

# Australian Government Productivity Commission

Performance Benchmarking  
of Australian Business Regulation:

## ***Occupational Health and Safety Draft Research Report***

---

### **OVERVIEW, pp X to XXV**

#### **Table 1, page XXII – Availability of Enforcement Tools:**

Infringement/penalty notices are available as an enforcement tool in the Northern Territory – the table incorrectly states they are not available in the Northern Territory. Infringement notices are available per Part 12A of the Workplace Health and Safety Regulations.

#### **Table 2 and commentary, page XXIII – Use of Enforcement Tools:**

- Infringement/penalty notices are available as an enforcement tool in the Northern Territory (Part 12A Workplace Health and Safety Regulations). The table data incorrectly indicates a “not applicable” for this figure for the Northern Territory. They were not used during 2008-09, the correct figure is 0.
- Number of prosecutions (finalised) for the Northern Territory for 2008-09 = 5. The table incorrectly indicates a “nr” for this figure.
- There were 0 (zero) enforceable undertakings for the Northern Territory in 2008-09. The table incorrectly indicates a “na” figure. Enforceable undertakings are available as an enforcement tool in the Northern Territory ( see Section 80 of the Workplace Health and Safety Act) but were not used in 2008-09.

Commentary following table...

*“It is apparent that Victoria and South Australia had the highest inspection and audit rates (equivalent to 1 in 5 worksites inspected or audited during 2008-09) followed closely by the Northern Territory (1 in 6).*

- The Northern Territory has withdrawn the number of worksites from the report, and thus, the reference to inspection to worksite ratio must be removed. The Australian Bureau of Statistics has confirmed in writing (see attached) that they do not collect or provide data in relation to the number of worksites. The previous figure provided by the Northern Territory was based only on worksites that the regulator has visited, and is therefore incomplete.

**Table 3, page XXIV – Resourcing Indicators:**

- Requires inclusion of Northern Territory OHS expenditure (data sheet attached at page 8):
  - OHS Expenditure = \$4 979 000
  - OHS Expenditure per FTE staff = \$113
  
- No worksites figure is available for the Northern Territory. The Australian Bureau of Statistics has confirmed in writing (see attached) that they do not collect or provide data in relation to the number of worksites. The previous figure provided by the Northern Territory was based only on worksites that the regulator has visited, and is therefore incomplete.

**Commentary, page XXV – “Transparency and accountability of Regulators”:**

*“all jurisdictions, except Tasmania and the Northern Territory, conduct feedback surveys and publish this information in some form.”*

- The Northern Territory has conducted a monthly feedback survey since April 2009, although the results have not yet been published. The results will form part of the regulator’s published annual output reporting from 2009-10.

*“the Northern Territory provides only limited contact information on it’s improvement notice – a post box address.”*

- The improvement notices also contains a toll-free 1800 contact number. The template for the improvement notice is attached at the end of this submission, showing the 1800 contact number (1800 019 115).

## **CHAPTER 5**

### **REGULATOR CHARACTERISTICS AND ENFORCEMENT PRACTICES**

#### **Table 5.3, page 104 – Resourcing Indicators:**

- Requires inclusion of Northern Territory OHS expenditure (data sheet attached at page 8):
  - OHS Expenditure = \$4 979 000
  - OHS Expenditure per FTE staff = \$113
- No worksites figure is available for the Northern Territory.
- The Australian Bureau of Statistics has confirmed in writing (see attached) that they do not collect or provide data in relation to the number of worksites. The previous figure provided by the Northern Territory was based only on worksites that the regulator has visited, and is therefore incomplete.

#### **Table 5.4, page 105 – OHS income components:**

- The Northern Territory regulator is 100% centrally funded and does not receive any fee income from any of the activities listed. Footnotes to the table need to be amended to reflect this.

