

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

SPECIFIC COMMENTS

Please complete this template to provide specific comments with supporting reasons against each chapter of the Issues Paper. If you are responding to a specific question in the Issues Paper, please include a reference to the relevant question number.

Legislative Approach:

The Riverina Winemakers Association members are generally speaking larger family wine companies with operations that span more than one State. In one example, a member has over 40 locations throughout Australia and is subject to several State jurisdictions. A single legislative and regulatory framework, containing a common set of principles that can accommodate the needs of both large and small winemakers, would be welcomed.

- A single national Act bringing all aspects of State legislation together
- Common set of standards embodied in the regulations
- Codes of practice.
- Standards
- Advice from regulators.

Harmonisation of codes of practice is occurring in the wine industry however the capacity to have a single code is prevented by the need to recognise separate institutional and regulatory arrangements in each State. Greater harmonisation of State legislation (or single National legislation) would overcome this.

Scope, Application & Definitions:

The definition of a workplace for the wine industry needs to encompass working in remote and variable locations. That same definition would also apply to contractors who work on the premises of clients. The limits of where a contractor's duty of care ends and the employer's begins should be defined.

The prevalence of contractors, and possible new or evolving forms of employment need to be dealt with through regulation rather than embodied in legislation.

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

There are issue here with visiting tradesmen – they have qualifications which the employer does not have. There needs to be some recognition that the 'proper' exercise of skills by qualified contractors may be beyond the control or understanding of the employer. A duty of care therefore exists for the contractor to a certain point. The definition of 'control' and the 'workplace' may need to recognise this.

This also requires the recognition of qualifications across states which we note has been announced as part of the recent COAG announcements.

Legislation needs to recognise the duty of care employees have to each other and to use their skills in the most appropriate manner. There should be greater recognition and perhaps prescription of the role of workplace OH&S committees to empower worker involvement.

The use of alcohol and drugs by individual employees poses a safety risk to fellow workers which is often beyond the scope of employers to manage. Unfair dismissal legislation and privacy legislation place limits on an employers capacity to ensure the safety of other workers.

With increasing use of contract labour, part time and overseas itinerant workers, there is greater scope for fellow workers to play a more active role in promoting workplace safety. Legislation needs to contain a “reasonableness” clause.

‘Reasonably Practicable’ & Risk Management:

The RWA rejects the NSW regime which applies an absolute duty of care on employers, and favours an approach based on an assessment of what is “reasonably practicable”.

The current NSW approach takes as its starting point a presumption of guilt - if there is an accident then the employer has not maintained a safe working environment. While that is common across all jurisdictions it makes no allowance for negligent or reckless behaviour by staff or what is reasonable and practicable in a working environment.

There appears little acknowledgement that actions or inactions by employees can be responsible for workplace injury, the ultimate responsibility for which is vested in the employer. The Qld approach which extends a duties of workers to not wilfully place at risk the workplace health and safety of other persons at a workplace, is to be applauded.

Consultation, Participation and Representation:

The RWA would like to see a greater emphasis placed on a collaborative approach to workplace health and safety, with greater communication across the industry sector.

RWA supports the principle of statutory provision for the right for consultation between employees and employers. Indeed OH&S Committees or other structures could be given a greater role in promoting workplace safety by including responsibilities to advise/ give notice of unsafe conditions, and the freedom to pass these on to the regulatory body if the matter is not addressed to its satisfaction.

The need to consult more widely with, for example, contractors may be recognised in regulations but should not be mandated in legislation.

OH&S committees, properly constituted within an organisation should have a consultative role their function should be to ensure there is open engagement between employers and employees. Employees should use the committee to address workplace issues. If there is an unsafe condition the employee should have the power to address the issue before an accident occurs. . The role of trade unions should be limited to referral of potential workplace hazards to O&S committees or management.

The situation that exists in NSW where unions being given the power to enter premises and issue default notices, and receiving half of any fines issued but the courts for a successful prosecution, should not be allowed to continue. This provides an area of conflict between the pecuniary interests of the union and the promotion of a safe and harmonious working environment.

Entry to the workplace should generally be by appointment and inspectors should meet the same entry criteria as other contractors/members of the public.

The regulation should recognise a consultative approach to issue resolution. A suggested approach is:

- Employee approaches Supervisor with safety issue.
- If the issue is not addressed to their satisfaction it is minuted for investigation by the OHS committee.
- Workcover or any other statutory authority should only be used a last alternative.

Regulator Functions, Powers & Accountability:

As stated earlier, the RWA would like to see a greater emphasis placed on a collaborative approach to workplace health and safety, with greater communication across the industry sector.

One way of facilitating this would be by allowing Workcover Inspectors to make recommendations for improvement as well as issuing of PINs and fines. The hierarchy has advice or persuasion as the first function. This could be achieved through the requirement to provide interpretive documents which set out how the regulator will interpret key issues and provisions in the Act and regulations.

The RWA would support a strengthening of the role and capacity of inspectors to provide advice and assistance.

The winemaker's operating framework is based on the following hierarchy:

- Acts
- Regulations
- Codes of practice
- Australian standards

Much winery equipment must be installed in accordance with Australian standards. These are expensive. Where an Australian Standard is quoted, these should be provided free of charge.

Compliance & Enforcement:

There should be one enforcement body – with powers vested in Workcover (or equivalent departments). At the workplace level the OH&S committees should have duties defined to include recommending improvements, with the capacity to pass these on to Workcover if not acted upon. Workcover can then endorse/reject the recommendation.