

# WHAT SHOULD THE OPTIMAL STRUCTURE AND CONTENT OF A MODEL OHS ACT BE?

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## Introduction

Heritage steam plant typically dates from the 19<sup>th</sup> century and includes land based traction engines, steam rollers, and portable steam engines; and waterway items such as paddle steamers. The equipment is part of the nation's industrial heritage and is generally owned and maintained by individuals at their own cost. Until recently, heritage steam plant owners operated under state government controlled OHS systems including life long operator qualifications and regulated boiler inspection procedures.

With this method of control there was no real need for individual owners to join a club or organisation as there was a government system in place. Accordingly, there was no representative body for this group nor was it possible to identify the number of people involved or the quantity of machinery that had been preserved or restored.

With the change in Australian OHS procedures similar to the Robens' model one unfortunate outcome is that procedures for heritage type industries which are 'fixed in time' and have their own unique operating requirements have largely been overlooked. This was highlighted in 2005, following the issue of the Draft National Standard for Licensing Persons Performing High Risk Work that the needs of heritage steam plant operators did not appear to have been considered. This may be the result of OHS organisations losing staff with specialist expertise particularly in the steam area over the last decade or so.

In December 2005 a submission prepared by a number of heritage steam plant owners was sent to The Office of the ASCC. The thrust of the paper was that Australia's OHS procedures, including the proposed High Risk Work Standard, did not adequately address non commercial industries such as heritage steam plant. The recommendation for the issue of a Heritage Steam Code of Practice (HSCOP) as a nationally endorsed document was supported by The Office of the ASCC in May 2006.

In 2006 the National Historical Machinery Association (NHMA), representing machinery clubs throughout Australia, agreed to the formation of a Steam Management Committee (SMC) to draft and administer the HSCOP. The four person committee was elected in July 2007, and to date approximately 260 heritage steam operators have registered with the SMC in support of the HSCOP. Drafting of the Code has commenced, there is regular liaison with The Office of the ASCC and the Association of Tourist and Heritage Railways of Australia (ATHRA), and skills sets for the operation of heritage steam plant have been submitted to DEEWR via the Transport and Logistic Skills Council. All this work has been achieved by a small group of volunteers at minimal cost to government.

With the development of model OHS laws there is a danger that this work and the achievements to date could be delayed or at worst not implemented if the model legislation does not provide for the operation of heritage industries such as steam plant.

## Legislative Approach:

Whatever method is used to develop a regulatory structure [1.1] the needs of all industries should be considered. For example, with heritage steam operation many of the standards date from the early to mid part of the last century, are prescriptive but contain vital information particularly those relating to boiler construction and repairs. They are readily understood by operators and represent steam practice at its zenith, noting that it is not feasible to redraft to

a different format not only for reasons of cost but as the change may actually produce dangerous outcomes when people interpret wording. While it is appreciated that there has been a move away from prescription to performance or process based standards an industry that has historically used a prescriptive document, that is known to be safe, should be allowed to continue to do so.

## **Scope, Application & Definitions:**

### **Industry Sectors**

Currently many heritage steam operators fall under state/territory OHS laws, however, ATHRA and waterway steam operators also have to comply with other legislation administered by different regulators [2.1]. This causes both confusion and frustration particularly for voluntary based organisations representing a heritage industry as the financial and time costs are significant. It is further compounded by the large amount of documentation that has to be produced, processed and approved by people who appear to have very limited understanding of the constraints of the industry they are dealing with. This process becomes further complicated if your operation crosses a border as in some cases you have to start the whole process again with a different regulator. In many cases individual owners find the process unworkable and no longer display their heritage equipment which is a loss to the nation. Improvement in coordination and procedures with intra and interstate regulators is vital for all industries.

### **Workplaces**

Throughout Australia there are regular events where heritage steam plant is displayed in areas attended by the public on private and public owned land. Feedback from a steam club committee member was that the state OHS organisation told them they were not a workplace, even though the public attended their open days, and was not subject to OHS legislation. The reality is that if there is an incident, police and OHS representatives will attend and depending on the level of incident there will be political involvement. The issue of a Workplace [2.2] in regard to heritage steam plant operation in regard to public safety was raised in the December 2005 submission to the Office of the ASCC:

*'Within the Australian heritage steam community there have been few incidents but this is not the case overseas. Over the last decade, there have been boiler failures in the USA and engines not being under control in the UK; in all cases resulting in either death or injury. Investigations and other reports indicate a number of reasons for the incidents including training and lack of experience.'*

*In Australia, over the last decade, the operation of heritage steam plant has not been adequately addressed by government. This is similar to the situation in the USA and UK where response occurs after an incident, and hindsight is applied stating what should have been done. The reality is that foresight is required to ensure that systems are in place to reduce the risk of an incident occurring in the first place. The main issue is that heritage steam equipment needs to be considered by government and should not be overlooked nor exempted from compliance. The potential loophole that an item, such as heritage plant, may not be a workplace for the purposes of OH&S legislation should be closed as the equipment is operated in areas open to the public.'*

Accordingly, the general duty of care should be extended to members of the public and in the case of heritage steam plant operation would be achieved by an operator complying with the HSCOP or other endorsed procedure such as that relating to the conduct of a rally as issued by the NHMA. The point is that the loophole should be closed to protect not only the public but the operators as well. The SMC is also concerned that without nationally endorsed

documentation an incident could lead to the banning of heritage steam plant operation in public areas.