#### **Table 5.5, page 107 – Inspectorate resources:**

- Worksites to OHS inspector's ratio should be removed – no figure is available for Northern Territory worksites. The Australian Bureau of Statistics has confirmed in writing (see attached) that they do not collect or provide data in relation to the number of worksites. The previous figure provided by the Northern Territory was based only on worksites that the regulator has visited, and is therefore incomplete.
- Inclusion / amendments to the rest of the data as follows:
  - Turnover of OHS inspectors = 15%
  - Starting salary of a full time OHS inspector = \$54,196
  - Average salary of a full time OHS inspector = \$63,043
  - Experience of OHS Inspectors:
    - Less than 3 years = 6
    - 3 to 10 years = 5
    - More than 10 years = 1
- Footnotes to the table need to be amended accordingly.

#### **Table 5.8, page 109 – Enforcement constraints:**

- Change constraint level for “Budget Limits” for Northern Territory from medium to HIGH. Data provided to the Commission was from senior Inspectors, who did not have sufficient information to determine the level of budget constraints. Note that for 2008-09 the regulator's

expenditure exceeded income, (refer to Data Sheet at page 9) which is evidence of the high budget constraint the regulator is facing.

**Table 5.9, and associated commentary page 113 – Activity indicators:**

- Remove “Worksites to inspection and audit ratio” figure for Northern Territory. The number of worksites in the Northern Territory is not available.  
The Australian Bureau of Statistics has confirmed in writing (see attached) that they do not collect or provide data in relation to the number of worksites. The previous figure provided by the Northern Territory was based only on worksites that the regulator has visited, and is therefore incomplete.
- “Total value of fines imposed on businesses by regulator” should be 0 (zero) for the Northern Territory. The footnote indicates “the Northern Territory is not currently able to provide information on the total value of fines...”. This is incorrect. The figure is 0 – the regulator did not impose any fines during 2008-09.

Commentary, above Table 5.9, referring to table 5.9:

*“...Victoria and South Australia have the highest inspection and audit rates (equivalent to 1 in 5 worksites inspected or audited during 2008-09) followed closely by the Northern Territory (1 in 6).*

- The Northern Territory has withdrawn the number of worksites from the report, and thus, the reference to inspection to worksite ratio must be removed.
- The Australian Bureau of Statistics has confirmed in writing (attached) that they do not collect or provide data in relation to the number of worksites. The previous figure provided by the Northern Territory was based only on worksites that the regulator has visited, and is therefore incomplete.

**Table 5.12, page 119 – Availability of Enforcement Tools:**

- Infringement/penalty notices are available as an enforcement tool in the Northern Territory (Part 12A Workplace Health and Safety Regulations) – the table incorrectly states they are not available in the Northern Territory.

**Table 5.14, page 120 – Use of Enforcement Tools:**

- Infringement/penalty notices are available as an enforcement tool in the Northern Territory – (Part 12A Workplace Health and Safety Regulations) - the table data incorrectly indicates a “not applicable” for this figure for the Northern Territory. They were not used during 2008-09, thus the correct figure is 0.

- Number of prosecutions (finalised) for the Northern Territory for 2008-09 = 5. The table indicates a “nr” for this figure.
- There were 0 (zero) enforceable undertakings for the Northern Territory in 2008-09. The table indicates a “na” figure. Enforceable undertakings are available as an enforcement tool in the Northern Territory (see Section 80 of the Workplace Health and Safety Act) but were not used in 2008-09.

**Commentary – “Relative use of the enforcement pyramid”, page 121:**

- The Report concludes that the NT Regulator (amongst others) relies ' heavily on 'soft' approaches to enforcement (educate/ advise, verbal warnings, written directives) compared to some other jurisdictions who use prosecution and enforceable undertakings (the 'tougher' approaches). The NT regulator has found this softer approach has led to increased compliance and improved outcomes. .

It should be noted that as a result of relatively new performance based OHS legislation and a relatively low level of understanding and awareness amongst many in the small business sector, a focus on education and advice is appropriate for the NT Regulator at this time.

