
14 Comments from jurisdictions

In conducting this study, the Commission was assisted by an Advisory Panel comprised of representatives from each of the Commonwealth, state and territory governments. In addition to providing advice to the Commission and coordinating the provision of data, government representatives examined the report prior to publication and provided detailed comments and suggestions to address factual matters and improve the analysis and presentation of the data.

The Commission also invited each jurisdiction, through its panel members, to provide a general commentary for inclusion in the report. These commentaries are included in this chapter, and presented in the same order as the data in the report.

New South Wales

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NSW welcomes the Productivity Commission’s study to benchmark occupational health and safety regulation across Australian jurisdictions. Measuring the costs of business regulation allows jurisdictions to better identify unnecessary regulatory burden and cut red tape. NSW is strongly committed to reform of the national occupational health and safety regulation through COAG. This report will be a useful tool to focus COAG, the NSW Government and stakeholders on particular areas for improvement.

The study provides useful information on the occupational health and safety frameworks in each jurisdiction and may be helpful to inform all jurisdictions of opportunities for further occupational health and safety harmonisation after the model Occupational Health and Safety Act is in place.

NSW notes that some of the data presented in the report may be difficult to accurately compare due to minor, but significant differences in legislation, policies and implementation in each jurisdiction. For example, variations in workers compensation definitions lead to key differences which make accurate comparisons difficult. Similarly, NSW notes that some of the indicators used in the study, such as fatality statistics, can be highly variable from year to year.

Future Occupational Health and Safety Regulation Benchmarking

Although this study was a benchmarking exercise across jurisdictions at a particular point in time, NSW would support future benchmarking exercises in order to compare over time whether improvements are being achieved. Future studies will also be able to demonstrate the changes to occupational health and safety regulatory burden after the introduction of the model Occupational Health and Safety Act.

The Productivity Commission notes that this benchmarking report was unable to establish whether higher burdens deliver improved occupational health and safety outcomes. NSW would support further analysis of other indicators or case studies to better understand the relationship between occupational health and safety regulations and quality of outcomes. Further information on this relationship could inform Australian jurisdictions on best practice approaches to occupational health and safety and assist any future efforts to harmonise other areas of regulation.

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Victoria

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The Victorian Government is both firmly committed to, and has taken a leading role in, the harmonisation of national Occupational Health and Safety (OHS) legislation. Victoria has made a significant investment to ensure that its OHS laws provide the highest workplace health and safety protections while at the same time minimising red tape for employers. Further and importantly, these laws are enforced by WorkSafe Victoria in a constructive way aimed at assisting duty holders in knowing what they need to do to comply.

The draft model laws largely reflect the Victorian approach to OHS — namely, the concept that duty holders do what is reasonably practicable to ensure a safe workplace, and that all workplace parties – including the regulator – play an important role. This approach is supported by business as being both fair and balanced and has recently been endorsed by the Workplace Relations Ministers' Council (WRMC) of COAG for national OHS model laws.

The Productivity Commission's report will be timely in terms of providing useful input to the development of harmonised OHS regulation by Safe Work Australia, under the auspices of WRMC. This process has commenced and is expected to be completed by mid 2011, in time for national implementation to coincide with model primary legislation coming into effect.

Regulatory burdens raise complex issues, no less so in the case of OHS regulations. Under the Inter-Governmental Agreement on nationalising OHS legislation, this is recognised in the objectives which include:

- addressing the compliance and regulatory burdens for employers with operations in more than one jurisdiction; while
- achieving significant and continual reductions in the incidence of death, injury and disease in the workplace.

In this context, it needs to be recognised that a suite of compliance measures are utilised in a coordinated manner for the purpose of achieving OHS outcomes. These include legislated duties and roles for workplace parties. Comparisons of regulatory burden that are made without a full analysis of the attendant workplace benefits and/or avoided costs in terms of the extra compliance activity required in the absence of such measures, are problematic. In this regard, the Victorian Government recognises the importance of a focus on the effectiveness of OHS requirements, including impact analysis undertaken to date to accompany the national reform of OHS legislation (the Decision Regulatory Impact Statement for a Model OHS Act and the Consultation Regulatory Impact Statement).

