

AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

21 July 2003

National Workers Compensation and
Occupational Health and Safety
Frameworks Inquiry Productivity
Commission PO Box 80, Belconnen
ACT 2616

Dear Commissioners

**Subject: Inquiry into Workers Compensation and OHS Frameworks
ACCI Submission No. 81**

At the public hearing on 26 June 2003 in Melbourne ACCI provided a series of supplementary data to demonstrate and support a number of issues in its submission

At the time we advised that the data was incomplete and that we would undertake further work to update the data and provide the commission with our findings.

We have now completed the data sets following consultation with the jurisdictions and the Department of Workplace Relations and other sources and attach an updated version of the data to assist the commission in its deliberations.

At the time we also advise that we would undertake some research of international sources for information on regulatory models where there are more balanced approaches to the issue of duty of care. We have not as yet been able to access the relevant information but will continue to research the matter and advise you of our finding in due course.

Please do not hesitate to contact me if you require any further clarification or explanation of the data in the attachment.

Yours sincerely

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ACCI Summary of Analysis of OHS Data - 1998-2002

Enforcement data

Workplace inspections increased by 6%
Improvement notices increased by 28%
Prohibition notices increased by 44%
Prosecutions increased by 6%
Convictions **reduced** by 8%
Court awarded penalties increased by 375%

Legislative Change

Amending instruments - 166
Amendments - 1796

Volume of Regulatory Materials

OHS and Related Acts	98
Related materials	1046

Performance (1997-2000) (2001- 02 data not yet available)

Workers' Comp premiums increased by 6%
Workplace injuries reduced - 16% incidence rate (7% no. claims)
Workplace fatalities reduced - 30% incidence rate (23% no. claims)

ACCI collation of data on occupational health and safety enforcement of the private sector across Australia July 1998 - June 2002

	NSW	VIC	QLD#	SA	WA	TAS	NT	ACT	Total
Workplace inspections									
1998-1999	57,254	48,859	7,106	*5,000	6,111	8,777	3,770	3,270	140,147
1999-2000	46,151	63,066	8,701	5,398	7,465	9,039	3,424	3,573	146,817
2000-2001	49,598	63,519	11,300	5,879	12,385	11,866	2,877	4,759	162,183
2001-2002	*50,000	50,343	9,245	10,325	10,838	11,432	1,882	5,030	149,095
Total	203,003	225,787	36,352	26,602	36,799	41,114	11,953	16,632	598,242
Improvement notices									
1998-1999	12,845	1,735	6,884	152	9,542	105	8	111	31,382
1999-2000	11,227	2,763	9,610	267	9,224	333	0	76	33,500
2000-2001	12,480	6,867	7,185	532	8,460	498	0	47	36,069
2001-2002	10,517	11,922	6,246	1,025	9,818	420	19	77	40,044
Total	47,069	23,287	29,925	1,976	37,044	1,356	27	311	140,995
Prohibition notices									
1998-1999	1,604	1,059	641	76	805	37	31	91	4,344
1999-2000	1,292	2,468	1,996	82	943	139	38	74	7,032
2000-2001	1,332	2,752	1,383	184	736	498	19	42	6,946
2001-2002	786	3,102	1,188	191	887	51	25	39	6,269
Total	5,014	9,381	5,208	533	3,371	725	113	246	24,591
Prosecutions									
1998-1999	672	89	43	12	65	5	1	15	902
1999-2000	586	86	55	6	56	9	4	4	806
2000-2001	467	111	142	1	37	9	3	2	772
2001-2002	550	198	135	8	55	8	0	4	958
Total	2,275	484	375	27	213	31	8	25	3,438
Convictions									
1998-1999	617	85	43	12	50	5	1	1	814
1999-2000	496	73	54	6	*50	9	4	1	693
2000-2001	404	107	129	1	36	9	1	0	687
2001-2002	455	112	129	8	29	8	0	4	745
Total	1,972	377	355	27	165	31	6	6	2,939
Fines awarded by court \$									
1998-1999	2,970,000	1,076,250	260,000	30,800	164,000	66,000	45,000	25,000	4,637,050
1999-2000	6,200,000	2,134,500	444,000	69,750	322,800	115,250	24,000	4,300	9,314,600
2000-2001	5,400,000	1,622,800	935,000	32,500	108,750	51,000	26,000	0	8,176,050
2001-2002	9,532,150	6,011,800	1,585,000	100,650	77,050	35,500	59,000	11,854	17,413,004
Total	24,102,150	10,845,350	3,224,000	233,700	672,600	267,750	154,000	41,154	39,540,704

This data has been sourced from the Workplace Relations Ministers' Councils Comparative Performance Monitoring Report: Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand, August 2002, 2nd Edition, pp 88 - 89; and jurisdictions annual reports and information services.

*These data values are estimations

#Data supplied by Workplace Health and Safety Queensland

Analysis of Enforcement Activity

ACCI conducted a review of enforcement activity data obtained from the WRMC Comparative Performance Monitoring Report: *Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand* (August 2002, 2nd Edition) for the 98-99, 99-00, and 00-01 financial years, and the jurisdictional authorities' annual reports and information services for the 01 - 02 financial year.