## **Responding to Change**

There is a strong feeling within the heritage steam community that OHS legislation does respond to evolving work arrangements, hazards and risks [2.3 and 2.4] but in so doing overlooks industries that do not change. Heritage steam plant requires constant vigilance and contains in many cases involves unguarded gears and rotating flywheels. Such plant would not be accepted in modern industry but are what makes the steam machinery unique and if covered would destroy the heritage. The equipment can be operated safely providing the person has received the correct training which includes risk perception. Current government endorsed steam training packages relate solely to modern equipment and do not address operation of older plants. This can produce a potentially dangerous situation if the person attempts to operate heritage plant, without re-training. Within the model OHS Act the process of responding to change within industry must also cater for those industries that do not change procedures and accept the uniqueness of their operation.

Volunteers are vital to the operation and ongoing future of many organisations yet are not mentioned in [2.3]; this type of worker should be considered in the review as discussed in the next paragraph.

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

Most machinery clubs, and many other community groups, are managed and operated by volunteers on a not for profit basis. They do not apply the Employer Employee relationship as defined in OHS legislation but work on a committee basis. This arrangement should be considered in the Review as the model has worked successfully for many years. If the risk to the individual volunteer becomes excessive due to OHS legislation, people will stop volunteering and the cost to the nation will be massive. An example of this is the auxiliaries that support many hospitals.

## **Reasonably Practicable' & Risk Management:**

Nil comment

## **Consultation, Participation and Representation:**

Nil comment

## **Regulator Functions, Powers & Accountability:**

The control of boilers and operator certification until the last decade was regulated by government and in many jurisdictions pressure vessel inspections were conducted by government inspectors. Hence steam plant was regulated through legislation but this has now been outsourced to private individuals and training organisations. However, in many OHS jurisdictions regulation is still imposed even though personnel have limited specialist knowledge, resulting in confusion and in many cases the inability or refusal to provide guidance to operators. There appears to be limited accountability by regulators as all risk is forced on the individual owner and the process is reactive rather than the preferred proactive approach [6.1] and [6.2]. The process of outsourcing and the transfer of responsibility to regulation within the industry should be considered in the model legislation because at the moment it is far from clear in many OHS jurisdictions. The purpose of the HSCOP is to provide a basis for regulation within the heritage steam industry.

## **Compliance & Enforcement:**

Nil comment

## **Prosecutions:**

Nil Comment

## **Other Issues:**

The thrust of the work of the SMC is to implement the HSCOP as a national document issued in conjunction with government as a means to provide an effective self regulation tool for the operation of heritage steam plant. This includes training, assessment and operator competence; boiler inspections, repair, maintenance, construction and disposal; and audit procedures. It is important that the model OHS Act [9.2] allows for Codes of Practice to be developed and approved preferably on a consultative basis between government and the industry concerned. Where cross border issues are involved a code should be issued as a nationally endorsed document.

The issue of entering another jurisdiction can be very frustrating with heritage steam plant as some states will not accept another state's registration but will do if it enters via a third state. Often this arises because one state's inspection regime is considered to be superior to another jurisdiction even though the process is outsourced in both cases. Cross-jurisdictional cooperation [9.7] between OHS agencies is vital for national efficiency.

The SMC is not in a position to comment on the overlap of federal and state law [9.8], but considers there is a strong need for a central OHS agency at the federal level. Heritage steam operators are spread across the nation and the ability to speak to The Office of the ASCC, who then briefs state agencies, has been a significant aid in the acceptance of the need for a HSCOP.

Most OHS procedures will require a workplace training process and although not specifically mentioned in the Review should be considered. At the moment the process of training is under the authority of another government department and this has led to a model where all training must be done through Registered Training Organisations. For a heritage industry it is highly unlikely that an RTO will have the expertise to do the training but most likely will attempt to do so for financial reasons. It would be preferable if this additional layer of bureaucracy was removed and where an industry has the ability to conduct in-house training it should be allowed to do so when it is in accord with an approved Code of Practice.

## **GENERAL COMMENTS**

Model OHS legislation will continue to evolve once implemented but it is important that the process allow for small industries such as the heritage sector where in many cases items of equipment will never be totally compliant with current regulations. To do so would destroy the unique design of the equipment along with the nation's heritage which in many cases is being kept for future generations due to the dedication of individual owners.

Currently heritage steam plant operators are faced with mounting challenges due to OHS procedures that if not addressed will see the demise of the equipment. Uniformity of process and acceptance of nationally endorsed codes of practice is considered to be an important component of model OHS laws.