



**Australian Council of Trade Unions  
Submission to Regulation Taskforce**

**Reducing the Regulatory Burden on Business**

**“Occupational Health & Safety  
and Workers’ Compensation”**

Contact:  
Steve Mullins  
ACTU OHS Project Officer  
Australian Council of Trade Unions  
393 Swanston St  
Melbourne 3000  
Email: [smullins@actu.asn.au](mailto:smullins@actu.asn.au)  
Ph: 03 9664 7302  
F: 03 9663 4283

This submission by the ACTU only attempts to address the areas of Occupational Health & Safety and Workers' Compensation regulation.

The ACTU is concerned that the Taskforce has been charged with the task of reducing the regulatory burden on business without clear terms of reference. It sways between reducing "compliance burden" to reducing "regulation" and seems to treat regulatory reduction as a fait accompli.

The mere fact that there are costs on business to comply with regulations is not a reason to reduce or abolish regulation. This is particularly relevant in the case of occupational health and safety and workers compensation, where strong regulation with enforceable provisions and penalties, and prescriptive obligations on business has saved lives.

### **Occupational Health and Safety**

The ACTU is deeply concerned at the Commonwealth Government's agenda of deregulation in the area of occupational health and safety. Legislative prescription is an important part of the occupational health and safety framework and is needed to reduce the appalling occupational death and injury statistics.

The ASCC (formerly NOHSC) National OHS Strategy 2002-2012 outlines initial national OHS targets, which are "a step towards achieving a national vision of Australian workplaces free from death, injury and disease." (National OHS Strategy 2002-2012, p.3). These are to reduce occupational fatalities by 20% and injuries by 40% by 2012.

In light of this target, the ILO estimates that over 6700 workers die of occupational injuries and disease in Australia every year. The Australian Bureau of Statistics found that nearly 500,000 workers suffer some form of injury at work each year.

Clearly, there is a desperate need to dramatically reduce occupational death, injury and disease in Australia, there is no such dramatic need to reduce compliance costs on business.

The ACTU believes that abolishing OHS regulations or reducing compliance obligations on business will, in fact, run counter to the objectives of the National OHS Strategy and we may see an increase in occupational deaths and injuries. There is certainly no legitimate evidence to suggest that incidents of death, injury and disease would be reduced because of deregulation.

In his June 2003 submission to the Productivity Commission, Professor Richard Johnstone invited the Commission to take full account of the proceedings of the Australian OHS Regulation for the 21<sup>st</sup> Century conference, July 2003. In his presentation to the conference, Professor Johnstone observed that:

- There is very little, if any, empirical evidence that the 'advise and persuade' mode does reduce workplace injury and disease. (Johnstone Presentation p.9)
- There must be higher maximum fines and a broader range of sanctions, including possible imprisonment for culpable corporate officers. (Johnstone Presentation p.46)

- Prosecutions should focus not only on punishing organisations for contraventions resulting in illness, injury or death, but also on organisations which expose workers to significant risk of injury, illness or death. (Johnstone Presentation p.49)

There has been support from business for self-regulation and education as an alternative to enforcement and compliance. Self-regulation and education about health and safety is not an alternative. Enforcement of criminal law should not depend on the capacity of the criminal.

The enforcement of occupational, health and safety laws and other related legislation sends a powerful and effective message to employers that the failure to abide by occupational health and safety laws has serious consequences.

A stronger point should also be made that more and more workers are employed by small business and as such just because a business is "small" should not necessarily justify a more lenient approach when it comes to OHS compliance. There may be a need to assist small business in meeting their obligations in a practical way, but in the event of non-compliance the law should be upheld, particularly by regulators.

Royal Commission into the Building and Construction Industry, Final Report concluded that:

*There is persuasive support for the view that the extent of compliance with occupational health and safety obligations is strongly influenced by a reasonable expectation of the likelihood of being inspected, prosecuted, convicted and having a meaningful penalty imposed. The presence of occupational health and safety inspectors is important.* (Royal Commission, Final Report, vol.6, p.83)

The ACTU supports a continued, cooperative approach to OHS regulation between the Commonwealth and State and Territory governments while still leaving primary responsibility for these systems with the States and Territories.

### **Workers Compensation**

The ACTU reiterates our submission to the Productivity Commission regarding the Interim Report on the National Workers' Compensation And Occupational Health And Safety Frameworks, November 2003.

Workers compensation insurance is a system that has its origins as social legislation to compensate workers and their families for their loss of earning capacity as a result of injury or illness. Legislation exists to assist workers and their families to cope with the after-effects of an occupational injury, illness or death. It is social legislation not an insurance model or business incentive program.

Unions oppose in principle the concept of self-insurance because we believe the system should be one in which everyone is contributing to and part of the same scheme.

Accordingly we believe the starting point should be that self insurance within the workers compensation system is a privilege not a right. Employers wishing to become or remain as such must earn that privilege by bringing to workers compensation systems a superior performance in all areas of injury prevention, claims management and occupational health and safety standards. Self insurers should be role models for other employers in terms of workplace safety, claims management and occupational rehabilitation by virtue of their special status.

There is insufficient monitoring of the performance of self insurers. Although the self insurance system operates on the premise that if employers are able to financially manage their claims then better standards of OHS will result, the major experience of unions with self insurers is that this is not the case.

Union experience of self insurers is that few could be regarded as role models providing a superior service to workers. In a bid to save money self insurers can take a very mercenary approach to their injured employees.

Since Federation each jurisdiction has developed a unique workers compensation scheme based primarily on the industry mix, economic activity, population and political and legal structures of each jurisdiction. This has resulted in differences in each jurisdiction between benefit levels and structures, common law access, premium design and collection methods and administration.

The direct comparison of benefits across systems for the purposes of determining consistency is a spurious exercise if isolated from the other essential elements of total scheme design.

The ACTU rejects the proposal that big businesses could abandon state schemes for self insurance, Comcare or the private insurance market. In doing so they would leave behind their long-tail liabilities to be covered by those employers confined to business within the borders of a particular jurisdiction, too small to acquire national self insurance and not a constitutional corporation or a public sector employer.

The shift of companies, generally large employers, from statutory funds to specialised insurer status would have the effect of diluting the pool of funds available for workers compensation generally. There is no doubt that there is a level of cross subsidisation by large employers. The exit of employers from the collective pool would place greater financial pressures on statutory schemes and no doubt force State Governments to reduce benefits or increase premiums. History shows it is usually the former that is adopted.

We are concerned that the proposals would make small and medium sized business and State Government agencies who remained in State systems liable for additional costs as a result of the reduction of premium cross-subsidising through a diminished premium base. It is our experience that at times of perceived financial crisis Governments' will either reduce injured worker benefits or increase employer premiums.

A preference for "private underwriting", as expressed in the Productivity Commission report, is an argument based on the assumption that that risk is accepted by capital markets and not taxpayers. However, the political reality is that

ultimately the public purse will pay the bill for workers' compensation. The spectre of incapacitated workers' denied benefits would be too difficult for any government to contemplate. As a result the taxpayer will ultimately be at risk if private underwriters default. Accordingly it is bad public policy to return profits to investors who in reality take no risk.

The ACTU rejects the notion the ' . . . multi-state firms . . . face significant compliance costs from having to deal with multiple workers compensation schemes and OHS regimes.' It is totally unreasonable and rejected by unions that the optimum mechanism to reduce employer compliance costs is to reduce worker rights.