For the July 1998 - June 2002 period the enforcement activity data indicates:

- An increasing trend in the number of workplace inspections undertaken by Jurisdictional enforcement agencies.

	1998 -1999	1999- 2000	2000 -2001	2001 -2002
Workplace inspections	140,147	146,817	162,183	149,095

Workplace inspections increased by 6% from the 1998-99 financial year to the 2001 - 2002 financial year.

An increasing trend in the number of improvement and prohibition notices issued by Jurisdictional enforcement agencies.

	1998 -1999	1999 -2000	2000 -2001	2001 -2002
Improvement Notices	31,382	33,500	36,069	40,044
Prohibition Notices	4,344	7,032	6,946	6,269

The number of improvement notices and prohibition notices issued increased respectively by 28% and 44% from the 1998 - 1999 financial year to the 2001 - 2002 financial year.

- A decreasing then increasing trend in the number of prosecutions and convictions. An increasing trend in the amount of court awarded fines.

	1998 -1999	1999- 2000	2000 -2001	2001 -2002
Prosecutions	902	806	772	958
Convictions	814	693	687	745
Court awarded fines	\$4,637,050	\$9,314,600	\$8,176,050	\$17,413,004

The number of prosecutions increased by 6% from the 1998 - 1999 financial year to the 2001 - 2002 financial year. Interestingly, Jurisdictional performance in successfully prosecuting employers decreased from 90% in 1998 - 1999 to 77% in 2001 -2002.

Court awarded fines have increased nearly four fold (375%) from the 1998 - 1999 financial year, doubling from 8 million to 17 million during the last two financial years despite the drop in the success rate of convictions.

Enforcement data

This data has been sourced from members, ohs enforcement bodies and CPM materials. All data values have been checked by the appropriate ohs enforcement agency in each State and Territory. This checking process has resulted in some changes to data values published in the ohs working party papers issued in June.

New South Wales

	1998 -1999	1999 -2000	2000 -2001	2001- 2002
Workplace inspections	57,254	46,151	49,598	50,000#
Improvement notices	12,845	11,227	12,480	10,517*
Prohibition notices	1,604	1,292	1,332	786*
Infringement notices (on the spot fines)	2,993	2,179	1,636	
Prosecutions	672	586	467	550*
Convictions	617	496	404	455*
Court awarded fines	\$2,970,000	\$6,200,000	\$5,400,000	\$9,532,150*

Unless otherwise stated the data has been obtained from the 4 Edition of the Comparative Performance Monitoring report, August 2002.

Estimation

* Provided by NSW WorkCover

Victoria

	1998-1999	1999 -2000	2000-2001	2001- 2002 *#
Workplace inspections	48,859	63,066	63,519	50,343
Improvement notices	1,735	2,763	6,867	11,922
Prohibition notices	1,059	2,468	2,752	3,102
Investigations	-	-	181 *	310
Cases finalised	89	86	111	198
Convictions	85	73	107	112
Court awarded fines	1,076,250	2,134,500	1,662,800	6,011,800

Unless otherwise stated the data has been obtained from the 4 'Edition of the Comparative Performance Monitoring report, August 2002.

Provide by the Victorian WorkCover Authority

* Obtained from the Victorian WorkCover Authority Annual Report 2001-2002

Queensland

	1998 -1999	1999 -2000	2000 -2001	2001 -2002
Workplace inspections	7,106	8,701	11,300	9245
Improvement notices	6884	9610	7185	6246
Prohibition notices	641	1996	1383	1188
On the spot fines	118	188	128	99
Prosecutions	43	55	142	135
Convictions	43	54	129	129
Court awarded fines	\$260,000	\$444,000	\$935,000	\$1,585,000

All data provided by Workplace Health and Safety Queensland

South Australia

	<i>1998-1999</i>	<i>1999 -2000</i>	<i>2000 -2001</i>	<i>2001- 2002*</i>
Workplace inspections	5000#	5398	5873	10,325
Improvement notices	152	267	532	1,025
Prohibition notices	76	82	184	191
Investigations	-	1,326*	1,027*	1,229
Prosecutions	12	6	1	8
Convictions	12	6	1	8
Court awarded fines	\$30,800	\$69,750	\$32,500	\$100,650

Unless otherwise stated the data has been obtained from the 4th Edition of the Comparative Performance Monitoring report, August 2002.

* Department for Administrative and Information Services Annual Report 2001 - 2002, pp 30 - 40.

Estimation

Western Australia

	<i>1998-1999</i>	<i>1999 -2000</i>	<i>2000 -2001</i>	<i>2001- 2002*</i>
Workplace inspections	6,111	7,462	12,385	10,838
Improvement notices	9,542	9,224	8,460	9,818
Prohibition notices	805	943	736	887
Investigations #	-	9,762	9,200	17,667
Prosecutions	65	56	37	55
Convictions	50	50A	36	29
Court awarded fines	\$164,000	\$322,800	\$108,750	\$77,050

Unless otherwise stated the data has been obtained from the 4th Edition of the Comparative Performance Monitoring report, August 2002.

