



**CGU Insurance**

Level 5, 65 Pirrama Road Pyrmont NSW 2009  
t (02) 9088 9728 f (02) 9088 9512

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National OHS Review Secretariat  
Department of Education, Employment and Workplace Relations  
64N1 GOP Box 9880  
**CANBERRA ACT 2601**

Email: [publicsubmissions@nationalohsreview.gov.au](mailto:publicsubmissions@nationalohsreview.gov.au)

Dear Sir/Madam

**Introduction**

CGU Insurance (CGU) welcomes the opportunity to make a submission in relation to the National Review into Model Occupational Health and Safety (OHS) Laws.

CGU supports a consultative approach to regulatory review and an approach that engages with industry at all stages of the review process. CGU commends the Government for its consultative approach to date.

**CGU Insurance**

CGU Insurance is a subsidiary of Insurance Australia Group (IAG), an international general insurance group, with operations in Australia, New Zealand, the UK and Asia. In Australia, IAG insures more than five million cars, two million homes, 250,000 businesses and 75,000 farms, and provides workers' compensation services to more than 170,000 employers. IAG operates under the brands CGU Insurance nationally; NRMA Insurance in NSW, Queensland, ACT and Tasmania; SGIC in South Australia; SGIO in Western Australia; and RACV in Victoria.

CGU Insurance is a leading provider of safety, claims and injury management services in Australia. It operates as a workers compensation insurer, claims agent, safety consultancy and/or claims administrator in every State, Territory and Federal jurisdiction.

CGU has a crucial interest in the long-term viability of insurance as a product valued by the Australian community. CGU believes that there are four principal ways in which the insurance industry can best meet these objectives.

These are:

- Investing in robust risk control frameworks and mechanisms that protect policyholders and provide certainty to shareholders

- Pricing products realistically
- Ensuring that customers understand what they are buying when they purchase a policy
- Committing to, and supporting, on a continuing basis, a comprehensive and clearly defined regulatory framework that facilitates more affordable premiums and more predictable claims costs

## **Comments on Review**

CGU largely supports the implementation of Model OHS Laws, and commends the Government for an approach that aims to ensure safe workplaces while increasing certainty for duty holders, reducing compliance costs for business and providing greater clarity for regulators.

With the trend towards an increase in the mobility of human capital and transit patterns which demonstrate little regard for jurisdictional demarcations, it is in the interests of employers, employees, insurers and health care providers to work within a regulatory OHS framework which is nationally consistent.

CGU supports nationally consistent frameworks in the key areas of workers' compensation insurance and occupational health and safety; such as frameworks would remove unnecessary costs and compliance burdens while at the same time act to deliver optimal outcomes for injured workers and provide employers with a regulatory environment better attuned to modern business practices.

In the preparation of this submission CGU has engaged with a number of its key customers and gathered feedback from IAG's own operations. These customers have highlighted their desire to ensure safe, responsible workplaces, without unnecessary administrative burdens or red tape.

Participants indicated a strong willingness to participate in the reform process, and CGU would welcome the opportunity to host the Review Panel and these stakeholders in further roundtable discussions.

If you wish to discuss this matter or make further inquiries please contact Heather Smith, National Manager, CGU Safety and Risk Services on (02) 9088 9728 or me on (02) 9088 9537.

Yours sincerely

Duncan West  
**Chief Executive Officer**  
**CGU Insurance**

# CGU Insurance's comments in relation to National Review of Model Occupational Health and Safety Laws

## Introduction

As a leading general insurer in Australia and New Zealand, CGU Insurance (CGU) has emerged as a leading provider of safety, claims and injury management services in Australia. It operates as a workers compensation insurer, claims agent, safety consultancy and/or claims administrator across every State, Territory and Federal jurisdiction, with over 1,100 people providing services to approximately:

- 1.7 million employees
- Workers Compensation Policies for 172,000 employers
- Injury and claims management for 82,000 injured workers with approx \$860 million paid in claims to injured people in the last financial year

This scale provides daily insight into the challenges faced by employers in ensuring an injury free workplace. With 14,000 employees in its parent's (IAG) operations, CGU understands as well as its customers do that the achievement of this goal requires a thorough understanding of its business operations, and practical application of its responsibilities. The commitment of this review to reducing 'red tape' is to be commended, as it will free employers and regulators to focus resources where the maximum impact can be achieved.

