

Business SA RESPONSE

To the Interim Recommendations of the Productivity
Commission Inquiry into Workers'
Compensation and Occupational Health & Safety –
2003

November 2003

Contents

Introduction	3
Occupational Health & Safety framework	5

Introduction

In providing a response to the 'Interim Recommendations of the Productivity Commission Inquiry into Workers' Compensation and Occupational Health & Safety – 2003' Business SA confirm its support to following core principles of:

- Nationally consistent workers' compensation schemes including premium setting, benefits structures and insurance regulations.
- Nationally consistent OHS& W 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.
- A culture of working together with mutual responsibilities

The core issues for industry in the review of frameworks for Occupational Health & Safety and Workers Compensation are:

- The interpretation of the Duty of Care for employers and employees – in OHS and Workers Compensation tribunals and courts including contributory negligence. This subject has not been addressed in the review and BUSINESS SA suggests that it be addressed in the final report.
- The access to national licensing arrangements for self-insurers
- National Consistency for Occupational Health & Safety and Workers' Compensation
- A more effective regulatory framework including a packaged approach to Standards, Codes and Guidance materials.

It must also be noted that Occupational Health & Safety and Workers Compensation are key elements of workplace related legislation, which have the potential to conflict with other government regulations, which affect the employer employee relationships.

Other legislative requirements for employers, which have an impact on each other, include:

- Workplace Relations – Unfair dismissal/Work and Family
- Equal Opportunity in Employment
- Drug and Alcohol Testing
- Sexual Harassment
- Privacy
- Disability
- Discrimination
- Genetic Testing

Too frequently there would appear to be inconsistent standards and interpretations applied across the various legislation listed above.

An example of this is: an employer dismissed an employee for a clear case of sexual harassment (agreed by the Sexual Discrimination Commissioner) however the Industrial Relations Commission forced the employer to re-instate the employee.

The impact on the employer and on the staff members and to standards in the organisation was to say the least negative.

It is essential that these inconsistencies and 'double standards are addressed If there are to be substantial improvements in organisational standards and expectations.

National Framework for Occupational Health & Safety

Overview

The BUSINESS SA policy position stated in its original submission to the Commission and reaffirmed in the introduction above is to achieve a nationally consistent Occupational Health & Safety system. This position is reinforced in BUSINESS SA policy statements and in ongoing work in a wide range of both South Australian OHS and NOHSC committees.

Productivity Commission Recommendation

The Commission recommends that, for the proposed cooperative OHS model, there should be:

- **a smaller NOHSC board of five to nine members appointed by the WRMC on the basis of their expertise and skills;**

BUSINESS SA RESPONSE - disagree with recommendation

Occupational Health & Safety is a workplace issue in which employers and employees work closely together to achieve a safe and healthy workplace. Much of the regulatory framework and guidance materials to assist the parties is derived from national standards developed in close consultation with industry,

The suggested move away from a tri-partite Commission to a small 'expert' board would downgrade and in practice disenfranchise industry, which plays a very active and constructive role in developing national policy, national standards and the national strategic direction of Occupational Health & Safety in Australia through NOHSC and importantly to distribute OHS information to the employer network.

In fact, the only stakeholder to be well advanced in implementing the National OHS Strategy is industry, through its representation on NOHSC.

The current tripartite process whilst sometimes criticised as slow and time consuming provides a mechanism for a wide and genuine consultation and a 'reality check' on bureaucratic decision makers and for a 'buy in' of all the parties who have an interest in and responsibility to implement national policies and strategies.

The suggested smaller, more skills oriented board leaves open a number of questions including:

- The structure and membership of such a board
- Would industry representation be guaranteed?
- If there is no industry representation or none, which is, tied to a peak industry organisation, how is it planned to establish a two-way conduit to industry, to provide input and to disseminate information.
- Will the new board structure have any effect on industry representation on a wide range of other NOHSC Committees?
- How would the board work and/or interact with WRMC and the NOHSC secretariat?

The criticisms of the current tri-partite mechanisms and NOHSC relate to the lack of delivery of the agreed outcome of national consistency. This is not so much a fault of the process but a lack of commitment, by the bureaucracy in the jurisdictions to implement policies and standards which they have assisted in developing and which have been endorsed by their own ministers at WRMC.

The removal of the NOHSC tri-partite board structure would leave a major gap in the consultation arrangements, which currently involve all the OHS stakeholders.

Productivity Commission Recommendation

- a clear specification in the legislation of the objective of achieving uniform national OHS legislation and regulation in all jurisdictions;

BUSINESS SA RESPONSE – agree in part

The National OH&S Strategy has a key objective and commitment to develop a process to implement a nationally consistent approach to OHS regulations. This objective and commitment to achieving national consistency should be included in each national standard as part of the model template regulations and in the guidelines for their development currently being developed by NOHSC.

Another option would be to include national consistency as a function of the Commission in the NOHSC Act.

It is however imperative that WRMC re-endorse and reinforce its commitment to national consistency and distribute this commitment in writing to the relevant WorkCover Authorities and to ensure that the commitment is supported by co-operative action at federal and state/territory level.

Productivity Commission Recommendation

- an agreement that all jurisdictions adopt, by way of template legislation, the acts, regulations and codes as approved by the WRMC without variation;

BUSINESS SA RESPONSE - agree

WRMC has endorsed a nationally consistent approach to the development and implementation of national standards and has recently re stated its commitment to national consistency.

NOHSC is developing a revised strategy to improve its processes and products to achieve national consistency, the strategy to be endorsement by WRMC, is expected to include model template regulations.

