



AUSTRALIAN STEEL INSTITUTE



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SUBMISSION TO THE NATIONAL REVIEW INTO MODEL OHS LAWS

July 2008

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1. INTRODUCTION

Thank you for the opportunity to make a submission to the national review into model Occupational Health and Safety (OHS) laws. We are in overall agreement that a single OHS Act for Australia would be good for safety and assist business.

OHS is an integral part of how all of our member companies do business and as such represents an important functional area for the ASI. For over a decade, the ASI has tracked lost time injury frequency rates and assisted in facilitating the steel industry's continuous improvement in its safety performance.

The approach taken in this submission is to provide an overall summary perspective and highlight the major areas of importance to ASI members.

2. ABOUT THE AUSTRALIAN STEEL INSTITUTE (ASI)

The Australian Steel Institute (ASI) is the peak industry body for steel in Australia. It promotes the use of Australian steel in manufacturing and construction, with a specific vision "To influence the profitable growth for the complete steel value chain".

ASI represents all the major sectors within the steel value chain including the two major manufacturers; BlueScope Steel and OneSteel as well as their Distribution channel members and also Fabricators, Detailers, Designers, Engineers, Architects and many others who service the industry.

The ASI has offices in all major capital cities and provides a variety of services including, Marketing, Technical assistance, Networking events, Safety Leadership and Industry lobbying to mention a few. We were formed in 2002 from the amalgamation of two long established steel bodies – the Australian Institute of Steel Construction (AISC) and the Steel Institute of Australia (SIA).

3. ASI SAFETY AGENDA

The ASI and its many members throughout the steel industry take safety very seriously. ASI convenes Safety Committee's in each of the major states and also a National Safety Committee that comprises safety professionals with a national line management responsibility within their companies. The National Safety Committee oversees the overall safety agenda on behalf of the ASI Board and its members. The ASI also collects Safety Statistics on behalf of its members and these are displayed below.

The ASI Health and Safety Charter is printed below:

VISION: A Healthier and Safer Steel Industry.

SCOPE: To Promote, Support and Develop Health & Safety Improvement within the Australian Steel Industry.

PRINCIPLES: *“Nothing is more important than the health and safety of the people who work in the steel industry.”*

1. All injuries and work-related illness can and must be prevented.
2. Management is responsible and accountable for health and safety performance.
3. Employee engagement and training is essential.
4. Working safely is a condition of employment.
5. Excellence in health and safety support excellent business results.
6. Health and safety must be integrated in all business management processes.

KEY STRATEGIES: Overall support of key Strategies --- (ASI National Safety Committee)

1	2	3
Promote Health and Safety Leadership development.	Support the Influencing of external stakeholders.	Develop the networking and communication amongst ASI members.

KEY ACTIVITIES:

1	2	3
<ul style="list-style-type: none"> ◆ Annual awards to promote excellence – categories of Individual, Site and Initiative.. ◆ Targeted Safety Leadership projects. ◆ Develop and maintain a system to progress and support significant ‘special projects’. 	<ul style="list-style-type: none"> ◆ Be aware of, and review/ contribute to new legislation, Codes and Standards. ◆ Membership to key external national and state industry bodies. ◆ Establish and maintain strong links with Australian Industry Group and other key stakeholders. ◆ Establish and maintain strong links with IISI. 	<ul style="list-style-type: none"> ◆ Sharing of: <ul style="list-style-type: none"> - Health & Safety Performance - Incident ‘lessons learnt’ - Good Health & Safety initiatives and practices - Health & Safety support. ◆ Establish and maintain links between all ASI Safety Committee’s. ◆ Encourage and support State Committees.

