

Department of Consumer and Employment Protection

WorkSafe

Government of Western Australia

Scanned copy of submission

Assistant Commissioner
Workers' Compensation and OHS
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Our ref: 099182

Date: 12 June 2003

Dear Assistant Commissioner

INQUIRY INTO NATIONAL WORKERS' COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY (OHS) FRAMEWORKS

The WorkSafe Division of the Department of Consumer and Employment Protection ("WorkSafe") is pleased to have this opportunity for input to the Productivity Commission's above inquiry.

In its role as the operational arm of the Western Australian Government's occupational safety and health portfolio, WorkSafe fully supports the WorkSafe Western Australia Commission's submission to the Inquiry (copy attached) and consequently WorkSafe will not be lodging a separate submission. However, in addition to the WorkSafe Western Australia Commission's submission, WorkSafe submits the following comments for the Productivity Commission's consideration.

By way of clarification, it is important to appreciate the fundamental distinction between WorkSafe, as a government agency, and the WorkSafe Western Australia Commission. WorkSafe administers and enforces the provisions of the *Occupational Safety and Health Act 1984*. The role of the tripartite WorkSafe Western Australia Commission is to consider and develop policies for consideration by Government on matters relevant to occupational safety and health in Western Australian workplaces. The Commission, as the pre-eminent body for occupational safety and health, advises the responsible Minister on legislation, policy and makes recommendations for codes of practice and guidance notes.

International Labour Organisation Convention 155 - *Occupational Safety and Health 1981*

Recent developments are such that the goal of greater consistency in OHS frameworks would be significantly enhanced by Australia's ratification of Convention 155. All States, Territories and the Commonwealth have indicated compliance with the requirements of this Convention, but the Commonwealth has not been inclined to proceed with ratification despite several requests in forums such as WRMC.

Westcentre 1260 Hay Street West Perth Western Australia 6005 PO Box 294 West Perth 6872
Telephone (08) 9327 8777 Facsimile (08) 9321 8973 Telephone Typewriter (08) 9327 8838
Email: safety@worksafe.wa.gov.au Internet: www.docep.wa.gov.au

Ratification commits all Australian jurisdictions to ensuring they maintain consistent legislative and administrative frameworks surrounding occupational safety and health consistent with the Convention's principles. The *National OHS Strategy 2002-2012* would also be strengthened by the Convention's ratification.

The Commonwealth Government has recently indicated they would be prepared to consider proceeding with ratification if Convention 155 is not reviewed at the International Labour Conference, scheduled for this month in Geneva. It is apparent from the agenda for the Conference that Convention 155 is considered an up-to-date instrument and that no changes to this Convention are likely.

It is WorkSafe's view that the Productivity Commission should also indicate their support for the ratification of Convention 155 on the basis of there being unilateral support across Australia for its principles.

Premium setting

In general terms, and as argued in WorkSafe's previous submissions to reviews of workers' compensation in Western Australia, WorkSafe is supportive of the introduction of arrangements whereby workers' compensation insurers provide premium incentives to employers who demonstrate a commitment to improving safety and health outcomes in the workplace.

Notwithstanding this support, it is prudent to note that any such initiatives, whether statutorily based or through other means, will need to be subject to actuarial analysis and debate by stakeholders to ensure there are not unintended consequences in what is a largely market driven system in Western Australia. WorkSafe would welcome further debate on this matter with an emphasis on utilising the experience and knowledge gained from other jurisdictions that have introduced, or endeavoured to introduce, premium discount arrangements. It is also understood that the Workers' Compensation and Rehabilitation Commission and the Premium Rates Committee have previously explored the impact of various forms of incentive arrangements on the Western Australian workers' compensation system.

WorkSafe is conscious of the role effective injury management plays in reducing the impact of injury and disease in the workplace and would welcome greater emphasis on the interrelationship between improved prevention and injury management approaches. While the WorkSafe emphasis is clearly in the preventative domain, its success in reducing the rate of lost time injury and disease in the workplace is contingent not only on prevention, but also on effective injury management. WorkSafe and WorkCover WA are increasingly working cooperatively to address such issues.

Consistent definitions (ie employer, employee etc) across workers' compensation and occupational safety and health regimes

WorkSafe sounds a word of caution in that there are very different objectives of various systems and the ramifications of moving away from concepts embodied in individual statutes would be extensive. WorkSafe's view is that such an approach would require in depth analysis of the potential effects to a whole range of legislation that may be affected by such a move.

Considerable debate would be required and WorkSafe seriously questions the amount of resources and effort that would be required when a satisfactory outcome is likely to be elusive.

