

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

SPECIFIC COMMENTS

Legislative Approach:

Scope, Application & Definitions:

Chapter 2.1

This should cover all areas over all States and Territories as per Q8. Standardise the OH&S regulations and requirements Australia wide under one Authority, with Training and updates to State Inspectors/Regulators to be controlled by a National Body with no power of veto by a State or Territory.

I would argue that "Simpler is Safer".

Chapter 2.2

As per Queensland's definition of Workplace, so that it includes places such as the Adelaide Parklands and Public places, which can affect a huge number of people who may otherwise not be covered.

Under Public Safety, there are two items I would like to raise.

The first is the definition of "Worker", where that person is defined by OH&S laws to be deemed a "Worker", yet under the SA Workers Compensation Act, a "Volunteer" is not regarded as a "Worker" (unless they are a Country Fire Service volunteer) and has no redress to a lack of implementation of the OH&S regulations in that State or any compensation for physical or mental damage.

It is generally accepted nationally and internationally that volunteers have the right to a safe and healthy workplace. It is incongruous that this right appears to be removed when the State is the event sponsor and puts the health of volunteers at risk.

The second is the situation where members of the public are subjected to non-compliance with OH&S laws which affect their lives without their knowing that the event has had a negative effect on their body.

An example of this is the Adelaide 500 Clipsal event, where the noise levels are ten times in excess of that allowed under current OH&S laws and no-where near those laws proposed in the near future.

This means that volunteers assisting at the event and any person attending the event could lose part of their hearing, even if only attending for one day.

This is an example of what volunteers and the public don't know will hurt them and expectations of recourse to the law are not upheld.

If the event is to continue not complying with OH&S regulations, there needs to be plain English information provided to volunteers and the public that they are at risk and do not have recourse to reparation if damage occurs to their hearing.

Q12. Perhaps a definition such as "Where the Employer or Organiser of an event who is expected to pay in remuneration or save in employment costs the value of a person on minimum hire fees the sum equivalent to two hours' work in a month at the rate paid by way of the Australian Unemployment Benefit calculated on an hourly basis" may be of use.

This may provide protection for volunteers and other workers.

Q14 The definitions need to be uniform across all areas and a definition such as 'reasonably practicable' needs to have some form of limitation.

An example of this is where the Consultants for Noise Testing at the Clipsal 500 Adelaide specified that "In many areas of the track, employees and volunteers are exposed to Laeq.8hr levels in excess of the specified level of 85dB(A) by Occupational Health Noise criteria." And that "Under the Occupational Health Noise Criteria the first noise reduction approach that should be considered is an engineering approach (i.e. modifying the vehicles and/or Clipsal 500 track)." then "We suggest that it is not practical to reduce the noise levels produced by all vehicles or modify the track".

These statements state that it is "not practical" to reduce even exhaust/intake noise on vehicles. This is ironic given that, in most cases, the original mufflers and intake system are modified for the competition from standard to make more noise and requires additional expense.

There is little logic in the consultant's comments except when seen as a gesture to appease the State Government who does not want to have to compete with other States for the event or comply with the OH&S Regulations and thereby risk the health of volunteers and employees.

Certainly there would be no cost to the Organisers of the Clipsal event to physically modify the vehicles.

Perhaps for other organisations or employers then a cost to make items "practical" to conform could be based on the dollar value of annual turnover percentage.

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

The SA Parliament has legislation in place such that there are no Laws or Regulations with regard to the Local Councils, the EPA or any State Laws being applicable to the Clipsal 500 Adelaide event.

How are these legislative measures a responsible attitude by a responsible authority with regard to OH&S?

'Reasonably Practicable' & Risk Management:

See above.

Consultation, Participation and Representation:

As a member of a local Car Club, I became involved in Motorsport activities then decided to give something back to the sport by becoming a Confederation of Australian Motor Sport (CAMS) official as a volunteer working for a non-profit organisation.

CAMS is the overall body responsible for the running of motor sport in Australia and makes the rules and regulations that the Clubs must adhere to, with Stewards being the responsible CAMS representative at each event held under their jurisdiction.

In this capacity I was responsible for execution of "Stewards must ensure that organisers have the necessary noise measuring devices in place, and that they are in operation throughout the entirety of race meetings."

I noted that this did not occur and raised it with CAMS, then being told not to have anything to do with the noise testing procedures.

CAMS did not acknowledge my letters and reports to them and I was ignored by other Stewards and Officials.

As a volunteer working for a not for profit entity and after discovering that the CAMS regulations for the Clipsal 500 Adelaide were not being complied with, I was victimised and never asked to volunteer for them again.

I had no idea what rights or recourse to remediation I had and being a volunteer was not told.

Regulator Functions, Powers & Accountability:

Compliance & Enforcement:

Q100 As an example, if at any time the Clipsal Adelaide 500 was recording noise levels in excess of those required under OH&S regulations as recorded by a specialist in sound and hearing, then any person should be able to ask for and have an injunction against the organisers and have the event stopped until a satisfactory outcome to the Magistrate or responsible official is forthcoming.

At the present time, there is a State-run OHS&W compliance Department such as SafeWork SA here in South Australia being responsible for compliance with the laws, rules and regulations.

This is a State run enterprise which is currently under the control of the Premier's Department.

When events are run by the State Government, then we have a State run enterprise overseeing a State run enterprise.

This means a SA Government Department called the South Australian Motor Sport Board (SAMSB) is the Organiser and is therefore responsible for the motor racing event called the Clipsal 500 Adelaide.

This event has noise levels ten times louder than that allowed under OHS&W Regulations, plus levels louder than the maximum allowable (instant hearing damage) yet when the staff of SafeWork SA are asked why this is allowed to occur, they say that it is "political".

The head of the SAMSB and SafeWork SA is the same person, the Premier of SA.

This is just one example of what happens when the States self-police their own events.

I would suggest that the same thing would happen if one State was to police another State's events.

Where you have a State entity being the Organiser or responsible for an event then a National body needs to be responsible for State compliance as these events are usually large events and affect a large number of staff/volunteers/attendees.

Having said that, we have the situation at the Clipsal 500 Adelaide where the Minister for Defence is responsible for the promotional flypast of military aircraft to promote the Armed Forces as a career, only to have the attendees have the potential for their hearing destroyed.

Who should be responsible for the flypast noise level, which currently is at or in excess of the level for instant hearing loss (140 dB(C)).?

Prosecutions:

Q117 "Reasonably practicable". Perhaps the onus of compliance should be on the employer, whereby the compliance has to be proven to be "reasonably impracticable".

Volunteers and the public have a right to know that this definition provides a loophole for poor surveillance of noise levels and an ability to prevent any legal recourse in the case of hearing damage or other injury.

Other Issues:

A person who feels aggrieved by a decision or lack of decision by a relevant authority should be able to access information from the Authority in writing or on-line to allow them to pursue all avenues open to them to solve their problem. A cloak of secrecy about the rights and responsibilities of volunteers and the public serves only the interests of those staging the event but provides no protection for willing helpers or enthusiastic attendees.