

NATIONAL REVIEW INTO MODEL OCCUPATIONAL HEALTH AND SAFETY LAWS

PUBLIC SUBMISSION FROM WILLIAM SHANNON

I wish to comment as follows:

1. Workplaces and Non-Workplaces

It is suggested that the scope of the Legislation be extended to include Workplaces and Non-Workplaces which have clear definitions – such definitions to be extensive enough to include all activities where one or more parties have caused harm to one or more other parties through their action or failure of duty of care. The concept or impression that the Legislation only covers physical workplaces should be disbanded and replaced with a definition encompassing any transaction between two or more parties which may result in harm to either party.

2. Definition of Harm

The Legislation should focus on the effect of harm done to either party by the action or failure of duty of care, by the other party. The definition of harm should include financial harm, emotional or psychological harm, and include failing their duty of care. The definition or other notes should clearly state that no party can abrogate their responsibilities by requesting the other party to sign or otherwise agree to conditions that state or imply the party signing or agreeing takes on all or most responsibilities.

3. Public and visitors in workplaces and non-workplaces

The NSW Occupational Health and Safety Act 2000 and the Occupational Health and Safety Regulation 2001 focus on Plant, Building and Dangerous Goods with regard to visitors and/or the public.

Your Submission Template sections 2.2 and 3.5 have indicated a need for review in these areas. It is considered that the current legislation does not adequately deal with these matters and it is recommended that the legislation be accordingly expanded.

Visitors and the public, unless engaged in unlawful behaviour, have the right to expect that they will not be harmed when entering workplaces or non-workplaces. In turn, the expectation would be that they would be expected to have and carry out duties of care to themselves and others.

Like many others, I have had experiences as a member of the public attending both paid events and unpaid events, where you have to sign an “indemnity”, which removes the other party’s responsibility, and often states that you are responsible regardless of their action. The Legislation should clearly state that this is illegal.

One experience was where my wife and I on a Marine Harbour Day, paid \$25 each for a short snorkel experience, were given an indemnity to sign – the form clearly exempting them from any responsibility – and told if we did not sign we could not snorkel (we had already paid). We signed and went, but the most concerning part was that – in my opinion - the instructor did not pay attention to where the 10 or so participants were swimming, and did not check us as we came out of the water. My impression was that his perception of his need for care was clearly lowered by his knowledge of having the indemnities.

An example of an indemnity can be found in the National Parks Association of NSW web site (<http://www.npansw.org.au/web/activities/bushwalking.htm>) as follows:

Quote "Liability: Every person participating in an activity conducted by the National Parks Association of NSW Inc does so as a volunteer in all respects, and as such accepts responsibility for any personal injury, however incurred. The Association, its office bearers and walks leaders cannot accept liability in regard to any injury or damage suffered by any person while engaged in any NPA activity." Unquote

I understand that where the organisation is at fault, signing such an indemnity is not legal, but presumably signing would make most people accept the harm they received, and if they did not, would make any legal case more expensive and lengthy.

It is considered these aspects should be covered in OHS Legislation.

4. Harm from financial and other transactions

It is recommend that Legislation be extended to financial and other transactions between two or more parties, where harm may result to either party from the illegal or unconscionable behaviour of the other.

It is considered that such transactions are "work" related.

The current use of common law to assist people harmed by such transactions is unwieldy and very expensive.

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20th June 2008