover Authorities. As a consequence of the differences in legislation, including definitions within the legislation, a national company operating in various state jurisdictions must purchase different systems for each state to manage and supply information to WorkCover. Each state system costs in the vicinity of \$50,000 to purchase and each must be tailored to comply with state terminology and legislation due to the inconsistency of national claim definitions, timeframes for reduction in compensation durations, medical terminology, etc. One national piece of legislation (and the abolishment of differing state legislation and Workcover statutory authorities) would eliminate such inconsistencies.

BENEFIT STRUCTURES

Common Law

The underlying principle of workers compensation legislation in Australia is the concept of “no fault”. The introduction of Common Law lump sums for “negligence” is contrary to the principles of a “no fault” scheme. Compensation levels for impairment lump sums should be adequately provided for in legislation to appropriately compensate “seriously injured” people without the involvement of the courts in determining negligence in an adversarial arena.

Journey cover

Compensation for workplace injury is designed to cover all employees whilst they are at work. Journeys to and from the worksite have no causal connection with the workplace and should not be included in any revised Australian scheme.

NSW Coal Industry

BHP Billiton is a self insurer in NSW for only the minority of our employees. Our principle business in NSW is coal mining, an industry in which companies are financially penalised by specific coal mining workers compensation legislation that requires participants to

insure with the monopoly insurer Coal Mines Insurance. There is no provision for self insurance and, therefore, a financial disincentive to achieve good OHS performance.

At present BHP Billiton pays in the vicinity of \$16,000,000 per annum in insurance premiums to cover approximately 1,000 coal miners, that is, approximately \$16,000 per year per employee. This compares with approximately \$3,000 per employee in our self insured Queensland coal operations. The cost is in the vicinity of 14% of wages for NSW employees compared to 3% in our Queensland operations. Due to improved safety performance, BHP Billiton has experienced a significant decline in the number and incidence of claims in NSW. Despite this, premiums have tripled over the last three years. Common law claims from past employees, coupled with the unfunded liability of Coal Mines Insurance, have had a significant impact on these costs.

No Australian and based industry, other than the NSW coal industry, has industry specific workers compensation legislation and its own mandatory insurer to administer claims. BHP Billiton finds the cost of workers compensation in New South Wales unsustainable and submits that all workers in New South Wales, irrespective of the industry they work should be covered by the same piece of Workers Compensation legislation. The creation of a single Federal entity to regulate workers compensation coupled with a single piece of national legislation would enable companies in the NSW coal industry to return more value to shareholders by managing claims to a higher standard and level of efficiency than is currently the case.

THE ROLE OF PRIVATE INSURERS IN WORKERS COMPENSATION

BHP Billiton believes there is a role for private insurers in the Australian workers compensation environment. Self insurers need to retain the right to outsource certain claims management functions to private insurers if desired. Companies should have the right to either take out a workers compensation policy with a national scheme where private insurers carry out the claims management functions on an agency basis or elect to purchase a policy with a private insurer to fully underwrite the entire liability.

PART 2 - THE OHS MODEL

BHP Billiton supports the establishment of a single OHS legislation framework and the elimination of state based legislation. The duplicity of state based legislation, regulations and standards and the compliance requirements of each places an unnecessary administrative cost on Australian industry.

A single federal administration would also provide a uniform approach to addressing OHS across the country delivering many added benefits such as sharing of successful systems and approaches and the creation of greater national awareness of OHS issues.

OHS LEGISLATION

BHP Billiton supports a single national OHS legislation framework comprising an overarching OHS Act and minimum multi-sector and industry based regulation. All legislation should be outcome and risk based allowing employers, in consultation with employees, to manage OHS matters in a manner best suited to their enterprise.

NATIONALLY CONSISTENT REGULATION

BHP Billiton supports a minimalist regulatory approach that provides for the consistent application across industry sectors where possible. Examples include the application of certain Australian standards across numerous industries. Within industry sectors, regulation should be nationally applied to ensure consistent application of best practice approaches, reduce compliance costs and eliminate competitive advantage based on State OHS regulation. Adoption of a nationally consistent approach will eliminate instances where the same risk issue is differently regulated across jurisdictions. Nationally consistent regulation will also enhance the transfer of best practice across and within industry sectors.

Industry based regulation should be risk based to recognise and accommodate the diversity of risk factors within industry sectors, which often occur even at proximate operations. In addition, all regulation should only prescribe desired outcomes to accommodate the diversity of site, technological, people and environmental factors present within industry sectors. This approach to regulation supports an innovative and improvement focussed culture within enterprises that ultimately delivers improved OHS and business performance.

NATIONAL COMPETENCY FRAMEWORK

A single national OHS legislation framework, as described above, has flow-on benefits to the area of competency recognition and qualification. Currently, in some industry sectors, administrative and other barriers prevent the free movement of people within industry sectors. A national competency framework aligned to a national OHS legislation framework will improve the quality of educational services, reduce the administrative burden around qualification, enhance the employment prospects of individuals and simplify recruitment and development processes for employers.