

WHAT SHOULD THE OPTIMAL STRUCTURE AND CONTENT OF A MODEL OHS ACT BE?

The Western Australian Commission for Occupational Safety and Health (the Commission) provides the following submission to the *National Review into Model Occupational Health and Safety Laws*.

In particular, the submission addresses the questions raised in section 9.5 of Chapter 9 in the May 2008 Issues Paper, in respect to tripartite mechanisms.

Background to the Commission for Occupational Safety and Health

The Commission was established in 1985 under Section 6 of the *Occupational Safety and Health Act 1984 (WA)* (the WA OSH ACT) and is comprised of:

An independent Chair (nominated by the Minister);
The WorkSafe Western Australia Commissioner;
Two officers of the Public Service nominated by the Minister, one of whom must be an officer from the department responsible for the administration of the <i>Mines Safety and Inspection Act 1994</i> ;
Two members nominated by the Chamber of Commerce and Industry of Western Australia (CCI);
One member nominated by the Chamber of Minerals and Energy of Western Australia;
Three members nominated by The Trades and Labor Council of Western Australia, one of whom must have knowledge and experience of the mining industry in Western Australia; and
Three members having knowledge of or experience in occupational safety and health (nominated by the Minister).

Section 15 of the WA OSH Act provides for the establishment of advisory committees to assist the Commission in the performance of its functions and duties. The Commission currently seeks advice from the following advisory committees:

- Legislation Advisory Committee;
- Emerging Issues and Risk Management Advisory Committee;
- Construction Industry Safety Advisory Committee; and

The Mining Industry Advisory Committee was established in April 2005 under section 14A of the WA OSH Act as a statutory advisory body on legislation and matters relating to occupational safety and health in the mining industry, which is governed by the *Mines Safety and Inspection Act 1994*.

The principal objective of the Commission is to develop and promote comprehensive and practical preventative strategies that will reduce the risk of work-related injury and disease in Western Australian workplaces.

The Commission meets on a monthly basis.

The Commission's functions are set out in Section 14 of the WA OSH Act and can be summarised as follows:

- provide advice on occupational safety and health to the Minister, particularly with respect to legislation, codes of practice and guidance material;
- provide advice to, and cooperate with, government departments, public authorities, unions, employer organisations and other interested parties on matters related to occupational safety and health;
- formulate or recommend standards or other forms of guidance for the purpose of assisting relevant people to maintain appropriate standards of occupational safety and health;
- promote occupational safety and health education and training, and to develop, approve and accredit courses;
- collect, publish and disseminate information on occupational safety and health; and
- recommend to the Minister the establishment of public inquiries into any matter relating to occupational safety and health.

Section 14A of the WA OSH Act details the corresponding functions of the Mining Industry Advisory Committee.

The Commission has accomplished a number of key initiatives in recent years including:

- developing a code of practice on working hours;
- developing a code of practice on safe design of buildings and structures;
- implementing in WA the national standard for construction work; and
- implementing in WA the national standard for licensing persons performing high risk work.

The Commission's Annual Report for 2006-2007 is attached (Attachment 1).

The Commission's Vision

The Commission's vision is to be the pre-eminent occupational safety and health body in Australia. It aims to show strong leadership and to promote occupational safety and health as a key element of business planning. In line with this strategy, the Commission will make decisions based on the best available evidence and, wherever possible, seek the elimination of hazards and control of risks at source. The Commission's Strategic Plan 2006-2010, published in November 2005, is its guiding document (Attachment 2). It provides an operational framework and sets out the Commission's goals for coming years. The Strategic Plan outlines the objectives the Commission is aiming to achieve in order to reach its vision, and details the specific actions to be taken to ensure its objectives are met.

Effectiveness of the Commission

As a tripartite body, with members representing employers, employees, Government and occupational safety and health expertise, the Commission is unique in terms of its longevity, composition and voting entitlements.

The Commission is the only State or Territory body established under occupational safety and health legislation to continue an unbroken period of operation regardless of political or administrative change. The Commission attributes this achievement to the commitment of its members (and nominating bodies) to the tripartite process and their ability to reach a consensus and consolidated position on issues impacting on Western Australian workplaces.

In relation to the mining industry, the Mining Industry Advisory Committee replaced the former Mines Occupational Safety and Health Advisory Board.

The Commission has embraced the concept of consultative processes outlined in the objects of the WA OSH Act and has the continuing support of all parties as being the most effective means of achieving workable occupational safety and health legislation and policy. The tripartite consultative processes significantly enhance outcomes, as the views of all members and their constituents are taken into account.

In all other Australian States and Territories, the respective government departments responsible for the administration of occupational safety and health legislation operate under a tripartite consultative framework to achieve broadly the same outcomes as the Commission in Western Australia, however, the statutory provision for the Commission in the WA legislation formalises the tripartite consultative processes.

Although the Commission is an independent statutory body, it is closely integrated with the WorkSafe Division of the Department of Consumer and Employment Protection (DOCEP). The two organisations share the same vision for WA, that is, workplaces free from death, injuries and disease. The Commission and WorkSafe often work collaboratively on projects designed to achieve that goal. Notwithstanding that crossover, the main focus of activity is different for each organisation. For its part, the Commission is primarily focused on strategic outcomes, such as the development of policy and legislation, which broadly influence occupational safety and health. For WorkSafe, the primary responsibility is to administer the occupational safety and health legislation, implement policy proposals and initiatives, and to ensure compliance with the legislation in Western Australia. The Resources Safety Division of DOCEP undertakes an equivalent role in the administration of the *Mines Safety and Inspection Act 1994*.

