

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

---

## SPECIFIC COMMENTS

### **Legislative Approach:**

A mix of principles and performance based standards should be used. This allows for industries and the organisation to be innovative regarding OHS. Prescription methods whilst providing clarity may stifle innovation and flexibility for local conditions.

Process and prescriptive should be the least used approach in legislation. They can form the lower level requirements or guidance for organisation not sure how to go about meeting the principles and performance standards.

The Act should hold the key principles and definitions, the regulations should hold more detail broken into specific areas and codes should have high level of detail to provide guidance but should have choice on implementation.

### **Scope, Application & Definitions:**

The title should be the Occupational Health and Safety Act. It is very clear, connections to welfare sends the wrong and unrelated message, and workplace may be limiting for the future as the way people are now working from home or in virtual workplaces and overseas is very broad. OHS is also the standard and recognisable acronym.

The act should include principles, it should include risk management, consultation, reduction in incidents and injuries and importantly increase the requirements for employees to participate and adhere to OHS requirements. Too often they do not follow rules or are passive in their approach and only complain when something happens, they do not always take accountability for their own actions or contributions to an incident. When they do you have a very responsive and proactive culture but this is difficult to create in the current environment where little emphasis is placed on employee accountability.

The model act should include all industry requirements, I do not see the need for great variations. Everyone should be working with the same principles. The prescriptive requirements should live in lower layers such as regulations and codes. Many companies now are very diverse and spread across industry and jurisdiction. This would make compliance more streamlined and easier to ensure that all requirements are met.

In regards to workplaces, in general the duties should be tied to the conduct of work, however some reason needs to be applied to this. For example if an employee is required to entertain customers and ends up drunk and falling down stairs, this should not be included, similarly if an employee is away and eats something bad, this should not be covered by the OHS act. The ability to be able to control the situation is important and for the employee to have accountability for their own conduct and decisions.

Working at home is another area, it needs to be limited to the work area required to do the job and the employee must then take liability for their own home.

In some ways the duties should be extended to members of the public however this should be specifically quarantined as it may become unmanageable. Also public members would have to take some accountability.

I do think that the OHS Act should be flexible to include new and evolving types of work, however it must also be reasonable regarding the level of control that can be expected from an employer as well as the real potential for actions to add value and actually improve OHS.

All of the suggested terms in the paper are important and critical for national consistency. However what should be added is definitions for injury classifications and incident notification requirements.

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

This does require clarification especially for contractors. For example on projects, the principle may allocate areas of control to each contractor and impose duties on them, however they do not have total control. However it can also be the reverse, particularly when work is happening within an operating area. What ends up happening is that each group has duplicating processes and systems in place, they may not all work together. Needs a practical approach and review, a consultative and open understanding between the employer and contractor about the requirements for the task.

Duties for employees, visitors and members of the public should be extended so they must think about their actions and ensure they take time and care to follow requirements or make suggestions for improvements. Also penalties should exist where the duty is not exercised, especially where people may trespass or purposefully act out against the employer. Obviously this needs to be balanced to ensure employees have a say and can do something about the conditions and environment.

I do not agree with the process for appointing specific people. It should be assumed from the duties that the employer or CEO etc has the duty and needs to provide resources to support meeting the duties. They may do this as they please. However I recommend that the top executive is automatically identified to ensure they delegate this through the organisation and follow up to ensure it is satisfactory. However it would not be possible for them to be involved in all detail.

### **‘Reasonably Practicable’ & Risk Management:**

Perhaps the focus needs to include prioritisation and availability of resources. All changes can not be completed in the short term. I think the concept from Victoria is ok but it is still not necessarily clear on what the tolerances are for each item that is given regard in the definition. The focus should be to focus on what can really be controlled versus stairs etc.

Hazard and risk should be defined. Agree in principle that all hazards and risks should be identified, however this is an ongoing and impossible task depending on the level of detail required. This can lead to work and spreadsheets that are completed to satisfy the requirement but do not add value. This is where innovation is required to consistently and regularly demonstrate that effort is made to identify hazards and control them. I think risk management principles should be included.

### **Consultation, Participation and Representation:**

The requirement to support consultation should be included. Consultation requirements should be determined based on the item to consult. If it becomes too onerous it will no longer be effective. At times both internal and external stakeholders should be included. Employees must need to reciprocate but also take in the information provided.

