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**Submission to the National OHS Review Secretariat
Department of Education, Employment and
Workplace Relations**

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CRISIS SUPPORT SERVICES INC

Response to the National Review into Model Occupational Health and Safety Laws

Introduction – Who We Are

Crisis Support Services Inc (CSS) is responding to the call for submissions relevant to the National Review into Model Occupational Health and Safety Laws. Drawing on our extensive experience as an employer and as a service provider, we wish to raise a number of critical issues we have identified that impact on the effectiveness of occupational health and safety of the Australian workforce.

CSS is a non-government, national provider of telephone based counselling and support services, currently delivering some seven specialist services. We have specific expertise in working with people experiencing a range of mental health, social, familial, and personal as well as work related problems.

Our expertise is evidenced by CSS' provision of professional development and training for a range of agencies working at the coal face of service delivery. By working closely with employers working in the public, private and non government sector, CSS has been proactive in assisting such organisations to develop skills and processes for better supporting their workforces. CSS' provision of the Australia Post Helpline, for instance, which offers assistance to all men working in Australia Post, has been a valuable service for staff experiencing both work-related and personal problems which may impact on efficiency, effectiveness and retention in the workplace.

In the context of our expertise and experience, CSS recognises the important role that Occupational Health and Safety provisions have in promoting and maintaining healthy workplaces and in preventing and responding to individual and whole-of-workplace risks. We believe we are well positioned to provide expert guidance to the National Review in relation to these issues.

1. Legislative Approach: Objectives, Principles and Structure

Objectives

A national model OHS Act should have at its most fundamental tenet a holistic approach to the health, safety and well being of the workforce. The objectives of existing State/Territory based legislation reflect common concerns with historic and well established physical health and safety matters and broad duty of care responsibilities. However such legislation is in need of updating. In our view, the national Model Act through its objectives and principles must encompass and more explicitly reflect the well documented health and safety related issues (and risks) associated with mental health (including depression, anxiety disorders etc), workplace bullying and harassment, and whistle blowing (beyond the limitations of existing national legislation).

<p>Recommendation: The national model OHS Act should encompass and more explicitly reflect health and safety issues associated with workplace-related mental health, bullying and whistle blowing.</p>

Structure and Principles

As legislation proposing to provide an umbrella for State/Territory legislation and regulation, the national model OHS Act should provide a framework of principles and performance standards that are common across sectors, industries, and tasks. Although individual environments and occupations have specific risks to be ameliorated, there are nonetheless a range of core matters which are applicable to all workplaces and occupations. The principles should be articulated in a manner which enables them to be translated into a performance framework can which then form the basis of accountability. For example, a sample of core principles which would be expected to apply universally is:

Due diligence requires that every reasonable precaution be taken to protect the health, safety and welfare of all who work in an organisation, are contracted to an organisation and visit an organisation. In meeting this principle, appropriate risk assessment and consultation processes should be undertaken to identify actions which represent reasonable precautions in the relevant circumstance.

Bullying or harassment, in any form, constitutes a breach of workplace or occupational health and safety. In meeting this principle, organisations should have policies and procedures (including training) to prevent bullying and address breaches.

Establishment, implementation and reporting on compliance form part of employer responsibilities for occupational health and safety. In meeting this principle, organisations will demonstrate and report annually (including any corrective actions taken) to ensure implementation and enforcement of relevant policies, practices and standards.

The establishment of regulations or standards with respect to individual industries or activities should also be accountable to the national principles, while also providing for more specific requirements in the particular context. Where industry-based standards and regulations can be established nationally, this would add to the consistency of protections. These standards and regulations also need to be supported by evidence-based programs which ensure that the intent of the core principles are achieved in practice.

<p>Recommendation: The national model OHS Act should provide a framework of principles and performance standards that are common across sectors, industries, and tasks. These principles and performance standards should also be supported by evidence-based programs which ensure that the intent of the principles are achieved in practice.</p>
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2. Responding to Change

(a) Accommodating new and evolving work arrangements:

Given the significant impacts of technology on the way work is done, including increased opportunities for off-site work, permanent or part-time work from home and the existence of a growing home-based business sector, there is a need to provide explicit guidance with respect to employer obligations for work conducted off-site.

