

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

SPECIFIC COMMENTS

Legislative Approach: Total commitment is needed, at present there are too few resources allocated to compliance of WorkCover Laws, as an employer and an employee I have noted that many companies and small business are going through the motion of initiating the policies then not following up as there is no checking process by government agencies, this is indicating to the workers that they are not serious about workplace safety in fact some workers are of the opinion that fines imposed on companies after an incident are more important to the government than prevention hence there needs to be an accident so a fine can be imposed on companies making OH&S another money grabbing machine.

Scope, Application & Definitions:

Duties of Care – Who owes them and to whom?: The government owes a duty of care to the workers some of whom are not able to report the issues of concern within their workplace for fear of retribution from their employer, it is for this reason the government needs to put strategies in place that will make compliance with OH&S rules and Regs unavoidable as they are now. These strategies could consist of mandatory submissions to authorities or insurance company's outlining and producing evidence of compliance to OH&S regs, compulsory workplace check by WorkCover each year etc; at present there are not such checks and many old business are still running dangerous work environments, it is not till after a worker is killed or maimed that an investigation is conducted.

'Reasonably Practicable' & Risk Management: Who is to decide what is reasonably practicable? At present this is not defined, companies are using the confusion to disguise lack of compliance, one comment I received from an employer was "what good is an OH&S plan if the company goes broke implementing it, that's not practicable", and in these cases the companies need help not fines. I believe that the lack of assistance to companies is a direct reflection of the lack of Funding in this area. Risk Management is not managed due to the old thought process implied by lawsuits that is to say if you don't know about it The potential hazard then you can't be held liable, hence the need for mandatory inspections of workplaces prior & during work.

Consultation, Participation and Representation: With the exception of large companies who are within the government spotlight such as mining & Blue chip companies, some companies have only made small steps toward the implementation of OH&S laws, that is to say they have initially implemented a OH&S plan in the early stages of the OH&S act becoming law, it was at this time publicity was involved with the description of what would happen if a breach of the law was detected, some companies were in fact charged initially with breaches of the act and these breaches were publicised but that is not now the case with the exceptions of breaches that cause death, these companies and employers now have an outdated plan that shows

little or no ongoing commitment whatsoever. In 2006 I conducted as part of my studies a survey of ten local businesses in my home town only one was able to state that they actually had current plan and that was because they had a relative within the family who was directly involved with OH&S consultation in agriculture. Once again the ignorance factor was the main issue directly showing that the lack of enforcement was a key factor.

Regulator Functions, Powers & Accountability: The regulator has failed as I see it within the wider community, lack of consistency is leading to a return of the days of non compliance. The WorkCover authority is widely seen as being only interested in the bigger companies and for this reason bigger fines are seen to be the carrot for them. As a previous employer and business operator I have only been requested for information pertaining to OH&S when conducting work for a government department.

Compliance & Enforcement: Compliance cost money! Without commitment from the relevant government bodies to see that the laws we have are in fact enforced then there is no need for more laws. At present is a breach of the law not to comply with the OH&S act and regulations, this breach needs to be detected and with the lack of investigations of companies for compliance then nothing will happen, employers will continue to flaunt it and palm it off as a white elephant. To enforce theses laws a program of compliance must be put in place this can be as simple as creating a tiered approach with insurance companies making it mandatory for employers to present there OH&S plans to them for inspection with active plans being eligible for a insurance cost reduction and of course a increase if the plan is not current. WorkCover inspectors need to be inspecting employer's premises and plans for compliance and need to be more proactive.

Prosecutions: If a company is prosecuted then it should be widely publicised as to why, it is currently the process of WorkCover to publish these breaches on their website, employers don't have a mandatory compliance to check the websites, employers are identified to a particular industry type! They should be notified of the breaches and the outcomes via a direct notice possible web notice or flyer. This would leave employers without the ignorance excuses that are currently seeing the current non compliance by remote business. It is currently a hit and miss situation and some employers are taking the risk believing that they will be able to continue under the radar as long as their employees keep quiet about it, and they will! because most of them need their job and don't know any different.

Other Issues: