



1. Introduction

- 1.1. Lion Nathan Ltd welcomes the Australian Federal Government's commitment to harmonising OHS laws through the development of One Model OHS Act for all States and Territories in Australia. Lion Nathan Ltd ("**Lion**") is committed to providing a safe working environment for our people in Australia, and, if they are injured, provide the best possible treatment and rehabilitation to assist them back into the work force.
- 1.2. We acknowledge this is a significant opportunity for all Stakeholders to be involved and that this opportunity may only come occasionally and we should seize this to make a difference to the Safety and Health of Australian workers.
- 1.3. Lion wishes to make submissions on a number of the questions (not all) posed in the Issues Paper and provide some recommendations that it believes will support the general thrust of The Federal Government to have one model Occupational Safety and Health Act in Australia.
- 1.4. Lion is multi-national company involved in the production of alcoholic beverages in Australia, New Zealand and America. We have operational sites (Breweries and Wineries) in all the States in Australia as well as commercial offices in ACT and NT. We employ approx 2800 people in Australia in a variety of roles including brewery technicians, wine makers, engineers, managers, and sales executives as well as people in marketing and financial roles.
- 1.5. We believe our organisation typifies many large companies in Australia with people working in various locations and being covered by different legislation. We believe this different legislation from State to State in which we operate imposes:
 - an unreasonable compliance burden on Lion;
 - Different responsibilities and liabilities on our people and the management teams in the different States which unnecessarily complicates the management of workplace safety.

1.6. We will make submissions on the following ‘chapters’ of the Issues Paper

- Legislative Approach
- Scope, Application & Definitions
- ‘Reasonably Practicable’ & Risk Management
- Consultation, Participation & Representation
- Prosecutions
- Mutual recognition

2. Purpose of the Issues paper

2.1. In making our submission we would like to acknowledge that there have been numerous reviews of existing State OHS legislation over recent years. Most recently Chris Maxwell completed a comprehensive review¹ of the Victorian Occupational Health and Safety Act (“Victorian OHSA”) which resulted in many changes in that State’s OHS legislation.

2.2. We have relied on some of the recommendations in the Maxwell Report in preparing these submissions. However, we would like to note that these ‘reviews’ typify what we believe is part of the problem with each State and Territory having their own OHS legislation, in that they are all individually reviewed and compared to each other for adequacy and recent changes. It would seem common sense that having a single comprehensive piece of OHS legislation in Australia would reduce the amount of time and effort put into these reviews and the subsequent time and effort in changing the actual legislation itself. A point that Maxwell raises himself in his own review of the Victoria OHSA when he refers to the Robens Committee² observations (Maxwell Report, p79):

“the fragmentation of the legislation and its administration makes the task of harmonising, servicing and up-dating the various statutory provisions extremely difficult; and it diffuses and compartmentalises the expertise and facilities that are available to deal with occupational hazards” (Robens Report, p9)

2.3. As Maxwell goes on to say in his report ‘many of the observations made by the Robens Committee apply in equal force to the legislative and administrative frameworks of OHS regulations in Australia. There are nine jurisdictions – Federal, State and Territory – each of which has its own OHS regulatory framework, consisting of Acts, regulations, Codes of Practice and guidance material. (Maxwell Report, p79)

¹ **Victorian Occupational Health and Safety Act Review**, Chris Maxwell QC, March 2004 (“Maxwell Report”)

² **Report of the Committee on Safety and Health at Work**, Lord Robens, 1972, HMSO, London (“Robens Report”)

- 2.4. Maxwell also points out the conclusion from the Royal Commission into the Building and Construction Industry in regards to this issue with the following statement:

“The result is a fragmented, disjointed and uncoordinated system of occupational health and safety law and regulation which, when applied to a national industry such as the building and construction industry, is inequitable, wasteful and inefficient”. (Cole 2003 p15)

- 2.5. We believe that the above statement applies equally to other national wide industries in Australia and creates significant inefficiencies for large employers such as Lion that have operations in all States in Australia.

3. Submission

3.1. Lion Nathan Submits

- 3.1.1. Lion supports the proposal to establish One Model Occupational Health Safety Act for all of Australia. We believe the people, and industry, of Australia will be best served by having one consistent approach to managing OHS. As indicated above, we have people working in all the States and Territories and to achieve the minimum compliance we are required to be aware and understand nine different OHS Acts, as well as Regulations and Codes of Practices made pursuant to these Acts.