reviewed and edited in Feb ‘08

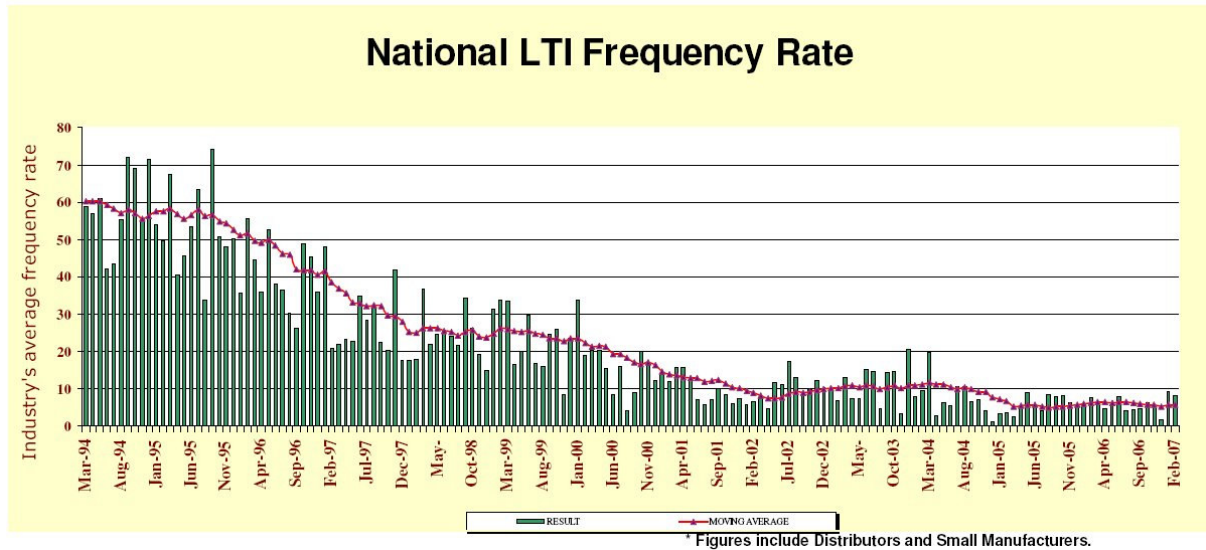
Compiled by Ian Cairns (ASI)



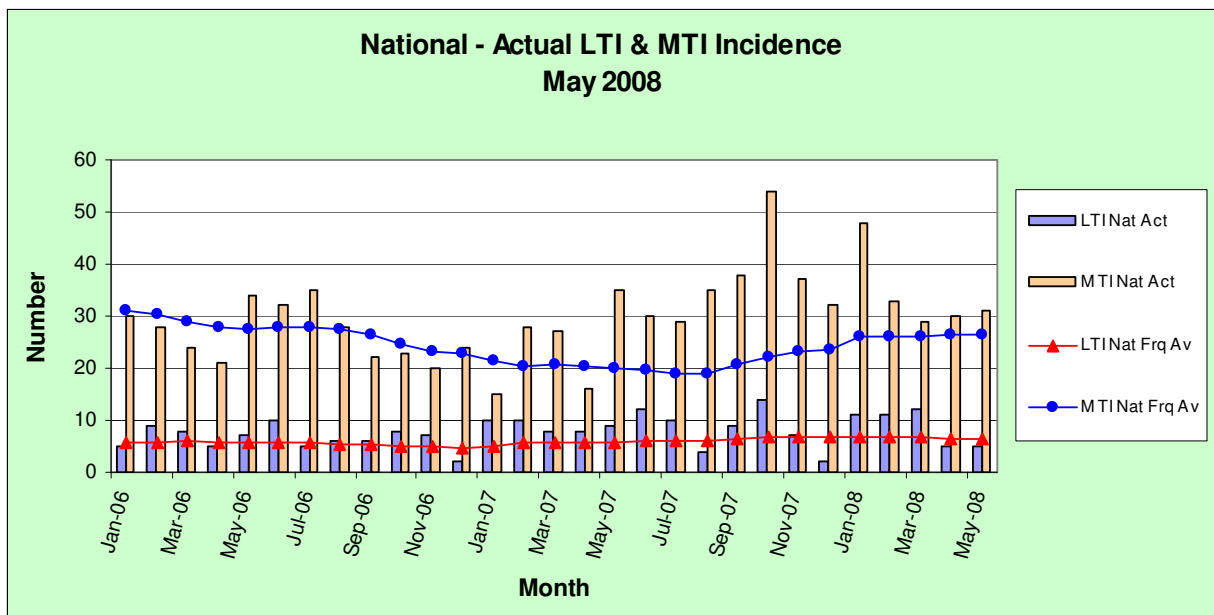
Example below of the Safety Stats collected by ASI and the industry improvement made from March 1994 to Feb 2007, which shows the improvement made.