CGU commends activity by both the Federal and State governments to work towards harmonisation of OHS laws, and recognises outcomes in areas such as certifications (e.g. Construction Induction, Forklift and other tickets), and acknowledges the commitments made by the Council of Australian Governments in the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* dated 3 July 2008.

As the nature of work becomes more complex, it will become commensurately more challenging for employers and controllers of work to achieve the goal of ensuring a safe workplace. The development of a Model Occupational Health and Safety (OHS) Act provides Australia with an opportunity to respond to this increasing complexity and build a framework that enhances productivity, *without compromising safety*, ensuring economic strength and international competitiveness through a workforce that is productive and operating at the highest rate of participation.

In this submission we will focus on the *Terms of Reference* provided. However, CGU would welcome the opportunity to work with all levels of Government to address the broader issue of a national workers compensation and occupational health and safety (OHS) framework that meets the needs of employers and employees.

In the past, commentary on harmonisation and national legislation has tended to be dominated by the needs of large employers. In this submission, CGU has attempted to reflect not only the needs of large employers, but also of the many small and medium size business that reflect the employment marketplace today. These small and medium employers are trying to provide their employees with a safe workplace, but have limited internal expertise to assist them to do so, and value clear and simple information from external sources.

## 1. Legislative Approach

*Which regulatory approach or approaches should be taken in the model OHS Act, and why?*

*How detailed should the model OHS Act be in comparison with the subordinate regulations and codes of practice?*

Performance-based standards, specifying the outcome to be achieved, rather than the process or measures to achieve it, are more effective in ensuring the ultimate outcomes and will become more critical as the nature of work changes. Prescriptive standards should be used sparingly in instances where the standards can apply consistently for all businesses.

The human and financial cost of failing to achieve a safe workplace is experienced by business every day. The broad intent of any OHS laws that are based on the Robens approach is to require all persons involved in a workplace to ensure that the people working in that workplace are not made ill or injured by the processes of work. Reducing accountability to just some persons and not others does not reflect the intent of the Robens approach, nor does it achieve optimal outcomes. A governance framework that encourages cooperative interaction between workers and the controllers of work striving to achieve safe workplaces will provide sustainable improvement in OHS performance nationally.

On this basis, the model OHS Act should have clearly stated objectives, acknowledging intent to prevent the human and economic loss associated with work related injury. These objectives should recognise the changing nature of work (e.g. increasing technology) and the changing nature of the workforce (e.g. greater use of contractors and franchise arrangements). The objectives and principles should aim to achieve a balance between the health, safety and welfare of workers, and the reasonableness, practicality and cost of preventing injury/illness.

A principles-based duty of care should require all individuals in a workplace (directors, managers, supervisors, employees), as well as those providing goods or services to a workplace (manufacturers, importers, suppliers) to do all that is reasonable and practicable *within their control* to ensure a safe workplace.

To enable the effective implementation of this duty of care, the regulatory framework should enable:

- Education of employers and employees
- Flexibility in approach
- A philosophy of continuous improvement

The compliance burden is increased when prescriptive standards require businesses to implement varying processes in different States. In developing a Model OHS Act, the Act needs to incorporate sufficient reference to National Regulations and Codes of Practice that variation in prescriptive standards is minimised. While potentially not having a material impact, without this, significant time and effort can be expended by cross-jurisdictional business in ensuring compliance with varying standards, for issues of relatively minimal importance such as the size of ladders or the content of first aid kits, taking focus away from more critical areas of safety. This is exacerbated by increasingly mobile workforces, who currently may be based in one State, but have people operating in another state, or could be State-based employers operating on Commonwealth lands (e.g. Naval bases).

