



## **AIOH SUBMISSION**

# **NATIONAL REVIEW INTO MODEL OCCUPATIONAL HEALTH AND SAFETY (OHS) LAWS**

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National Review into OHS Laws**

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## **AUTHORISATION**

This response has been prepared by the AIOH Working Party into the National review into Model Occupational Health & Safety Laws and authorized by the AIOH Council.

### **Australian Institute of Occupational Hygienist's (AIOH)**

The Australian Institute of Occupational Hygienists Inc. (AIOH) is the association representing professional occupational hygienists in Australia. Occupational hygiene is the science and art devoted to the anticipation, recognition, evaluation and control of hazards in the workplace and the environment. Occupational hygienists specialize in the assessment and control of:

- Chemical hazards (including dusts such as silica, carcinogens such as arsenic, fibrous dusts such as asbestos, gases such as chlorine, irritants such as ammonia and organic vapours such as petroleum hydrocarbons);
- Physical hazards (heat and cold, noise, vibration, ionising radiation, lasers, microwave radiation, radiofrequency radiation, ultra-violet light, visible light); and
- Biological hazards (bacteria, endotoxins, fungi, viruses, zoonoses).

Therefore the AIOH has a keen interest in occupational health and safety laws, as its members are the professionals most likely to be asked to identify occupational health hazards in the workplace, evaluate the risk of an adverse health effect associated with them and then to eliminate or reduce exposure to the hazard in question by making recommendations on controls.

The Institute was formed in 1979 and incorporated in 1988. An elected governing Council, comprising the President, President Elect, Secretary, Treasurer and three Councillors, manages the affairs of the Institute. The AIOH is a member of the International Occupational Hygiene Association (IOHA).

The overall objective of the Institute is to help ensure that workplace health hazards are eliminated or controlled. It seeks to achieve this by:

- Promoting the profession of occupational hygiene in industry, government and the general community.
- Improving the practice of occupational hygiene and the knowledge, competence and standing of its practitioners.
- Providing a forum for the exchange of occupational hygiene information and ideas.
- Promoting the application of occupational hygiene principles to improve and maintain a safe and healthy working environment for all.
- Representing the profession nationally and internationally.



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## **Consultation with AIOH Members**

AIOH activities are managed through committees drawn from hygienists nationally. This submission has been prepared through a specially convened AIOH Working Party with comment sought from AIOH members generally and active consultation with particular members selected for their known interest and expertise in this area. The Chair of the Working Party initiated, coordinated, reviewed and assembled comment into this submission, that was passed on to Council and the President for approval. Various AIOH Working Party and other members were contributors in the development of this submission.

## **AIOH Working Party, National Review into the model OHS Laws**

### **Membership of the AIOH Working Party includes:**

Martin Jennings (ACT) (Chair)  
Jeremy Trotman (VIC)

### **Twenty-seventh AIOH Council**

President: Geza Benke (VIC)  
Secretary: Gavin Irving (QLD)  
Treasurer: Garry Rhyder (NSW)  
President Elect: Sharann Johnson (VIC)  
Councillors: Ron Capil (QLD)  
David Chambers (TAS)  
Kerrie Burton (NSW)



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## **AIOH Submission to the national review into model**

### **Occupational Health and Safety (OHS) Laws.**

It has been said that Australia is one of the world's most over governed countries. The Occupational Health and Safety of Australian workers is governed by 16 sets of legislation. It hardly needs to be said that this is inefficient and wasteful of resources; it creates unnecessary duplication of effort and is ultimately confusing, in that the interpretation, application and regulation of the law can vary enormously from one jurisdiction to the next. This creates unnecessary costs not only for Australian tax payers, but also for Australian businesses, at a time when they need to become more competitive in order meet the challenge of operating in global markets. Therefore, it was not surprising when the opportunity arose in 2007, a number of private sector employers made the move across to Comcare.

The AIOH supports the harmonization of OHS legislation, but would like to see this as the first step in a move towards a single OHS regulatory body. Therefore, the report of the review should indicate the future direction for OHS regulation i.e. a single piece of legislation and give a timeframe for this to happen. Ultimately, this should be taken further to align Australian legislation more closely to OHS legislation from other countries.