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Queensland



The Queensland Government is committed to a nationally harmonised OHS legislative framework aimed at enhancing OHS outcomes, reducing unnecessary regulatory burden on business and improving the protection of the health and safety of all workers in Queensland.

Queensland supports this initiative by the Commission to inform the Council of Australian Governments (COAG) about those areas of OHS regulation where differences in the compliance burdens between the jurisdictions exist.

The work-related injury and illness data of the report shows Queensland has shown less improvement in incidence rates particularly within the agricultural and manufacturing industry sectors. While Queensland is pleased that the Commission has recognised a number of limitations associated with workers' compensation statistics, Queensland wishes to raise further concerns about the suitability of this data for assessing the effectiveness of regulations involving injury prevention and intervention. This matter is also noted in the *Consultation Regulatory Impact Statement for a Model OHS Act*.¹

Medium sized businesses (MSB) account for over 30% of all workers' compensation claims in Queensland. To achieve a reduction in work-related injury rates Queensland has identified the need for a concentrated effort for improvement in this sector. To this end, Queensland has implemented a new initiative to help MSBs better understand and manage their OHS risks by providing information, advice and encouragement before being audited. The initiative will run until mid-2011 during which time all MSBs involved can expect a visit by a Queensland health and safety inspector.

The report also suggests that provisions requiring obligation holders in Queensland to engage a workplace health and safety officer (WHSO) are more onerous than in other jurisdictions. The Queensland Government supported the inclusion of WHSOs in the Model Act, pointing to the strong support for WHSOs from Queensland stakeholders and research that demonstrated their effectiveness. Employers benefited from there being an appointed officer with OHS training, expertise and authority. Unions also found it highly beneficial to have a designated OHS officer as it clarified lines of communication and ensured that unions could quickly locate and liaise with OHS specialists at the workplace. The National OHS Review subsequently recommended WHSOs, however, this proposal was not supported by the majority of jurisdictions at the Workplace Relations Ministers' Council.

In Queensland, the *Workplace Health and Safety Act 1995* does not cover OHS in the mining industry. The mining and quarrying industry is covered by the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* (the 'Mining Safety Acts'). Queensland supports the approach by the Ministerial Council on Mineral and Petroleum Resources which, through

¹ Report by Access Economics Pty Limited for Safe Work Australia (Access 2009, p. 32).

the National Mine Safety Framework, has an objective of national harmonisation of mine safety legislation. COAG endorsed this approach in April 2009.

Queensland's mining OHS regulatory strategy is fundamentally proactive, in that inspections and audits are aimed at detecting shortcomings in safety and health management and enforcing improvements through issuing statutory directives. The Queensland Mines Inspectorate also works with industry through workshops, seminars and information sharing to improve safety and reduce the number of injuries. This strategy of taking the initiative before incidents occur, rather than reacting to non-compliance or accidents, significantly reduces regulatory burden; the Commission's report notes a 26% fall in the serious injury rate for the Queensland mining industry, and Queensland Mines Inspectorate statistics show a 66% reduction in lost time injury frequency rate since introduction of the Mining Safety Acts in 2001.

The Queensland Mines Inspectorate strongly supports the use of directives to enforce corrective action when risks are not managed to an acceptable level at mines. Statutory directives are considered to be effective enforcement tools as they can be issued immediately to address risk and, if necessary, shut down unsafe work. There are no provisions in the Mining Safety Acts for the use of enforceable undertakings, but in effect such undertakings can in many cases be obtained through directives.

Queensland is supportive of industry consultative arrangements through tripartite Advisory Councils as established under the Mining Safety Acts. These consultative arrangements have provided a forum for safety and health issues and have facilitated implementation of reforms. Regulatory burden has not been an issue in Advisory Council meetings and, in fact, the Councils consider mining OHS specific legislation to be a major influencing factor in safety performance in the mining industry.

