

Productivity Commission
Inquiry
into
National Workers' Compensation
and
Occupational Health and Safety Frameworks

A Response to the Issues Paper

from

Group Training Australia
Ltd

June 2003

Issues for Discussion

1. National frameworks
2. National Self-Insurance
3. The OHS Model
4. Reducing the Regulatory Burden and Compliance Costs
5. Access and Coverage
6. Benefit Structures (including access to common law)
7. Cost Sharing and Cost Shifting
8. Early Intervention, Rehabilitation and Return to Work
9. Dispute Resolution
10. Premium Setting
11. The Role of Private Insurers in Workers Compensation Schemes

1. Executive Summary

1.1. Group Training Australia Ltd (GTA) welcomes the opportunity to respond to the issues paper for the commission's inquiry into workers compensation and occupational health and safety frameworks.

1.2. The issues canvassed in this paper are wide ranging and technical and this association is not in a position to comment on all of the issues raised. As a national association representing the interests of a network of companies that employ apprentices and trainees and hire them out to host businesses, we have an interest in this topic which varies markedly in its impact on our members depending on the jurisdiction in which they are located or doing business.

1.3. In our submission, we have provided a brief history of group training for the benefit of those who have little knowledge of it and some statistics to demonstrate how critical we have become to the national economy and in particular to national skills formation. Our submission outlines the impact that the increasing cost, complexity and lack of national consistency is having on the ability of our members to fulfil their charter and some of the solutions that have been proposed, or attempted, to address the problem.

1.4. There are no doubt many costs associated with the interplay of the legal and medical systems in workers compensation which could be reformed while still safeguarding the interests of the injured worker. Such reforms could lower costs to the benefit of all employers including Group Training Organisations and we would of course welcome such measures. We are unfortunately not in a position to offer comment on the more technical legal, medical and rehabilitative issues raised in your paper, preferring of necessity to comment on how we are affected and to make some recommendations that deal more specifically with our needs.

1.5. Our problem is certainly one that is acknowledged by government. The recent national review of group training, chaired by the Australian National Training Authority (ANTA), recommended to Ministers (ANTA MINCO) that they 'agree that States and Territories be requested to consider the issues raised in the report (of the review) in relation to ... the impact of the rising cost of workers compensation premiums and various liability insurance premiums on the viability of GTOs.' ANTA MINCO resolved at its meeting in May 2002 that States and Territories be requested to take such action and ANTA wrote to the Productivity Commission on their behalf on 6 September 2002 to refer the matter to this inquiry.

1.6. The principal issues that this association believes need to be addressed in order to make the system more responsive to the needs of our network are:

- the need to clarify the respective responsibilities of the GTO and host employers in respect of OH&S with greater responsibility placed on the host employer who has power of day-to-day direction over the apprentice and trainee as well as control of the workplace
- the need for insurers to have regard to claims history and the occupational groups employed by GTOs when determining their WorkCover Industry Classification (WIC), rather than rating GTOs automatically as labour hire which attracts the highest premiums
- the need for government to investigate the feasibility of legislating for a national workers compensation scheme for the group training industry

1.7. As a result of our deliberations we conclude by making the following recommendations:

Recommendation 1: That government implement a nationally consistent OH&S framework

Recommendation 2: That the OH&S framework clarify the respective responsibilities of the GTO and host employer making it clear that the

host employer, with day-to-day power to direct the employee, and control of the workplace, should bear responsibility for workplace health and safety.

Recommendation 3: That government investigate the benefit of legislating a national workers compensation scheme for the group training industry in view of its importance to national skills formation.

Recommendation 4: That, in the event that an attractive national workers compensation scheme cannot be implemented for the group training industry, insurers be required to have greater regard to the occupational groups employed by GTOs when setting premiums.

2. Role of Group Training

A Uniquely Australian Employment and Training Solution

2.1. GTA is the national industry association for a network of over 180 not-for-profit Group Training Organisations (GTOs) operating in over 200 locations across Australia.

