

Business
Council of
Australia



Submission to the Commonwealth
Department of Employment on the
Issues Paper and Consultation
Regulation Impact Statement
Examining Improvements in the
Model Work Health and Safety
(WHS) Laws

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The Business Council of Australia (BCA) brings together the chief executives of more than 100 of Australia's leading companies, whose vision is for Australia to be the best place in the world in which to live, learn, work and do business.

About this submission

This is the BCA submission to the Council of Australian Governments (COAG) Issues Paper and Consultation Regulation Impact Statement examining improvements to the model Work Health and Safety (WHS) laws.

The model WHS laws include:

- a model WHS Bill
- model WHS regulations
- model WHS codes of practice.

The work health and safety laws aim to help prevent workplace injuries and disease by encouraging employers, employees and regulators to work together to provide safe and healthy workplaces.

This submission proposes that while most jurisdictions have adopted the model WHS laws, opportunities remain to further improve the efficiency of the model laws. This would incentivise Victoria and Western Australia to adopt national laws, and discourage other jurisdictions from changing provisions from the model laws.

More efficient model WHS laws would assist to prevent workplace injury, improve health and safety outcomes and lower the compliance and enforcement costs of employers. In turn, full harmonisation would lower business costs for multi-state employers and would reduce barriers to other businesses seeking to grow across state boundaries, creating opportunities for investment and new job creation.

The BCA is concerned that the full benefits of national WHS regulation harmonisation are yet to be fully achieved because:

- Victoria and Western Australia have yet to adopt the national model WHS laws.
- The South Australian, NSW, Queensland and ACT governments have adopted the model WHS laws, yet are changing some provisions from the model laws (COAG Reform Council, 2013).
- The varying application of the model WHS laws across jurisdictions results in unnecessarily higher administrative and compliance costs for multi-state businesses for no additional safety benefit.

It is highly likely that divergence between jurisdictions will increase if the goal is not to start with anything but full alignment and there is a strong commitment to keep it this way. Accordingly a key objective of the review must be to identify a set of reforms that will incentivise Victoria and Western Australia to join, and for all other jurisdictions to achieve full alignment in the scheme's application.

As some states clearly have better health and safety outcomes than others (see Figures 1 and 2 below), the regulatory arrangements of the better performing states should be reflected in the national model WHS laws. We should not be harmonising for its own sake and risking the adoption of less adequate regulation, but ensuring that harmonised model laws reflect best practice. As Victoria and Western Australia's WHS performance is better than many other Australian jurisdictions, one option would be to consider amending the model WHS laws to incorporate differences that demonstrably result in safer workplaces.

This submission makes several suggestions to reduce business costs and improve health and safety ahead of a full review of the WHS laws scheduled for 2016.

Key recommendations

Recommendation 1

The review should establish if implementation of the national scheme has been effective in both improving work health and safety outcomes and lowering costs to business.

Recommendation 2

The review should identify changes to the current model to bring the national scheme into line with best practice, thus providing sufficient incentives for Western Australia's and Victoria's OHS to join the national scheme. The aim should be to further lower costs to all businesses while continuing to improve health and safety outcomes.

Recommendation 3

All work health and safety regulators should adopt a risk-based approach to improving the design of the national model WHS laws and assess further opportunities to improve the efficiency of work health and safety legislation. This may include placing more industry-specific guidance in codes of practice, instead of the model WHS regulations and legislation.

Recommendation 4

All work health and safety regulators should adopt a risk-based approach to improving the enforcement and administration of the national model WHS laws by:

- Using education and information provision as the initial approach to encouraging compliance with WHS laws, and escalating regulatory responses according to the level of assessed health and safety risk. Penalties and sanctions should be used as last resort or where health and safety risks are assessed as high.
- Adequately training all work health and safety regulators, officers and inspectors.

Recommendation 5

The Commonwealth Government should consider further strengthening the incentives of the states to achieve national consistency by allowing 'opt in' arrangements that allow regulated entities to self select between state based or Commonwealth regulation.

Background

The human and economic cost of workplace injury and illness is substantial. While the human cost is difficult to calculate in financial terms, the annual economic cost is estimated to be around 5 per cent of GDP (PC, 2012). Of the economic costs, most are borne by workers and their families with income loss and medical costs, for example. Employers bear the cost of lost production and work health and safety costs, while the community bears the cost of associated medical and welfare payments.