**Table 5.16, page 122 – OHS Expenditure Components:**

- Requires inclusion of Northern Territory OHS expenditure (data sheet attached at page 8):
  - Total OHS Expenditure = \$4 979 000
  - Administration expenditure = \$519 500 (11%)
  - Enforcement expenditure = \$3 775 000 (76%)
  - Education expenditure = \$119 000 (2%)
  - Other expenditure = \$565 500 (11%)
  - Other expenditure includes office-based staff involved in the provision of OHS advice and information.
- Remove footnote re non-inclusion of Northern Territory data.

**Table 5.22, page 131 – Encouraging a Culture of Compliance:**

- Change frequency of “information campaigns” for Northern Territory from “Regular” to “SELDOM”.
- The information supplied to the Commission was from operational inspectors, who may have confused information and educational activity that they provide during each workplace visit with the term “information campaigns”. In terms of structured/formal information campaigns the Northern Territory has conducted the following number of campaigns during the previous 2 years.
  - 2007-08 – 1 campaign
  - 2008-09 – 2 campaigns
  - In 2009-10 the NT regulator will conduct 3 campaigns.

**Commentary, page 135 – “Special assistance for businesses”:**

*“...all core and mining OHS regulators, with the exception of the ACT and the Northern Territory, provide special assistance to small business.”*

The claim is made that NT does not provide specific assistance to small business. Whilst it is true there is no specific targeted information source in the form of a free consultancy service, NTWS provides small business with significant on the ground assistance during regular inspectorate activity. Approximately 90% of all businesses in the Northern Territory are small business (ABS, cat1321). This equates to approximately 3600 work place visits carried out within small businesses each year. As part of it's “softer” approach, regular inspectorate activity includes a large element of information and advice during each visit.

## CHAPTER 6 ACCOUNTABILITY OF REGULATORS

### Key Points, page 139:

- Dot point 3 – *“Most jurisdictions conduct feedback surveys and publish this information in some form, the exceptions being Tasmania and the Northern Territory.”*

The Northern Territory has conducted a monthly feedback survey since April 2009, although the results have not yet been published. The results will form part of the regulator’s published annual output reporting from 2009-10.

- Dot point 4 – *“the Northern Territory provides only limited contact information on its improvement notice – a post box address..”*
- The improvement notices also contains a toll-free 1800 contact number. The template for the improvement notice is attached at this end of this submission, showing the 1800 contact number (1800 019 115).

### Table 6.2, page 143 – Appeals against Court Decisions:

- Correct figure for prosecutions for Northern Territory for 2008-09 = 5. The table indicates 4.
- Number of prosecutions per worksite figure should be removed for the Northern Territory. The number of worksites in the Northern Territory is not available.  
The Australian Bureau of Statistics has confirmed in writing (see attached) that they do not collect or provide data in relation to the number of worksites. The previous figure provided by the Northern Territory was based only on worksites that the regulator has visited, and is therefore incomplete.

### Table 6.7, page 149 – Written Notices:

- The table indicates the Northern Territory does not use a “written notice” for Breaches/Prohibition. Please find attached a copy of the Northern Territory prohibition notice.
- The footnote to the table indicates the Northern Territory only provides a post box address on its improvement notices. The improvement notices also contains a toll-free 1800 contact number. The template for the improvement notice is attached at this end of this submission, showing the 1800 contact number (1800 019 115).
-





Commentary page 150, relating to Table 6.7:

*“...the Northern Territory is the only jurisdiction to have an inspection report. Despite this, the contact information on the improvement notice only lists a post box address, while the inspection report contains no contact information.”*

- The inspection report is not an enforcement tool or enforceable – thus it does not constitute a “written notice”. It was provided to the Commission as a courtesy.
- As previously stated, the improvement notice contains a toll-free 1800 contact number in addition to a post box address.