Importantly, this will require a fine balance between ensuring the health and safety of workers and a reasonable expectation of employer responsibilities. This is likely to present particular challenges as professional employees are increasingly able to operate between the workplace and home. Although there are reasonable precedents for workers operating within the community, these have not been uniformly applied. Given the potential liabilities to both employer and employee/contractor of this area of evolving work arrangements not being addressed, it is essential that there are clear mutual understandings about responsibilities and obligations.

Recommendation: The national model OHS Act should provide explicit guidance relating to employer obligations and responsibilities for work conducted offsite, such as in the home.

(b) Current and Emerging Risks That Are Not Effectively Addressed

Workplace bullying and violence creates a significant cost to the employer, the employee and third parties.¹ Diminished productivity, increased absenteeism, cost of compensation claims and lost hours are just some of the measurable costs.

For example, the ACT WorkCover reported in July 2004 that the estimated annual cost of workplace bullying to business in Australia is between \$6 billion and \$13 billion². Further, it cites a Griffith University study which reported that some 3.5% of the workforce experiences bullying, at an average cost \$20,000 per employee in serious cases. According to research from Queensland's Griffith University, 3.5% of the working population is bullied, and the average cost of serious bullying is \$20,000 per employee.

Although it is acknowledged that there are a number of state/territory WorkCover guidelines for employers to address workplace bullying, there is little evidence that this has effectively reduced the incidence or impact of bullying in the workplace.

Similarly, although mental health and workplace stress are universally recognised workplace health and safety issues, ambiguity remains with respect to reasonable employer responsibilities.

¹ Hockley, C (2003) The impact of workplace violence on third party victims: A mental health perspective, AeJAMH), Vol. 2, Issue 2, 2003 reports the significant impact of workplace violence not only on the perpetrator and victim, but equally on colleagues and family.

² This includes indirect costs, such as absenteeism, labour turnover, loss of productivity and legal costs.

The Compendium of Workers' Compensation Statistics 2005-2006 published by the Australian Safety and Compensation Council (June 2008) reported that just over 5% of all claims made were for mental health reasons, of which over two fifths involved absences of 13 weeks or longer and one quarter involved absences of more than 26 weeks.

Further, the Queensland Government Office of Public Service Merit and Equity (QGOPSM) reported in June 2006 that the direct cost of stress-related claims in Australia in the period 2000-2001 as calculated by the National Occupational Health and Safety Commission was in the order of \$105.5 million or 4% of all claims for compensation. This excluded costs associated with loss of productivity, loss of income and loss of quality of life. The QGOPSM report also notes that Comcare estimated stress claims at around 6% of all workplace injury claims and 21% of compensation costs. This represents approximately four times the cost of other types of claims given the multiple periods off work and greater legal and medical costs.

Risks associated with popularly marketed training regimes have not been well recognised.

This requires a framework which enables employers and employees to differentiate between skilled professionals able to provide relevant counselling or mental health services from the generalist support that may be provided by a peer mentor. As there is an increasing embracing of peer mentor systems in the workplace, this has been accompanied by training such as Mental Health First Aid and similar 'lay person' information. While awareness raising is a valuable activity, placing responsibility on non professionals to undertake risk assessments, particularly where there is a potential for serious self harm, suicide or harm to others, has become a risk in itself. This needs to be understood in the context of quality control and risk management. CSS has achieved internationally recognised accreditation from the American Association of Suicidology (AAS) for its processes for risk assessment and support for people in such high risk situations. (The international certification process is currently the only option for services to address suicide or self harm related problems, including assessment and referral, as there is no Australian equivalent). However other training programs being marketed and provided have not needed to meet any such quality controls. Accordingly there are risks to both employers and employees in the provision of non-accredited 'popular' training which may be inadequate to meet duty of care responsibilities or account for the risks it may create.³

<p>Recommendation: Training and assistance programs offered in the workplace in the area of mental health need to be appropriately accredited and credentialed.</p>
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Risk Management Although there are a growing number of employers, particularly public sector, educational institutions and national organisations, that offer EAP programs, there remains a gap between such services and employer and employee requirements. Of particular concern for