To supplement performance-based standards, employers should be able to refer to a range of regulations and codes of practice to guide implementation of appropriate interventions. The design of these codes of practice should reflect the broad range of business operations, and provide examples of how to respond to specific issues and should be coordinated by a central source.

While a high standard, Australian regulations and codes of practice should not be considered the 'single truth' in demonstrating compliance to a duty of care. Employers who have actively sought best practice information, including from international sources, should be able to use this information as evidence of appropriate practices.

The development of Standards and Codes of Practice based on sound evidence is essential, and facilitates more effective and focussed review of these standards over time. Legitimation of Standards and Codes of Practice through legislation indicates a level of confidence that must be supported by an evidenced-based approach. As many OHS hazards vary depending on the level of exposure (e.g. Noise, Manual Handling, Chemicals, even workplace stressors) it is essential to differentiate between absolute standards and guidelines. For example, the *National Standard for Occupational Noise (2000)*<sup>1</sup> sets a maximum average weighted exposure of 85dBA, with a maximum exposure of 140dBA. Guidelines are then provided in the Code of Practice for how to reduce exposure, acknowledging susceptibility for some individuals below 85dBA average weighted exposure.

Consideration should also be given to the interaction of OHS with other legislation, such as Road Safety, Radiation, Food Safety and numerous other public health acts.

## 2. Scope, Application & Definitions

Consistency in definition of key terms is essential for clarity. To illustrate: the recently released National Standards and National Codes of Practices<sup>2</sup> declared by the Australian Safety and Compensation Council (ASCC) and endorsed by the Workplace Relations Minister in May 2008 illustrate the need for consistency in definition. In the documents reference is made to:

- *items* that might contribute to hazards/risks
- *persons with control*
- *reasonably practicable*
- *use of an item or system of work*
- *duties of employers*

These key terms should all be defined in the model Act, and a test of the definition provided. It is important to ensure the definitions are such that there is clarity for employers and workers. For example, the definition of 'practicable' in some legislation is 'what is reasonably practicable'. A test would assist in clarifying definitions.

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<sup>1</sup> <http://www.ascc.gov.au/NR/rdonlyres/38A158B3-0F37-4ADC-B050-7758F5529033/0/noisestandard.pdf>

<sup>2</sup> [http://www.ascc.gov.au/NR/rdonlyres/514BC761-49D7-4127-A4AD-315735101F3D/0/2239DEWRNationalStandards\\_FINAL.pdf](http://www.ascc.gov.au/NR/rdonlyres/514BC761-49D7-4127-A4AD-315735101F3D/0/2239DEWRNationalStandards_FINAL.pdf)

***Should the model OHS Act maintain the status quo in each jurisdiction regarding industry specific safety legislation? If so, what provisions should be made for establishing the relationship between the model OHS Act and industry specific legislation?***

***Alternatively, should a model OHS Act incorporate all industry specific safety legislation?***

Prior to confirming the legislative approach to be used, objectives and measures of success should be defined. This provides clarity for all stakeholders on the direction and expectations. Industry specific legislation should reflect the goals, objectives and measures of success of the broader framework.

It seems incongruous (although true) that employers operating in different states are subject to varying standards, even for industry specific issues. National consistency could be achieved through incorporation of broad performance-based standards into a model OHS Act, or through reference to a range national regulations and codes of practice. As new risks emerge the scope of coverage of the OHS Act will increase, and potentially create new industry specific issues. A framework that enables the development of new codes of practice, without requiring change to the central Act would provide the most responsive environment for these new risks.

Industry specific legislation should be related to the relative maturity of the industry, and hazards or risks that are unique to that industry. The Safety Case approach adopted by the *National Offshore Petroleum Safety Authority* (NOPSA) is better attuned to mature industries than some more prescriptive standards. These standards should be used sparingly. Standards and codes of practice should provide guidance that covers a range of industries. This will facilitate an environment of knowledge sharing and learning from best practice.