3.2. Legislative Approach

- 3.2.1. (Q 1.) In respect to the hierarchy and detail of the Act, Lion submits that a combination of ‘principles-based standards’ and ‘performance-based standards’ is appropriate. This approach would clearly spell out what is required by the various duty holders but also indicate the level of performance required without going into the actual detail of how to attain the required performance. This would provide organisations the flexibility to meet these performance-based standards in a way that suits both their specific industry requirements and individual company culture.
- 3.2.2. (Q2.) Lion supports the original recommendation in the Roben Report that the ‘Act’ should be at a high level and should set out the general duties of care. These general duties of care should then be supported by more detailed provisions contained in Regulations and/or Codes of Practice.

3.2.3. (Q3.) Lion submits that the title for the One Model Act should be 'Health, Safety and Wellbeing at Work Act'. We believe adding Wellbeing into the title defines the Act to include some of the new and emerging risks that have been identified in recent years in the workplace. The Maxwell Report identifies the following as examples of the type of new risks.

- Precarious employment
- Psychosocial hazards
- Fatigue
- Work Intensification

3.2.4. 3.2.4 Lion has developed comprehensive workplace policies to address these 'new' workplace risks. Lion is committed to maintaining the 'wellbeing' of its employees. These policies have had a positive impact on, and are important to, Lion's business. The development of policies by organisations in a way which suits both their specific industry issues and individual company culture should be encouraged by the legislation to address the 'new' risks to employee 'wellbeing'.

3.2.5. (Q4.) Lion believes the One Model Act should specify its objective, which should be as succinct and readily understood for all stakeholders.

3.2.6. (Q5.) The Act should include a set of Principles of Health, Safety and Wellbeing. The 'principles of workplace safety' recommended by the Maxwell Report (see section 1.2 of the Issues Paper, pg 6) are appropriate.

3.3. Scope, Applications & Definitions

3.3.1. (Q12.) As referred to in 3.2.3 above, Lion would include the 'Wellbeing' in the title of the Act. This would respond to the changing work environments, new ways of organising work and emerging hazards and risks.

3.3.2. (Q14.) Lion submits that the One Model Act would, by design, have standard and uniform definitions for all key terms, including 'worker', 'workplace' 'undertaking', 'control', 'reasonably practicable' and 'consultation'.

3.4. 'Reasonably Practicable' & Risk Management.

3.4.1. (Q37.) Lion submits that this particular area of OHS legislation is one that promotes the most contention and lack of understanding by many organisations as well as people working in the OH&S area. The fact is the interpretation of what is 'reasonably practicable' varies significantly within the current State and Territory legislation. We believe that a 'test' should be included in the model OHS Act to assist all stakeholders understand what is expected of them. The example of the WA and Victoria OHS Acts appears to go some way in defining the term 'reasonably practicable' in regards to:

- the likelihood of the hazard or risk occurring
- the degree of harm that would result if the hazard or risk occurred
- the state of knowledge that exists about the hazard or risk and any ways of eliminating or reducing the hazard or risk
- the availability and suitability of ways of eliminating or reduce the hazard or risk; and
- the cost of eliminating or reducing the hazard or risk

(The New Zealand Health and Safety in Employment Act and Amendments use similar wording)

3.4.2. (Q42.) Another area that often confuses people is in the definitions of 'hazard' and 'risk'. Lion believe that clear definitions should be spelt out in the model Act so as to avoid the present confusion. When reviewing the various State OH&S legislation there is either, no definitions of these terms or just one of them; and none of the existing definitions are common across the legislation. Even the AS/NZ4804:2001 Standard recognises that different terminology is used between Australia and New Zealand. Even amongst Safety Professionals this is a cause of confusion. Yet hazard management is recognised as the most significant system/process required in the prevention of harm to the health and safety of workers. By clearly defining both terms it will help to support those stakeholders who are held accountable to understand what they are expected to manage.

AS/NZ4804:2001 does provide definitions for both this terms and in our view they are practicable and reasonable definitions.

