

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

SPECIFIC COMMENTS

GENERAL COMMENT

Catholic employers are engaged in diocesan and parish administration, congregational works, pastoral care, education, health and aged care as well as community services and fall under the umbrella of the Catholic Church in New South Wales (NSW). The Catholic Church is one of the largest employer groups after government in NSW. These employers operate across the 11 Dioceses of NSW and the Australian Capital Territory (ACT).

Catholic employers seek to ensure that their work place is safe and that they take appropriate responsibility for the physical and mental wellbeing of their employees. They hold the view that it is not sufficient to ensure that the legal minimum standards are met. As a commitment to their employees, Catholic employers aim to implement preventative strategies for the safety of their employees, without the imperatives of legislation. Employees are also expected to take proper responsibility for their personal health and safety and that of their fellow employees in the workplace.

This submission is made by the Catholic Commission for Employment Relations on behalf of Catholic employers in NSW and the ACT and is supportive of national harmonisation of OHS legislation.

1. Legislative Approach

Catholic employers are satisfied with the current policy objectives of the legislation in NSW. However, the objectives could be expanded to place an emphasis on the need of the individual employee, contractor or visitor to be more responsible for their actions. Reckless conduct by any of these persons may place people in the workplace in danger of serious injury.

Consistent with the above point, Catholic employers would support an additional objective that makes it clearer that any employee, contractor, visitor or volunteer has a responsibility under the legislation to protect their own safety and the safety of others in the workplace. All principles should be legally based and clearly define the level of responsibility placed on the various positions. Guidance to regulators and duty holders in undertaking these responsibilities should be provided.

Employers need protection from instances where employees do not adhere to their directives and lawful instruction. There needs to be clarification that employees have an obligation to adhere to safe working procedures & employers have the right to require adherence.

2. Scope, Application & Definitions

Any new legislation should apply to all employers and employees in every industry without exception.

As outlined under *Legislative Approach* above, general duties of care should apply to employees, contractors, volunteers and members of the public visiting workplaces.

In recent years there has been a move from the employment of permanent, fulltime employees to the use of contractors, working bees (in schools in particular), volunteers and student teachers from Universities. The relationship between employers and contractors and the respective roles that these and other parties have in the workplace should be clarified and defined.

Religious congregations across the State have set up schools and hospitals as corporations. The existing legislation is not helpful in identifying who is the controller of premises. Particular difficulties can arise when congregations and parishes share grounds, car parks, buildings etc. with schools or educational institutions.

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

Consideration should be given to more clearly identifying the requirements for duty of care as they relate to the employer and other parties (e.g. students in a school environment). Some Catholic employers are concerned that there is at present a lack of clarity about relationships and responsibilities. To this end, any additional provisions that further express the obligations of the various parties under the legislation will be of assistance in helping ensure safe places of work.

4. ‘Reasonably Practicable’ & Risk Management

Currently in NSW it is the Courts that decide what is considered to be practicable or reasonably practicable when considering the actions taken by the responsible person; there is no guidance given in the legislation to assist the Courts. Any new legislation should attempt to define what is reasonably practical by giving a clear indication of what matters should be taken into consideration when deciding what is practicable or reasonably practicable.

5. Consultation, Participation and Representation

Catholic employers agree that health and safety risks are best identified and managed in the workplace with the involvement of employees. Based on their experience, the majority of employees at their workplaces are not interested in being actively involved in OHS as part of a committee or in being an OHS workplace representative.

If workplace committees are to continue, consideration should be given to reviewing and streamlining workplace committee training. The inflexible demands of the existing 4 day course are inefficient and expensive. Provision should be made for the recognition of prior learning for those attending such training and also for flexible modes of delivery.

It is agreed that sufficient flexibility to consult is contained in the current New South

Wales legislation. Minimum requirements need to be agreed upon and inserted in the legislation to give clearer direction on the method to be adopted. Any model legislation should prescribe how and when consultation should occur.

Any process adopted in this regard should be the same in each jurisdiction.

6. Regulator Functions, Powers & Accountability

Powers to inspect under the current legislation are extensive and appointed Inspectors should have industry specific background experience and be employed by the regulator, not other authorised bodies.

In our view there has been a conflict between the Inspectors acting as regulators and advisers at the same time. Clear provision needs to be made for the employers to be able to seek advice on particular activities to assist in ensuring that they are being performed in a safe manner.

At present in New South Wales there is a move to more educational activity being undertaken by Inspectors. Any new legislation should empower Inspectors to be able to provide advice to employers as well as to enforce compliance with the legislation.

7. Compliance & Enforcement

Any OHS system introduced should be simpler and easier for small employers to comply with. The current State system specifies what compliance is required but is not sufficiently prescriptive in relation to the “how to comply”.

Penalties need to be easily enforceable but modest in the case of first infringements. The issue of same requirements and same penalties applying to large and small employers needs to be given closer consideration and raises a question of fairness and financial viability.

There may be benefit in establishing a system whereby smaller employers can opt for either a higher process prescription/lower penalty system and larger employers can opt for a lower process prescription/higher penalty system ie one size fits all is not necessarily the most appropriate framework.

8. Prosecutions

People should have appropriate defences available relevant to their position in the organisation. The fear of prosecution could have an effect on the management of the undertaking, and as a result, responsible persons could lose sight of the objectives of the Act.

Any new legislation should aim to ensure that people are not penalised unjustly by clearly identifying who is the responsible body to ensure that the workplace is safe. In the instance where there is an offence that is not of a major nature, the employer's efforts towards safety in their workplace should be recognised in accordance with the objectives of the Act. In this instance, Catholic employers believe the strategy of an enforceable undertaking, registered with the courts, would be more beneficial to improving safety. Where more serious offences are detected, the provision of

custodial sentences and fines should be available.

Catholic employers recognise that trade unions and employer organisations have the right to exist and represent their members, but in matters relating to the inspection, investigation and prosecution for offences under this legislation they are of the view that the action should only be taken by authorised and appointed Inspectors that have been suitably trained and possibly the Office of the Public Prosecutor. The appropriate court for these matters to be dealt with should be industrial in nature; preferably a specialist court dealing only with occupational, health and safety matters, the New South Wales Industrial Relations Commission, the Chief Industrial Magistrates or Industrial Magistrates Court. It could be that an area within the Fair Work Australia organisation, when established, could also hear these matters.

9. Other Issues