***Should general duties of care be tied to the conduct of work, to the workplace, or to some other criteria?***

With the advancement of technology, the 'workplace' is no longer a single physical location, but may be a vehicle, a home, another worksite or even a 'café and laptop'. General duties should not be limited to the worksite, but be tied to the conduct of work similar to the *Queensland Workplace Health and Safety Act 1995*. This approach covers work activities that are undertaken outside the confines of the traditional workplace – e.g. Private residences (individuals working from home) motor vehicles (sales representatives). This provides clarity for employers that they should not only ensure the *worksite* is safe, but also that a home office or company vehicle should meet minimum safety standards.

If the general duty of care is tied to the conduct of work rather than the worksite, it is not possible to impose an absolute duty of care, and the concepts of 'reasonably practicable' and 'control' should be applied and defined. By way of example, it may be reasonable that an employer-issued vehicle have a 4 or 5 star safety rating, however it is not reasonable to require an employer to ensure the road on which the employee drives is in top condition.

***Should the scope and application of the model OHS Act be sufficiently broad and flexible to accommodate new and evolving types of work arrangements? If so, how should this be achieved?***

The increasing variation in work arrangements, including growth of labour hire and contractual arrangements requires a new approach. With more than 3.3million labour hire placements each year<sup>3</sup>,

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<sup>3</sup> Australian Bureau of Statistics (2003). 8558.0 - Employment Services, Australia, 2001-02, <http://www.abs.gov.au/ausstats/abs@.nsf/cat/8558.0>.

the level of control of a workplace is changing from the employer to the controller of the work. In most jurisdictions, employers remain accountable for ensuring adequate training and supervision of employees, even if the employee is moved to a new task by the controller of the work (or host employer).

While leaders in the labour hire industry attempt to control this through contractual arrangements with the host employer requiring notification of change of task, the ability for the employer to conduct a risk assessment prior to the commencement of the task is limited.

Similarly, a duty to provide supervision should be couched in such terms as to allow for the increasing mobility of workforces. While training and supervision are both necessary to support employees, it is no longer possible for employers to have supervisors physically present in all instances. Accountability should sit with employees to comply with reasonable directions given by an employer, and to make appropriate judgements within their level of competence and training.

***Are there current or emerging hazards and risks that are not effectively addressed under the general duties of care? If so, how should they be provided for under a model OHS Act?***

The Emerging Risks Initiative (ERI) of the Chief Risk Officers Forum, in which CGU's parent (IAG) has been a participant, has identified a wide range of emerging risks. A number of these could potentially impact on the health of Australian workers through exposure in the workplace. These include specific hazards such as infectious diseases (e.g. SARS, Avian Influenza), workplace related stress, nanotechnology, asbestos, toxic mould, occupational diseases arising from exposure to chemicals or other toxins, "Repetitive Strain Injury" (Occupational Overuse Syndrome), latex, electromagnetic fields, indoor pollution; as well as broader risks such as demographic changes, ageing, obesity, chronic disease and deterioration of safety standards due to mergers. To prepare for the future, the model OHS Act needs to be sufficiently flexible in order to respond to such emerging risks.

Common characteristics of emerging risks include high levels of uncertainty, difficulty in assessing frequency or severity, questionable risk transfer, absence of industry position, communication difficulties and a need for regulatory involvement.

Accordingly, emerging risks are, in general, more complex, more difficult to control, and are much more difficult to relate specifically to workplaces. The model Act should define the duty held by employers, and then incorporate a 'control' test or definition, to assist employers (and other duty holders) to determine the scope of their responsibility for prevention.

By way of example, an absolute duty of care on employers requires them to prevent exposure to illness and injury arising from these risks. However, the nature of exposure means that it is difficult to be certain that the condition was caused by the workplace. Many employers are concerned that accountability for conditions such as Occupational Overuse Syndrome does not take into account the increasing use of home computers, game machines and texting on personal mobile phones. Similarly, individual factors such as obesity increases the risk of back and other injuries. Some employers (and regulators in the instance of the Work Health initiative in Victoria) acknowledge the impact that employee health programs can have on productivity.

However it is unlikely that any employer desires to be held accountable for injury or illness where lifestyle factors provide significant contribution.