***Recommendation 1. The OHS review should consider the move towards a single OH&S regulatory agency, administering a single piece of OH&S legislation.***



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## Scope, Application and Definitions: The Regulation of Occupational Health

A disappointing feature of OH&S legislation is that the 'H' is often silent in OHS. The focus is very much on safety, at the expense of health. In fact, even the Issues Paper makes a number of references to 'safety legislation'! For this reason, it was encouraging to those of us engaged in occupational health to hear the newly elected Prime Minister make reference to a victim of asbestos related disease, Bernie Banton on Election night.

Admittedly, one of the problems in regulating occupational health is the difficulty in establishing the cause and effect linkage between an unhealthy workplace environment and the resultant occupational illness, injury or disease. An unhealthy workplace could for example, be one where there are high concentrations of toxic dusts such as silica, lead or asbestos; or where workers are exposed to high noise levels or extremes of temperature. Hence, it is very difficult to prosecute an employer for a disease condition which can manifest itself 20, 30 or even more years after exposure and for this reason, most regulatory agencies have chosen not to actively pursue health related prosecutions.

Prosecutions for breaches of OHS legislation are usually brought when an event such as a fatality or serious injury occurs as a consequence of an unsafe workplace. It is impossible for regulatory agencies to wait for occupational illnesses or diseases to become manifest before prosecuting an employer, therefore, there must be a greater emphasis on agencies enforcing healthy workplaces. Where workers are exposed to airborne contaminants at levels that exceed the workplace exposure standard; or to noise levels above the exposure standard, regulators must have the capability to gather evidence in such a scientifically robust manner so as to be able to achieve successful prosecutions.

***Recommendation 2. The OHS review must ensure that the regulation of occupational health is adequately addressed in any forthcoming model legislation.***

There is another crucial difference between 'unsafe' and 'unhealthy' workplaces that is often overlooked. Unsafe workplaces may result in an injury to an individual or in some cases, several people. Unhealthy workplaces on the other hand can result in hundreds or even thousands of workers being incapacitated. Recent examples include more than a thousand ex-sandblasters now incapacitated with respiratory disease<sup>1</sup>; in excess of 400 RAAF personnel exposed to hazardous substances during the desealing & resealing of the F-111 fuel tanks<sup>2</sup>; and most obviously, the thousands of workers

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<sup>1</sup> Thomas A Faunce, Haydn Walters, Trevor Williams, David Bryant, Martin Jennings and Bill Musk, Policy challenges from the "White" Senate inquiry into workplace-related health impacts of toxic dusts and nanoparticles, Australia and New Zealand Health Policy 2006, 3:7

<sup>2</sup> Royal Australian Air Force, CHEMICAL EXPOSURE OF AIR FORCE MAINTENANCE WORKERS, Report of the Board of Inquiry into F-111 (Fuel Tank) Deseal/Reseal and Spray Seal Programs, Air Force Headquarters, Russell Offices, Canberra, ACT, 2600. 29 June 2001



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dead or dying as a result of working in the blue asbestos mines in Wittenoom. These failures to address exposure to unacceptably high levels of contaminants in the workplace were all completely avoidable, but occurred because of a failure of regulation.

A more worrisome aspect of this situation is the lack of capability in OH&S regulators; i.e. there has been a decline in the number and quality of occupational health specialists such as occupational hygienists employed by the regulatory agencies. (There have been similar declines in other occupational health professionals such as occupational physicians, nurses, ergonomists and health physicists). This lack of competency in OHS inspectors is a deplorable situation, and it should be pointed out that in 2006, the Senate Enquiry<sup>3</sup> into toxic dusts in the workplace recommended that, “*That the Australian Safety and Compensation Council, in conjunction with the Heads of Workplace Safety Authorities, consider mechanisms to increase the number of occupational hygienists being trained and employed by regulators*”. As yet, there is little evidence of any action being taken to implement this recommendation.

So not surprisingly, employers and to a large extent employees, still feel little pressure or urgency to address factors in the workplace which can impact upon the health of workers. The AIOH is of the opinion that this review should address the relatively weak measures in OH&S legislation pertaining to the regulation of occupational health hazards in the workplace. The regulatory agencies must ensure that occupational health is given equal weighting as occupational safety.

***Recommendation 3. The OHS review should ensure that inspectors employed by OHS regulatory agencies have the competency in areas such as occupational hygiene, to adequately enforce legislation appropriate to them.***

***Recommendation 4. The OHS review should recommend that the regulatory agencies have the appropriately qualified and trained inspectors to enforce occupational health regulations and standards.***

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<sup>3</sup> Senate Community Affairs References Committee, *Workplace exposure to toxic dust*, May 2006.



