

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the provisions of the OHS and SRC Legislation Amendment Bill 2005**

---

**Submission no:** 5

**Received:** 27/03/2006

**Submitter:** Mr Darryl Turner  
Manager

**Organisation:** Self Insurers of South Australia

**Address:** 136 South Road  
TORRENSVILLE SA 5031

**Phone:** 08 8234 9522

**Fax:** 08 8234 9533

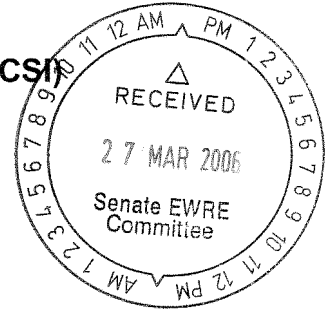
**Email:** [darryl@sisa.net.au](mailto:darryl@sisa.net.au)

---

# SUBMISSION BY THE NATIONAL COUNCIL OF SELF INSURERS (NCSI)

## OHS AND SRC LEGISLATION AMENDMENT BILL 2005

23 March 2006



### 1 Introduction

The NCSI is the national representative body for state based self insured employers.

The NCSI comprises representatives of each state self insurance association in Australia, and one of its major objectives is to achieve national consistencies for self insurers in a number of key regulatory and operational areas.

Self insured employers are represented through their state associations in the following numbers:

- New South Wales 66 employers
- Queensland 26 employers
- South Australia 70 employers plus the Government
- Tasmania 14 employers
- Victoria 38 employers
- Western Australia 26 employers

As large employers, self insurers employ a significant proportion of the national workforce.

Very recently we have extended an invitation to self insured employers under the Comcare scheme to be part of the NCSI as we believe that there would be mutual benefits to be gained for all self insurers in such an association.

### 2 Background

On 7 December 2005, the OHS and SRC Legislation Amendment Bill 2005 (C'th) ("the Bill") was introduced into Parliament.

Currently private corporations licensed under the SRC Act are not subject to the OHS (CE) Act. OHS obligations for these corporations are provided by up to eight different regimes under State and Territory OHS legislation.

The Productivity Commission enquiry into National Workers' Compensation and Occupational Health & Safety, recommended that the Australian Government amend the OHS (CE) Act to enable those corporations that are licensed under the Australian Government's workers' compensation scheme to elect to be covered by the Commonwealth OHS legislation.

### 3 Discussion

The NCSI made a comprehensive submission to the Productivity Commission Review into National Workers' Compensation and Occupational Health & Safety, which identified significant administration and cost burdens for self insurers operating in more than one state, by having to meet different state regulatory and legislative requirements.

The full NCSI submission, and its response to the Interim Report from the Productivity Commission, have been forwarded to the Senate Committee separately. It was not possible to forward in electronic format because of the size of the documents.

In essence, the NCSI submission sought to

- Achieve consistencies nationally across the self insurer workforce.
- Simplify the management of OH&S and workers compensation benefits and arrangements.

The NCSI understanding is that the main amendment in this Bill will ensure that all employers that obtain a self-insurance license under the *Safety, Rehabilitation and Compensation Act 1988*, including former Commonwealth authorities and those in competition with existing or former Commonwealth authorities, are automatically covered by the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

As noted above, the OHS obligations for these employers are currently provided by up to eight different State and Territory legislative regimes.

#### 4 The NCSI Position

The Australian Government has taken the view that its workers' compensation and OHS schemes are effectively integrated and the value of this integration is diluted if a corporation under the Commonwealth SRC scheme is subject to up to 8 different OHS regulatory regimes.

##### **The NCSI agrees with that view.**

The Bill, therefore, would provide OHS coverage under the OHS (CE) Act (to be renamed to simply the *Occupational Health and Safety Act*) for all SRC Act licensees.

The Government has rejected the suggestion of the Productivity Commission that this should be by "election". The result is that if a corporation obtains a licence under the SRC legislation it will be subject to the OHS (CE) Act.

##### **The NCSI agrees with this view.**

Whilst the NCSI has and will continue to advocate nationally consistent regulatory and administrative arrangements, it is of the view that access to the Comcare scheme

- should be an option or choice for individual self insurers, and
- self insurers should conduct their own feasibility and benefit studies, in determining the suitability of Comcare for their organisations.

For those organisations operating nationally, and considering entry to Comcare, this proposal offers an immediate attraction as it purports to substitute one piece of national legislation for up to 8 state and territory schemes, and **its establishment is therefore supported by the NCSI.**

However, the NCSI has one significant concern in relation to the proposed application of the OHS (CE) Act. Section 4 of that Act provides as follows:

##### ***Saving of certain State and Territory laws***

*It is the intention of the Parliament that this Act is not to affect the operation of a law of a State or of a Territory that promotes the occupational health and safety of persons and is capable of operating, whether of its own force or as an applied provision within the meaning of the Commonwealth Places (Application of Laws) Act 1970, concurrently with this Act.*

As the NCSI understands it, having regard to the nature of OHS laws at both the national and state/territory levels, this provision has the effect of ensuring that many State and Territory OHS will continue to apply to licences under the SRC Act following the amendments. If this is so, then far from simplifying the compliance process it will *potentially* add another layer of complexity. Whether this concern is realised in practice will depend upon factors such as how State and Territory OHS authorities, unions (who have certain powers under various State OHS laws – for example to prosecute (NSW) or right of entry (Victoria) and the courts interpret section 4.

The NCSI therefore urges the Government to closely consider the operation and effect of section 4 and amend that provision, or otherwise take steps to provide greater guidance and certainty to licencees as to the scope of that provision.

## 5 Conclusion

Notwithstanding the concern in relation to Section 4 of the OHS (CE) Act, the NCSI supports progression of the Bill as a significant step forward

- in achieving national consistencies and national options, and therefore encouraging and stimulating business growth and development in Australia,
- in reducing inefficiencies and costs to business, and
- in providing benefit for the safety, health and welfare of employees.