

# YOORALLA

*People Helping People Achieve*



8 July 2008

National OHS Review Secretariat  
Department of Education, Employment and Workplace Relations  
64N1 GPO Box 9880  
Canberra ACT

Dear Sir/Madam

## **National Review into Model OHS Laws**

Thank you for giving us the opportunity to respond to the issues as set out within the consultation paper. As Yooralla operates in the disability sector, we are aware that a submission has been made by the National Disability Organisation and support that submission. However as one of the largest employers within the sector, we also wish to make our own submission.

Yooralla has not responded to all areas outlined in the National OHS Act Issues paper, but have focussed our attention on issues that are relevant to the Disability Sector and more specifically Yooralla.

Yooralla is a large disability organisation, with approximately 1,400 employees, that provides support and assistance to a range of people with disabilities, including people with significant behaviours of concern and complex medical needs. Hence there are inherent risks associated with that provision of service. Yooralla is often an agency of last resort, in that Yooralla provides services to the most difficult or challenging of clients. These services are not discretionary, by which we mean that these clients cannot be ignored simply because they are difficult or challenging. Without the supports provided by Yooralla, many of our clients would be at significant personal risk and would certainly be in danger of deprivation of basic human rights.

We would argue, therefore, that some consideration is required to align our services to those of emergency, health and mental health services, where there appears to be recognition that their services need to be provided as a public necessity, even when the inherent risk is high.

Yooralla needs to be able to continue to provide services in a flexible and responsive manner, therefore there needs to be recognition in the model act that workplaces are no longer traditional and may include people's private homes or the wider community. Neither of these environments can be significantly controlled by Yooralla management and therefore have residual risks.

Yooralla also believes that the employer should only be responsible for workplace risks, so that influences on health, such as stress and fatigue, that are external to the workplace, are not our responsibility (i.e. we are not, by default, responsible for 'whole person well-being').

The issuing of PIN notices on individual clients or users of our services is a concern for Yooralla and has been considered in the past by WorkSafe inspectors. It is recognised that in some situations, a client who displays behaviours of concern may in fact be responsible for causing injury to employees, however there are other factors that must be taken into consideration before issuing the PIN. We believe that the issuing of a PIN notice on an individual client could well be seen as bordering on an abuse of the human rights of that client with disabilities, as it stops our organisation and possibly any other organisation from providing the service that is required and could even be life-preserving.

Working in collaboration with WorkSafe is critical in meeting the ultimate goal of providing employees with a safe work environment. Yooralla sees that WorkSafe must provide organisations with assistance and advice to meet the goals of the Act. This includes taking into account the special nature of our services.

Yooralla certainly agrees that not having used appropriate resources or environmental controls should never be offered or accepted as an excuse for the death or serious injury of an employee. However there needs to be some consideration given to the duty and responsibilities of the funder of a given service that is provided for the public good. By seeking a provider for the service (i.e. employing a purchaser/provider model) and offering funding, the funding body ought to be seen as accepting an ongoing responsibility for the health and safety of the workers who ultimately provide the service. At the moment, this is not the case, and Yooralla often finds itself in the position of agreeing to provide a given service, for example on behalf of the Victorian Department of Human Services, but then wearing an unreasonable proportion of the responsibility and costs in relation to the provision of a safe working environment when the needs of the clients or the regulations associated with the mode of service change. In summary then, we accept that it should never be an allowable defence that an enterprise could not afford the protection that would have saved a worker's life or protected him or her from injury, but we also believe that where the service is offered on behalf of another, the purchaser of the service has a duty to fund the appropriate levels of protection and maintains a vicarious liability if it fails to do so. Accordingly, should a serious OHS issue occur, there would be a joint responsibility in prosecution (our organisation and the funding body) if it is deemed that the service was not funded appropriately.

Directors of not-for-profit organisations are also liable at present for breaches of OH&S law in the same way as directors in other organisations. However not-for-profit Directors are not remunerated for their directorships and therefore we believe this personal risk without corresponding recompense may lead Directors to shy away from the provision of services in the higher risk areas. By refusing to accept high risk clients, agencies would be ensuring that people who are already amongst the most marginalised

in our society would be further discriminated against, which would create a significant moral and Human Rights concern for the nation.

Turning to some of the specific questions raised in the issues paper, we agree that there should be provision in the Act to allow staff to cease or refuse to complete work they deem unsafe or unhealthy, however there would need to be some very tight guidelines (page 24).

We also strongly support the need for regulations or codes that are industry specific for the disability industry (page 8).

In relation to the burden of proof (page 37), we believe this should lie with the prosecutor, in almost all, if not all, cases. The organisation should not have to prove that it did not break the law. There is obvious additional cost associated with a system that assumes guilt until it is disproved.

Consultation (page 21) is certainly an important aspect, however in Victoria it requires Health and Safety Representatives to be consulted prior to all staff. The aim of this pre-consultation is not clear. Also, in relation to consultation with all employees, there are obvious time and cost implications in a workforce that is as widespread as Yooralla's in complying with this expectation, particularly in relation to employees working in people's homes, contractors, volunteers and casual staff.

As covered on page 28, we feel inspectors should be involved in giving assistance and advice, rather than just an enforcement role, as it diminishes the extent of guess work about what the inspector requires, assists in achieving compliance, and improves the quality of practice.

As discussed above, the concept of reasonably practicable (page 19) should include recognition that Disability sector work has inherent risk and so should align us with emergency services and mental health services regarding what level of practicability is achievable.

I trust that you will give our comments due consideration and thank you for the opportunity to express our views.

Yours sincerely



**Bryan Woodford**  
MANAGING DIRECTOR &  
CHIEF EXECUTIVE OFFICER