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## **Scope, Application and Definitions: Emerging Hazards and Risks**

The AIOH supports any legislative approach to ensure that any hazards from new technology are appropriately identified, evaluated and controlled. However, it should be pointed out that even under current legislation many well-known existing hazards, for example hand-arm vibration, are not currently regulated, other than by the general duty of care upon employers. Therefore, as well as looking to regulation of new and emerging hazards, the review should also address gaps in current legislation.

In the future, model regulations will be required for new emerging technologies, such as hazardous exposure to mobile phones and Nanomaterials in the workplace. There are currently many unanswered questions regarding health impacts from these technologies. Forthcoming model regulations will need to be soundly health based on the available science and best practice for control to adverse hazardous exposure.

***Recommendation 5: The OHS review should ensure that in addition to new and emerging hazards, existing hazards should be adequately covered under new OHS legislation.***



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## **Duties of Care: Duties on manufacturers and suppliers**

In the Issues Paper, the term Chain of Responsibility is used. With regard to hazardous substances, this chain of responsibility clearly commences with the manufacturer or the supplier of the substance. The capability of downstream users to use, handle, store, transport and dispose of the substance safely is completely dependent upon information provided by the manufacturer or supplier. Under current OHS legislation, the duty of care on manufacturers and suppliers with respect to hazardous substances for use at a workplace, typically requires that:

- “(3) A person that manufactures, imports or supplies any substance for use at a workplace shall, so far as is practicable, ensure that adequate toxicological data in respect of the substance and such other data as is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance is provided —
- (a) when the substance is supplied; and
  - (b) thereafter whenever requested”<sup>4</sup>.

It is argued that this minimum requirement upon manufacturer and suppliers is manifestly deficient. Most enterprises interpret this as meaning that they must ensure that their products are adequately labeled and that a material safety data sheet (MSDS) has been prepared. This view is compounded by the regulatory agencies which have rarely enforced this duty, or if so, have prosecuted on the basis of failing to provide MSDSs.

***Recommendation 6: The OHS review should ensure that the duties of manufacturers and supplier, especially with respect to hazardous substances, are more comprehensive than at present.***

In Australia, member companies of the Plastics and Chemicals Industry Association (PACIA) subscribe to an industry code of product stewardship. This is a voluntary initiative which is part of the Responsible Care® scheme<sup>5</sup>, which entails the company exercising a ‘cradle to grave’ responsibility for its products. As such, this initiative goes beyond the minimum duty of care required under OH&S legislation and in some cases may be considered to be an example of best practice. Given that current OHS legislation tends to force a compliance based approach, it is recommended that new legislation should at least recognize those companies which are endeavouring to operate at a best practice standard.

The AIOH would like to see improved regulation of chemical substances, along the lines of the EU Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemical substances. REACH is a new European Community Regulation on chemicals and their safe use (EC 1907/2006). Based on advice from the

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<sup>4</sup> From s.23(3) WA OH&S Act (1984)

<sup>5</sup> <http://www.pacia.org.au/index.cfm?mmid=001>



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British Occupational Hygiene Society (BOHS)<sup>6</sup>, the AIOH believes that professionals such as occupational hygienists can make a strong contribution to improving the occupational health of workers through introduction of this type of legislation. In Europe, the new law entered into force on 1 June 2007.

The aim of REACH is to improve the protection of human health and the environment through the better and earlier identification of the intrinsic properties of chemical substances. At the same time, innovative capability and competitiveness of the EU chemicals industry should be enhanced. The benefits of the REACH system will come gradually, as more and more substances are phased into REACH.

The REACH Regulation gives greater responsibility to industry to manage the risks from chemicals and to provide safety information on the substances. Manufacturers and importers will be required to gather information on the properties of their chemical substances, which will allow their safe handling, and to register the information in a central database run by the European Chemicals Agency (ECHA) in Helsinki. The Agency will act as the central point in the REACH system: it will manage the databases necessary to operate the system, co-ordinate the in-depth evaluation of suspicious chemicals and run a public database in which consumers and professionals can find hazard information.

