Australian
Higher
Education
Industrial
Association

SUBMISSION TO THE NATIONAL OHS REVIEW

The Australian Higher Education Industrial Association is the employer association for the higher education sector, registered under the Workplace Relations Act 1996. AHEIA represents the interests of its members, which include 29 of Australia's public universities and the Batchelor Institute of Indigenous Tertiary Education, in relation to employment matters.

As the national employer association of the higher education sector and the representative of universities which have to deal with interstate legislative differences, AHEIA strongly supports the proposal to harmonise OHS legislation nationally.

One issue for AHEIA Members with multi-jurisdictional employment is that the current arrangement requires an approach of adopting the highest standard in any jurisdiction when developing policy and OHS guidelines. However this approach still creates difficulties because there are incompatible inconsistencies between the State/Territory Acts, e.g. reporting methodologies.

AHEIA's comments on the specific areas raised in the discussion paper are as follows.

1. Legislative Approach:

Consistent with modern legislative drafting principles, any new legislation should be written in plain English. The new ACT Work Safety Bill 2008, recently released as a consultation draft, provides an example.

A nationally consistent system should incorporate formal recognition of the appropriate national standards, but there should be a clear method (e.g. by Regulation as determined by a national body) as to which standards apply and, once determined, such standards must apply nationally, i.e. there should be no variations by state or local governments allowed.

2. Scope, Application & Definitions:

In relation to emerging hazards, the system needs to be flexible enough to deal with emerging hazards as they occur into the future. Again it is essential that the mechanism for dealing with these is national in scope and produces outcomes which are consistently applied nationally.

If harmonisation is to work, there is a need to have national consistency in definitions, especially critical ones such as "reasonably practicable", consultation,

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employer, and worker (or employee). To ensure effective contractor management, contractors should not be defined as workers (or employees).

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

The duty of care should be a shared duty and linked to the chain of responsibility. That duty should extend to manufacturers. There is a need to ensure that, in unusual cases (e.g. students in some professional work placements, visiting academics and other "outworkers"), the duty of care is clear.

This requires a clear definition of "control" because with control comes the appropriate accountability and responsibility. The matter of control with respect to who is the duty holder could be a tiered application and this should follow a typical management structure of delegation and reporting. Such structures assign accountability and responsibility in the workplace and the same principle should be reflected in the legislation. This would recognize the shared duty of care, but also make clear the chain of responsibility, so that who is (and who is not) directly responsible for the exercise of control is also clear.

In relation to importers, it is important that any obligations are not so onerous that they stifle innovation. It may be that specific conditions or exemptions should be allowed in cases of leading edge research. A clear national definition of supplier and importer and their respective responsibilities is essential.

4. 'Reasonably Practicable' & Risk Management:

A test of "reasonably practicable" should be included in the Act, establishing national consistency. It should incorporate modern concepts of risk management and risk assessment, taking into account foreseeability and probability. This is then related to the issue of effective control and the responsibility to control, defined through a hierarchy of control. It should be noted that such a scheme places an onus of proof on the responsible parties to demonstrate that they have "done the right thing".

5. Consultation, Participation and Representation:

The available structures for consultation should be nationally consistent. However there should be flexibility on how consultation is carried out to deal with differing circumstances in particular workplaces. The current NSW Act, with its provision for one or more of OHS committees, OHS representatives, or other agreed arrangements, may provide some example here.

Training of safety representatives and committee members should be made nationally consistent and subject to mutual recognition, preferably through the Australian Qualifications Framework.

6. Regulator Functions, Powers & Accountability:

The insurer, regulator, and investigator should be separate. The existing Queensland Model (with the separation of WorkCover Queensland, Q-COMP and

Workplace Health and Safety Queensland), together with the Civil Aviation Safety Authority (the regulator) and the Australian Transport Safety Bureau (the investigator) in the Commonwealth sphere may be useful examples. Nevertheless it is essential that all relevant entities share information, especially data, to ensure a common direction and focus, and nationally consistent application.

7. Compliance & Enforcement:

The compliance and enforcement system should be a wide regime, which should deal harshly with the recalcitrants. Fines and enforceable undertakings should be available to assist compliance as part of that wider regime. However, minimally trained on the job local representatives should not have power to, for example, stop work.

8. Prosecutions:

As with most areas of law, the bringing of prosecutions should be the responsibility of the relevant government authority. Other parties, such as unions, should not have the right to initiate prosecutions independently of the government authority.

Enforceable undertakings should be available as an alternative to prosecution, especially where this is likely to lead to better OHS outcomes. Enforceable undertakings could include shaming and blaming, community work, public identification, public apologies, and presentations of failures/errors to peer groups. Such undertakings may be particularly useful where public reputation and/or financial viability mean that this alternative to prosecution is a "win-win" for the offending party and the community.

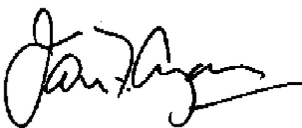
9. Other Issues:

If industry codes become the norm, consideration should be given to an Industry Code of Practice for the Higher Education Industry.

The national system should include harmonisation of occupational licensing to ensure consistency, including matters such as the number of years between reviews, any extension of occupational licensing, and supervision of licensing.

10. General Comments:

NIL



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