***Should the model OHS Act clarify responsibilities where multiple duty holders and multiple duties are involved? If so, how should this be achieved?***

A more broadly expressed provision, such as S.28 of the Queensland *Workplace Health and Safety Act 1995* requiring a person conducting a business or undertaking to *ensure* that all people impacted by this undertaking are not exposed to risks to their health and safety arising out of the conduct of the business or undertaking, is better suited to the changing nature of the workplace. This provides greater protection for employers of contract workers (who have limited control of the worksites in which the employee works) and clarifies accountability for all controllers (including building owners, employers and lead contractors)

While the extent of this duty is reasonable, effective implementation of such a provision requires also the recognition of *reasonably practicable* action, where the person conducting the business or undertaking has the *control* to take preventative action.

### **3. Duties of Care – Who owes them and to whom?**

***Should the model OHS Act include a ‘control’ test or definition? If so, why and what should it be?***

Organisations that have demonstrated improved and consistently high safety performance have been able to establish a culture where all individuals (directors, managers, supervisors and employees) take accountability for their safety and the safety of others. Explicitly addressing the *chain of responsibility*, as has been done in road safety, provides employers with clarity of expectation and facilitates more effective implementation of effective cultures within their business.

A clear definition of ‘control’ should be provided, reflecting:

- the acts (or failure to act) of all individuals,
- the capacity for them to influence decisions, and

incorporating not only employers and workers, but also manufacturers, suppliers, and operators of plant, then the duties of these individuals become much clearer.

An employer who has explained to a designer/manufacturer/importer a particular need, and then takes the advice of this supplier in addressing that need, and trained/instructed their employees accordingly, should be able to have some comfort that they have discharged their duty of care to provide safe work if there is a failure of the equipment/material supplied.

A test should be incorporated that assists all duty holders to understand the scope of their duty, without being required to refer to complex legal advice based on case law to guide their decisions. This duty should incorporate the responsibilities of workers to notify their employer of risks to health and safety, participate in reducing the risk and to avoid endangering others through their actions.

### **4. ‘Reasonably Practicable’ & Risk Management**

***Should a test of ‘reasonably practicable’ be included in the model OHS Act?***

The application of *reasonably practicable* is currently primarily determined by case law. Interpretation requires complex legal knowledge, making it largely inaccessible to the many small and medium

employers. The Model OHS Act should provide for clarification of what is reasonably practicable, and should incorporate:

- The state of knowledge that exists about the hazard or risk, and any ways of eliminating or reducing the hazard/risk
- The likelihood of the hazard or risk occurring
- The consequences of the hazard/risk
- The availability and suitability of ways to eliminate or reduce the hazard/risk through reducing its likelihood of occurring, or reducing the impact should the hazard/risk occur
- The cost of eliminating or reducing the hazard/risk; and
- The capacity to prioritise controls

These standards should be supplemented by regulations and codes of practice that give specific examples of what the standards mean.

Small/medium enterprises generally have poorer OHS performance than large employers as OHS is often managed by 'jugglers' who have a number of operational roles. These businesses want to keep their employees safe, but often express confusion about their responsibilities and the best way to address the hazards/risks in their business. Clarity within the Act and supporting regulations, without the need for legal advice based on complex case law, supplemented by easy to understand examples, provides these employers with the incentive to act, rather than complexity leading to inertia.

***Should risk management principles and processes be specifically required by the model OHS Act in relation to the general duties, or otherwise?***

Best practice organisations operate an enterprise wide risk framework, integrating all operational risks (including health and safety) into their risk framework. As a result, any OHS laws should be consistent with *ISO 31000 Risk Management*. This standard is in its final stages of development and will replace *AS/NZS 4360 Risk Management* once it is ratified. The ISO standard includes the following principles of Risk Management should:

- Create value
- Be part of decision making
- Help to prioritise actions and distinguish among courses of actions
- Explicitly address uncertainty
- Be systematic and structured
- Be based on the best available information
- Be tailored

- Take into account human factors
- Be transparent and inclusive
- Be dynamic, interactive and responsive to change
- Be capable of continual improvement and enhancement

These principles, developed with worldwide consultation, provide a sound basis for the development of health and safety risk management practices. Any legislation that limits the application of these principles does not enable employers to provide the best possible outcomes in preventing injuries to their employees without the imposition of unnecessary process.

