

11th July 2008

Mr Robin Stewart-Crompton
Chair
National Review into Model OHS Laws
GPO Box 9880
CANBERRA ACT 2601

By email: publicsubmissions@nationalohsreview.gov.au

Dear Sir

This submission by the Australian Construction Industry Forum Limited (ACIF) supports the need for consistency in OHS legislation and other instruments across Australia, and in application of those instruments as they apply to building and construction projects.

ACIF is a not-for-profit organisation with thirteen members:

Air Conditioning and Mechanical Contractors' Association of Australia
Association of Consulting Architects Australia
Association of Consulting Engineers Australia
Australian Institute of Building
Australian Institute of Quantity Surveyors
Construction Industry Engineering Services Group
Facility Management Association of Australia
Fire Protection Association Australia
Master Builders Australia
Property Council of Australia
The Institution of Engineers Australia
Planning Institute of Australia
The Royal Australian Institute of Architects

ACIF member organisations represent most disciplines within the private sector of the built environment sector, including planners, end users and asset managers, investors, designers and constructors. Firms in the industry are primarily responsible for planning, design, construction and operation of the nation's built form.

This submission addresses the overall structure of a model OHS Act, and its relationship with other instruments. Individual ACIF members will make separate submissions in response to the Government's May 2008 Issues Paper, and address the detailed questions contained in it.

A. ACIF POLICY POSITION

ACIF supports Occupational health and safety legislation and systems that:

- Are nationally consistent;
- Are reasonable in their duty of care requirements;
- Are based upon mutual responsibility;
- Provide clarity and certainty for all workplace stakeholders;
- Impose obligations which are commensurate to actual operational control;
- Does not act as a disincentive for innovation through the impost of excessive red-tape.
- Are developed, communicated and implemented via a system of open consultation and mutual cooperation between government, statutory authorities, workplace stakeholders, and the wider community in general.

ACIF supports the thrust of the Guide to Best Practice for Safer Construction Practices¹ which is an aspirational document aimed at developing a robust safety culture for all stakeholders.

B. OVERVIEW

The challenge of achieving meaningful improvements in workplace safety is a priority for all ACIF members, and for all firms and people working in the built environment industry.

Safer Construction Practices sets out 6 principles for a safety culture. These principles, which are were adapted from the Federal Safety Commissioner's Safety Principles and Guidance released in September 2006 are:

- Principle 1: Demonstrate Safety Leadership;
- Principle 2: Promote Safety in Design;
- Principle 3: Communicate Safety Information;
- Principle 4: Manage Safety Risks;
- Principle 5: Continuously Improve Safety Performance;
- Principle 6: Entrench Safety Practices;

ACIF members have participated in the development of *Safer Construction Practices* and support the on-going efforts of all parties to implement a robust safety culture.

Diverse OHS requirements in each state jurisdiction create misunderstanding and uncertainty in OHS compliance. The achievement of national consistency of the OHS enforcement and regulatory requirements across all Australian jurisdictions remains a priority. However, such regulatory requirements need to be clear, effective and practical with desired outcomes expressed in terms of the improvements and levels of performance required.

The achievement of meaningful improvements in workplace safety requires the establishment of an effective health and safety culture. This requires all persons in the supply chain to accept mutual and shared responsibilities and to take them seriously. Aside from employers it includes all workplace stakeholders, politicians and statutory authorities.

Current workplace safety legislation in all Australian jurisdictions does not provide practical guidance to employers on what they must do and consider in addressing all risks to health and safety. For all firms, but small firms in particular, guidance is required on the development of hazard identification and how to develop and implement OHS management systems.

The fact that a workplace injury has occurred should not automatically mean that a breach of law has occurred. These duties must not impose absolute or unreal obligations. Employers are unable to be 'everywhere at the same time'. Duties of care which place all of the responsibilities for workplace upon employers are both unmanageable and unworkable.

¹ *Guide to Best Practice for Safer Construction*, Sept 2006, Cooperative Research Centre for Construction Innovation

C. THE SCHEME OF REGULATION

The Act

ACIF understands that the regulatory approach taken in the model OHS Act will need to set standards for all industries and workplaces, and their differing work methods and risks. It understands the challenges inherent in doing so, and suggests that those challenges call for a hierarchy of instruments, beginning with performance-based standards in the Act rather than prescriptive standards.

In contrast to a prescriptive-based regulatory approach, a performance-based or goal-setting regulatory approach should be based on an objective method/approach and specify desired outcomes.

A performance-based regulatory approach should not only establish the desired OHS outcome, but also allow the duty holder the ability to choose appropriate OHS measures to achieve the desired outcome. For example, an employer not only provides protective equipment for the workplace but also reduces the need for protective equipment by minimising the hazard or risk through education, training, retrofitting or innovation.

A performance-based regulatory approach for the model OHS Act should:

- provide duty holders with a greater amount of flexibility in meeting their OHS duties and responsibilities;
- allow duty holders to use their experiences, knowledge and skill of their work activities to design, implement and manage to provide suitable controls or solutions to any workplace hazards or risks;
- allow for changes in the business environment and introduction of advances in technology and work methods.

Regulations & Codes of Practice

The success of application of OHS legislation, regulations, and codes of practice within the built environment industry, is directly affected by the project based nature of the industry. Unlike single workplace based industries, the built environment industry essentially is concerned with the creation of a prototype on each project, by a team assembled for that project. This way of working is characterised by:

- The creation of project teams drawn from many different organisations and callings;
- Most work being undertaken by firms under subcontract, under the control of a head contractor;
- Differing enterprise cultures across project teams;
- Site and work conditions differing with each project;
- By and large small firms, with few employees, undertaking separate sub-contract work packages.

These characteristics dictate that the implementation of performance-based hazard identification and mitigation is variable.

A performance-based approach involving the use of risk management techniques by duty holders is unlikely to be well applied by largely small firms operating on several different projects at the same time. The industry has addressed this issue with the use of detailed OHS management plans prepared by head contractors, imposing prescriptive obligations on subcontractors.

It is therefore suggested that the model OHS Act (a performance-based regulatory approach which specifies only the desired outcome to be achieved) is supported by subordinate legislation (regulations which are a process-based approach that specifies a process or series

of steps to be followed, e.g. hierarchy of control) and codes of practices (compliance codes which are a prescriptive-based approach that describes precisely what measures should be taken and requiring little interpretation).

Process based regulations and prescriptive codes of practices will give the small firms making up the bulk of the industry an appropriate balance in the legislative structure which recognises the project-based nature of the industry.

Please contact the undersigned for further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barda', with a stylized, circular flourish at the end.

Peter Barda
Executive Director