Occupational safety and health data

As a result of a range of initiatives undertaken over the years by State and Territory occupational safety and health agencies and NOHSC, useful data on the level and characteristics of occupational injury and disease in Australia is accessible. WorkSafe strongly supports continued efforts to improve the availability and use of data on the levels, causes and costs of occupational injury and disease from State and Territory and Commonwealth workers' compensation systems. Indeed, workers' compensation data will play a critical role in the measurement of progress towards the achievement of targets underpinning the *National OHS Strategy 2002-2012*.

The introduction of the National Data Set (Second Edition) in 2001/02 expanded the collection scope to include all claims for which compensation had been paid, regardless of time lost, and the national reporting focus is on claims resulting in one week or more lost time (a "week" represents five working days even though a greater period of time may have actually elapsed). This change has improved the standardisation of reporting and to some extent addresses issues associated with the sensitivity of Western Australian data in relation to other jurisdictions that was evident under the original scope for the National Data Set ie claims resulting in absence of work of more than one day or shift. Notwithstanding this progress, WorkSafe remains concerned about the overall effect of the underreporting of claims in other jurisdictions, for example, claims involving time lost of between five and ten days' duration. In this regard Western Australia records all lost time injuries and diseases which result in absence from work of more than one day or shift.

The following types of workers are generally excluded from Western Australian workers' compensation claims data (note: the collection scope for the National Data Set is different to the collection scope used by Western Australia):

- Self employed persons.
- Commonwealth Government workers (including defence service personnel). These workers are covered by Comcare.
- Police officers (except for work-related fatalities).
- Unpaid volunteers and students on work experience.

In addition, to maintain consistency with regard to lost time claims, the following claim types are excluded:

- Journey claims between home and work.
- Asbestos-related diseases, including mesothelioma and pneumoconiosis.
- Duplicated or disallowed claims.
- Injuries and diseases that are treated in the health system (ie invalid pensions and sickness and unemployed benefits).
- Claims with less than one working day absence from work.
- Claims with less than one whole shift absence from work.

While there are limitations associated with the data derived from the workers' compensation system, WorkSafe advocates continued development of this source of information. Debate over the limitations of workers' compensation data or associated issues in relation occupational safety and health performance should not obscure the wealth of information available through workers' compensation data, and overall it provides the best indicators of occupational safety and health status available.

WorkSafe supports investigation of additional and alternative sources of information on occupational injury and disease to supplement workers' compensation data, in accordance with the *National Data Action Plan* incorporated in the *National OHS Strategy 2002-2012*.

A range of data issues was also addressed through the recent statutory review of the Western Australian *Occupational Safety and Health Act 1984*, the Laing Review, and currently the Western Australian Government is considering a number of initiatives as a result of Laing's final recommendations to improve the whole area of data collection and publication.

Finally, thank you again for the opportunity to comment, and WorkSafe looks forward to the release of the interim report later this year.

Should you wish to discuss any matters, please contact me direct on (08) 9282 0432.

Yours sincerely
Brian Bradley



**WorkSafe Western stralia Commissioner
Director General**

Attach.

WorkSafe Western Australia COMMISSION

Mr Herb Plunkett
Assistant Commissioner
Workers' Compensation and OHS
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Our Ref: 099182

10 June 2003

Dear Assistant Commissioner

Thank you for the opportunity to make a submission to the Productivity Commission Inquiry into National Workers' Compensation and Occupational Health and Safety Frameworks.

The WorkSafe Western Australia Commission, which was established in April 1985, represents this State's long term commitment to improving occupational safety and health.

The tripartite structure of the Commission has endured over time as an efficient and productive mechanism for identifying contemporary issues and developing and implementing agreed responses for the benefit of Western Australian employers and employees.

Legislative provisions ensure the activities of the Commission are monitored and reviewed from time to time, and adapted as necessary to ensure they remain relevant for their purpose.

The Commission's comments (attached) address a number of key areas outlined in the Issues Paper. Included in these comments is an overview of the occupational safety and health regime in Western Australia and the role of the WorkSafe Western Australia Commission for your information and as background to our comments.

Yours sincerely



Tony Cooke
CHAIR

WORKSAFE WESTERN AUSTRALIA COMMISSION
Attach.

WESTCENTRE
1260 Hay St West Perth
PO Box 294 West Perth 6872
Phone: (08) 9327 8777
Fax: (08) 9321 2148
Email address:
safety @ worksafe.wa.gov.au
Internet address:
www.safetyline.wa.gov.au

1. BACKGROUND TO THE WORKSAFE WESTERN AUSTRALIA COMMISSION AND THE OCCUPATIONAL SAFETY AND HEALTH LEGISLATIVE ENVIRONMENT IN WESTERN AUSTRALIA

1.1 Occupational Safety and Health Act 1984

The *Occupational Safety and Health Act 1984* is a modern performance based piece of legislation relating to occupational safety and health in Western Australia.