## **5. Consultation, Participation and Representation:**

### **Consultation**

#### ***What provisions should be made in the model OHS Act for consultation?***

It is widely accepted that effective consultation produces better health and safety outcomes, and a requirement to consult is a reasonable and practical component of any model Act. However, the process of consultation should not be defined, but the Act should be sufficiently flexible in order to enable an organisation to design consultation frameworks that produce meaningful results for their business. Some large organisations do not even apply the same process across their business, but adapt consultation structures to different parts of their organisation, in order to most effectively gather feedback in a timely manner. Therefore the Act needs to allow for flexibility within, as well as between, organisations.

The Act should outline a test of effective consultation in the development of consultation structures, requiring employers to demonstrate they have considered:

- The size and scale of the business
- The number of employees on the worksite
- The number and location of worksites where the employer operates
- The cultural and linguistic needs of the workforce
- The nature of the workforce including workers such as contractors and casual employees

Such a framework then enables businesses to best integrate consultation into their normal operations – improving the quality of both input and outcomes.

This should then be supported by the training and competency structures that are designed. Effective consultation requires two-way interaction, involving transparency of information and open, pragmatic discussion. Yet some states (e.g. WA, SA) don't allow or encourage OHS representatives and management to receive training at the same course. This approach reinforces an adversarial rather than cooperative approach.

## Participation and Representation

### ***Should there be a requirement for the establishment of (Health and Safety Representatives) HSRs and (Health and Safety Committees) HSCs?***

Participation of employees in the consultation process requires effective understanding of the hazards/risks of that workplace. Adversarial environments can be prevented by retaining HSRs and HSCs in an advisory role, and leaving enforcement to inspectors/regulators, eliminating the ability to issue Improvement Notices or similar.

Health and Safety Representatives and Committee members should be a key resource for employers and workers through an enhanced understanding of the nature of the hazard/risk, and the principles of addressing it. To be able to perform this role effectively HSRs and HSC members require appropriate training.

### ***What training and qualifications should members of HSRs and HSCs have?***

Current variations in State requirements mean that the training, roles, responsibilities and rights of these Representatives vary considerably. For example, CGU operates a network of approximately 350 OHS Representatives, some of whom are members of OHS Committees. Some of these Representatives can issue Improvement Notices, and some cannot. The training of these representatives is inconsistent, and for the most part is focused on process rather than outcome. Some States have aligned HSR and HSC member training with the nationally recognised competency standards (usually Certificate III in OHS), while others produce their own course.

- NSW: 4 day Authority accredited face to face course
- Victoria: 5 day Authority accredited face to face course, and 1 day refresher training annually
- WA: 5 day face to face course and a 2 day refresher course after 12 months in the role
- Qld: Workplace Health and safety officers must complete core module (5 days) and an industry specific module (2 days for services industry). Workplace Health and Safety Representatives who request training are required to complete a 3 day workplace Health and Safety Representative training course

Many States consider training adequate on the basis of minimum face to face time with no assessment of competency, and in NSW a performance indicator for trainer quality is their adherence to the timeframes but no measure of learning outcomes.

As a Registered Training Organisation (RTO), CGU would advocate best practice learning, with clearly defined learning outcomes and learning strategies that may involve a range delivery styles (e.g. online, pre-reading, work-based activity) and ability to adapt face to face time and assessment to the needs of the learner– allowing flexibility for the learner and their employer.

Learning outcomes for HSR and HSC member training should focus on understanding key concepts and practical application of the concepts to the situation. There should be less emphasis on rote learning of legislation and regulations, and learning redirected to developing OHS fundamentals and research skills which will enable HSRs and HSC members to provide answers to specific issues at the time they are required *in the workplace*. This type of training will better position business as the range

of risks become more complex, making it impractical to cover the scope of all risks with a reasonable course timeframe.