An efficient WHS regulatory system benefits the economy and the broader community by reducing work health and safety risks at least cost.

Over the past few decades, Australian governments have been working to improve work health and safety while reducing regulatory costs by harmonising state and territory WHS laws. An intergovernmental agreement was signed in 2008, and in 2013 the COAG Reform Council reported that national WHS law harmonisation was only partially complete because:

- Victoria and Western Australia have not yet implemented the national model WHS laws.
- South Australia, NSW, Queensland and the ACT have adopted the model laws with some variations.

Over the period that jurisdictions have worked to harmonise WHS laws, Australia experienced falls in the rates of workplace injury and illness. The most recent international comparisons indicate that Australia is ranked around seventh best in the world in terms of lowest workplace injury and illness rates (PC, 2012).

Achieving national harmonisation of WHS laws and their administration

The first task of this review should be to determine if the national WHS scheme has achieved its objectives of lowering costs to business operating in more than one jurisdiction, while also improving work health and safety outcomes. The review should also identify further ways to reduce costs to business.

The review should identify a way to bring the national scheme into line with the Victorian and Western Australian occupational health and safety schemes, thus achieving a truly national scheme. The Victorian Government has released extensive analysis that indicates the national work health and safety scheme imposes costs on businesses that are in excess of the benefits of harmonisation. The review should examine this analysis and look to move the national WHS laws towards the Victorian scheme in areas where it would lower costs to business (while maintaining health and safety outcomes). A similar analysis should be conducted for the Western Australian scheme.

BCA member companies generally operate in more than one jurisdiction. Based on their experience with the implementation of the model WHS laws, unnecessary business costs continue to be incurred because of jurisdictional differences in the application and enforcement of laws that do not improve work health and safety. Unnecessary costs on business affect competitiveness, investment and job growth.

Differences in WHS laws between jurisdictions include:

- Powers of the workplace health and safety representative to direct unsafe work to cease do not exist in Western Australia and Queensland (SWA 2014a)
- Victoria remains outside of the national scheme and its WHS laws differ from the model laws in several respects. These include 1) a narrower definition of a confined or hazardous space; 2) officers being liable only when the body corporate contravenes the legislation; 3) retaining the two-metre threshold for requiring fall prevention procedures; 4) excluding hand-held or manually-powered equipment from the regulations and 5) less prescriptive content for a workplace emergency plan (PwC, 2012).

Several BCA member companies are concerned that WHS inspectors in some jurisdictions still apply a prescriptive and heavy-handed approach to compliance, rather than a risk-based approach. This adds unnecessarily to compliance costs and red tape without improving workplace safety.

The BCA suggests that all WHS regulators adopt the following strategies to improve the efficiency of their enforcement activities and reduce red tape:

- focus enforcement efforts on critical WHS risk areas
- greater use of guidance material and industry codes to achieve compliance
- provide adequate training for WHS regulators, officers and inspectors
- learn from WHS regulators in jurisdictions that escalate their enforcement and compliance activities using a 'responsive regulation' model (PC, 2010).

Greater choice of WHS insurer is likely to drive greater harmonisation of WHS laws and better work health and safety outcomes. Several states provide the option for qualifying businesses to self-insure. Since December 2013, the Commonwealth has enabled private companies that meet certain criteria to self-insure with Comcare, which operates under the model WHS laws. This enables such businesses to only be subject to a single, national regulator (Abetz, 2013).

Monitoring WHS regulatory performance and outcomes to continuously improve health and safety

Within Australia, recent research indicates that most workplace fatalities occur among the self employed (SWA, 2014). The most hazardous industries are Agriculture, forestry and fishing and Transport postal and warehousing. Figure 1 shows how these results translate into fatality rates by jurisdiction.

