

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

SPECIFIC COMMENTS

Legislative Approach:

Q2 – The model OHS Act should be more generic in comparison to the subordinate regulations and codes of practice.

Q3 – Occupational Health and Safety Act

Q5 – Yes, there should be a set of principles of health and safety protection. These principles should be the same as, or based on, the Victorian principles outlined in section 4 of the Occupational Health and Safety Act 2004

Scope, Application & Definitions:

Q 7 – Yes

Q10 – The duties of care should be tied to the conduct of work, wherever this is happening eg: private residences, vehicles and temporary worksites.

Q14 – Reasonably Practicable is the one term that requires national consistency in terms of its definition. The definition used in the Victorian Occupational Health and Safety Act 2004 S20(2) should be used.

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

Q20 – Yes

Q21 – This should be covered under the “Duties of employers to other persons”. Perhaps some additional information to specifically mention groups such as contractors, volunteers, visitors etc

Q33 – Yes. Duties of designers, manufacturers, suppliers, importers etc should be specified in the Act

‘Reasonably Practicable’ & Risk Management:

Q37 – Yes

Q42 – Yes

Q44 – Yes, a risk management approach should be specified in the Act in relation to general duties

Consultation, Participation and Representation:

Q45 – Consultation needs to be captured in the Act but it shouldn’t become too prescriptive. There needs to be general statements about when consultation has to happen but the

mechanisms for consultation should be developed by the employer and employees (in consultation)

Q49 – There should be requirements for establishing HSR's and HSC's.

Q57 – The general requirements for the establishment of HSR's and HSC's should be in the Act and the specific requirements should sit in the regulations.

Q59 – Yes – as per the Victorian legislation

Q67 – Yes

Regulator Functions, Powers & Accountability:

Q79 – Yes, as per Part 9 of the Victorian Occupational Health and Safety Act

Compliance & Enforcement:

Q93 – PIN's, improvement and prohibition notices should contain recommendations about how compliance should be achieved. Where possible examples of industry best practice should be made available.

Q101 – Yes, for serious injuries not resulting in death

Prosecutions:

There needs to be a more consistent approach to prosecutions. At the current time it is our view that not enough regard is had by regulators when deciding whether or not to prosecute on what efforts the company has taken with its OH&S policies and procedures prior to and indeed immediately following an incident. There seems to be an attitude of prosecuting the company rather than the employee involved in the incident where the incident has occurred despite the company having the policies in place and the employee having been made aware of those policies and indeed where the employee has either deliberately gone against those policies or has put him/herself in the dangerous position through their own actions or omissions.

Other Issues:

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

GENERAL COMMENTS

General Comments:

There is no doubt that while awareness of OH&S is at a much higher level than used to be the case there is still huge scope for improvement.

ABB Australia makes responsibilities for its staff a highest priority we employ a large number of OH&S professional within the company to guide our line managers in the application of OH&S.

We continuously strive to improve our OH&S performance through induction courses, training, safety observation tours, Safety audits, Hazard alerts and a national Safety award.

We believe that while employers must take the leading role in the drive for better OH&S performance, there is also a vital role to be played by the regulatory authorities.

The present situation, where there are multiple regulatory bodies, each applying different legislation, can not be in the best interests of the people that we are trying to protect. Any organization that operates nationally in Australia has to work with these multiple sets of legislation, at the very least this introduces additional cost (which cost could be utilized by companies to further improve safety if there one a single legislation) and complexity but far more important, differing regulations can lead to confusion which may compromise the very safety that we are all striving to achieve.

The sooner that we can have a single set of OH&S legislation, covering the whole country the better this will be for the safety of all the people who work here.

It might be appropriate to have sub-sections to cover industry specific issues, such as public transport, mining, electricity etc, but these could still all reside in the one set of legislation.

The other major area, in which the regulators could play a significant role in improving OH&S performance, is that they could be significantly more pro-active in their dealings with industry. At present, following an incident, the regulatory authorities take a very high profile in determining who is to blame for the incident, and where appropriate in prosecuting those who are seen to have failed in their duty.

This is an important part of enforcement of the law, and it is both necessary and appropriate that there should be seen to be “a big stick” that can, and will be used on those who blatantly put their employees at risk. But there also needs to be a carrot for those companies who are genuinely endeavoring to do the right thing.

But there is another, much more constructive role that could play a major part in improving the OH&S performance right across business.

Behavior is key to improving OH&S performance, and this can only be improved by long term consistent attention to lead indicators. Training, hazard alerts, safety audits, safety observation tours, safety awards are all part of this and companies should be encouraged, by the regulator, to ensure that they not only have robust processes in place for all of these. They should be monitored by random audits by the regulator, and in the event of an incident taking place, due consideration should be given to the care and attention that has been directed to OH&S in the company. This is the carrot