The *Occupational Safety and Health Act 1984* covers all employees in Western Australia excluding those employed by the Commonwealth Government and employees who work on a mine or petroleum sites to which the following legislation applies:

- The *Mining Act 1978*;
- The *Mines Safety and Inspection Act 1994*;
- The *Petroleum Act 1967*;
- The *Petroleum (Submerged Lands) Act 1982*;
- The *Petroleum Pipelines Act 1969*.

The *Mines Safety and Inspection Act 1994* covers the safety and health of persons engaged in mines and mining operations in WA, while the respective Petroleum Acts cover operations in that industry sector.

The cornerstone of the legislative frameworks surrounding the *Occupational Safety and Health Act 1984* and the *Mines Safety and Inspection Act 1994* is the concept of general duty of care. General duty of care style occupational safety and health legislation has applied in Western Australia since 1988. The legislative frameworks of both Acts consist of:

- an Act expressed in general terms, encompassing broad duties of care, with an emphasis on consultation between employers and employees on workplace safety and health; and more specific and detailed Regulations; supported by:
- codes of practice; and
- guidance notes.

The *Occupational Safety and Health Act 1984* is also subject to periodic statutory review, a number of which have been undertaken, resulting in the Act in its present form. A current set of recommendations from the most recent review is currently under consideration by the Western Australian Government, and may result in further amendments to the Act.

1.2 WorkSafe Western Australia Commission

The tripartite WorkSafe Western Australia Commission ("the Commission"), established under the *Occupational Safety and Health Act 1984*, is the preeminent forum for the development and consideration of policies and

coordination of laws relating to safety and health in Western Australian workplaces. The Commission is supported in its role by the WorkSafe Division of the Department of Consumer and Employment Protection.

The Commission provides high-level advice to the Minister responsible for occupational safety and health on any matter referred to it by the Hon Minister, and on laws administered by the Hon Minister and on the *Mines Safety and Inspection Act 1994*, which is prescribed for this purpose.

The Commission is comprised of members with knowledge and experience in occupational safety and health, members nominated by the peak employer and employee organisations in Western Australia, the WorkSafe Western Australia Commissioner and other officers of the Public Service.

As the pre-eminent occupational safety and health policy forum, the Commission monitors and comments on the development of a range of legislation with implications for occupational safety and health. It is the driving force behind Western Australia's workplace safety laws, policies and programmes, and has demonstrated a capacity to reach consensus on fundamental principles of occupational safety and health and their application in Western Australian workplaces.

The Commission is the only State or Territory body established under occupational safety and health legislation to continue an unbroken period of operation (since 1985) regardless of political or administrative change. Similarly, the Mines Occupational Safety and Health Advisory Board has been a long running tripartite forum overseeing occupational safety and health in the mining industry, and has operated continuously throughout political and administrative change.

1.3 WorkSafe Western Australia Commission and the WorkSafe Division of the Department of Consumer and Employment Protection

Strategies developed to achieve the objects of the *Occupational Safety and Health Act 1984* ("the Act") are the collaborative effort of the Commission and the WorkSafe Division of the Department of Consumer and Employment Protection ("WorkSafe"). The Commission has joined with WorkSafe on a number of projects primarily designed to eliminate work related fatalities, reduce lost time injuries, reduce the risk of acute and long term occupational disease and promotional activities aimed at achieving these outcomes. There is a high degree of consistency between Commission priorities and WorkSafe's priorities and operational plans.

WorkSafe administers the Acts and laws relating to occupational safety and health under the jurisdiction of the Minister, namely the:

- *Occupational Safety and Health Act 1984*;
- *Timber Industry Regulation Act 1926*; and
- *Shearers' Accommodation Act 1912*.

The Commission strongly supports fair, consistent and open administration of the Act. However, it does not, and does not seek to, direct WorkSafe on operational matters. The Commission focuses its attention on occupational safety and health policies and actions that may impact on administration of the Act.

The Commission regularly reviews aggregated enforcement data provided to the Commission by WorkSafe. It is also regularly informed of decisions made by the WorkSafe Western Australia Commissioner under the administrative provisions in the *Occupational Safety and Health Regulations 1996*.

2. NATIONAL FRAMEWORKS

The Commission supports the view of the Federal Government, articulated in the Background preamble to the Scope of the Inquiry that, ideally, national frameworks for workers' compensation and occupational health and safety (OHS) would encompass a cooperative approach between the Commonwealth and State governments while still leaving primary responsibility for these systems within the States.

