

Introductory and General Comments

1. The Independent Education Union of Australia (IEUA) is a federally registered organisation pursuant to the provisions of the *Workplace Relations Act 1996* and operates in the non-government education industry which comprises Catholic and other independent schools, pre-schools and kindergartens, English and Business Colleges and other private providers of education. The union's membership of approximately 65,000 consists of teachers, principals, education support staff and other ancillary staff such as cleaners and grounds and maintenance staff.

2. The IEUA supports the submissions made by the ACTU on behalf of affiliates. In particular the IEUA supports the expectation expressed by the ACTU that the Federal Government's review of Australia's OHS laws must deliver the highest standards of protection for workers. Specifically that:
 - Every worker must be better off from this review.
 - Employers will gain from this process – by reducing costs through having just one law – Employers can afford to improve standards for workers.
 - Adoption of the OHS laws from a single state jurisdiction alone will not deliver the highest possible standards. The review must consider the best practice legislation from all jurisdictions and use them as a template to improve Australia's OHS laws so that the highest possible standards of protection are delivered for all workers.

Specific Issues

Legislative Approach

3. In the education industry workplace injury, illness and disease can result as much from exposure to poorly organized systems of work as exposure to hazardous substances or dangerous goods. Consequently, the objectives and principles of the Act must clearly state the equal significance of protecting workers psychological and physical health, safety and welfare.
4. Stress, bullying, fatigue, work overload and work intensification are major contributors to workplace ill health in the education industry. There are significant organizational and environmental factors in workplaces with the potential to injure the psychological health of employees, and these industry factors allow hazards to flourish.
5. The Act and its subsequent compliance framework should therefore cover all classes of hazard threatening the health, safety and welfare of workers. The Act should specify separate objectives and principles. The IEUA supports the comments contained within the ACTU submission relating to objects and principles.

Scope Application and Definitions

6. There should be no 'shield of the Crown' in the Act. The IEUA contends that the Act should apply to all workplaces and cover all workers to the extent of no detriment or reduction of existing OHS laws and safety standards

7. The Act should include definitions of work and workplace consistent with 21st Century Australian society. The IEUA supports the ACTU submission's proposal that the definition of work should include any place where work is or is to be performed by either a worker or a person conducting a business or undertaking.

Duties of Care – Who owes them and to whom?

8. The Employer's duty of care should be absolute and not qualified by any qualification such as 'reasonably practicable' or 'practicability'.
9. The IEUA notes that in the non-government sector cost alone is often relied upon by employers as a means to avoid or defer the adoption of available hazard control measures and to claim elimination or reduction of a risk was beyond what could be considered reasonably practicable.
10. The IEUA believes that the Act should adopt the NSW model of placing the onus on the employer to prove adopting measures was not reasonably practicable.
11. The Act should ensure the employer duty of care is non delegable and the primary duty to ensure the health and safety of employees is retained by the employer. For example, in schools the capacity to make decisions about budgets, resource allocation both financial and human, prioritizing preventative or restoration works lies with the Principal, Business Manager or School Board and it is therefore appropriate the employing authority retains the absolute duty.
12. The IEUA notes that at any given time there are a variety of classes of person in the workplace. This includes contractors, volunteers, visitors, full time and part

time employees, casual or relieving employees, apprentices or trainees. There should be no differentiation in the Act as to the duty of care owed to any person in the workplace by the employer.

13. The IEUA would reinforce matters identified in the ACTU submission which must be included in the employer's duty of care. Specifically:

- ensuring the health, safety and welfare of all workers and others involved in the workplace
- providing and maintaining a healthy work environment
- providing and maintaining safe plant
- ensuring safe use, handling and storage of substances
- ensuring safe systems of work, including systems of work with the potential to place the psychological health of workers at risk
- providing adequate training and supervision to ensure health, safety and welfare
- monitoring health and safety
- systematically addressing hazards
- embedding OHS in the management of work

14. The IEUA rejects any proposition that the Act should contain a definition or test of "control" for the purpose of limiting the absolute duty of care. The IEUA believes what is or is not within a duty holder's control is best determined by the Courts and should not be constrained by the Act.