### **Regulator Functions, Powers & Accountability:**

OHS Committees and HSRs should be included. However the HSRs are provided with powers they should also be held to account to participate and carry out their duties effectively by working with the employer to establish and maintain a guide on how and when they should be involved. They should be able to be performance managed by their work group or the employer. One area that can really add value is an effective HSR however when they do not participate they are unhelpful and unreliable. There is nothing that currently requires them to be able to be held to participate in processes etc that require their attention.

The Comcare regs should not state the requirement for a national OHS committee, this may not fit the structure or operation for an organisation.

Organisations should be allowed some flexibility in this to determine what fits their organisation and geographic spread.

Right of entry should be completely restricted to enforcement agencies. The union should not be in a position to enter. The enforcement agencies should work with employers and employees through the standard issue resolution process. Often the union have alternate agendas and do not focus on the current issues but rather what they may be pushing at the time. This can lead to immense distraction and resource drain rather than improvement in OHS systems and processes. Where unions are on site their voice should be heard as per all other employees through the HSRs.

The entry of enforcement agency members may be as a result of an incident or injury. It may also be the target for promotional programs and education. However notice should be provided to ensure they can be adequately accompanied and provided with the information they are looking for. A second opinion or validation group should be available for disputes with employers and inspectors. It is known that inspectors opinion can vary, they need to be reasonable as well.

Provision should be included for Issue resolution, however it should be for the company to decide the process. Resolving issues should be part of the daily processes. The key is that employees should provide feedback, be reasonable, look at real potential for the risk or issue and also input into solutions.

Right to cease work needs to be managed carefully, this needs to be done with reason understanding that the impact can be very costly. It should be part of the principles, employers should also want to cease work as needed to resolve issues and you find that most employers have and will cease work to manage issues or ensure that operation and controls are safe.

Discrimination is better included in alternative legislation. Not under OHS. Of course no one who had a claim or raises an issue should be discriminated against.

### **Compliance & Enforcement:**

Regulators need to take a business focus and equal responsibility with employers. Flaws and limitations in Acts, definitions etc should be rectified more quickly. They should have powers, however they should also have consequences to match the powers so they can not act recklessly. Again this may go back to the principles. The focus should be education and assistance. They should also have more responsibility for conducting their own investigations rather than reviewing investigations completed by the employer. They may identify other items which could add more value for real improvement.

They should help focus employers to assistance and guidance material. They need to be open minded to how employers can demonstrate their application of the Act and regulations. Sometimes it is the fault of prescriptive regs etc however sometimes the inspectors believe there is only one way to achieve something.

## **Prosecutions:**

The idea of a hierarchy of enforcement is a good one. It should consider the effort made by the employer and the complexity and resources required to maintain compliance.

The notices should have an agreed risk assessment considering what is reasonably practicable to determine the time frames for completion.

Enforcement should be the last action taken. Employers need to be held to account however fines etc do not necessarily add up to improved OHS. This should be the focus of the outcome, improved OHS conditions.

## **Other Issues:**

The authorities should have to consult with employers regarding changes and gather input and feedback to understand the benefits and implications.

Reporting to authorities should be very limited so that resources are only deployed as needed. The result should be assistance and support unless there is reckless behaviour. Otherwise the employer should be handling the remedy of the issue that caused the incident. As stated earlier in the submissions there should be very clear definitions. Perhaps there is more transparency on overall performance and trends of employers rather than spot incidents.

There should definitely be an appeals mechanism. This should not be arduous, it should include mediation and each side to present their issue and case to support.

Not sure about the tripartite bodies. Going back to my first point here, if regulators consult with employers then that should be the mechanism.

All areas should be subject to mutual recognition. This should be standardised across the country with a lengthy phase in and bridging approach to a national standard.

There should be one set of laws. Many companies operate nationally with a consistent set of requirements. The better standards should be selected and introduced across the board. This negates the issue for cross jurisdictions and mutli law applications. For example of you subject to Commonwealth requirements, this may not apply to your sub contractors or you in certain situations. So the benefit is lost and you are still grappling with working to all state and territory requirements.

The states should focus more on industry clusters in their area, trends from injury data and specific methods to help promote and reinforce improvement rather than setting laws.

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

---

### GENERAL COMMENTS

**General Comments:**

Consistency with some flexibility should be the key. With a focus on promoting and educating in regard to the requirements rather than adding to the requirements.