This Government remains committed to improving Queensland's regulatory environment. At the national level, Queensland is working with other Australian jurisdictions to deliver a seamless national economy, and at the state level, is implementing the Smart Regulation Reform Agenda to reduce and prevent unnecessary regulatory burden on business, community and government by tackling the quantity of existing regulatory stock and the quality of future regulation simultaneously.

Two key actions under this Agenda are the: (i) Queensland Regulatory Simplification Plan 2009-13 which targets a reduction of \$150 million per annum in the compliance burden to business and the administrative burden to government by 30 June 2013; and (ii) enhanced regulatory development system which will introduce a streamlined, more rigorous and harmonised regulatory development and review system that will be implemented by 31 March 2010.

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ACT

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The ACT Government welcomes the opportunity to comment on the Productivity Commission 2010, Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety, Research Report. The ACT supports the objectives of the Council of Australian Government's National Reform Agenda and all efforts to identify unnecessary compliance costs and enhance regulatory consistency.

As noted in the Research Report, since the majority of benchmarking exercises underpinning the Report were conducted, the principal legislation regulating work safety in the Territory has been replaced. On 1 October 2009, the Occupational Health and Safety Act 1989 was replaced by the Work Safety Act 2008 in the ACT.

In improving the regulation of OHS in the Territory, the ACT Government has sought to establish a legislative framework that ensures progressive improvement in real outcomes without imposing unnecessary costs and administrative burdens. Our new legislation was developed after significant public consultation and was guided by advice by the (then) ACT Occupational Health and Safety Council, an advisory body comprised of employer, worker and community representatives. A detailed Regulatory Impact Statement was also prepared for the new legislation.

The commencement of the Work Safety Act 2008 has led to substantial changes in the regulation of work safety. These changes have been designed to impact on real outcomes and the regulatory burden imposed on businesses. This includes the extension of protections to cover a range of contemporary work and employment arrangements, new duties for 'upstream' duty holders, the integration of systematic risk management principles, and, the extension of the duty to consult to all employers and all workers coupled with a range of flexible compliance options.

While welcoming the Productivity Commission's efforts, the ACT does not believe that benchmarking based on repealed legislation is of value in assessing the current and future impact of local regulation. Given the changes introduced by the Work Safety Act, data based on the repealed legislation is of little relevance in assessing current regulatory impacts. Further, as national harmonisation work has progressed significantly during 2009, the ACT believes that greater emphasis on the anticipated impact of harmonisation would have significantly increased the relevance of the benchmarking exercise.

The ACT continues to support all efforts to assess the effectiveness of regulatory action in achieving optimal work safety outcomes. That said, the data utilised in this Report should be examined with caution as, as noted in the Report, it can be difficult to obtain and reliably assess comprehensive data on real outcomes. In this context, the ACT is not convinced that the data presented in the Report provides meaningful insight into the regulatory burden on business in the Territory, or a real basis for comparing legislation between jurisdictions. No evidence presented in the Report supports the view that Territory businesses

actually face higher, unjustified compliance costs.

Education and enforcement strategies in the ACT are designed to advise business that operating safely is not an inherent cost to their operations. Rather, a structured approach to risk management is likely to result in a reduction in net costs, is highly likely to be more efficient, and is likely to lead to a reduction in direct input costs over time. The ACT believes that these benefits should be acknowledged in any assessment of work safety regulation in the Territory.

Since 1 October 2009, the ACT has implemented additional National Standards and Codes of Practice, a general risk management process that must be undertaken by duty holders and mandatory work safety representative training (although work safety representatives are not compulsory). The ACT is now working towards further regulatory reform, which will simplify existing work safety regulations that deal with falls from heights and other significant hazards.

The ACT Government bases its assessment of the performance of worker's compensation regulation in the public and private sectors on analysis of data obtained from the Comparative Performance Monitoring Reports. The Commission's Report utilises alternative data, which the ACT regards as less robust.

The ACT believes that, while work safety regulation imposes a prima facie regulatory burden on business, well-targeted regulation is necessary to obtain improved work safety outcomes in real terms for all workers in the Territory.

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