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Australia's representative to the International Music Council



Music Council of Australia

The Secretary

Performance Benchmarking Australian Business Regulation
Productivity Commission

March 1, 2010

ohs@pc.gov.au

Dear Sir/Madam

The Music Council of Australia appreciates the opportunity to make comment on the Productivity Commission's Draft Research Report: *Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety*.

The Music Council of Australia is the national peak organization for the music sector. The 50-member Council is comprised of nominees of national music organizations and distinguished individuals elected to positions covering the breadth of this diverse sector. It fulfils its mission through provision of information, research, advocacy and project management. The Music Council of Australia is that Australian affiliate to the International Music Council, based in UNESCO, Paris.

The Music Council considers that the need for a national framework for occupational health and safety continues to be a priority for employers and employees alike and in particular for those whose activities necessitate activity in multiple jurisdictions.

From 1983, all occupational health and safety legislation and regulation in Australia has been formulated on the 1972 Robens model. It is frustrating that, rather than resulting in any national consistency, this has given Australia ten versions of the Robens model, all slightly different! While all involve a general duty of care imposed on those having control over aspects of the workplace – employer and employee alike – backed by comprehensive regulation and codes of practice, the detail varies across jurisdictions.

The National Occupational Health and Safety Commission first identified national uniformity as a priority in the early 1990s. It subsequently replaced the quest for "uniformity" with "consistency" – a matter of semantics in the view of the Music Council.

The Productivity Commission argued the need for a nationally consistent framework in 2004¹ and yet, as this inquiry indicates, the matters identified for urgent consideration remain unresolved. In 2004, the Productivity Commission found that cross-jurisdictional inconsistencies imposed an unnecessary burden on employers with employees working in multiple jurisdictions and raised matters of inequity. That remains the case today.

As the 2010 Report notes:

Every Australian jurisdiction (state, territory and the Commonwealth) has a core OHS Act, with a specific regulator responsible. Most are also responsible for workers' compensation. The OHS legislation in all jurisdictions contains common themes and addresses the same core aspects of OHS, including duties of care; worker participation and representation; OHS training and information; incident notification and record keeping; licensing, registration or use of permits; inspectors; and risk management.

Each jurisdiction also has a number of other pieces of primary legislation apart from the general OHS Acts, which cover OHS issues relating to specific industries or hazards. The number of additional Acts varies from three in Western Australia to nine in the Commonwealth. In total, there are around 70 additional Acts relating to OHS Australia wide. This highlights the complexity of the task facing businesses in complying with OHS obligations, particularly for those that operate nationally or in a number of jurisdictions.²

In 2010, entities operating in multiple jurisdictions can contend with up to "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."³ Such complexity invites non-compliance.

The music sector has a number of characteristics that distinguish it from many other sectors managing multi-jurisdictional workplaces. Unlike, for instance, the aviation, mining or constructions sectors where work in multiple sites in multiple jurisdictions occurs over extended periods of time, the music sector can be in the position of having employees in workplaces for periods of time as little as one day. By way of example, concert and other live performance tours might present performances in, for instance, Sydney, for two days, followed by performances in, say, Brisbane, Melbourne, Adelaide and Perth. Other tours might involve single performances in Sydney, Gosford, Tweed Heads, Coolangatta, Brisbane and Cairns or Port Fairy, Mount Gambier, Adelaide and Port Augusta or Blackheath, Bendigo and Ballarat. For the typically small enterprises that underpin the music industry, the complexity of occupational, health and safety legislation and regulation is unnecessarily complex, unnecessarily burdensome – and simply unnecessary.

It cannot be expected that any organization lacking the scale and wealth to have a lawyer permanently on staff will have an adequate understanding of these legislative and regulatory requirements, nor the ability for diligent compliance. Non-compliance is hardly the outcome that should be expected from such crucial legislation and

¹ National Workers' Compensation and Occupational Health and Safety Frameworks, Inquiry Report No 27, Productivity Commission, 16 March 2004, see online at http://www.pc.gov.au/__data/assets/pdf_file/0006/18546/workerscomp.pdf

² *Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety*, Draft Research Report, Productivity Commission, January 2010, page XIV, see online at

http://www.pc.gov.au/__data/assets/pdf_file/0007/94336/ohs-draft.pdf

³ Ibid, page XV

regulation. By way of example, notwithstanding the National Standard for Occupational Noise, New South Wales has a separate code covering noise management – something of which an entity from say Western Australia is likely to be unaware when mounting a tour from that state to the eastern seaboard.

The challenges of working in circumstances where the workplace can change from day to day are met by few industries – emergency services, the film and television industry, and news and current affairs being obvious and notable exceptions. The problems for the music sector are exacerbated by the fact that it is identified by micro, small and small-to-medium enterprises, those least equipped to address the complexities raised by cross-jurisdictional inconsistencies.

Further, for employees the outcomes of a workplace or work-related accident can be entirely reliant on location. For those on tours, travel is a key issue. Yet journey accidents are compensatable in some jurisdictions and not others.

The outcome, for small business struggling with the challenges presented by both occupational, health and safety legislation and regulation and workers' compensation regimes is often a recasting of persons, who can rightly be described by the Australian Taxation Office as employees, as sub-contractors, shifting, to some extent, responsibility for occupational, health and safety and shifting responsibility entirely in respect of workers compensation obligations to the person who should more rightfully be considered an employee.

The Music Council strongly supports the work of the Council of Australian Governments to develop a harmonized national framework for occupational health and safety but regrets that, notwithstanding recommendations that are now decades old, harmonization remains an unrealized ideal.

Given that occupational health and safety is such a fundamental right for all those in any workplace, any and all measures to deliver cross-jurisdictional harmonization must not be "a race to the bottom" but an undertaking that delivers optimal results across the nation.

In 2002, the National Occupational Health and Safety Commission formulated a *National Occupational Health and Safety Strategy 2002–2012*. The strategy was signed off by the Ministers of all states and territories and the Australian Government, and adopted by peak employer organizations and unions. One of the nine national targets and priorities identified was the implementation of a nationally consistent regulatory framework. The Music Council supports all endeavours to see that priority becoming a reality by 2012.

Thank you for the opportunity to submit these observations. We would be pleased to respond to your questions.

Yours sincerely

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Executive Director