ASI National LTI Frequency Rate March 1994 to February 2007



Example below of the Safety Stats collected by ASI for May 2008.





4. KEY ISSUES IN RELATION TO MODEL OHS LAWS

- There should be a single model OHS Act covering all industries, supported by nationally consistent regulations and codes of practice that provide guidance in relation to specific industries.
- The general duty of care of employer corporations should be a duty to ensure 'so far as is reasonably practicable' that a workplace, plant, substances or processes within the employer's control are safe and without risk to harm. - The reasonably practicable test for employer corporations is consistent with ILO Convention 155.
- Where it is not reasonably practicable to eliminate the risk, employer corporations should be obliged to control and reduce the risk, as far as is reasonably practicable.
- The test to determine liability of individuals should be a test of recklessness. If this is not considered appropriate, then individuals should be able to claim a defence where they took all reasonably practicable steps to comply.
- Everyone at a place of work should be responsible for health and safety.
- Defendants should be able to rely on compliance with the regulations and codes of practice, or compliance with the advice of an inspector, as a defence to a prosecution.
- Defendants should also be able to claim a defence in circumstances where they relied on the specialised expertise of a person properly qualified to carry out a particular job.
- The model OHS Act should provide a hierarchy of enforcement measures with prosecution as a last resort.
- ASI considers that the model OHS Act should provide for breaches of duties or obligations to be civil offences and that it may be appropriate for offences involving intentional or reckless conduct to be criminal offences.
- Persons who are criminally prosecuted should be guaranteed fundamental legal and human rights, including:
 - The right to silence.
 - The right of appeal to the Supreme Court, Court of Criminal Appeal and if appropriate, the High Court of Australia.
 - The right to trial by jury in relation to serious offences.
 - The right to trial without undue delay by an independent objective prosecutorial authority (such as the Director of Public Prosecutions). Unions should not be permitted to commence prosecutions.
- Further, in accordance with fundamental principles of criminal law:
 - The burden of proof should be on the prosecutor to prove the offence beyond a reasonable doubt.
 - Officers of a corporation should not be deemed to be guilty simply by virtue of the liability of the corporation.
 - Defendants should be tried by a court experienced in dealing with criminal matters.

5. CONCLUSION

The Federal Government is to be congratulated for this proactive initiative and creating this opportunity to harmonise the OHS laws across Australia.

The current inconsistent legislation across the States and Territories has come under consistent criticism and frustration by many of our member companies who operate on a National basis. We understand that businesses are running parallel or hybrid systems across Australia, creating greater work and expense for no benefit and arguably a detriment to Safety.

The harmonisation of Australia's OHS laws and regulations can be determined to be a success if:

- It provides a consistent set of laws and regulations across Australia, and these are interpreted and applied consistently.
- These consistent laws do not hinder a risk management based OHS system.
- The laws allow and encourage employers to directly engage with their employees to jointly create safer workplaces.

The Australian Steel Institute strongly believes that if structured and implemented properly the consistency of OHS Laws nationally will go a long way to building a stronger safety culture within industry and ultimately reducing injuries.

We would also like to confirm that we support in principal the submissions made by BlueScope Steel, OneSteel and the Australian Industry Group.

Ian Cairns
on behalf of
Australian Steel Institute.
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