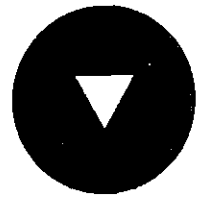


10th July 2008



TCCI
Invigorating Business

Mr Robin Stewart-Crompton
Chairman
National OHS Review Secretariat
Department of Education Employment and Workplace Relations
64N11
GPO Box 9880
Canberra ACT 2601

Southern Office

Dear Mr Crompton

Northern Office

National Review into Model OHS Laws

We take this opportunity to confirm that we have had meaningful consultation with the WorkCover Tasmania, Workplace Standards Tasmania and Unions Tasmania on the National OHS Review.

Our Chamber supports the principles of the Australian Chamber of Commerce and Industry response to the Panel.

The accompanying submission highlights points of difference with the State Government's response to the Issues Paper.

Thank you for the opportunity to participate.

Yours sincerely

Damon Thomas
CHIEF EXECUTIVE

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

SPECIFIC COMMENTS

Please complete this template to provide specific comments with supporting reasons against each chapter of the Issues Paper. If you are responding to a specific question in the Issues Paper, please include a reference to the relevant question number.

Legislative Approach:

The State Government is suggesting that the New South Wales legislation be adopted as the as model to follow. The TCCI does not support the Tasmanian Government position.

TCCI is firmly of the view that the Queensland legislation expresses mutuality of employer/employee obligations much better and submits it is a better basis upon which to base the National model.

Scope, Application & Definitions:

Q 11 The State Government is proposing to include duties of care to the public by inclusion of specific provisions with respect to public safety. However, TCCI believes there are issues that need to be carefully considered regarding private/public rights. In other words, members of the public must accept responsibility to not irresponsibly behave in a manner that is not prejudicial to their safety.

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

Qs 16-36 TCCI agrees to the principal of extending duty of care to the public, but there are mutual obligations and responsibilities between the workplace and the public and these should be clear. There are also issues that need to be defined on what is the actual workplace. For example, it is apparent it relates to the actual premises, but there is a view that it might extend beyond the actual premises in certain circumstances. We understand that noise, fumes and dust are issues covered by State environmental control legislation already. Then there could be a situation whereby an industrial stockpile escapes the premises of the workplace as a mud slide, for example. Is this and OHS workplace issue or a public liability issue? We believe it is the latter.

There is also a tendency for the State Government to want to define such matter as "chain of responsibility" but TCCI would prefer to see this left to the Courts to interpret.

'Reasonably Practicable' & Risk Management:

Agree with State Government response.

Consultation, Participation and Representation:

Qs 59-62 TCCI rejects in the strongest possible terms any changes to right of entry without notice to the workplace.

TCCI also strongly disagrees that union officials have an inspectorial role on workplace safety matters.

TCCI regards any inspectorial role for union officials creates conflict of interest issues in respect of organising and other union related business..

Regulator Functions, Powers & Accountability:

Q 84 TCCI's position is that State Government should have direct responsibility for the employment of OHS inspectorial and enforcement personnel. The only exception is in circumstances where expertise is required that Government can not otherwise source.

Q 85 TCCI advocates that OHS inspectors should be able to offer advice and assistance in the work place without compromising their independence. Or regulatory role.

Compliance & Enforcement:

Q 97 TCCI submits that infringement notices should be issued against employees in situations where they have failed to take heed of employer directions.

Prosecutions:

Q 104/105 TCCI agrees that it should be left to the courts to determine appropriate penalties within maximum prescribed amounts. There should be no legislated references to such issues as capacity to pay. Penalties related to capacity to pay are not supported.

TCCI does not agree with Union instigated prosecutions and while this is not proposed in the State Government response it will be possibly be put to the Panel in other responses.

TCCI supports a system of robust penalties but does not agree with "reckless indifference/gross negligence" provisions that have been adopted in other jurisdictions.

Other Issues:

Q 148 Tripartism should not be mandated but instead be a facilitated process to enable parties to work collaboratively and cooperatively as much as possible to reach agreement on workplace matters.



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

GENERAL COMMENTS

Please list any general comments you would like to make on any other matters not already highlighted in the Issues Paper. Ensure your general comments fall within the Terms of Reference of the National Review into Model OHS Laws (refer to Appendix A of the Issues Paper).

General Comments: