

## **Department of Education, Employment and Workplace Relations Submission on the Productivity Commission's Discussion Draft – *Impacts of COAG Reforms: Business Regulation and VET***

The Department of Education, Employment and Workplace Relations (DEEWR) welcomes the opportunity to make a written submission on the Productivity Commission's discussion draft – *Impacts of COAG Reforms: Business Regulation and VET*.

### **The harmonisation of occupational health and safety**

Harmonisation of occupational health and safety (OHS) is a key reform under COAG's *National Partnership Agreement to Deliver a Seamless National Economy* (National Partnership), agreed in November 2008. Each party to the National Partnership acknowledged that it has a mutual interest in the creation of a seamless national economy and agreed to work together to achieve this objective. Clause 21(a) of the National Partnership commits States and Territories to implement a coordinated national approach to uniform OHS laws.

The discussion draft includes a number of inaccuracies that require clarification. This section of DEEWR's submission addresses those inaccuracies and responds to two invitations to provide comment:

1. The Productivity Commission (the Commission) invites comment on the nature and magnitude of the estimated direct impacts from OHS reform; and
2. The Commission invites comment on where there might be scope for improvement of the national OHS regime.

### **Justification of references, figures and statistics**

Throughout Chapter 8 (of Part A) – Occupational Health and Safety, there are numerous references to Productivity Commission and Australian Bureau of Statistics figures. However, there is no explanation as to how these figures were derived. References provide details of dates but lack additional information as to which document they were sourced from. As the Productivity Commission has released a number of reports which have included OHS as a component or focus, it is necessary for the references to be more specific.

The discussion draft also includes a number of references to Access Economics and Safe Work Australia Regulation Impact Statements (RIS) and the impacts and costs of the harmonisation of OHS laws, however, the figures provided in the discussion draft do not correspond to the figures in the RISs undertaken by these organisations. There is also no explanation as to how these figures were derived or which document they were sourced from. As there are three RISs attributed to model Work Health and Safety (WHS) laws, any reference needs to be specific and provide justification as to how the figures were derived.

## Clarifications

### ***Under 3.4 (of the Overview) Opportunities for improvement – on page 43 - Achieving the reform potential of agreed reforms***

Last dot point on page 43 and the top of page 44 states:

*Achievement of the full benefits of harmonisation between jurisdictions entails common legislative provisions between jurisdictions. The Commission heard that jurisdictional differences were codified (or consolidated) into model legislation and codes of practice, effectively eroding the original intent of the harmonisation.*

Under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA), jurisdictional differences are provided for in order to implement model OHS laws in the context of other jurisdictional laws. Clause 5.1.7 of the IGA provides:

“For the purposes of subclause 5.1.1, the adoption and implementation of model OHS legislation requires each jurisdiction to enact or otherwise give effect to their own laws that mirror the model laws as far as possible having regard to the drafting protocols in each jurisdiction.”

Jurisdictional notes in the model OHS laws allow the jurisdictions to vary provisions to accommodate the interaction of the model OHS laws with other laws or processes within the jurisdiction, particularly existing criminal laws and justice systems. This is necessary to achieve uniform policy outcomes and without them harmonised arrangements could not occur.

The jurisdictional notes do not change the overall rights and obligations of parties under the model WHS Act. Jurisdictional notes allow the model WHS laws to have the same effect when enacted in nine different jurisdictions.

The IGA also provides that the adoption and implementation of model OHS legislation is not intended to prevent jurisdictions from enacting or otherwise giving effect to additional provisions, provided these do not materially affect the operation of the model legislation (clause 5.1.8 page 9).

### ***8.1 Reform objectives and changes***

On page 137 (of Part A), the discussion draft indicates that the move to nationally harmonised occupational health and safety laws is occurring against a backdrop of:

- reductions in injury and illness rates,
- falls in fatalities and other work related physical injuries, and
- increasing mental health stress claims as a result of work related stress.

The harmonisation of OHS and workers' compensation are two separate issues and should not be confused. Workers' compensation statistics, which might be impacted over time by improved OHS, do not have an immediate correlation.

### ***What has changed under the harmonisation reforms?***

On page 142 (of Part A), the discussion draft states:

*For all jurisdictions except Queensland and Western Australia, there will be some changes to the mining specific OHS regulations. (Footnote: Queensland, Western Australia and New South Wales all have specific mining OHS laws. In New South Wales, however, unlike in Queensland and Western Australia, the generic OHS legislation also applies to mining activities. In the event of any inconsistencies, the provisions in the generic OHS legislation prevail. The Seamless National Economy National Partnership Agreement also includes reforms to mine safety.)*

The use of the term "mining specific OHS regulations" implies mining is entirely separate to the general OHS regulations rather than just being a chapter within them (with additional provisions in separate legislation in NSW, WA and QLD).

In addition, the comment regarding NSW is not entirely accurate as it does not have any mining specific OHS regulations within its general OHS legislation. NSW's mine safety legislation is contained in separate mine safety Acts and Regulations.