With regard to OHS and national arrangements, the effectiveness of the OHS legislative framework adopted around Australia and based on 'duty of care' provisions has been clearly demonstrated by national data showing a downward trend in workplace injury in Australia over a number of years. The Commission believes the key challenge now is to ensure the system adapts to the changing working and business environments and to address any weaknesses or problems that have emerged over the last decade.

The Commission strongly supports national arrangements that achieve national consistency for OHS but not rigid uniformity. National consistency for OHS is best pursued through identification and adoption of common essential requirements.

For the national development of OHS, the States and Territories have worked effectively together over the last decade or more through the National Occupational Health and Safety Commission (NOHSC) to achieve consistent legislative frameworks based on general 'duty of care' provisions and have identified and largely adopted common standards.

2.1 Specific Comments on the Scope

With regard to points in the Scope, the following comments are submitted:

"a) consistent definition of employer, employee and work-related injury/illness and fatalities relevant to both workers' compensation and OHS that could be adopted consistently across Australia."

The Commission recognises the need for consistency of definitions as a basis for effective cross jurisdictional comparisons and for the development of national consistency. It is also acknowledged that while this task would be

difficult to achieve, it is a worthy pursuit. At the very least, such a proposal should be scoped for consideration. Consistency of definitions would meet the NOHSC occupational safety and health strategy objective of improving data through national consistency.

"I) the national and State and Territories infrastructure necessary to support the models identified in establishing national frameworks for workers' compensation and OHS."

The Commission's position with regard to part 1) is that this has already been achieved for OHS through the development of the National OHS Framework and by supporting the *National OHS Strategy 2002-2012* endorsed by the Workplace Relations Ministers' Council. It is the Commission's view that the focus for occupational safety and health should now be on identifying any implementation issues, identifying and addressing gaps in legislative coverage such as new employment arrangements, and identifying impediments to achieving national consistency.

2.2 The Role of NOHSC & National Standards

The Commission has been a strong supporter of the development and implementation of national occupational safety and health standards. It has been an active participant in the process of developing National Standards and codes of practice and has sought to implement these Standards and codes wherever possible. (Refer Attachment 1 for list of Standards adopted in Western Australia).

The Commission strongly supports the view that the objective for the development of national standards should be "consistency" in standards between jurisdictions rather than strict uniformity.

The Commission holds the view that consistency with national standards can be achieved through a variety of instruments including legislation, regulations and codes of practice. It is on this basis that the Commission supports continuation of the central role of the standards development program of NOHSC.

The Commission notes that NOHSC has picked up standards where they already exist in State jurisdictions, such as the HIV/AIDS code of practice produced by Western Australia. This is a promising move which is supported by the Commission.

Notwithstanding its commitment to national standards, the Commission reserves the right to consider and assess each standard on a case-by-case basis within its tripartite forum. Where adoption of a particular standard is considered appropriate, implementation will be through whatever instrument or instruments best meet the needs of the State.

The Commission's view is that a key role of NOHSC should be to lead the development of national standards, codes of practice and guidance notes on behalf of the Workplace Relations Ministers Council.

The Commission considers NOHSC activities in areas other than standards development should be limited to areas in which the organisation has a "natural advantage" by virtue of its national structure. These areas encompass statistics, research, assessment of chemicals, international inter-governmental liaison and national coordination of information exchange, and are captured under the *National OHS Strategy 2002-2012*.

2.3 *Current Arrangements*

In Western Australia the occupational safety and health and workers' compensation agencies are separate but cooperate effectively on common issues of information sharing, promotion of industry and community awareness of prevention solutions.

The Commission submits the existing institutional arrangements relating to occupational safety and health legislation provide an effective framework for improving Australian work environments. Given recent developments it can be argued there is constructive cooperation between national, Commonwealth, State and Territory agencies in promoting occupational safety and health.

The WorkSafe Division of the Department of Consumer and Employment Protection currently deals with enforcement issues on behalf of Comcare under a contractual arrangement which provides a degree of consistency in enforcement, eg WorkSafe is a signatory to a mutually beneficial Indian Ocean Territories agreement with the Federal Department of Transport and Regional Services (DoTaRS) to provide an enforcement function to Christmas and Cocos (Keeling) Islands.

The constitutional responsibility for occupational safety and health clearly rests with the States and Territories. In our view, any attempt to impose a national structure may lead to bureaucratic inefficiencies and a loss of responsiveness to regional and local industry and community needs.