The Regulation also calls for the progressive substitution of the most dangerous chemicals when suitable alternatives have been identified. REACH has been developed in a climate of transparency and consultation. The Commission has held extensive dialogue with stakeholders before and after the proposal was presented. Stakeholders sent over 6000 responses during the REACH internet consultation and contributed to the REACH Impact Assessment both before and after the launch of the Commission REACH proposal in 2003. This helped the Commission to improve the design and cost-effectiveness of the system and subsequently the European Parliament and the Council of the European Union to amend the proposal under the co-decision procedure. REACH provisions will be phased-in over 11 years<sup>7</sup>.

***Recommendation 7: The OHS review should consider the adoption of legislation similar to REACH, to address the regulation of hazardous substances in the workplace.***

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<sup>6</sup> The value of occupational hygiene in the implementation of REACH, Andy Gillies, President BOHS, AIOH Annual Conference Proceedings, Gold Coast, 2006.

<sup>7</sup> [http://ec.europa.eu/environment/chemicals/reach/reach\\_intro.htm](http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm)



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## Recognition of accredited OH&S Practitioners

A major concern of the AIOH is that there are many individuals claiming to be occupational hygienists, with no formal background in the area. It is not uncommon to see consulting companies offering services in occupational hygiene, despite having no known expertise as occupational hygienists. The consequences of unqualified, untrained and uninformed personnel advising employers on the management of health hazards in the workplace should be cause of significant concern to all parties engaged in OH&S legislation.

One of the earliest Australian references to the need for workers to check that occupational hygienists were appropriately qualified was given in John Mathews' book, *'Health and Safety at Work: a trade union safety representative's handbook'*<sup>8</sup>. In this, he urged workers that, 'whenever occupational hygienists are called in to a workplace as consultants, safety representatives should make a point of asking them whether they are a member of the Australian Institute of Occupational Hygienists'. Occupational hygienists who wish to become full members of the AIOH have to submit work for scrutiny by their peers and be interviewed by at least two members to be eligible for full membership. They are also obligated to follow the Institute's Code of Ethics. This provides safety representatives and others with a degree of assurance that a member of the AIOH is adequately qualified. Regrettably, since then, too few safety representatives have followed this advice.

In 2004, the AIOH introduced the designation of a certified occupational hygienist (COH). This is recognition of the highest level of professional expertise by the AIOH and international agencies, such as the International Occupational Hygiene Association (IOHA). COH also recognises continued maintenance and further development of professional expertise. A number of companies are now specifically requiring applicants for positions as occupational hygienists must be a COH, or at least a member of the AIOH.

This review of OH&S legislation must address the issue of the 'cowboy' consultant. The requirement to use relevant professionals, such as occupational hygienists, is already stated in some government documentation, e.g. *National Code of Practice for the Control of Workplace Hazardous Substances*<sup>9</sup>, but it is considered that as this document is now quite mature, it would be appropriate to formalize this requirement under OH&S legislation.

***Recommendation 8: The OHS review should consider recognition of professional, qualified OH&S Practitioners to ensure that employers and employees are not subjected to unethical, inappropriate or incorrect advice.***

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<sup>8</sup> John Mathews. (1993) *Health and Safety at Work: a trade union safety representative's handbook*, Chapter 19 Occupational Hygiene, p. 441, 2<sup>nd</sup> Edition. (Leichhardt, NSW: Pluto Press)

<sup>9</sup> NOHSC, *National Code Of Practice For The Control Of Workplace Hazardous Substances*, [NOHSC:2007(1994)]



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## Consolidated Recommendations

*Recommendation 1. The OHS review should consider the move towards a single OH&S regulatory agency, administering a single piece of OH&S legislation.*

*Recommendation 2. The OHS review must ensure that the regulation of occupational health is adequately addressed in any forthcoming model legislation.*

*Recommendation 3. The OHS review should ensure that inspectors employed by OHS regulatory agencies have the competency in areas such as occupational hygiene, to adequately enforce legislation appropriate to them.*

*Recommendation 4. The OHS review should recommend that the regulatory agencies have the appropriately qualified and trained inspectors to enforce occupational health regulations and standards.*

*Recommendation 5: The OHS review should ensure that in addition to new and emerging hazards, existing hazards should be adequately covered under new OHS legislation.*

*Recommendation 6: The OHS review should ensure that the duties of manufacturers and supplier, especially with respect to hazardous substances, are more comprehensive than at present.*

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