# AMENDED DATA SHEET FOR NT WORKSAFE OHS EXPENDITURE (FROM REGULATOR SURVEY)

▪ Please complete the questions in Part 3 for the period 1 July 2008 to 30 June 2009

## KEY DEFINITION - PLEASE READ FIRST

Expenditure on OHS activities includes staff costs for those directly involved in OHS activities, consultants' fees (where related to regulatory activity), enforcement expenses (for example, legal costs), OHS contractors, travel expenses, and costs incurred in stakeholder consultation/liaison. It excludes corporate and fixed overheads (such as rent and utilities), maintenance, depreciation, interest, amortisation, and losses on disposal of plant and/or equipment.

6a. What was your agency's total expenditure on OHS activities in 2008-09?

\$  
4,979,000

6b. What was your agency's expenditure on the following categories of OHS activities in 2008-09?

Expenditure	\$
Administration	519,500
Enforcement	3,775,000
Education Activities	119,000
Other	565,500
<b>Total</b>	<b>4,979,000</b>

7a. What was your agency's total income (appropriation and other) for OHS related activities in 2008-09?

Indicate its source (central/cost recovery/mixed)

\$	Source
4,655,000	Central

7b. What was your agency's revenue from the following categories of OHS related fees collected from businesses in 2008-09?

Fee type	\$
Licensing	0
Permits	0
Inspections	0
Audits	0
Appeals	0
Other	0
<b>Total</b>	

White Copy: To Respondent  
 Green Copy: To Worker Representative  
 Yellow Copy: To Information Services  
 Pink Copy: To Remain in Book

Notice No: \_\_\_\_\_

## IMPROVEMENT NOTICE

Section 75, *Workplace Health and Safety Act 2007*

**Notice issued against** (Respondent): \_\_\_\_\_

**Notice given to** (person): \_\_\_\_\_

**Position:** \_\_\_\_\_

**Copy given to** (person): \_\_\_\_\_

**Role:** \_\_\_\_\_

**Location of Workplace:** \_\_\_\_\_

**Service method:**  given to a person apparently in charge of the workplace  post  fax  email

**You are required to undertake the actions specified below no later than:**

(Compliance Date) ..... / ..... / .....

I, \_\_\_\_\_, a Workplace Safety Officer appointed under the *Workplace Health and Safety Act 2007*, reasonably believe that the person named above as the Respondent to this Notice

has contravened  is contravening  is about to contravene

the *Workplace Health and Safety Act 2007*, specifically Section .....

**This belief is based on the following grounds:**

.....  
 .....  
 .....  
 .....\*

**The action required by this notice to remedy the contravention / prevent the contravention is:**

.....  
 .....  
 .....  
 .....\*

.....  
 Workplace Safety Officer (signature) Date Phone

**If you do not do what this notice requires within the time specified above you will fail to comply with this notice. Failure to comply with an improvement notice is an offence under the Act to which penalties apply (see over).**

*The issue of an improvement notice is a reviewable decision under Section 87 of the Workplace Health and Safety Act 2007. See over for information on review of decisions.*

\*FM 102 - Attachment may be used if required.

FM030 Rev3 25/06/2008

## NOTES

If you need further information in relation to the requirements of this notice or further advice on how to comply, contact the Workplace Safety Officer who issued the notice, or if they are not available contact NT WorkSafe.

### Failure to Comply with an Improvement Notice

*Workplace Health and Safety Act 2007, Section 75(5)*

*"a person against whom an improvement notice is issued who fails to comply with the notice within the time allowed in the notice is guilty of an offence.*

*Maximum penalty: Individual 100 penalty units.*

*Maximum penalty: Body Corporate 500 penalty units."*

### Reviewable Decisions

Section 87 of the *Workplace Health and Safety Act* provides a right to seek review of the issue of an Improvement Notice. A person affected by the issue of the notice may seek review of any aspect of the notice, including the time allowed for compliance or the actions the notice requires to be taken. Section 88 of the Act sets out the mechanism for review as follows:

- "(1) A person affected by a reviewable decision may, within 14 days after the date of the decision, apply to the Authority for a review of the decision.*
- (2) An application for a review must:*
  - (a) be made in an approved manner and form [available on website worksafe.nt.gov.au; or phone 1800 019 115]; and*
  - (b) set out in detail the grounds on which the applicant believes the decision should be reviewed; and*
  - (c) state the nature of the decision the applicant seeks on the review.*
- (3) The Authority may extend the time for applying for review in a particular case if satisfied that there is good reason to do so.*
- (4) The Authority may summarily reject an application for review if it considers the application frivolous, vexatious or lacking in substance."*

### Appeals

A person who is dissatisfied with the decision of the review may, within 21 days of the date of the decision, appeal against the decision to the Court. Refer to Sections 91 and 92 of the Act for further information on Appeals.