Statutory Review of the WA OSH Act.

Section 61 of the WA OSH Act requires the responsible Minister to carry out a review of the operations of the Act on every fifth anniversary of the commencement of the Act. A report based on the review must be laid before each House of Parliament. The matters to be considered in the course of each review are set out in section 61 of the Act and include the following:

- the effectiveness of the operations of the Commission, any advisory committees and the department; and
- the need for the continuation of the Commission and any committees established under this Act.

The fourth review of the WA OSH Act was conducted by Mr Richard Hooker, an independent barrister, and the final report released in December 2006.

The final report on the Hooker Review endorsed the Commission's observations on its role as a tripartite body, subject to a qualification about the complexities sometimes created, and the time required accordingly, by the nature of the consultative process.

Mr Hooker noted that “while being open to potential variation” the tripartite Commission “continues to serve the administration of OSH well”.

National harmonisation

The Commission is committed to aligning with national OSH strategies as stated in objective 2 of its *Strategic Plan 2006-2010*, and positively contributes to identifying priorities and establishing targets agreed at the national level. The Commission regularly reviews the progress being made in Western Australia in meeting the Australian Safety and Compensation Council endorsed national priorities and areas of action contained in the national strategy.

The Commission is cognisant of the importance of harmonised OHS laws, particularly when considered in the context of a national economy and the changing nature of work and employment arrangements. Harmonisation of OHS laws will cut red tape and provide greater certainty and protection for workplace parties across Australia.

Notwithstanding the Commission’s support for harmonisation of OHS legislation, the Commission holds a strong view that within a national framework, the capacity to respond to local issues in a timely manner must be accommodated in any model legislation.

Although there is a vast amount of common ground across jurisdictions in regard to the common goal of improving safety and health of workers, circumstances within jurisdictions can influence particular workplace practices and create specific challenges for regulators of OHS law.

Western Australia is perhaps unique in Australia in terms of the rapid expansion of its local economy, a booming mining industry and the challenges posed by the remoteness of its regional areas and its isolation from the rest of Australia.

Issues such as those associated with working alone in remote areas may need to be considered in the context of local work conditions. Work practices developed to cope with remote regions, such as fly-in fly-out work arrangements can also create specific health and safety risks. The vast distances between towns and services in WA also creates specific problems when considering transportation of goods and the associated fatigue risks for long distance drivers.

Q148. Should the model OHS Act facilitate tripartism in the administration of OHS regulation, and if so, how?

The Commission considers that a national model for OHS legislation will work most effectively if a mechanism for monitoring emerging occupational safety and health issues on a local level, and a mechanism for responding through an educational approach or by regulation can be undertaken within a particular jurisdiction in a timely fashion.

It is noted that the review will examine the breadth of regulation required to support a model OHS Act, but will not cover the specific detail found in OHS regulations, codes of practice and guidelines. It is envisaged that a model Act will provide for the ability for jurisdictions to address OHS issues quickly, flexibly and in more detail in subordinate legislation.

One of the Commission’s key roles is to provide advice on occupational safety and health to the Minister for Employment Protection, particularly with respect to regulations, codes of

practice and guidance material, and it considers a continuation of this role within a national OHS framework would provide a useful and effective mechanism for dealing with local jurisdictional matters.

Tripartism is a key element in the occupational safety and health context and is fundamental to OSH policy development. The tripartite composition of the Commission is enshrined within the WA OSH Act, and provides for a formal structure to incorporate union, industry and government input into decision making.

The Commission holds a firm view that the model OHS Act should facilitate tripartism in the administration of OHS regulation, and this should be achieved by providing for the establishment of a tripartite advisory body with similar functions to those of the Commission, within the proposed model OHS Act.

Q149. Should there be some provision for tripartite committees that deal with OHS matters in particular industries?

The WA OSH Act provides for the establishment of advisory committees to assist in the performance of its functions and duties. The Act specifies that members of advisory committees shall represent employers, employees and 'experts'.

The Commission has established several industry specific advisory committees as well as industry specific working groups. The Commission currently seeks advice from the Construction Industry Safety Advisory Committee and the Mining Industry Advisory Committee. The Commission also established an agricultural industry safety advisory committee, however, this has since been disbanded.

The Mining Industry Advisory Committee was established as a result of the amendments to the WA OSH Act that arose from a Statutory Review completed in 2002. The Committee provides advice and makes recommendations to the WA Commission and the Minister on occupational safety and health matters relating specifically to the mining industry in Western Australia. The composition and functions of MIAC are set out in section 14A of the WA OSH Act.

Industry specific advisory committees play an important role in advising the Commission and support effective liaison with key industry stakeholders, provide access to specific industry expertise and create a valuable forum for sharing ideas.

The Commission considers that there should be provision for tripartite committees that deal with OHS matters in particular industries.

The WA model, which provides for specific advisory groups or sub-committees under the umbrella of a broader advisory body (the Commission), presents an effective framework for addressing specific problem areas such as high risk industries, in a direct and focussed manner.