



australian
nursing federation

What should the optimal structure
and content of a model
OHS Act be?

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INTRODUCTION

The Australian Nursing Federation (ANF) is the national union for nurses with branches in each state and territory in Australia. The ANF is also the largest professional nursing organisation in Australia. The ANF's core business is the industrial and professional representation of nurses and nursing in Australia.

The ANF's 160,000 members are employed in a wide range of enterprises in urban, rural and remote locations in the public, private and aged care sectors, including hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, offshore territories and industries.

The ANF participates in the development of policy in nursing, nursing regulation, health, community services, veteran's affairs, education, training, occupational health and safety, industrial relations, immigration and law reform.

The ANF thanks the review panel for the opportunity to make comments in relation to the content of a model OHS law.

The ANF supports the ACTU's submissions to the Review. In addition to the ACTU submissions, the ANF would like to make comment in relation to particular OHS issues important to nurses, and make some comments in relation to some, but not all, of the issues discussed in the issues paper.

MAIN ISSUES OF OHS CONCERN TO ANF

Some of the main OHS issues of concern to Australian nurses are reflected in a recent report, Australian Safety and Compensation Council, *Occupational Exposures of Australian Nurses: Results of the Project. July 2008*.

The report, commissioned by the Australian Safety and Compensation Council (ASCC), involved completion of a survey by 955 Australian nurses.

The survey revealed Australian nurses are exposed to a wide range of important occupational hazards and identified a number of areas for intervention and on-going surveillance.

Sixty percent of nurses taking part in the survey identified stress as a high risk workplace hazard. Over 40% identified the lifting or repositioning of heavy objects, including patients (sometimes referred to as 'manual handling'); injuries caused by needles and other sharps; prolonged standing; and blood borne pathogens (eg. HIV, hepatitis) as high risk occupational

hazards. More than 30% of participants identified violence at work; repetitive hand, wrist, arm or shoulder motions; and latex allergens (eg. from gloves) as high risk hazards.

Just over 50% of nurses surveyed had sustained, at some stage in their work, at least one work-related injury or disease that required they take time off work. The most common recent injuries or diseases affecting nurses in the workplace were reported as musculoskeletal injury or disease (70.6%), stress (19.8%), bullying (15.1%) and infection (12.1%).

ANF POLICY

It is ANF policy that nurses must be protected from exposure to, among other hazards:

- **manual lifting** of patients. ANF policy is that manual lifting must be eliminated or minimised so far as possible via appropriate layout and design of facilities, and the use of mechanical lifting aids and other equipment.
- **violent and aggressive behaviour.** Employers must implement policies and procedures supporting a zero tolerance approach to occupational violence and aggression.
- **blood and body substances.** Nurses must be protected by way of effective personal protective equipment, and sharps products which are of safe design and which protect nurses during their use (such as the use of needleless systems and retractable needles wherever possible). Diseases that can arise from blood and body substances include hepatitis and HIV/AIDS.
- **hazardous substances**, such as glutaraldehyde, latex and cytotoxic drugs. (Cytotoxic drugs are primarily intended for the treatment of cancer. They are toxic compounds which are known to have carcinogenic, and other potentially harmful, effects including irritation to the skin, eyes and mucous membranes, and ulceration and necrosis of tissue. Long term exposure to low level doses of multiple drugs is considered to be more hazardous than single event exposure to a single drug).
- **shiftwork** patterns which are adverse to nurses' health, safety and well-being. Shifts should provide for adequate breaks and rest periods between shifts.
- **harassment, discrimination and bullying** in the workplace.

SPECIFIC COMMENTS

Legislative Approach:

Title, objects and principles

The ANF considers that the *National OHS Strategy 2002-2012* must be reflected in the objects, principles and duties of the model national OHS laws.

All Australian governments, the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions stated in 2002 that “the Strategy will focus our efforts in working together to dramatically improve Australia’s occupational health and safety performance over the next decade and to foster sustainable, safe and healthy enterprises that prevent work-related death, injury and disease.”

One of the priorities of the National OHS Strategy is the more effective prevention of occupational disease. Because of this, and reflecting the experience of nurses, the ANF considers that a focus on preventing occupational disease should be reflected in the Act’s objects, principles and duties.

As noted above, diseases that nurses are particularly exposed to include contact dermatitis, infectious diseases such as hepatitis, HIV/AIDS and tuberculosis, musculoskeletal disorders, and stress-related mental disorders.

The objects, principles and duties should also emphasise the role of governments as exemplar employers. This is of particular interest to the ANF as a high proportion of nurses are employed in the public sector or in areas that are publicly funded, eg aged care. Aside from governments as employers, governments also have a role to play as policy-makers, regulators and as purchasers/procurers. The role of government is another priority of the National OHS Strategy, which ‘aims to sharpen the effectiveness of governments in securing better OHS outcomes and providing examples of good practice’. The Strategy refers to governments as having ‘a leadership role in preventing work-related death, injury and disease in Australia’.

Scope, Application & Definitions:

Emerging Hazards and Risks

The ANF has particular concerns about psychosocial OHS hazards that historically have not received adequate attention, and/or which have increased in recent years. Nurses face psychosocial hazards such as stress, fatigue, bullying and violence without adequate protection under existing OHS legislation.

The principles, objects and duties of the Act should provide a recognition of the need to prevent psychosocial hazards.

Duties of Care – Who owes them and to whom?

