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Business Regulation Benchmarking—Stage 2
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2600

via e-mail: ohs@pc.gov.au

BUSINESS REGULATION BENCHMARKING – STAGE 2

Dear Ms Holmes

I refer to the draft research report *Performance Benchmarking of Australian Business Regulation: Occupational Health & Safety* ("Business Regulation Benchmarking-Stage 2") released on 27 January 2010. Suncorp welcomes the opportunity to provide written comments to the draft research report and to areas which might be examined by the Commission in future years.

The draft report correctly highlights the current myriad of differences in the occupational health and safety (OHS) statutes, regulations and codes of practice across the nation. Single and multiple jurisdictional businesses are faced with inconsistent standards and enforcement which makes compliance complex and costly.

Suncorp supports all reform efforts that actively seek to reduce the regulatory burden on businesses whilst maintaining and improving OHS outcomes. The Federal Government's current objective to implement a nationally consistent or harmonised OHS legislative regime will go some way to achieving this. Suncorp fully supports this objective. The benefit of this approach is likely to see businesses invest any savings into enhancing company-wide cultures of preventing injury and illness and unlocking much needed productivity increases.

Suncorp's interest in the draft report is two-fold. First, as a multijurisdictional employer, Suncorp seeks to streamline and enhance its own internal OHS procedures and risk management nationally. Secondly, as an insurer, Suncorp seeks clarity and consistency in OHS laws nationally, in order to promote best practice risk management strategies with its single and multijurisdictional business clients across all jurisdictions and borders.

Suncorp takes this opportunity to comment generally to issues raised in the draft report.

Overview

Suncorp broadly agrees with observations in the draft report of differences across jurisdictions in respect to regulator characteristics, enforcement practices, accountability of regulators and regulations aimed at influencing the culture of compliance, regulation of particular hazards or processes, duplication between OHS regulatory regimes and industry specific and general OHS regulations.

In respect of these observations, Suncorp has and will continue to contribute to recent and ongoing discussions surrounding the model OHS laws, with the view of promoting positive OHS outcomes whilst reviewing opportunities to reduce regulatory burden on businesses.

1. Regulatory Framework and Objectives

Suncorp welcomes the proposed model Work Health and Safety Act (Model Act) endorsed by the Workplace Relations Ministers' Council on the 11 December 2009. Suncorp is keen to see the legislation fully adopted in all jurisdictions, as one method to further reduce regulatory burden on both single and multi jurisdictional businesses.

The draft report also highlights instances where OHS obligations or penalties arise from separate Acts within jurisdictions that ultimately may not be affected by the harmonisation of OHS laws. Examples include industry specific Acts, Acts relating to specific hazards (pages 39-42, 252); separate Act that govern obligations to provide OHS training, instruction or information (page 199) and the offence of industrial manslaughter in the Australian Capital Territory (page 190) under the *Crimes Act 1900* (ACT). Notwithstanding the implementation and adoption of the model Act, there is concern that these added provisions, obligations or penalties in other legislative instruments will not achieve the sort of reduction in regulatory burden on businesses as desired.

2. Outcomes of OHS

The draft report highlights (from page 46) data from various sources to illustrate incidence rates of injury/disease, compensated fatalities, industry data and the like. The limitations of the data are explained which in turn makes effective comparisons of OHS outcomes across jurisdictions problematic. The data is generally lagged in time and disaggregation of data (such as within an industry, injury types and age groups and injury types) is not readily available to insurers and businesses to be used as an effective tool to assess emerging trends nationally in a timely fashion and to assess whether OHS initiatives in response to injury or disease trends are successful. A case in point is the emerging trend of increasing incident rates of injury/disease and fatalities in the mature worker group in the context of current and future Government incentives encouraging mature workers to either re-enter or stay in the workforce.

Data collection and submission to regulators nationally in respect of workers compensation (and general insurance claims) represents a significant regulatory burden for Suncorp (and other insurers) due to the level of complexity and the variations of data required from each jurisdiction. Suncorp supports the principle of data collection and submission where data is purposeful, accurate and the parameters of the data are precisely defined so that the data is capable of useful comparisons across jurisdictions. Publication of data trends in a timely fashion is also crucial if it is to be used as an effective tool to measure the success of OHS outcomes over time.

There are substantial variations in record keeping requirements under OHS regulations across all jurisdictions (from page 168). Suncorp supports efforts to harmonise these obligations to make them consistent. Further, timely publication of this data would assist in proactively managing emerging and/or ongoing risks.

3. OHS Training Requirements, Worker Consultation, Participation and Representation

Suncorp broadly agrees with observations in the draft report of difference across jurisdictions in respect to OHS training requirements (from page 193), worker consultation, participation and representation (from page 215). Suncorp has and will continue to contribute to recent and ongoing discussions surrounding the model OHS laws on training requirements, workers consultation participation and representation in an effort to seek consistency in obligations which in turn should reduce the regulatory burden of businesses.