Hazard – A source or a situation with a potential for harm in terms of human injury or ill-health, damage to property, damage to the environment, or a combination of these.

Risk – (In relation to any potential injury or harm) The likelihood and consequence of that injury or harm occurring.

3.4.3. (Q43.) The definition of ‘reasonably practicable’ would be enhanced by including reference to the risk management principles and process of hazard identification, assessment and control. We also suggest including the terms ‘actual or potential’ hazards or risks into the definition to help organisations understand that they need a systematic approach to demonstrate they have effectively carried out the duties.

3.5. Consultation, Participation & Representation

3.5.1. Lion agrees with the widely held view that consultation with our people is essential for effective OH&S management and enabling participation of our people in health and safety matters. In 2007 we were nominated by the unions in NSW as a company that ‘consults’ with its people at a high level of effectiveness.

The Robens Report went into some detail review the existing consultation processes of the time and recognised that various industries and organisations had different approaches to consultation which were effective and the Committee came to the conclusion that there should be a statutory duty for employers to consult with their employees, but the form and manner of the consultation and participation would not be specified so as to provide flexibility needed to suit a wide variety of particular circumstances. (Robens p22)³

Lion Nathan agrees with this approach and that Consultation should be a statutory duty of the employer. Taking heed of the above Lion Nathan submits that guidance should be provided in the form of a Code of Practice outlining model arrangements for safety committees and safety representatives.

3.5.2. (Q45.) Lion Nathan submits the reason for defining consultation is to avoid the present confusion with many people in referring to consultation as ‘consensus’. Clearly these two terms have very different meanings but it is one of the areas where people get into difficulties in moving past the ‘issue’

We would support an interpretation of how employees are consulted similar to that in the Victoria OHS Act⁴ :

- a) Sharing with employees information about the manner on which the employer is required to consult; and

³ **Report of the Committee on Safety and Health at Work**, Lord Robens, 1972, HMSO, London (“Robens Report”)

⁴ **Victorian Occupational Health and Safety Act 2004 Part 4 s.36**. Duty of Employers to Consult.

- b) Giving the employees a reasonable opportunity to express their views about the matter; and
- c) Taking into account those views.

3.5.3. (Q48.) The ways and means of meeting the above definition should be left to the individual companies and their people on each site. As long as it can be clearly seen that all parties involved have carried out the duties required to meet any obligations.

3.6. Prosecutions

3.6.1. (Q110.) In respect to who should be entitled to commence criminal proceedings Lion believe that this duty should only be able to be exercised by the Regulator. We believe they have the expertise and the knowledge to bring such proceedings and allowing others to do so may lead to mischievous allegations and unwarranted time and effort involved by all parties.

3.6.2. (Q112.) Due to the complexity of some cases Lion believes that 12 months, after the regulator comes aware of it, is a reasonable time for commencement of proceedings. This will ensure that the evidence is able to be heard in a timely manner.

3.7. Mutual Recognition (Q150.)

3.7.1. Lion agrees that the areas identified at section 9.6 of the Issues Paper could benefit from mutual recognition. The Model OHS Act provides a real opportunity to ease the 'red-tape' and compliance burden imposed by the different requirements across the several separate OHS systems for organisations that operate nationally.

3.8. Summary

- 3.8.1. Lion supports the One Model OH&S Act for Australia.
- 3.8.2. If there is a preference Lion would support a model based on the current Victoria OH&S legislation. Lion believes the Victorian OH&S legislation strikes a reasonable and appropriate balance between the objective of achieving workplace safety and imposing obligations and liability on corporations and their officers and managers.
- 3.8.3. We have responded to a number of specific questions within the Issues Paper which we believe will advance the course of occupational Health and Safety in Australia.
- 3.8.4. Though this is a significant step in the right direction we believe it is just a start of a journey which all stakeholders should be involved in.
- 3.8.5. We leave you with the final words from the Robens Report from 1972 which we believe is still relevant today and for this particular situation.

‘Thereafter, the task will be a continuing one. Many problems will remain to be solved, and fresh ones will arise. The new framework that we have proposed will need to be kept flexible, and adapt to meet new changing requirements. In the long run, the most essential need will be for sustained interest and initiative’ (Robens c499)