Activities which impact on health and safety

It is ANF policy that employees must be provided with premises, work environments, fixtures, fittings, equipment and systems of work that are safely designed. Nurses expect that the most effective hazard control measures will be implemented and that hazards are eliminated or controlled *at their source* before last resort measures, such as providing personal protective equipment, are considered. This is consistent with the Prevention Principle.

Accordingly, the ANF considers that the model OHS Act needs to contain strong, clear duties not only on employers but also on designers of buildings, plant and equipment, and other persons up the supply chain including manufacturers, importers and suppliers of goods and substances, plant and premises.

Eliminating hazards at the design stage is a national priority of the National OHS Strategy, which states that “responsibility to eliminate hazards or control risk rests at its source...Responsibility falls on a wide range of parties, including those outside of the workplace such as designers, manufacturers, constructors or suppliers.” This should be reflected in the model Act.

The actions of persons upstream have a myriad of effects on nurses’ OHS outcomes. For example, equipment to assist manual handling of patients needs to be made safe at source, including by designers and manufacturers as well as employers. Lifting aids and equipment used by nurses include overhead tracking, lifting machines, hoists and slide sheets. Faulty design or faulty manufacture of equipment has the potential to cause serious injury to nurses.

Layout and design of buildings must also be conducive to safe work practices. The workplace, including people’s homes, must provide adequately modified clear space for the safe movement of people, lifting aids and other equipment, and the safe and accessible storage of equipment.

The design of health facilities is extremely relevant in relation to aggression and violence against nurses. Nurses must be provided with a secure and safe physical environment, including buildings, grounds and car parks. This should occur, for example, through appropriate design of public access points (such as reception and waiting areas), alternative exit points for nurses facing a violent or aggressive situation, and of furniture and fittings. Nurses must also be consulted on matters related to the risk of violence, including in relation to facility design.

The model OHS Act needs to provide a supportive framework for regulations on safe design, as well as hazards such as manual handling, violence, bullying, fatigue and stress.

'Reasonably Practicable' & Risk Management:

Risk Management

The ANF considers that the model OHS laws must require employers to proactively undertake risk assessments. Assessment of risks should occur as early as possible, before decisions to introduce changes in the workplace, and involve thorough consultation with nurses and their representatives.

For example, decisions related to staffing levels and skills mix have a massive impact on OHS outcomes for nurses. Heavy workloads from inadequate staffing lead to increased risk of:

- stress and fatigue
- needlestick and musculo-skeletal injuries (because of time constraints)
- bullying
- violence and aggression from patients and/or their friends or family who have to wait longer for attention at health facilities. Inadequate staffing levels, and hence security, is also an issue for staff who perform home visits or work in isolated locations.

Consultation, Participation and Representation:

Strong consultation and representation requirements are essential in order for nurses to participate effectively in relation to OHS issues in their workplace and thereby enable improved OHS outcomes for nurses and patients.

Nursing health and safety representatives (HSRs) have played a significant role, via consultation and representation, in raising issues and achieving preventative outcomes in relation to issues such as manual handling and occupational violence. The potential issuing of PIN notices has been very effective in achieving resolution when other alternatives have failed.

Duty to consult

There must be clear duties on employers to consult employees and health and safety representatives on OHS issues.

In particular, the laws must require employers to engage in *meaningful* consultation, not just the provision of information. For consultation to be effective, the participants must be contributing to the decision-making process not only in appearance but in fact. To this end, the laws should define what consultation must include. Among other things, employers must give HSRs a

reasonable opportunity to express their views and must 'take into account' their views. Consultation should occur early and often.

Nurses must have input before any changes are introduced to the workplace, work environment, equipment, furniture, work practices or training. For example, nurses must be consulted in relation to the selection of equipment used for manual handling purposes and on measures to reduce the risk of violence.

Participation and representation

The model laws must unambiguously enshrine the right of nurses and other employees to be represented in relation to OHS issues in the workplace.

Health and Safety Representatives

The ANF supports the ACTU's view that workplace HSRs are fundamental to achieving health and safety.

The model OHS laws should provide HSRs with specific powers including to:

- undertake risk assessment and risk review processes
- inspect workplaces
- access information
- consult with employers
- investigate incidents
- develop policies and plan for changes that may impact on the health and safety of employees
- issue Provisional Improvement Notices in the event that a hazard is not properly addressed by the employer
- contact the relevant occupational health and safety authority
- direct that work ceases until adequate measures are taken to protect the health and safety of employees.

HSRs should also have access to suitable training.

Employees must have a specific right to elect their own employee OHS representatives. The right of workers to elect workplace HSRs needs to be in addition to the existence of workplace OHS Committees.

Protection from discrimination and victimisation

Nurses making an occupational health and safety complaint or taking part in occupational health and safety activities must not be dismissed, nor have their employment status altered or be harassed or victimised as a result of their actions.

Prosecutions:

Who may commence prosecutions and relevant procedures

The ANF supports the ACTU's call for unions to be able to initiate prosecutions for OHS breaches.

Nurses frequently face the threat of aggression and violence. As noted above, 30% of nurses in a recent survey identified violence at work as a high risk hazard. Further, only 11% considered that they faced no risk from violence at work.

Despite this the OHS regulatory authorities generally do not prosecute employers. If the ANF was able to prosecute the employer the ANF considers that such workplaces would be safer for nurses.