* Department of Consumer and Employment Protection - Annual Report 2001 - 2002

#Investigations sourced from attachment to 2003 April OHS Working Party Meeting Agenda item 4e.

'Estimation

Of interest:

Investigations	Target	Actual	Info & Educ	Target	Actual
Quantity	15,000	17,667	Quantity	8,800	7,588
Cost p/unit	\$644.06	\$622.79	Cost p/unit	\$385.70	\$468.00

Tasmania

	<i>1998 -1999</i>	<i>1999 -2000</i>	<i>2000 -2001</i>	<i>2001 -2002*</i>
Workplace inspections	8,777	9,039	11,866	11,432
Improvement notices	105	333	498	420
Prohibition notices	37	139	93	51
Prosecutions	5	9	9	8
Convictions	5	9	9	8
Court awarded fines	\$66,000	\$115,250	\$51,000	\$35,500

Unless otherwise stated the data has been obtained from the 4th Edition of the Comparative Performance Monitoring report, August 2002.

* Data received from Workplace Standards Tasmania.

Northern Territory

	1998-1999	1999 -2000	2000 -2001	2001 -2002*
Workplace inspections	3,770	3,424	2,877	1,882
Improvement notices	8	-	-	19
Prohibition notices	31	38	19	25
On the spot fines (Infringement notices)	179	67	49	
Prosecutions	1	4	3	0
Convictions	1	4	1	0
Court awarded fines	\$45,000	\$24,400	\$26,000	\$59,000

Unless otherwise stated the data has been obtained from the 4th Edition of the Comparative Performance Monitoring report, August 2002.

* Provided by NT Work Health

Australian Capital Territory

	1998-1999	1999 -2000	2000 -2001	2001 -2002*
Workplace inspections	3,270	3,573	4,759	5,030
Improvement notices	111	76	47	77
Prohibition notices	91	74	42	39
On the spot fines (Infringement notices)	-	-	-	1
Prosecutions	15	4	2	4
Convictions	1	1	0	4
Court awarded fines	\$25,000	\$4,300	\$0	\$11,854

Unless otherwise stated the data has been obtained from the 4th Edition of the Comparative Performance Monitoring report, August 2002.

*Provided by ACT WorkCover

**Summary of the amount of regulations and guidance materials for
each jurisdiction**

Amount of Regulation

Jurisdiction	Principle OHS Act	Principle OHS Regulations	Other Relevant Acts	Other Relevant Regulations	Total
ACT	1	3	5	7	16
NSW	1	1	5	2	9
NT	1	1	6	7	15
QLD	1	—	1	1	4
SA	1	1	6	4	12
TAS	1	1	5	3	10
VIC	1	11	5	7	24
WA	1	1	3	3	8
Total	8	20	36	34	98

Please note that the regulation counted above is only the regulation that falls under each jurisdiction's main OHS administering organisation, and as such this amount of regulation does not truly reflect the volume of legislation employers must comply with as other administering organisations are also responsible for issuing safety related regulation such as the Office of the Chief Electrical Inspector in Victoria that administers the Electrical Safety Act 1998 and seven Regulations.

Amount of relevant codes of practice/advisory standards and guidelines

Jurisdiction	Relevant Codes of Practice or Advisory Standards	Relevant Guidelines	Total
ACT	27	2	29
NSW	*37	*205	242
NT	3	6	9
QLD	31	*355	386
SA	11	6	17
TAS	2	31	33
VIC	20	*260	280
WA	31	19	50
Total	162	884	1046

Please note that the code of practice/advisory standards and guidelines counted above is only the material that falls under each jurisdiction's main OHS administering organisation.

*Figures obtained from a count of material listed on ohs bodies' websites 1 July 2003.

This data has been sourced from the Workplace Relations Ministers' Councils Comparative Performance Monitoring Report: Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand, August 2002, 2^d Edition, pp 54-61.

Regulatory change

The number of legislative instruments that have amended OHS legislation (1998 - 2003) in each jurisdiction, and subsequently the number of amendments to OHS legislation

	No. Amending instruments	No. Amendments
ACT		
OHS Act	13	143
OHS Regulation	6	48
NSW		
OHS Act	11 (1 of which was revoked and entirely replaced with a new Act)	24
OHS Regulation	3 (Information regarding revoked Regulations has not been made available by NSW.)	4
NT		
OHS Act	14	215
OHS Regulation	3	19
QLD		
OHS Act	15	22
OHS Regulation	48	651
SA		
OHS Act	2	42
OHS Regulation	11	129
TAS		
OHS Act	4	117
OHS Regulation	1	1
VIC		
OHS Act	5	18
OHS Regulation	12 (4 of which were revoked and replaced)	202
WA		
OHS Act	3	3
OHS Regulation	15	158
TOTAL	16	1796