Figure 1: Worker fatalities: incidence rate by jurisdiction of incident, 2013



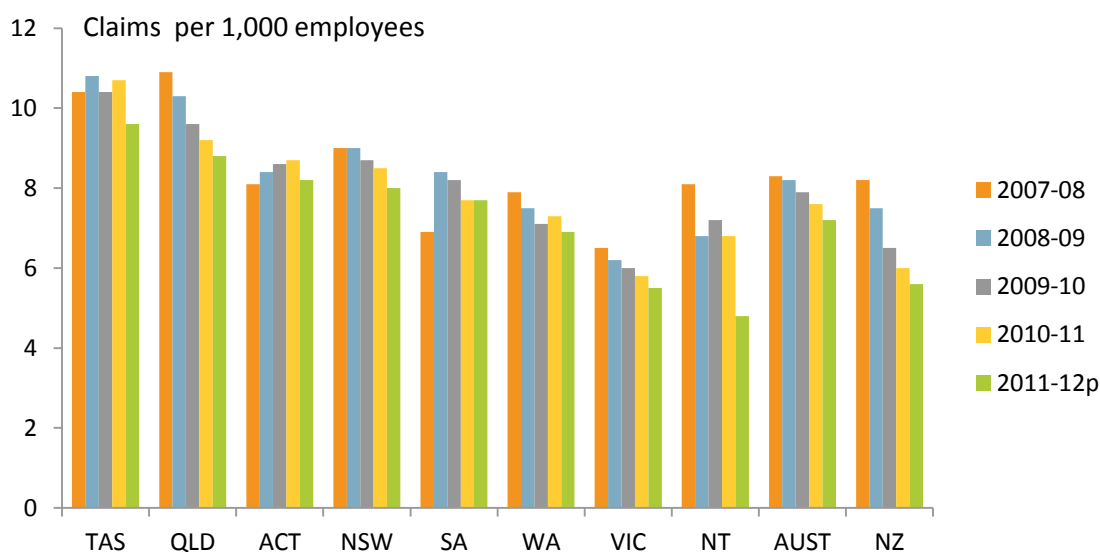
Source: SWA 2014b

An effective way to improve health and safety outcomes is to improve compliance with WHS laws in workplaces at greatest risk of injury. A best practice risk-based approach to compliance requires initial regulatory interventions that emphasise education and information, with sanctions being applied to manage critical risks and as a last resort (PC, 2010).

Regular publication and analysis of WHS performance information is essential to encourage the adoption by jurisdictions of better practice WHS law and its administration.

As shown in Figure 2, frequency rates of serious disease and injury have fallen in all Australia jurisdictions and New Zealand over the past five years. Apart from 2011–12, Victoria had the lowest frequency rates of serious injury and disease of all jurisdictions. Victoria points to its WHS performance and the estimated costs of changing its WHS regulation as the reason for not adopting the model WHS laws (PwC, 2012).

The Northern Territory, which has fully adopted the model laws, experienced a substantial improvement in its safety performance in 2011–12. It now has the lowest frequency rates of serious injury and disease of all the Australian jurisdictions. It should be noted that the 2011–12 estimates are still preliminary and subject to change.

Figure 2: Frequency of serious injury* and disease claims by jurisdiction

Source: SWA 2013

* Includes all accepted workers' compensation claims involving temporary incapacity of one or more weeks' compensation, plus all claims for fatality and permanent incapacity

Access Economics (2011) observed that the tight COAG timeframes and the large number of WHS regulations led to the model WHS laws being more of a consolidation rather than optimisation exercise. This supports the views of BCA member companies that opportunities exist to further improve the efficiency of the model WHS laws and their enforcement.

Safe Work Australia (SWA) regularly reports on WHS performance by Australian jurisdiction. Such comparisons provide an essential basis for identifying and assessing opportunities for improvement, not just in the law, but also its enforcement.

As Australia is currently ranked around seventh best in the world in terms of lowest workplace injury and illness rates (PC, 2012), comparisons with overseas jurisdictions would also provide valuable insights into improving the efficiency of WHS regulation.

Conclusion

The BCA supports all Australian governments continuously adopting more efficient, nationally harmonised WHS regulations and enforcement activities.

To help achieve this, we argue for:

- Regular publication of WHS performance and analysis of regulatory arrangements that contribute to improved work health and safety performance. This would provide the evidence base to further refine the model laws and their administration, and encourage all jurisdictions to optimise, as well as harmonise, WHS regulation.
- Enabling qualifying parties subject to WHS regulation to self-insure and also self-select between state-based and national regulation. This would help drive improvements in health and safety and the efficiency of WHS regulation.

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