2.2. GTOs employ apprentices and trainees (New Apprentices) and place them with host employers for varying periods until the apprentice or trainee has completed their training contract. This network of companies collectively employs close to 40,000 apprentices and trainees, some 13% of the national total, making it the largest employer of apprentices and trainees in Australia.

2.3. Research conducted by Dench McClean Associates in 1996 Group Training Australia: Growth Strategy 1996-2000 indicated that, at that time, over 50% of group training's host employers were small and micro businesses employing fewer than 5 employees while 70% employed fewer than 10. More recent research suggests that, while an increasing number of larger employers are now using the services of GTOs, small businesses are still the major user group. Many of these businesses would not be involved in contracted training if it were not for the services provided by group training.

2.4. The concept of group training began in the late-1970s in response to the needs of small employers in the building and automotive industries who were increasingly unable to commit to four year indentures, which at that time was the standard duration of a training contract. GTOs subsequently proved themselves to be an important mechanism for providing employment for outof-trade apprentices affected by the economic downturn in the early-80s.

2.5. From the early-1980s, the growth of group training was assisted by the support of the ACTU-Lend Lease Foundation, which promoted the concept and facilitated the establishment of new companies.

2.6. From about this time, group training also attracted the support of governments, which could see the benefit they provided to young people seeking employment in the trades and the important contribution they made to national skills formation. In recognition of their efforts, not-for-profit GTOs started to receive government grants to assist them with their operating costs.

2.7. A decision taken by government in the early-1990s to gradually withdraw operating support, subsequently rescinded as a counter cyclical measure, impelled Group Training Organisations to expand their operations beyond their core function in search of alternative sources of funding. Governments have, however, continued to promote the philosophy that GTOs should seek to be more self-sufficient and, as a consequence, have allowed the real value of their operating support to decline over the years.

2.8. The result of this is that today many Group Training Organisations are involved in a range of commercial functions including:

- the provision of training and assessment services as Registered Training Organisations (RTOs)
- the management of New Apprenticeship Centres (NACs) or the provision of other employment placement services under contract from the Commonwealth (Job Network)
- the provision of other employment and training services under contract from State and Territory governments; and
- labour hire for qualified tradespeople and other workers

2.9. These activities have contributed substantially to the commercial operations of GTOs and in many instances are the only reason they have been able to continue to operate the core business of employing and placing apprentices and trainees with host employers.

Group Training Underpins Traditional Skills Base

2.10. As indicated earlier, group training has its origins in the traditional trades when four-year indentures, or Training Contracts, as they are now known, were essentially the predominant form of structured entry-level training.

2.11. The introduction of traineeships in the mid-1980s saw a massive expansion in the range of contracted training arrangements available to prospective job-seekers, initially at lower skill levels than traditional trade training, invariably of shorter duration (generally 12 months) and mostly in industries or occupations where such training arrangements had not previously existed.

2.12. Figures available from the National Centre for Vocational Education Research (NCVER) demonstrate the extent to which the group training network underpins the national effort in traditional trade training. The following table compares the growth of the numbers of all tradespersons, and selected categories of tradespersons, employed by GTOs with other employers over the last seven years.

| % Growth in Numbers in Training by Trade and Employer Type | | | |
|--|---------------------------|---|--------------------------------------|
| March Quarters 1995 - 2002 | | | |
| Trade | Growth in GT 1995-2002 | Growth non-GT Employers 1995-2002 | Growth all Employers 1995 2002 |
| • Tradespersons and Related Workers (all Trades) | 57 | 8.5 | 14.6 |
| • Construction tradespersons | 34.2 | 17.5 | 21.0 |
| • Automotive tradespersons | 118.4 | 2.0 | 13.1 |
| • Mechanical and fabrication engineering tradespersons | 39.5 | -27.4 | -21.1 |
| • Electrical and electronics tradespersons | 121.7 | 5.3 | 20.2 |
| • Food tradespersons | 22.9 | 41.9 | 38.8 |

2.13. A closer look at the data at March 2002 is even more revealing. The following table highlights group training's national market share of all tradespersons, and selected trade categories, as well as its share in the same trade categories in those States and Territories where it exceeds its national share.

