



25 August 2003

Workers Compensation and OH&S
Productivity Commission
P O Box 80
BELCONNEN ACT 2616

By email to: wcohs@pc.gov.au

Dear Sir,

I spoke to your office recently with regard to the problems our business encounters with regard to Workers Compensation. I am submitting the following to your inquiry into Workers Compensation. I cannot guarantee that my understanding of the situation is 100% accurate, it is only my interpretation of what I have been verbally advised and what I read in policy information. If after reading this you come to the conclusion that I am incorrect in my understanding and that the situation is not as complex as I have made out I would appreciate your advice to that effect.

Background.

Ausworks Pty Ltd (as trustee for the HAB Trust) is a small business based in Canberra, my husband and I are the sole Directors of the Company. We conduct outdoor experiential learning programs, specialising in leadership development and team building.

The nature of our business means:

- We work all over Australia, in effect wherever the client wants.
- We have no full time staff, we employ staff as facilitators, on an as needed basis.
- Many of the people we employ in the capacity of facilitators are proprietors of their own business and accordingly have all necessary insurances in place. They are not treated as employees from either a

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workers compensation point of view OR from a taxation point of view. We pay them a lump sum as a contractor and they are responsible for their insurance and taxation.

- There are some people who take leave from their full time jobs to work on our programs, and accordingly have no insurances in place. We are technically responsible for ensuring that they are covered for Workers Compensation and that the appropriate taxation is deducted from their earnings.
- Some people who work for us are sole traders. My understanding is that they run a business which for taxation purposes gives them one definition of an employee and for Workers Compensation gives them another definition.

I don't feel I am an expert in understanding all of the nuances associated with Workers Compensation, company or business registrations and the differences in definitions between who is an employee and who isn't.

At the end of the day we intend to meet our obligations to these people under both the Workers Compensation Act and the ATO provisions. At the same time in the interests of profitability we do not want to pay more than we are required to by law and there is no point in paying additional premium if the premium covers a person not eligible under the Act.

Workers' Compensation Insurance.

As we are based in Canberra, my understanding is that we need to have workers compensation insurance for both my husband and I as working Directors, and for any Canberra based workers; who work for us for a period of time, and whilst employment with us is irregular it is reasonable for them to assume that they will work for us again. These people are generally sole traders in terms of taxation.

Our business is held under a family trust, which means that we don't take wages as such but any profit from the business is distributed to us at the end of the financial year and is included in our personal tax return (we both have other paid employment). This of course means that it is not wages that we are paid rather distributed earnings. Technically therefore we do not need to take out Workers Compensation Insurance. We have in place income protection insurance to cover us in the event of an accident. We do however take out the minimum premium to have some type of workers compensation policy for our Company.

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The Canberra cover cannot usually (as I understand it) be extended to cover people who live and/or work elsewhere. Our insurer does this as a matter of courtesy (as I understand it) as long as it is only limited additional cover. The ACT Act uses the location where the work is usually carried out to define if the person is a worker of the ACT – as our work is usually carried out elsewhere (WA/QLD) even though our people live and usually work in the ACT we are not required to cover them. However if they are sole traders they are not required to have Workers Compensation insurance – they now have no cover in the event they are injured working for us.

Another example: one of our facilitators, who lives in Victoria, is taking leave from his normal employment and will facilitate a program for us in the Kimberley region of WA. He is not covered under our ACT policy, He can not be covered under Victorian policy or under WA policy. In effect he slips through the cracks.

Victoria's workers compensation cover is based on where you work. If you work in Victoria you must have Victorian cover. It is not based on where you live. If you are not working in Victoria you cannot get cover irrespective of where you live.

In WA the legislation is based on where you live, if you don't live in WA you cannot get cover – irrespective of where you are working!

Next the issue of where you are being paid from also comes into effect. In our case, our workers are being paid "out of" Canberra. My understanding, under the Western Australia workers compensation legislation is that this would mean we should have a Canberra based workers compensation insurance policy for our WA residing facilitators. But as we now know, the Canberra legislation does not really cover this possibility.

The problem then arises that if we are working anywhere else and some one who is working for us and is deemed to be an employee under that States Workers Compensation definitions, they have the opportunity to claim under either the Workers Compensation Act of the ACT or under the Relevant State's Act. If my understanding of all of this is correct that leaves Ausworks exposed to claims not covered by our insurer.

Our dilemma is that we, by law, must have workers compensation insurance for any one who is deemed to be a worker for our Company. I note that the definition of "worker" varies significantly between federal government bodies ie the ATO and state bodies ie the ACT Workcover. This in itself creates confusion in trying to establish if we need to "cover" someone or not.

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How do we ensure that we are meeting our obligations as an employer when we seem to be unable to get appropriate cover for our staff? For us to proceed with out this insurance is against the law but despite our best efforts have been unable to obtain workers compensation insurance for our Victorian based staff. I am yet to explore the possibility of getting cover for our NSW staff. There is a query hanging over our WA staff dependent on where they are being paid from.

My head goes round and round when I start to look into this legislation / insurance nightmare. I am sure we are not the only Company with transborder insurance issues but I have yet to meet anyone who can offer a satisfactory solution.

We would, in an ideal world have access to a National legislation and policy framework which would enable us to take out one policy to cover all our employees through out Australia.

Failing that we should have uniformity in the legislation in terms of;

- **The definition of a worker**
- **If the cover based on where you live or,**
- **where you work or,**
- **where the Company is based.**

Although it is Public Liability Insurance that has been the focus of most of the attention over the last more than 12 months, our primary concern is with Worker's Compensation Insurance. Despite our best efforts we are unable to secure Workers Compensation Insurance, compulsory by law, which will protect our workers, because of the cross border disparity in approach.

I am fast coming to the conclusion that we will not employ anyone who does not own his or her own registered Company thus removing the burden of insurance from us. But we would miss out on the input of the people who take leave from work to work on our programs, or those who are sole traders, though I suspect that Sole Traders would normally have income protection insurance.

We try to make the situation as clear as possible to people who agree to work with us;

- That they are not guaranteed to be protected under our workers compensation policy and
- They need to make sure that they have adequate personal insurances in place.

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But like most things we don't realise that we are slipping through the cracks until we do. We expect that if we break our leg whilst working for someone that;

It is reasonable to suppose that we are covered under workers compensation legislation.

It is reasonable to suppose that there will be some compensation for the 6 weeks off work that is required while the leg mends.

It is reasonable to suppose that while the employer did not break the leg that the employer is responsible to look after the employee.

Our business is not big enough to self-insure and depending on the type of claim and the extent of injury, as a Director, I fear the consequences. To be truthful I feel that neither Ausworks nor our employees are adequately covered and this continues to be of great concern.

I look forward to hearing from you with reference to the outcome of this inquiry.

Regards,

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AUSWORKS Pty Ltd.

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