11 August 2005

Dear Sir or Madam


The Property Council of Australia welcomes the opportunity to provide comment on the Discussion Paper prepared by WorkCover reviewing the Occupational Health & Safety Act 2000.

The Property Council represents property investors, managers, developers and service providers across Australia. In recent years we have made comment on several workplace issues including workplace fatalities and liability issues, fire safety and lifts. It is on these general issues which we provide comment on in this submission.

Workplace fatalities and liability issues

The Property Council has in the past made comment regarding the recent legislative changes which introduced a new offence relating to workplace deaths. The Property Council is not opposed to reasonable amendments to enhance workplace safety. We understand the importance for the law to reflect community expectations that employers who disregard the health and safety of their employees either through direct actions or the failure to act can be made accountable.

However, we remain unconvinced that the recent changes to the legislation will result in fewer workplace fatalities or improved safety for employees. We are concerned that it will lead to employers being prosecuted for events beyond their control and without the same degree of legal protection provided to defendants accused of serious criminal offences.

If an employer is convicted of causing an employee’s death, due to demonstrable recklessness, the legislation allows WorkCover to prosecute employers and recommend gaol sentences and fines. The Property Council recommends that these provisions be carefully monitored and regularly reviewed.

The Property Council, whilst not completely supportive of this legislation as currently enacted, would strongly recommend against any further extension of these laws which may unduly burden a building owner, manager or company director for liability arising from harm or death of employees where it is not clearly demonstrable that the employer has acted recklessly.

Specifically, we are opposed to a narrowing of the defence of reasonable excuse or any increased liability for corporations or company directors beyond the personally reckless definition currently in place.
Fire safety

The Property Council has previously welcomed the NSW Government’s commitment not to introduce the property based fire services levy proposed by consultants to the NSW Parliament’s Public Accounts Committee, averting a potential 20 fold increase in levy costs to major commercial building owners.

The Public Accounts Committee recommended in 2004 that the Government not replace the existing insurance based levy with a property based levy, citing unresolved problems this would have on the commercial property sector.

The Committee’s 2004 report identified several of the arguments made by the Property Council identifying how a proposed property system would have resulted in levy costs for commercial owners increasing by up to 20 fold, with flow on impacts for some 50,000 business tenants.

The Property Council urges WorkCover not to reconsider the introduction of a property based fire services levy, unless these cost impacts can be resolved.

Lifts

In recent years, the Property Council has supported representations made to Government by the Australian Elevator Association to concerning the adoption of a hazard and risk process for the management and treatment of alteration of plant.

We understand that since the introduction of the Occupational Health and Safety Act 2000, and associated regulations in 2001, the AEA and WorkCover have been working cooperatively to ensure a hazard and risk approach to managing the lift industry in NSW.

The Property Council continues to support the position of the AEA in relation to the application of the hazard and risk process for the management and treatment of the alteration of plant associated with lifts. We also support the amended definition of ‘alteration’ as proposed by the AEA.

Where the structural hosting machines of the original design is not compromised by an alteration, there is no need for de-registration. We have argued that the structural and mechanical integrity in a lift is invested in its machine and supports. Alterations that change the characteristics of a lift in a manner that causes it to be outside the design parameters for these components, must be the subject of de-registration.

It is essential that any future alteration of policies with regard to the operation of lifts will be based on a cooperative agreement being reached between WorkCover and the AEA.

Thank you for the opportunity to provide comment as part of the review of the Occupational Health and Safety Act 2000.

Yours sincerely

Ken Morrison
NSW Executive Director