2.14. It is important to bear in mind that group training's national market share of all apprentices and trainees across all industry classifications is currently in the order of 13%, to appreciate the significance of the following figures.

| Group Training Percentage Market Share by Trade and by Key States Based on In Training Figures at March Quarter 2002 | | | |
|---|--|---|------|
| Trade | GT Market Share All States/Territories % | GT Market Share Selected States/Territories | |
| • Tradespersons and Related Workers (all trades) | 17.1 | QLD | 22.6 |
| | | WA | 23.1 |
| | | SA | 23.0 |
| | | TAS | 22.0 |
| • Construction tradespersons | 23.4 | WA | 46.0 |
| | | ACT | 43.0 |
| | | SA | 40.0 |
| | | QLD | 33.0 |
| • Automotive tradespersons | 18.4 | TAS | 34.1 |
| | | SA | 25.0 |
| | | WA | 23.0 |
| • Mechanical and fabrication engineering tradespersons | 16.8 | NT | 26.0 |
| | | TAS | 24.3 |
| | | SA | 22.0 |
| • Electrical and electronics tradespersons | 23.6 | SA | 39.9 |
| | | TAS | 39.0 |
| | | WA | 34.0 |
| | | QLD | 28.5 |
| • Food tradespersons | 14.5 | QLD | 25.5 |
| | | SA | 22.6 |

2.15. If one takes the construction tradespersons and looks at market share on the same basis as the table above for just two key occupation groups within this classification, the significance of the role of group training in underpinning traditional trade training is made even more apparent.

| Group Training Percentage Market Share by Occupation Groups Within the Construction Trades and by Key States Based on In Training Figures at March Quarter 2002 | | | |
|---|---|---|------|
| Occupation Group | GT Market Share All States/Territories | GT Market Share Selected States/Territories | |
| • Carpentry and Joinery tradespersons | 25.2 | ACT | 60.7 |
| | | WA | 52.0 |
| | | SA | 41.5 |
| | | QLD | 38.5 |
| | | NT | 28.1 |
| • Bricklayers | 26.3 | WA | 78.1 |
| | | SA | 39.6 |
| | | ACT | 31.6 |
| | | QLD | 28.7 |
| | | NSW | 25.3 |

Data sourced from NCVER Apprentice and Trainee data collection March 2002 Data
 interrogations based on ASCO classifications at AQF level III only

3. The Impact of Workers Compensation

3.1. These figures leave no doubt about the significance of the contribution made by this network to national skills formation and why, as a consequence, governments, both State and federal, have traditionally been so supportive.

3.2. A recent national review of group training, chaired by the Australian National Training Authority (ANTA), and including representatives of State and federal governments, industry and unions made a number of recommendations about national regulatory standards and future funding arrangements. The review committee also made recommendations to the ANTA Ministerial Council (ANTA MINCO) in relation to a number of issues adversely affecting the operations of GTOs, including the burgeoning cost of workers compensation.

3.3. The problem that this association made clear during the course of the national review is that the costs of workers compensation must be passed on

to GTOs' host employers through increased charge-out rates, the result of which is a reluctance by those hosts to continue employing apprentices and trainees through group training arrangements, especially when they may be incurring higher workers compensation costs by using group training than if employing directly. This can occur when the GTO's insurers rate it at the highest labour hire rate irrespective of the occupations of its apprentices and trainees.

3.4. The issue for government however, is that many of these employers will not employ directly for a range of reasons, and will walk away from contracted training altogether, to the great detriment of the skills base and the many young people who now depend on group training for a vocation.