³ Interestingly, while the need for professional expertise in addressing physical health issues is unquestioned, the importance of trained professionals for addressing mental health and stress related issues is not equally acknowledged.

employees in many fields, including emergency services, is the potential for help seeking to compromise career opportunities.⁴ This then creates a barrier to prevention or early intervention of a presenting problem. Equally, such concerns can act as a disincentive to an employee acting on a concern which might be considered 'whistle blowing', or complaining of a breach of health and safety requirements (such as harassment or unfair treatment). It is important that there are mechanisms for employees to seek advice/ help which are independent and confidential. The success of the Australia Post Helpline for instance, which is offered at no cost to Australia Post staff by CSS under contract, has provided concrete evidence of the value of providing a confidential option. This is not to discredit the value of programs such as EAP, but rather to recognise their limitations in certain circumstances and to support other appropriate alternatives.

Recommendation: Opportunities for employees to access confidential assistance in the workplace for work-related concerns need to be recognised.

3. Reasonably Practicable, Risk Management and Codes of Practice

While processes for assessing mechanical and physical risks associated with a number of professions, occupations and forms of labour have been subject to testing and refinement within the work environment, there is a growing body of evidence with respect to the negative consequences of work-related physical and emotional stress and mental health issues, where current processes are inadequate.

While it is recognised that some occupations are inherently stressful, such as emergency services in which workers are regularly exposed to traumatic events, there is little evidence that risk assessment and management for workplace stress and mental health have become part of any robust risk assessment. If the standard of 'reasonably practicable' in conjunction with risk assessment is to apply globally, considerably greater work needs to be done in the development of benchmarks and processes associated with workplace stress, mental health and victimisation.

Recommendation: If the standard of 'reasonably practicable' in conjunction with risk assessment is to apply globally, considerably greater work needs to be done to develop benchmarks and processes associated with workplace stress, mental health and victimisation.

Accordingly, there is a strong interface between the codes of practice which need to provide the nuts and bolts of risk assessment and risk management beyond the outcome based principles and performance framework that a National Model Act will provide. Although the regulator has important roles to play in education as well as enforcement, the codes of practice should be subject to rigorous and inclusive processes of development, testing and review. This is particularly important in the gap

⁴ This concern was subject to considerable discussion with representatives of emergency services in the context of training recently provided by CSS to police, ambulance and fire services nationally.

areas pointed out in this submission. Further, it is essential that any practice codes, as endorsed by the regulator, are accompanied with appropriate caveats acknowledging the limitations and associated matters to be considered.

4. Summary

This review has provided a critical opportunity to address significant gaps in current occupational health and safety regulation and practice. Despite the well documented and acknowledged costs of workplace related stress, mental health issues and workplace violence (bullying), there has been relatively limited energy into the development of strategies which move from policy to practice. Equally there has been inadequate recognition of the limitations of many of the 'educational and awareness raising' programs that have been promoted as a solution. Finally, in the absence of appropriate regulation of such programs, or the providers, this has a potential to contribute to risks.

As a professional and accredited organisation, Crisis Support Services Inc encourages the review panel to look beyond the 'easy solutions' being promoted and to support the establishment of strategies which can make a more substantive inroad in reducing the likelihood and impacts of the costs of health issues to individuals, organisations and productivity. CSS is equally committed to working with the panel and playing an important role in this process.

5. Recommendations

CSS recommends that:

1. The national model OHS Act should encompass and more explicitly reflect health and safety issues associated with mental health, workplace bullying and whistle blowing.
2. The national model OHS Act should provide a framework of principles and performance standards that are common across sectors, industries, and tasks and these principles and performance standards should be supported by evidence-based programs which ensure that the intent of the principles are achieved in practice.
3. The national model OHS Act should provide explicit guidance relating to employer obligations and responsibilities for work conducted offsite such as in the home.
4. Training and assistance programs offered in the workplace in the area of mental health need to be appropriately accredited and credentialed.
5. Opportunities for employees to access confidential assistance in the workplace for work-related concerns need to be recognised.
6. If the standard of 'reasonably practicable' in conjunction with risk assessment is to apply globally, considerably greater work needs to be done to develop benchmarks and processes associated with workplace stress, mental health and victimisation.