



National Review into Model Occupational Health and Safety Laws

July 2008

Submission on behalf of Working Women's Centre SA Inc

The Working Women's Centre SA Inc (opened in 1979) is a community organisation which supports women employees whatever their age, ethnicity or work status by providing a free and confidential service on work related issues. The Centre works primarily with women who are not represented by a union, their own lawyer or other advocate. Many women who contact our Centre work in very precarious areas of work.

The Centre is a small organisation which relies on funding from the Commonwealth and State.

In addition to the work related services the Centre provides, we have also also conducted research and project work on a range of issues that women experience in relation to work such as outwork, family friendly practices, OHS&W, workplace bullying, work/life balance and the impact of domestic violence on women workers and their workplaces.

In the last financial year the Centre has provided specialised advice to over 1400 women on issues related to work. Approximately 350 of those calls were directly related to workplace bullying including other OHS issues.

The Working Women's Centre is pleased for the opportunity to submit comments relating to model occupational health and safety laws. We have not addressed all the terms of the Review but have reserved our comments to those areas we feel best able to comment on.

Q3 What is an appropriate title for the model OHS Act?

The Working Women's Centre believes that the title of a Model Act needs to include the words 'Occupational Health and Safety' as well as 'Welfare' as it does in the South Australian Act. The term 'welfare' refers to the well being of a person. This is particularly important if we acknowledge that a person's welfare is affected at work by issues such as bullying and work/life balance. Having this term in the Model Act highlights and recognises that welfare is a workplace issue related to health and safety.

Q13 Are there current or emerging hazards and risks that are not effectively addressed under general duties of care? If so, how should they be provided for under a model OHS Act?

The SA legislation includes a definition of workplace bullying. We believe that it is imperative that the Model Act also includes a definition of workplace bullying. Under a general duty of care an employer should provide a workplace free from bullying. A person should also have an appropriate avenue for formal complaints and the process should ensure that the complainant is involved. We believe it is absolutely necessary that a complainant feels that they still have ownership of their complaint and are consulted with and kept informed during the process about the progress of their complaint.

Another issue that can be identified as an emerging risk that is not currently effectively addressed is the issue of work/life balance. There has been much research which supports that an employee's general welfare will be impacted upon by their ability to manage a work/life balance. The inability to do so impacts negatively on a person's welfare and health thus making it, we believe an OHS&W issue. A Model Act, should include this issue as a general duty of care. Having it recognised within legislation would ensue an employer's obligation to support this concept.

Q22 Is primary reliance on employment relationships a valid basis for framing safety obligations?

We submit that an employment relationship is a valid basis for framing safety obligations if the definition extends to contractors, outworkers, self employed persons, trainees and apprentices, volunteers and students. The Centre was interested to read that in the Tasmanian legislation the definition of 'employee' includes persons who use substances or plant in an educational institution. If this definition was to be included in a model OHS&W definition then the basis for framing safety obligations should extend to those in educational institutions who are operating or fulfilling tasks under instruction. We are aware of cases where school students have been instructed to lift and/or carry items which has resulted in injury. Our research leads us to understand that there is no formal OHS&W instruction given to students, apart from when they embark on work experience and that claims for injury recompense are dealt with in a very ad hoc manner.

Q23 How and to what extent should the model OHS Act specify an employer's duty of care?

A Model OHS Act should specify prescriptively an employer's duty of care. The

responsibility of the primary care of a worker lies with the employer. A Model Act should make it very clear, without question, the extent of an employer's duty of care. We believe that the duties of care in the SA Act are easily understood and we would encourage a Model Act to include such detail.

Q37 Should a test of 'reasonably practicable' be included in the model OHS Act?

If a Model Act had to include 'reasonably practicable' then we say it is necessary that a test be included to ensure appropriate interpretation.

Q59 Should the model OHS Act include right of entry provisions? If so, who should be entitled to exercise the right of entry?

The Working Women's Centre SA supports the ACTU position on right of entry. This is that there should be union right of entry to all workplaces regardless of union membership or not. The right of entry must extend to all OHS&W matters and not just suspected breaches.

Q71 What provision should be made in the Model OHS Act to protect persons from discrimination or victimisation and who should be protected?

The Centre has grave concerns for many women workers working in non-unionised businesses; where OHS&W is an issue but, in fear of losing their job or being treated unfairly, they do not raise the issue. In the case where a person, after making an internal OHS&W complaint, is dismissed but not able to lodge an unfair and unlawful application in the current industrial arena the Model Act needs to ensure that adequate protection is afforded such workers (see Case Study 1).

Case study 1 (Details changed to preserve anonymity and confidentiality)

Thui was employed as a hairdresser in a medium sized company. She was 4 months pregnant. She spoke to her boss in relation to her concerns about handling chemicals in the workplace, given that now she was carrying a child. Her boss told her there was nothing he could do about it and that she would simply have to deal with it. Thui was in a difficult position as she needed her job and felt that she would have difficulties in finding alternative employment. In the few days following, Thui's boss became rude and nit picking with her. He then terminated her on the grounds of performance.

Thui did not have jurisdiction for an unfair dismissal or for an unlawful termination. She lodged with the Human Rights and Equal Opportunity Commission on the grounds of indirect pregnancy discrimination.

The Commission at conciliation was not in a position to reinstate her back to work nor were they able to address the OHS issue with the employer. Thui was not in a position to take the matter further.

This case study represents the difficulty some workers have when trying to address OHS&W issues internally. In the case of Thui it would have been beneficial for her to have been able to access a tribunal that had the power to make orders of reinstatement, address the OHS issue as well as make an order of penalty if victimisation occurred upon

return to work.

***Q136 Should there be specific offences relating to workplace death or serious injury?
If so, what?***

The Working Women's Centre supports the ACTU position that a criminal offence of industrial manslaughter be the appropriate charge.