3.5. The cost of workers compensation to GTOs differs between jurisdictions and is affected by two principal factors, these being:

- the basis on which the insurers rate the GTO which is increasingly in the high risk labour hire category, despite the actual industries in which the GTO operates or its claims history; and
- the extent to which State and Territory governments have policies in place to mitigate the effects of the cost of workers compensation on employers' willingness to engage in contracted training.

3.6. On this last point, a number of State/Territory governments have such policies but they vary markedly between jurisdictions. Briefly:

- the NSW government meets the cost of workers compensation for all trainees employed in NSW, a policy which is to be reviewed in light of the substantial cost being incurred by that government, but offers no concession in relation to apprentices;
- WA offers no relief from the cost of workers compensation to employers of apprentices and trainees other than a rebate on stamp duty to apply from July 2004;

- Victorian employers do not count apprentice and trainee wages as part of payroll for the purpose of calculating the cost of their workers compensation premiums however compensation claims by apprentices and trainees subsequently affect the premium paid in respect of an employer's other employees, a concession which is presumed to be underwritten by the Victorian government
- SA, Tasmania, QLD, the ACT and NT provide no relief to employers of apprentices and trainees that we can ascertain

3.7. These differences can lead to significant variations in the cost to GTOs of doing business around Australia and consequently to host employers using group training. It is becoming particularly cumbersome to the increasing numbers of GTOs now operating in multiple jurisdictions.

3.8. These jurisdictional anomalies can mean that a GTO in NSW can be paying twice as much, or more, in workers compensation premiums as a GTO in Victoria of similar size and operating across similar industries.

3.9. The group training network has been looking for solutions to these problems for some time. As responsibility for workers compensation and OH&S lies with State and Territory governments, GTA State and Territory associations have traditionally lobbied at the local level for whatever improvements or concessions could be extracted from their governments.

3.10. This effort has met with some limited success including the decision of the Queensland government to amend its OH&S legislation some years ago to specify that a GTO host employer is the 'employer' for the purposes of the OH&S Act. This amendment appears to have removed some of the ambiguity surrounding the respective levels of responsibility between the GTO and the host employer, though this remains untested in the courts. However, the ambiguity arguably still exists because similar provisions have not been introduced into the Queensland WorkCover legislation.

3.11 One of the solutions to rising costs and national inconsistency that has been brought to the attention of the board of GTA is the possibility of federal legislation to create a national industry scheme along the lines of that which has been legislated for seafarers and the merchant marine. While this option has not been explored in any detail with the relevant authorities, and so specific conditions and criteria are unknown to us, it would obviously only be of interest to our industry if the majority of GTOs were made better off than under current arrangements.

3.12. Other proposed solutions that have been considered by this association, by GTA State/Territory associations or by individual GTOs include:

- the establishment of an industry mutual fund; and
- self-insurance

Neither of these options has been implemented, though we understand that the option of self insurance has been explored by a number of GTOs who ultimately have been reluctant to risk the exposure.

4. Conclusion

4.1 The spiralling cost for GTOs of workers compensation and OH&S compliance in some jurisdictions, must be reigned in. We have no doubt that it directly threatens the capacity of many GTOs to deliver skills training in the future. As has been amply demonstrated, GTOs play a critical role in maintaining Australia's skill base in the traditional trades. If this is to be undermined and ultimately threatened through a combination of antiquated State laws and a piecemeal, nationally inconsistent approach, then all governments stand condemned.

4.2. This investigation by the Productivity Commission has the potential to play a significant role in future skill formation in this country. It is hard enough, as it is, to deliver quality training outcomes in a policy environment that is forever changing and lacking appropriate funding support. But add in the

burgeoning cost of 'components' such as workers compensation and OH&S, and serious questions such as "Is it worth it?" begin to be asked.

4.3. The forced withdrawal of GTOs and employers from the training market due to skyrocketing costs is now a real possibility. Every action must be taken to avoid this outcome as they significantly contribute to the ongoing skilling and training of future apprentices and trainees.

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