In respect of providing information, instruction, training and supervision of workers in appropriate languages (page 195), Suncorp supported this position by way of submission in response to the *Exposure Draft Model Act for Occupational Health and Safety Discussion Paper* released by SafeWork Australia in September 2009. In that submission, the prosecution by WorkSafe Victoria against Lakeside Packaging Pty Ltd was given as an example of where information, training, instruction or supervision was not given in an appropriate manner suitable for the relevant workers and serious injury resulted.

We enclose a copy of the submission to SafeWork Australia (mentioned above) for your information.

Further, ongoing effort should be maintained to seek consistency of definitions of relevant terms with all inter-relating Acts, such as the *Fair Work Act 2009* (Cwlth) (page 246), is supported.

4. Psychosocial Hazards

The draft report notes the incidents of claims of bullying, harassment and general work stress (from page 277) and the relative high cost of those claims (pages 279, 283) compared to claims for physical injuries. However, it is observed that only Queensland and Western Australia has specific codes of practice in respect of these types of claims with corresponding downward trend in claims.

Recently in a tragic fatality where a worker committed suicide, record fines were imposed on the three (3) individuals accused of bullying, the Company who employed them and its owner¹. Specific codes of practice on psychosocial hazards may give businesses further guidance on risk management of these types of claims.

Suncorp suggests that extension of the model laws specifically to psychosocial hazards should be considered in an effort to harmonise processes to effectively manage the risk of harm nationally. In consideration of such a move, regard should be had to the potential for positive OHS outcomes against the added regulatory burden of imposing further obligations by way of regulation.

5. Duplication

Suncorp notes the regulatory burden, associated costs (page 328) and confusion suffered by businesses as a result of intra and inter-state duplication (page 322) and overlap between Commonwealth and State/Territory coverage of OHS laws (from page 330). Much of the confusion relates to jurisdictional variations of duty of care by employers to workers/contractors/volunteers and the like (page 331). Harmonisation of OHS and workers compensation laws may go some way to resolve some of these issues.

¹ WorkSafe Victoria and MAP Foundation Pty Ltd
<http://www1.worksafe.vic.gov.au/vwa/vwa097-002.nsf/content/LSID164635-1>

In respect of the Federal OHS Act, Comcare's previous experience has essentially been with 'white collar' workers, and concerns have previously been raised as to the capacity of Comcare's inspectorate to provide rigorous oversight of OHS obligations in high risk industries not previously part of Comcare's traditional risk profile of public servants.²

The Commonwealth Government has announced its intention to transfer OHS coverage of self-insurers under the Comcare system to the states and territories after the model Act has been adopted (WRMC 2009c, p. 2). Whilst such a move may impose additional costs on those businesses affected initially, Suncorp considers it would reduce the scope for regulatory overlap with its associated confusion and resolve concerns raised in respect of the lack of rigorous oversight of OHS obligations.

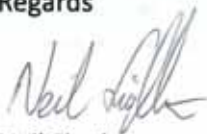
In respect of high risk industries and hazards, the Tasmanian experience highlights the need to introduce industry specific laws to clarify powers and duties owed by all stakeholders to prevent serious injury or fatality as experienced in the mining industry in Tasmania in the years 2000 to 2006.³ In respect with the interrelation between general OHS and industry specific OHS Acts, Suncorp agrees the two separate regulatory regimes, such as exists in NSW in the mining industry, places added regulatory burden on the relevant businesses (page 336). Suncorp prefers the Victorian approach of one overarching OHS Act, specifically dealing with various industries in formal regulation under this Act and supports efforts for this approach to be adopted nationally for all high and hazard specific risks.

6. Conclusion

As a multijurisdictional employer and a workers' compensation insurer, Suncorp is keen to actively work with the Federal Government and relevant stakeholders to enhance current OHS laws at the Federal level. Further, Suncorp supports the current Federal Government policy agenda of pursuing nationally consistent OHS and WC laws whilst actively seeking to reduce the regulatory burden on businesses imposed by all levels of government.

If you have any questions or wish to seek further clarification of Suncorp's position in relation to the matters discussed above then please feel free to contact me on (07) 3135 3637 or my Stakeholder Management Leader, Mike Thomas on (02) 8121 3115.

Regards



Neil Singleton

Executive General Manager

Statutory Portfolio & Underwriting Management

²Australian Government-Department of Education Employment and Workplace Relations-Report of the Review of Self-Insurance arrangements under the Comcare Scheme; January 2009; Page 16

<http://www.deewr.gov.au/WorkplaceRelations/Policies/ComcareReview/Documents/DEEWRRReportComcareReview.pdf>;

³ Department of Justice, Workplace Standards Tasmania: *Regulatory Impact Statement-Mine Safety in Tasmania-Proposal to Amend The Workplace Health And Safety Act 1995*; December 2009;

http://www.wst.tas.gov.au/_data/assets/pdf_file/0006/133548/AR016_RIS.pdf