DEEWR suggests that the comment and footnote should be amended to something such as the following:

*For those jurisdictions that currently regulate mine safety through general OHS legislation (Victoria, South Australia, Tasmania and the Northern Territory), there will be some changes to the OHS regulations that apply to mining operations. [Footnote: Queensland, Western Australia and New South Wales all have separate (either stand alone or complementary) mining OHS laws. In Queensland and Western Australia, these are stand alone Acts and Regulations that do not interact with general OHS laws. In New South Wales, unlike in Queensland and Western Australia, its mine safety Acts and Regulations (for coal and metalliferous mining) are subordinate to the generic OHS legislation, which means that the general OHS and mine specific OHS legislation both apply to mining operations. In the event of any inconsistencies, the provisions in the generic OHS legislation prevail. However, there are no mine safety provisions contained within the general OHS regulations. The Seamless National Economy National Partnership Agreement also includes reforms to mine safety.]*

### ***Harmonisation of common regulatory elements***

On page 146 (of Part A), the discussion draft compares compliance requirements between businesses covered by the Comcare scheme to those businesses that operate in all jurisdictions whereby Comcare scheme businesses had to be aware of 25 codes of practice while other businesses (not in the Comcare scheme) had to be aware of 276. While the

figures are accurate, businesses not covered by the Comcare scheme do not have to be aware of the full 276 codes of practice, rather, only those that are relevant to the business.

On page 148 (of Part A), the discussion draft claims that transition costs in moving to the new system will decrease the total benefits from a harmonised OHS regulatory regime. This statement is inaccurate as a Regulation Impact Statement (RIS) has been completed, which quantified the benefits obtained from the harmonisation of OHS. Benefits include reducing red tape, addressing compliance and regulatory burdens for businesses with operations in more than one jurisdiction, creating efficiencies for governments in the provision of OHS regulatory and support services, uniform, equitable and effective safety standards and protections for all Australians, and achieving a significant and continual reduction in the incidence of death, injury and disease in the workplace. The RIS found that “adopting the model WHS Regulations indicates net benefits (i.e. after implementation costs) of around \$250 million per annum to the Australian economy over each of the next 10 years.” and “...productivity improvements in the order of \$1.5 billion to \$2 billion per annum over the next 10 years are considered likely”. It also found “single-state firms and small businesses will face a net cost of \$3.27 per worker per annum...clearly outweighed by the net benefit to society of \$21.48 per worker per annum”.

### ***Government administration costs***

The discussion draft states on page 149 (of Part A) that the reforms will shift the majority of OHS policy review and development to the Australian Government – in particular, to Safe Work Australia.

While it is accurate to say that the reforms will shift the OHS policy review and development to Safe Work Australia, it is inaccurate to say that it is solely the responsibility of the Australian Government. Safe Work Australia is an Australian Government statutory agency, established in 2009, with the primary responsibility of improving work health and safety and workers’ compensation arrangements across Australia.

The agency is jointly funded by the Commonwealth and State and Territory governments (facilitated through an intergovernmental agreement signed in July 2008).

Safe Work Australia is an inclusive, tripartite body comprising 15 members, including an independent Chair, nine members representing the Commonwealth and each State and Territory, two representing the interests of workers, two representing the interests of employers and the Chief Executive Officer of Safe Work Australia. Safe Work Australia represents a genuine partnership between governments, unions and industry.

### **Responses to invitation to provide comment**

1. The Commission invites comment on the nature and magnitude of the estimated direct impacts from OHS reform

The nature and magnitude of the estimated direct impacts from OHS reform have been fully canvassed through the original Productivity Commission Report *Performance Benchmarking*

*of Australian Business Regulation: Occupational Health and Safety* (23 December 2008), and the National Review into Model Occupational Health and Safety Laws. In addition, estimated direct impacts were also considered in both the Consultation (subject to public comment) and Decision Regulation Impact Statements (subject to comment from regulators, employer and employee representative groups) for the model Act and subsequent model Regulations and Codes of Practice.

2. The Commission invites comment on where there might be scope for improvement of the national OHS regime.

The recently developed framework for OHS in Australia which has been implemented in the Commonwealth, NSW, QLD, NT, and the ACT was fully canvassed through the National Review into Model Occupational Health and Safety Laws. Any consideration of scope for improvement of the national OHS regime will be considered during the review of Safe Work Australia in 2015 and the model OHS laws in 2017.

### **Descriptions of the Longitudinal Surveys of Australian Youth and terminology issues in relation to youth transitions**

DEEWR would like to provide the following comments in relation to descriptions of the Longitudinal Surveys of Australian Youth (LSAY) and terminology issues in relation to youth transitions:

- DEEWR suggests that the comment on page 168 (Appendix G of Part B) that ‘LSAY began in the 1970s’ be amended to reflect that LSAY in its current form commenced in 1995 (although it built on earlier longitudinal youth surveys dating from the 1970s).
- DEEWR notes that it prefers to use terminology such as young people who are ‘at risk of making a poor transition to adulthood’ or ‘at risk of making a poor transition to the labour market’, rather than the terms ‘failure’ and ‘failed transitions’. Whichever terms are used, DEEWR notes the importance of terms being clearly defined.

### **The modelling used in the discussion draft**

DEEWR would like to provide the following comments in relation to the modelling used in the discussion draft:

- The assumption relating to the source of the modelled increase in labour supply is probably the simplest but not necessarily the most realistic. As an alternative scenario, it would be good if simulations could be carried out which restrict the supply to those with a certain level of education, for example Year 10-11, rather than an unrestricted inflow from Not in the Labour Force (NILF) and Unemployment (UE).
- Possible effects of increased human capital on interstate migration (on results at the state level) and emigration (brain drain) at the national level should be explored, especially in the long-term.

- Econometric modelling of the effect on mature learners could include some basic model diagnostic and evaluation steps. For example, given the inclusion in the employment equations of the dummy variables for young children, it would also be useful to evaluate performance of models split into two categories - full-time employment and part-time employment.