**NT WorkSafe**  
GPO Box 4821  
DARWIN NT 0810

White Copy: To Respondent  
Green Copy: To Worker Representative  
Yellow Copy: To Information Services  
Pink Copy: To Remain in Book

Notice No:

## PROHIBITION NOTICE

Section 76, *Workplace Health and Safety Act 2007*

Notice issued to (Employer):

Notice given to (person):

Position:

Copy given to (person):

Role:

Location of Workplace:

Service method:  given to a person apparently in charge of the workplace  post  fax  email

The activities specified below are PROHIBITED until a Workplace Safety Officer is satisfied that the risk has been eliminated or reduced to an acceptable level and withdraws this notice. You must not cause or allow the prohibited activities to be undertaken while this notice is in force.

I, ....., a Workplace Safety Officer appointed under the *Workplace Health and Safety Act 2007*, reasonably believe that workers are exposed to serious and immediate risk to their health or safety arising from the following activity or from working in the following situation or activity:

.....  
.....  
.....  
.....  
.....\*

This belief is based on the following grounds:

.....  
.....  
.....  
.....  
.....\*

Workplace Safety Officer (signature)

Date

Phone

If you cause or allow the activity or work in the situation prohibited above to continue you will fail to comply with the notice. Failure to comply with a Prohibition Notice is an offence under the Act to which penalties apply (see over).

*The issue of a Prohibition Notice is a reviewable decision under Section 87 of the Workplace Health and Safety Act 2007. See over for information on review of decisions.*

\*FM 102 - Attachment may be used if required.

FM091 Rev3 25/06/2008



Northern Territory Government  
Work Health Authority

## NOTES

If you need further information in relation to the requirements of this notice or further advice on how to comply, contact the Workplace Safety Officer who issued the notice or, if they are not available, contact NT WorkSafe.

### Failure to Comply with a Prohibition Notice

*Workplace Health and Safety Act 2007, Section 76(4)*

*"An employer who fails to comply with a prohibition notice is guilty of an offence.*

*Maximum penalty: Individual 100 penalty units.*

*Maximum penalty: Body Corporate 500 penalty units."*

### Reviewable Decisions

Section 87 of the *Workplace Health and Safety Act* provides a right to seek review of the issue of a Prohibition Notice. A person affected by the issue of the notice may seek review of any aspect of the notice, including the activity or situation that is prohibited or the actions that are required to be taken for the notice to be withdrawn. Section 88 of the Act sets out the mechanism for review as follows:

- (1) A person affected by a reviewable decision may, within 14 days after the date of the decision, apply to the Authority for a review of the decision.*
- (2) An application for a review must:*
  - (a) be made in an approved manner and form [available on website worksafe.nt.gov.au; or phone 1800 019 115]; and*
  - (b) set out in detail the grounds on which the applicant believes the decision should be reviewed; and*
  - (c) state the nature of the decision the applicant seeks on the review.*
- (3) The Authority may extend the time for applying for review in a particular case if satisfied that there is good reason to do so.*
- (4) The Authority may summarily reject an application for review if it considers the application frivolous, vexatious or lacking in substance."*

### Appeals

A person who is dissatisfied with the decision of the review may, within 21 days of the date of the decision, appeal against the decision to the Court. Refer to Sections 91 and 92 of the Act for further information on Appeals.

**NT WorkSafe**  
GPO Box 4821  
DARWIN NT 0810