

Business
Council of
Australia



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Submission to the Productivity Commission

on the

***Draft Research Report: Performance Benchmarking of
Australian Business Regulation: Occupational Health &
Safety***

February 2010

The Business Council of Australia (BCA) welcomes the opportunity to present its views to the Productivity Commission's Draft Research Report, *Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety*, January 2010.

The BCA is an association of Chief Executives of leading Australian corporations with a combined national work force of almost one million people. It was established in 1983 to provide a forum for Australian business leadership to contribute directly to public policy debates in order to build a better and more prosperous Australian society.

The BCA strongly endorses efforts to enhance the effectiveness of occupational health and safety (OHS) legislation and policy and its operation around Australia. The BCA considers that the key objective must be to establish an equitable and efficient system that focuses on the prevention of workplace injury or fatality and encourages businesses and employees to be proactive in that respect.

The BCA supports the efforts of the Council of Australian Governments to develop a harmonised national framework based on model legislation which would address the inconsistency of OHS laws across jurisdictions in Australia, whilst ensuring that the more concerning aspects of some of the laws are not duplicated across the country. This submission does not address the draft research report in detail, except to support the contribution that the research makes to the important process of harmonisation of OHS.

The BCA supports the recognition in the draft report of the costs that are imposed by duplicated and overlapping OHS regimes in Australia. A key concern for business is the complexity and inconsistent operation of occupational health and safety legislation across the Australian jurisdictions. The BCA therefore welcomes the information and statistics that highlight the imperative for national harmonisation, including:

“The costs national firms face due to the differing OHS regulatory regimes of the jurisdictions exceed those of the Comcare system. For example, firms operating Australia-wide have to be aware of 3392 pages of regulation – 1068 from primary legislation and 2324 from formal regulations – and face 282 codes of practice at the state and territory level. In contrast, firms operating under Comcare have to be aware of 621 pages of regulation – 147 from primary legislation and 474 from formal regulations – and 21 codes. The volume and complexity of the OHS regulatory regimes has been a critical motivation for those companies which have joined the national Comcare scheme.

Additionally, the BCA has been concerned with some of the prescriptive provisions that have developed in OHS regulation and legislation, and in the direction of legislative changes being adopted by some states. With this in mind, the BCA welcomes the trend data analysis which can be a useful source of information for reform and harmonisation of the OHS system. In particular the BCA notes the finding that *“Trend data indicates the Commonwealth and Victoria have achieved the lowest injury rates in recent years...”* and the BCA reiterates that model OHS legislation should ensure that:

- General duties of care are administered through the normal court system, consistent with the principles of due process (including an appropriate system of appeals).
- Appropriate and flexible qualifying concepts are included, such as the concepts of ‘reasonably practicable’ and ‘reasonable care’, to ensure that the system applies fairly.
- Prosecutorial due process is incorporated, including prosecutions for alleged breaches under OHS laws can only be brought by public authorities.

The BCA notes the Productivity Commission’s finding that:

“There are significant differences among OHS regulators in: their level of resources; funding sources; availability and application of enforcement tools; appeal mechanisms; and transparency.”

In this respect, the BCA considers that the development of a harmonised set of OHS laws under COAG should also ensure that a harmonised system can continue into the future. It would be extremely disappointing to reach a conclusion to the process, only to see duplication and overlap re-emerge in the future due to the way in which the laws are for example administered, amended or applied.