

PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS REGULATION

OCCUPATIONAL HEALTH & SAFETY

ABOUT NSW BUSINESS CHAMBER

The NSW Business Chamber has over 30,000 members and is affiliated with 129 NSW regional Chamber of Commerce, with an additional combined membership exceeding 12,000.

Through its alliance strategy the organisation has a strong partnership with a significant number of the NSW industry and employer associations.

Members of the NSW Business Chamber closely mirror the broader NSW business demographic. Approximately 62% are located outside the Greater Sydney Metropolitan region and of the total membership

- 55% have between 1 and 50 employees
- 32% have between 50 and 100 employees
- 13% employ over 100.

This broad-based membership is supported through a network of regional offices located in Western Sydney, Sydney South, Wollongong (Illawarra Business Chamber), Newcastle (Hunter Business Chamber), Gosford, Coffs harbour, Ballina, Canberra, Griffith and Albury.

The NSW Business Chamber champions the development, capability and prosperity of Australian businesses.

INTRODUCTION

The New South Wales Business Chamber welcomes this opportunity to make a submission to the Productivity Commission.

Occupational Health and Safety is a subject which has been widely considered at the National and State/Territory levels on a relatively regular basis. Most jurisdictions have had some sort of review of their OHS regulatory frameworks in recent years. At the National level the two reports of the National Review into Model OHS Laws have now been substantially accepted by the Workplace Relations Members Council.

Consequently our submission does not seek to revise well trodden ground rather we seek to draw the Commission's attention to a few key considerations. In doing so we do not seek or intend to diminish the many concerns our members have regarding the OHS regulatory framework, its application and impact on businesses.

Copies of previous submissions to the Review of the NSW Occupational Health & Safety Act 200 and the national Review into Model Occupational Health & Safety Laws are attached.

The Chamber also extends an invitation for the Commission to meet with representatives of industry to discuss its investigations in more detail.

REGULATIONS AND REGULATORS

In considering the impact of regulation on business there are two dimensions to be considered:

- The regulations; and
- How those responsible enforce those regulations.

Within the NSW context the regulatory framework itself has been fairly stable, however it has become increasingly apparent of greater importance has been the approach of the Regulator.

NSW has a reputation of having the toughest OHS regulatory regime in Australia.

That reputation arises not only from the relevant legislation but also the higher propensity of WorkCover to prosecute alleged offences when compared to other jurisdictions.

The vigorous pursuit of prosecutions has been exacerbated by legislation which makes it very difficult, if not impossible, for defendants (employers) to successfully mount a defence and a judiciary which has taken a very broad view of the obligations of employers.

There are elements of the "chicken and egg" dilemma in this situation. Has the regulator pursued a vigorous prosecution policy because the legal framework makes it relatively easy for them to obtain a conviction or does the framework indicate to the regulator and judiciary that vigorous enforcement is intended.

Whatever the cause the key question has to be to what effect! With respect to Occupational Health and Safety have workplaces become safer.

The evidence of New South Wales experience is aggressive enforcement of a regulatory framework does not produce the best outcome.

Despite New south Wales having more prosecutions and imposing more fines than all other jurisdictions safety performance resources will have little impact if they are not supported by an appropriate organisational philosophy and culture. If, as has been the suspicion of employers in New South Wales, the regulator views those who it regulates as, prima face, wrong does simply because they are the subject to regulation then it is unlikely a cooperative relationship which focus on the intended result, safer workplaces, will emerge.

Of course such situations are fragile and subject to external pressures including public opinion. Criticism of regulatory performance is not uncommon when there is a serious incident. That this should occur, is entirely understandable, even if it may not be fair or warranted. The risk that arises from these situations is the regulator may feel forced to react.

Clearly regulators need to be held to account for their performance, however, we do need to find ways to encourage them to focus on “getting it right” rather than “not being wrong”.

For example, in New South Wales we have seen what we believe to be unnecessary over-reaction to an Independent Commission Against corruption (ICAC) inquiry into aspect of WorkCover operations.

The Commission found there was corrupt activity by some people with respect to aspect of WorkCover’s Licensing operations. Many of the actions taken by WorkCover were proper, however those are circumstances where the reaction can only be described as excessive and counterproductive, and not reasonably necessary.

WORKER COMPENSATION

While average worker’s compensation premiums are often used for comparing workers compensation schemes they are at best a poor indicator of regulatory outcomes.

There are simply too many variables impacting workers compensation schemes, other than the number and severity of schemes which affect premiums, for example:

- Benefits levels and limits
- Eligibility criteria
- Underwriting model
- Scheme asset performance
- Actuarial assumptions
- Claims and injury management models
- Policy decisions by Governments

All of these variables impact scheme costs independently of the number and severity of claims. It is theoretically possible to have a high cost/high premium scheme where the number and severity of claims may be low.

It does not follow that low or high premiums equate to low or high accident and severity rates.