The training should be outcomes based with flexibility in the delivery process. There is currently no mechanism to recognise existing competence, whether from prior learning on safety topics, or merely relocation to another state. By using the national training system to determine HSR and HSC members' competency it would be possible for skills to be transferable across states and industries. This refocuses training from a prescribed approach (contact hours, run sequence, 'must cover', 'must attend') which contradicts adult learning principles, to emphasising demonstrated outcomes in the workplace.

The value placed on competency-based training is evidenced by the adoption of this as a standard in WA. Since offering the *Certificate III in Occupational Health and Safety* for completion in conjunction with the OHS Representatives training CGU has noted that approximately 25% of participants have taken the opportunity, including some employers who made it mandatory.

HSRs and HSC members should have defined competencies endorsed through the Vocational Education and Training (VET) sector of the Australian Qualification Framework (AQF) and allow RTOs the freedom to deliver programs that meet those outcomes. The most relevant current competencies are those that constitute the *Certificate III in Occupational Health and Safety* (or at least a 6 unit skill set as in WA). This would allow for more action learning topics where actual performance is demonstrated through varied methods and allow rapid movement through a programme for those who can demonstrate prior learning. HSRs and HSC members benefit through access to a recognised qualification, and employers benefit as any time invested in training is based on building on existing knowledge, rather than re-learning known material.

Extraordinarily, while there is mandated training for HSRs and HSC members, there is not mandated competencies for managers and supervisors, OHS practitioners or Inspectors. Many organisations do mandate training for managers and supervisors, and use a similar approach in determining the appropriate training required - determining the competencies necessary to fulfil their role, and aligning to the AQF, with the most frequently applied standard observed by CGU being *BSBOHS407A Maintain a Safe Workplace*. We would not advocate mandated training for managers and supervisors based on the current common approach of face to face attendance, as it would create a significant impost on business that is unlikely to achieve commensurate gains in safety. Instead, clearly defined competencies, and assessment to determine the achievement of those competencies, would provide guidance to business on what is reasonable to expect managers and supervisors, and other advisory and enforcement roles, to be able to do.

## **Right of Entry**

In response to the WorkCover NSW Review of the NSW OHS Act 2000, CGU recommended that there is no increase in right of entry powers for unions as this creates a blurring of industrial relations and health and safety issues. This blurring does not generally support a cooperative approach, due to a perception of 'other priorities' of both parties.

Any Right of entry by unions should be limited to OHS qualified union officials who have a capacity to contribute to workplace health and safety in the workplace. Expanding right of entry beyond this limitation potentially creates a situation where the union 'advisor' is less qualified to comment on the situation than an effectively training HSR or HSC member.

## 6. Regulator Functions, Powers & Accountability

The design of effective legislative frameworks requires the establishment of clear objectives and goals, along with the evidence of success. An optimal framework provides clarity to all stakeholders on the objectives; assists with implementation and outlines clear indicators of when the objectives have been achieved.

Regulators then have a role in implementing the governance framework, and setting the strategies and plans for achieving those goals.

As the nature of work becomes more complex, employers will become more reliant on 'experts' to assist them to manage the hazards/risks in their work operations. This will require regulators to adopt dual functions of advice and enforcement. The model OHS Act should reflect these dual functions by defining accountability for education and community engagement, as well as for enforcement of obligations.

In Australia there is no private sector research capacity on OHS issues, attributed to large parts of the private sector having no direct financial interest in their actual OHS performance resulting in a focus on compliance and enforcement of complex regulatory arrangements. This limits community education about OHS issues that incorporate all stakeholders. At present, some research is done by state regulators, as well as further coordination through the Australian Safety and Compensation Council.

Future government investment in research on OHS issues should be primarily made at a Federal level to maximise benefit for all workplaces across the country. This investment should incorporate a role to engage with private sector, and build a complementary private sector research capacity. Success of this engagement will rely on further reform in order to more closely align health and safety performance with the financial interests of business.

