

The Minerals Council of Australia makes the following comments on the Productivity Commission Draft Research Report on Performance Benchmarking of Australian Business Regulations: Occupational Health and Safety. The Draft Report heavily references the parallel Model Work Health and Safety regime and does not make any recommendations, therefore the MCA provides these comments as support for the work of the PC and to encourage further benchmarking following the adoption of the Model Work Health and Safety Act (WHS regime) and Regulations on 1 January 2012.

To recap, the MCA met with the PC on 6 May 2009 at the PC's Canberra offices. Discussion included the timing of the benchmarking study given the development of a Model OHS regime. MCA presented the view that a model regime regulating all businesses across Australia would go a long way to removing the regulatory burden of health and safety laws, and the remainder of the discussion focused on issues of legislative interpretation, implementation and Regulator competency, transparency and accountability. The PC was very familiar with the MCA's position on regulatory burden, therefore in conjunction with the discussion, the MCA referred the PC to its submission to the 2007 Annual Review of Regulatory Burdens on Business - Primary Sector and to the submission to the OHS Review Panel established by Minister Gillard in April 2008 which set out the minerals industries policy position on health and safety and the preferred legislative framework, as constituting the MCA's input into the benchmarking analysis.

Since the meeting with the PC the MCA made a further substantial submission to Safe Work Australia on the draft Model Act and Regulations (attached here for your reference) and continues to strongly support the national reform agenda.

The draft PC report represents a comprehensive and valuable insight into the regulatory burden of OHS laws across the country. Read in conjunction with the OHS Review Panel's Discussion Paper, this report provides further insight into the costs of regulatory burden. There is significant overlap in both reports by virtue of the need to document the existing regimes across the country. The PC report does however delve into the details of inconsistency, duplication and overlap. The OHS Review Panel's 2 reports did not capture this detail as the Review was focused on considerations of policy and legal provisions rather than application and interpretation of existing regimes.

The draft report is an excellent 'status' document and whilst recommendations have not been made, the report will provide a strong foundation from which to benchmark the Model OHS regulatory regime by focusing not on the content of the law (which will be uniform) but on its application, interpretation and enforcement. Whilst there is no reference to the MCA in the draft report (apart from a statistical reference), the draft report adequately captures the views of the Australian minerals industry as presented to the PC and the OHS Review Panel.

The report also mirrors the concerns of the MCA regarding the variation in approach to regulation, the inefficient and unnecessary overlap and duplication between general OHS laws and industry specific laws (with mining laws specifically referenced in the draft report), differences in application where there are multiple Regulators, the inadequate resourcing of Regulators, the range of and inconsistent use of enforcement tools. The draft report can only serve to further convince all States and Territories that a national WHS regime regulating all businesses across the nation is the only way forward.

Putting aside the differences in legislation being addressed through the WHS regime for the moment, a significant amount of the regulatory burden to business rests with the Regulator and the Courts in each jurisdiction. The draft report provides a good assessment of the court systems in each State/Territory and the differences in opportunities for appeals through the general and specialist courts (the recent High Court decision on Kirk Holdings vs NSW Workcover may see significant reform on the role of specialised courts). The MCA recommends that the PC provide this report to the Attorneys General as input for their consideration in any review of the courts regime under COAG's regulatory reform agenda.

Of particular use, the draft report's chapters on Regulator resourcing, accountability and transparency represent important baseline research for ongoing benchmarking following the implementation of

the WHS regime. The MCA will also be encouraging Safe Work Australia to review the PC report to assist them in developing national interpretative documents and guidance to support the WHS regime to ensure that jurisdictions do not apply regulatory burdens through varying interpretation and enforcement of the WHS regime.

The MCA would welcome the opportunity to further discuss the draft report as well as provide any additional information to the Productivity Commission to assist with finalising the research report.

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