The industry proposal, which is the catalyst for the NOHSC review includes the a package structure as outlined below:

Proposed National Standards Package structure

National Standards to be developed through the NOHSC tri-partite processes as a standard national package of materials to be adopted nationally, which would include:

- A National Standard - Written as a Model Regulation
 - Performance Based framework
 - Designed to be adopted as regulations by the jurisdictions
 - Written and presented in an agreed template model regulation format
- Code of Practice
 - Generic
 - Written to clarify and explain the regulations in simple easy to read plain English language.
- A Suite of guidance materials
 - Workplace focussed
 - Industry/hazard/risk specific
 - Focussed on what to do and how to do it
 - Brief, simple easy to read and understand
 - Easily accessible either in hard copy or electronically

The package would include an implementation strategy to achieve national consistency within an agreed short timeframe. This would enable NOHSC and the jurisdictions to review and revise all elements of the standards package approach and to retire current materials whilst maintaining an adequate legislative framework in place.

The one key issue not addressed in the NOHSC review or in the BUSINESS SA proposed packaged approach is the subject of the individual jurisdictional OHS Acts. The OHS Acts are different in each jurisdiction and BUSINESS SA would prefer to see consistency in this area also but recognises that there are political and states rights issues and difficulties.

Productivity Commission Recommendation

- **three committees to assist the WRMC:**
 - **a standing policy committee comprising the heads of State, Territory and Commonwealth departments responsible for OHS;**
 - **a technical committee of experts; and**
 - **an OHS advisory committee comprising representatives of employers and unions;**

BUSINESS SA RESPONSE - strongly disagree

The proposed structure with its focus on assisting WRMC would appear to remove the authority of NOHSC in providing advice to WRMC on OHS and related issues.

BUSINESS SA is greatly concerned that these three committees, which it is proposed, will provide assistance to WRMC, not NOHSC, will downgrade and in practice disenfranchise industry and reduce the role of industry to one of advice rather than direct input to policy direction, as is the current situation.

Industry has played a significant role and been a major contributor and effective driver in the development of the original National OHS framework and now the National OHS Strategy.

WRMC meets only twice per year; its agenda is predetermined as are largely its outcomes. It is hardly the most effective illustration of an objectively structured debating or decision making forum based on independent or open minded judgement.

OHS technical issues are effectively managed in the current system through a range of industry and risk/hazard committees/working parties eg Chemical Standards Sub-Committee.

The industry advisory committee reduces the industry input and influence in improving OHS performance at the workplace through input to the development of national standards, codes of practice and guidance materials, which should be the focus of the OHS system to assist employers to both comply but more importantly to improve prevention strategies and improvement in OHS performance.

The proposal that these committees will provide advice direct to WRMC when WRMC members already have a plethora of government bodies, staff committees and advisors at both federal state/territory levels appears to duplicate current resources without any perceived benefits to WRMC, NOHSC or the OHS systems.

In summary, Business SA strongly disagrees with this recommendation

Productivity Commission Recommendation

- specified timetables for WRMC review of proposals from NOHSC — the process to be prescribed in the legislation; and

BUSINESS SA RESPONSE – agree in part

Productivity Commission Recommendation

- funding for NOHSC shared by the jurisdictions, together with a commitment to funding the research and data collection necessary to ensure the development of a best practice national OHS system.

BUSINESS SA RESPONSE – agree in part

The current funding arrangement whereby the Commonwealth funds NOHSC direct has many advantages including:

- Industry believes that it is important that the federal government demonstrates its commitment to OHS at the national level by allocating federal funding in this way.
- A level of independence from the jurisdictions
- Isolation from the possible vagaries of political change and possible conflict on the levels of funding and payment arrangements of shared funding arrangements.
- Equality of representation by the members, which is not affected or perceived to be affected by different levels of financial funding arrangements between the jurisdictions.
- A level of certainty over funding arrangements from one source, the Commonwealth.

There are however some NOHSC initiated projects and/or programs, which cannot be funded within the NOHSC budget and are consequently not in the annual business plan and where special shared funding arrangements, may be a necessary and effective way of developing a particular product or program.

In such cases individual jurisdictions should be asked or may volunteer to take the lead in the development, for example, of a Code of Practice, which will then be used by NOHSC as the draft for the development of a national code.

This is a very cost and resource effective process which would also speed up the development of a suit or package of materials at the national level.

This process may well become more wide spread as the National Standards are revised and developed into national packages including National Standards (Model Regulations) Codes and industry/hazard/risk specific guidance materials.

Notwithstanding this approach to share the workload, resources and the costs to achieve improved outputs on specific projects/programs, the primary funding for NOHSC should remain with the commonwealth for the reasons outlined above.

Productivity Commission Recommendation

The Commission recommends that the Commonwealth should amend the Occupational Health and Safety (Commonwealth Employment) Act 1991, to enable those employers who are licensed to self-insure under the Commonwealth's workers' compensation scheme (or, in a later phase, to insure under a national scheme) to elect to be covered by Commonwealth OHS legislation.

BUSINESS SA RESPONSE – a gree

In Australia we currently have two levels of OHS regulations, namely the Occupational Health and Safety (Commonwealth Employment) Act 1991 for Commonwealth agencies and a small number of approved enterprises and the eight separate jurisdictions acts covering state/territory government activities and the private sector.

The suggestion to allow self-insurers under the Commonwealth workers compensation laws to elect to be covered by the extending the Occupational Health & Safety (Commonwealth Employment) Act is, in principle, a sensible one, which will help to achieve national consistency at least amongst some self-insurers with consequent cost and efficiency benefits.

Whilst this would increase the number of workplaces covered by Commonwealth OHS regulations vs state/territory based regulations in any one jurisdiction, the number would actually be quite small as we are talking of a relatively small number of major corporations spread across Australia.