Investment, or at least coordination, at a Federal level enables Australia to maximise research outcomes and avoid duplication of effort. On many occasions, States have released Standards or Codes of Practice on the same issue, within weeks or months of each other, yet in other instances there has been referral by the Commonwealth to the State standards where a particular standard does not exist in Comcare (e.g. Random Drug Testing). A coordinated national approach ensures certainty and clarity for employers, and focuses on evidence-based outcomes, that therefore instil greater confidence.

## 7. Compliance & Enforcement

CGU receives feedback from customers who have been issued with compliance notices (e.g. PINs or other types of breach notices), but have not received any advice on *how to* address the safety concern. A framework that enables employers to receive education and advice, as well as enforcement when required, is optimal. PINs are an opportunity to educate employers through clarification of the *outcome* expected, and guidance about *how to* address the issue at hand. However, the PIN should not demand compliance with the guidance provided in the PIN, if the employer is able to demonstrate that an alternate approach can meet the *outcome* required.

Employers responding to PINs or breach notices are required to demonstrate the risk assessment that has been conducted on the task however there is no requirement for an HSR to demonstrate that they have conducted a risk assessment prior to issuing a PIN. Discrepancies between controls may more easily be addressed if a comparison of risk assessments is conducted and the key differences noted.

## 8. Prosecutions

### Where prosecutions should be heard

Current variance in jurisdiction for hearing OHS prosecutions is likely to be contributing to frustration with the decision process and perception of varying standards being applied. The Model Act should outline the process by which prosecutions should be heard and appealed, creating consistency across each state.

The separation between Industrial Relations and OHS could be emphasised by ensuring the courts or tribunals responsible for hearings are not the relevant Industrial Relations Tribunals or Commissions in each jurisdiction. Instead, a focus on evidence-based, pragmatic and practical outcomes can help to provide consistency for all concerned.

Workers Compensation has demonstrated that alternative dispute resolution processes have been more effective in achieving cost-effective, sustainable outcomes for all parties, when compared to traditional adversarial legal approaches. There is an opportunity for considering the use of alternate dispute resolution, including conciliation and mediation for some minor OHS offences. By focussing on the outcome of a safe workplace, the goal may be achieved in a much more cost effective and timely manner.

## 9. Other Issues

### Regulation making

As regulations provide further detail about the process for achieving compliance with the general duties of the OHS Act, it is essential that there is a limitation on the power to make regulations in order to maintain consistency at a national level. Regulations should primarily be set at a national or industry level, responding to specific issues within that industry.

### Incident Reporting

Clear definition of incidents and injuries that require reporting is required. At present regulations define different standards, timeframes and processes. A single reporting process with consistent information would assist in building a national dataset of OHS performance, critical to contributing to prevention research and monitoring performance change. Alignment of incident notification reporting with workers compensation injury reporting requirements (e.g. as has been done in NSW) has reduced duplication of effort where employers previously needed to report significant incidents to WorkCover as well as their insurer.

## 10. General Comments

In submissions to previous Reviews and Inquiries CGU and its parent IAG has highlighted the strong link between industrial relations, health and safety outcomes and effective workers compensation scheme design.

Complete copies of public submissions are available on the IAG website, <http://www.iag.com.au/IAGNews/mediaReleases.do?queryText=Latest&docFilterType=GovSubmissions&htmlFlag=N>. We would highlight responses to:

- Review of Self Insurance Arrangements Under the Comcare Scheme (February 2008)
- WorkCover NSW Review on the Occupational Health and Safety Act 2000 (August 2005)
- Review of National Competition Policy Arrangements (June 2004)
- Productivity Commission Inquiry into National Workers Compensation and Occupational Health and Safety Frameworks (June 2003)
- HIH Royal Commission Submission (September 2002)

While workers compensation scheme design is beyond the *Terms of Reference* of this review, fundamental to any consideration of reform initiatives is an understanding and recognition of the most effective and competitive mechanisms that reward positive employment practices with affordable premiums and capitalise on the opportunities for reduced risk and accident prevention for workers in Australia. A compensation scheme that focuses on rehabilitation will be demonstrably more successful in achieving positive outcomes (both in injury recovery and industrial relations) and will supplement the proactive reform that is the goal of this review.