The Commission submits national occupational safety and health structures are required only in areas where the States and Territories are unable to undertake key tasks (eg the development of national standards) or where there are considerable advantages in a national approach (eg research). Operational and enforcement issues are most effectively dealt with at the State and Territory level.

3. CONCLUSION

The WorkSafe Western Australia Commission is of the view that achieving national agreement on the National OHS Strategy is a major development for occupational safety and health in Australia.

The National Strategy provides a very effective mechanism for ensuring new momentum is achieved, a nationally consistent regulatory framework is advanced, and the most strategic and efficient use of resources and achieving improved OHS outcomes for the whole of Australia. The Commission is committed, but not limited, to contributing to attainment of the outcomes specified against each national priority and the achievement of the national targets.

In practice, Western Australia has already incorporated the underpinning National OHS Framework into the strategic planning for both the policy framework for this State through the Commission and into the operational arm of OHS through WorkSafe. The Commission will continue to incorporate national developments into its strategic planning processes.

Having said this, Western Australia and the other jurisdictions need to have the flexibility to meet local needs and achieve a strategic balance of national consistency. Clearly, there will always be issues arising at the local level and any national regulatory framework and consistency in areas such as enforcement and compliance, for example, needs to include the level of flexibility required to address these.

The Commission looks forward to working with all the jurisdictions, industry and unions to achieve the most effective mix of national consistency and local flexibility and to continuously improve our strategic approach to occupational safety and health across Australia.

In conclusion, the Commission believes the framework and commitment to improving OHS outcomes across Australia are already in place.

ATTACHMENT 1

Instruments developed and published by the National Occupational Health and Safety Commission (NOHSC), the Standards Association of Australia alone (AS) or jointly with the Standards Association of New Zealand (AS/NZS), and industry associations recommended by the Commission to and approved by the Minister as codes of practice under the Western Australian *Occupational Safety and Health Act 1984* include:

- Safe Removal of Asbestos [NOHSC: 2002 (1988)]
- Safe Use of Vinyl Chloride
- Safe Use of Synthetic Mineral Fibres [NOHSC: 2006 (1990)]
- Safe Use of Ethylene Oxide in Sterilisation/Fumigation processes [NOHSC: 2008 (1992)]
- Prevention of Occupational Overuse Syndrome [NOHSC: 2013 (1994)]
- Control and Safe Use of Inorganic Lead at Work [NOHSC: 2015 (1994)]
- Control of Scheduled Carcinogenic Substances [NOHSC: 2014 (1995)]
- Workplace Hazardous Substances [NOHSC: 2007 (1994)]
- Preparation of Material Safety Data Sheets [NOHSC: 2011 (1994)]
- Labelling of Workplace Substances [NOHSC: 2012 (1994)]
- AS/NZS 4576:1995 Guidelines for scaffolding
- AS 3610-1995 Formwork for concrete
- AS 4024.1-1996 Safeguarding of Machinery Part 1: General principles
- Health and Safety in Welding Technical Note 7 Welding Technology Institute of Australia: TN7-98
- Safety and Health within the Waste Management and Recycling Industries, Waste Management Association of Australia, 1999
- Safe Use and Application of High Pressure Water Jetting Equipment, Australian High Pressure Water Jetting Association

Other NOHSC National Standards and guidance material adopted in Western Australia:

- National Standard Manual Handling (1990) - WA code
 - National Standard Plant (1994)
 - National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment [NOHSC:1006(2001)]
 - National Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC: 1003(1995)]
 - Protection of Workers from Ultraviolet Radiation in Sunlight [NOHSC:3012(1991)]
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- Guidance Note for Control of Asbestos Hazards in Buildings and Structures [NOHSC:3002(1988)]
- Guidance Note for Membrane Filter Method for Estimating Airborne Asbestos Dust [NOHSC:3003(1988)]
- National Guidelines for Occupational Health and Safety Competency Standards for the Operation of Load Shifting Equipment and Other Types of Specified Equipment [NOHSC:7019(1992)]
- Guidance Note for the Assessment of Health Risks Arising from the Use of Hazardous Substances in Workplace [NOHSC:3017(1994)]
- Guidance Note for the Control of Workplace Hazardous Substances in the Retail Sector [NOHSC:3018(1994)]
- Guidance Note on the Interpretation of Exposure Standards for Atmospheric Contaminants in Occupational Environments [NOHSC:3008 (1995)]
- National Guidance Material for Spray Painting - WA code (consistent with NOHSC publication)
- National Guidance Material for Passive Smoking in the Workplace - WA Material (consistent with NOHSC publication)

WA code of practice to be adopted by NOHSC:

- Management of HIV/AIDS and Hepatitis at Workplaces (2000)
-