



AUSTRALIAN LOGISTICS COUNCIL

NATIONAL REVIEW INTO MODEL OCCUPATIONAL HEALTH AND SAFETY LAWS

SUBMISSION

Legislative Approach:

ALC seeks to achieve light handed but uniform OHS laws. Light-handed in the sense that the Model Act not be too prescriptive, but makes duties and obligations clear and gives employers and employees sufficient flexibility to meet OHS standards by adopting practices and procedures that best meet their circumstances.

Scope, Application & Definitions:

The Model Law should make duties and obligations clear but ALC cautions against prescriptiveness in the scope and application of the Model Law, particularly its definitions. A flexible framework is best suited to meet changing circumstances and adapt to the wide range of industries and circumstances covered by OHS law.

Whilst it would be ideal to bring all industries within one OHS umbrella, ALC acknowledges that this may be too difficult given existing jurisdictional differences. However it is important that a particular industry not be subject to regulation under OHS law and some other specific industry safety law. That is why we have drawn attention to the heavy vehicle driver fatigue laws and the OHS laws in our covering letter. Some form of statutory reconciliation or “carve-outs” should be available.

Duties of Care – Who owes them and to whom?:

ALC sees this as a shared responsibility- referred to as the mutuality of obligations approach by some. ALC sees employers as owing duties of care to employees and others who come within the work context and subcontractors are a specific example in the T&L industry. Equally employees owe duties of care to their fellow employees and in a broad sense to their employer.

It is essential that OHS is not only a shared responsibility but a willingly accepted shared commitment. The Model Law must contain the framework which supports and encourages such a commitment

That is at the micro level but at the macro level all must be involved, governments, unions, industry associations.

‘Reasonably Practicable’ & Risk Management:

ALC generally supports the “reasonably practicable” test in existing OHS law as a realistic test. However, that should not stop attempts or policies which adopt a higher standard. The T&L Vision Zero is an example. Its components include

- ZERO- Fatalities
- ZERO- Injuries
- ZERO– Motor Vehicle Accidents
- ZERO- Environmental Harm
- ZERO –Tolerance of Unsafe Behaviour

Risk Management is a key component in identification of risk and eliminating or handling that risk. Some occupations and industries have inherent or greater risks than others. Formal risk management programs may be more appropriate under some circumstances than others, but the content and form of risk management identification and procedures should be left open and the Model Act should not contain definitions or standards. The principles set out in section 4 of the Occupational Health and Safety Act 2004 (Victoria) provide a good general framework

- (1) The importance of health and safety requires that employees, other persons at work and members of the public be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.*
- (2) Persons who control or manage matters that give rise or may give rise to risks to health or safety are responsible for eliminating or reducing those risks so far as is reasonably practicable.*
- (3) Employers and self-employed persons should be proactive, and take all reasonably practicable measures, to ensure health and safety at workplaces and in the conduct of undertakings.*
- (4) Employers and employees should exchange information and ideas about risks to health and safety and measures that can be taken to eliminate or reduce those risks.*
- (5) Employees are entitled, and should be encouraged, to be represented in relation to health and safety issues.*

Consultation, Participation and Representation:

Consultation is essential and that must mean more than symbolic consultation. It needs to move further into active participation in the safety process and representation on health and safety committees.

Although to some extent concerned about prescriptiveness, ALC believes that the Model Act should include provisions for Health and Safety Representatives and Health and Safety Committees along the lines of existing OHS statutes

Regulator Functions, Powers & Accountability:


On the assumption that OHS law will become uniform, the functions, powers and accountability of the regulator will be uniform. Functions and powers are not likely to be controversial, but it is essential that the exercise of regulatory powers and regulatory decisions are subject to review by courts of competent jurisdiction

Regulators are most often subject to criticism for a failure to act, rather than inadequate powers. It is essential that each jurisdiction provide the regulator with sufficient funds and resources to carry out its functions.

Consistency in compliance and enforcement approach, referred to below, is essential.

Compliance & Enforcement:

ALC notes that the IGA provides that uniformity will be complemented by a nationally consistent compliance policy and enforcement policy. ALC considers that to be essential if the system is to work. ALC is wary of use of the term "nationally consistent" given the experience with the NTC reforms. Jurisdictional differences should not be allowed to justify significant differences.



ALC supports the use of alternatives to prosecution, particularly enforceable undertakings. They can provide a quick and effective remedy in an effective OHS system.

Prosecution should be a process of last resort and should not be used for statistical purposes. A reverse burden of proof may make prosecutions a more easily used tool in some jurisdictions, and may enable claims to be made about rigorous enforcement – a common political ploy. However, the number of prosecutions, especially successful prosecutions, is not necessarily reflective of a statute meeting its objectives.

Prosecutions:

ALC considers that breaches of OHS law should remain criminal in character in accordance with existing OHS regimes. Criminal liability establishes and emphasises the seriousness with which Parliament views OHS responsibilities whilst civil liability may be appropriate in some cases, we would not want the Model Act to contain a mixed criminal/civil regime which may cause confusion and cause compliance difficulties.

The power to prosecute should be restricted to the government arm, such as the Director of Public Prosecutions, or the Worksafe/WorkCover authority (or equivalent) in the relevant jurisdictions.

The reverse burden of proof should not be used, certainly in criminal prosecutions. The burden of proof should rest with the prosecution in accordance with accepted standards.

Other Issues:

ALC welcomes the IGA and the prospect of uniform OHS laws and a consistent approach to compliance and enforcement.