15. The Act should limit the duty of workers with respect to requirements under the Act to those consistent with Section 25 of the Occupational Health and Safety Act 2004 (Victoria).

16. The duty to co-operate with reasonable instructions given for the purposes of health and safety could be added to Section 25(1) to strengthen co-operating with actions taken by the employer to comply with a requirement of the Act. However, nothing in the Act relating to the duty of workers should exclude a worker's right to

cease working in unsafe or unhealthy conditions. Workers must also have the right to refuse to carry out work which in their opinion is unhealthy or unsafe.

17. In supporting the ACTU submission with respect to the duty of care owed by other Duty Holders the IEUA notes that in schools it is often the case that modifications are made to the working environment or the systems of work. In such cases the School Principal assumes the duty not only of employer but also that of designer. The Act should make clear that in such circumstances the Principal assumes the additional duty of care as that assigned to designers.

Risk Management

18. The IEUA believes that the Act should make clear that it is not the duty of the health and safety representative to eliminate or control risk. Duty holders must apply a systems approach to risk management and the Act must specify the requirement of duty holders to eliminate hazards.

19. It is the IEUA's experience that far too often in the non-government education sector the approach to hazard and risk management is ad-hoc and reactive. The Act should require employers to be proactive in the identification and elimination of hazards. The application of the hierarchy of controls by employers in a systemic manner should be prescribed by the Act. In the non-government sector a systematic approach to hazard management and the elimination or control of risk is often overlooked by employers.

20. The Act should also specify a requirement for the employer/duty holder to consult with workers at every stage of the hazard management process.

Consultation, Participation and Representation.

21. The Act should provide a definition for 'consultation'
22. The Act should provide a clear consultative structure inclusive of health and safety representatives, unions, health and safety committees and workers.
23. Consultation should include a requirement for employers to provide health and safety representatives with time and resources to consult with the workers they represent.
24. The process of issue resolution should be included in the Act. The issue resolution procedure should prescribe the process and not allow for the adoption of procedures which are inconsistent with other provisions of the Act or that diminish the duty of care of the employer or the powers of the health and safety representative. It is the IEUA's experience that in the non-government school sector at present, OHS specific issue resolution procedures are often non-existent.
25. Health and Safety Representatives in the non-government sector are often expected by their employer to carry out many of the safety management duties that should be expected of the employer.
26. The Act should make clear the duty of care of the health and safety representative is no more onerous than that of every other employee.

27. Further, the Act should detail that health and safety representatives have rights and powers by virtue of their election to office and that these rights and powers are given under the Act for the purpose of representing workers, not fulfilling a management duty.
28. The Act should delineate between the representative role of the health and safety rep and the safety management duty of the employer.
29. In the non-government education industry there are a large number of primary schools, early childhood education centres and other private training providers where the number of employees is less than 20. These workers face the same potentially hazardous work environments as their colleagues in larger workplaces.
30. The IEUA believes that there should be no threshold number of employees in a workplace before a health and safety representative can be elected. The IEUA is opposed to any provision in the Act limiting the ability of workers in any workplace to elect a health and safety representative.
31. The IEUA fully supports the ACTU submission in regard to union right of entry. This power is provided for in the NSW OHS Act and it has enabled union officers to enter non-government schools to address OHS issues and assist schools in developing procedures to meet compliance. Employers have valued this process.
32. Health and Safety Representatives should be entitled to attend high quality training during work time in each year of their term of office as a Representative.

33. Further, Health and Safety Representative training should be paid for by the employer.

34. Training providers and courses must be approved by the Regulator against a set of criteria which for training providers includes an understanding of, and empathy with, the role workers and their representatives play in workplace health and safety. The training courses should be primarily about how health and safety representatives carry out their role and powers in representing workers but also include a basic understanding of the law and its operation.

Protection from Discrimination and Victimization

35. In exercising the powers granted to them by the Act, health and safety representatives must be protected from victimization by their employer.

Employees and members of health and safety committees must also be protected from victimization when either raising or dealing with matters relating to workplace health and safety.

36. The onus of proof proving there was no discrimination or victimization should reside with the employer.