

Further Submission into the National Review of OHS Law

Geoff Taylor, Adj. Prof. (Curtin University Faculty of Engineering).
Director, Work Safety and Health Associates and Enhancing Safety Pty Ltd
Editor and co-author, OHS textbooks and workbooks, a community safety book, and a mining safety newsletter.

This follows my submission on the need for one piece of national OHS legislation , or at most only federal OHS acts covering all workers in Australia* for general workplaces, mining, petroleum and seafaring.

*or as appropriate on Australian rigs and vessels

Responses to the Issues Paper

Contents

3.2 and 5.2 Special groups of workers

3.4 Training

3.4 and 3.6 Provision of OHS services

- **Spain**
- **Mexico**
- **Malaysia**
- **China**
- **Comment**

3.8 National Industrial Chemicals Notification and Assessment Scheme

6.2 Agency agreements

Appendix 1 Excerpt from Mexican Reglamento on Safety, Hygiene and Work Environment

Appendix 2 ILO Convention 161

Appendix 3 Excerpt from UK HASAW Act

3.3 and 5.2

Special groups of workers

In Spanish-speaking America, OHS laws may deal especially with women, apprentices, minors and homebased workers (eg. Paraguay), with pregnant women (eg. Guatemala, Peru), women of procreative age (eg. Chile), blind workers (eg. Chile), and with minors (eg. Costa Rica). In Mexico OHS committees are charged especially with the responsibility to safeguard women, especially pregnant and lactating women (see Appendix 1), and minors.

3.4

Training

This is not specifically addressed in the issues paper.

One of the reasons for the success of the push for safer mining in Western Australia since 1990 has been the introduction of a common standard of induction training in 1994 by an association formed by group of contractors, known as MARCSTA.

Pat Gilroy, present CEO of MARCSTA, has adjusted the course content so that it is built on the unit Work Safely in the national metalliferous mining package. There is now a similar Work Safely unit in the recently revised ASCC Guidelines for Integrating OHS in to National Industry Training Packages. MARCSTA certification must be renewed every two years.

This is recognised by a range of (but not all) contractors and mining companies. It does not replace company- and site-specific inductions, but the intention is that these do not repeat what the MARCSTA course covers. MARCSTA operates as an RTO, although some of its individual members are also RTOs in their own right. It has strict quality control, in initial approval of licensed training providers, in documentation by members, and in unannounced audits of training sessions.

The link between this training and improved OHS outcomes has recently been independently demonstrated in a PhD thesis by Dr Ian Douglas at ECU. Another factor was the introduction in 1991 by the WA mining industry of joint attendance by management and safety and health representatives at OHS representative training. (management attendees were excluded a few years later because their inclusion did not accord with the requirements for the course set by the WA OSH Commission).

Compulsory OHS induction also exists in eg, the Queensland mining industry, and, with a degree of commonality in most states and territories, with the Blue Card for the construction industry.

It is suggested that the general duty in regard to information, instruction and training spells out that all employees must receive induction training in OHS preferably before commencing work, but, recognising practicality, at least within a short specified time.

There would be clear advantages in employees then progressing to complete the Certificate III OHS units in the Business Services training package.

Special attention needs to be given to 457 visa workers, both in regard to language and OHS skills and legal entitlements.

3.4 and 3.6

Provision of OHS services

The relevant ILO Convention is 161 with Recommendation 171. See Appendix 2. Australia is not recorded on the ILO database as having ratified Convention 161.

The convention recognises [Article 1(a)(i)] that provision of occupational health services includes the provision of occupational safety services.

Queensland has long had the WHSO concept in specified workplaces. However the training requirements are quite short by comparison with those developed for the Certificate IV, Diploma and Advanced Diploma in the Business Services Training package, and by universities which provide OHS degrees.

It is time for any future OHS law to legally recognise those (OHS managers, OHS superintendents, OHS advisors, OHS coordinators) who are employed to provide specific skills in OHS to an organisation.

- **Spain**

It is instructive to look at the 21 Spanish-speaking countries. Many of these have a civil law legal system under which ratification of an international instrument such as ILO Convention 155 (or the Andean nations' Cartagena Accord under which lies the Andean Instrument on Safety and Health at Work), automatically makes it law in that country.

In Spain, under law passed by the Spanish parliament, employers must organise resources to develop preventive actions. The company size and types of risks affect the resources required. If a company has over six workers (there are certain other factors), the employer must designate personnel to be responsible for OHS, and ensure they are appropriately trained to perform their duties. Companies can create their own OHS service or outsource it. The MATEPSS (mutuas – regional or sectoral mutual insurance organisations formed by employers) may provide the outsourced service. Joint prevention services may be arranged if companies share a building and in certain other circumstances. Prevention services of themselves do not relieve the employer's obligations.

While employers carry the cost of prevention, a foundation to improve OHS especially in small enterprises is also funded by management surpluses in the MATEPSS. This is based on need for occupational health related activities per employee per year.

Preventive services must address:

- risk factors
- design and implementation of prevention
- prioritisation
- monitoring of information and training for employees
- provision of first aid, emergency and surveillance plans for employee health, especially if they are pregnant, postnatal, youth, sensitive to some risks or exposed to known risks.

Health monitoring includes initial checkup, following prolonged absence on health grounds, and regular checkups. The OHS service must also provide first aid and emergency treatment, and look at links between exposure and health. They must also collaborate with hospital services to diagnose, treat and rehabilitate employees with occupationally related conditions, as well as with health authorities.

- **Mexico**

This is a modified machine translation of the Mexican Reglamento on Safety, Hygiene and Work Environment accompanying the Federal Law on Work but the idea is clear.

CHAPTER SEVENTH

PREVENTIVE SERVICES OF SECURITY AND HYGIENE IN THE WORK

ARTICLE 150.

The Secretariat (government), the employers and the workers will promote the development of preventive services of security and hygiene in the work centres, taking care of the nature and characteristics of the activities that are realised and the number of exhibited workers. These services shall be under the supervision of professionals qualified in this discipline.

ARTICLE 151. The preventive services of security and hygiene in the work to that the previous article talks about, will develop the following activities:

- I. Investigation of the conditions of security and hygiene in centre of work;
- II. Investigation of the producing causes of incidents, accidents and diseases of work;
- III. Promotion of the improvement of the environmental conditions in the work centres;
- IV. Development of the security program and hygiene in the work, and
- V. Determination of the agents to that the workers are exhibited, by means of recognition and evaluation of the work environment, carrying out, where appropriate, the control of the same.

ARTICLE 152. The preventive services of security and hygiene in the work, could external or be given within the own company. These services will help to the qualification of the workers in the matter of prevention of risks. The employer must facilitate the work of the people in charge of the preventive services of security and hygiene in the work, when these are provided in internal form.

- **Malaysia**

It is also instructive to look at the Malaysian OHS Act, viz:

PART VII

SAFETY AND HEALTH ORGANIZATIONS

29. Safety and health officer.

(1) This section shall apply to such class or description of industries as the Minister may, by order published in the Gazette, specify.

(2) An occupier of a place of work to which this section applies shall employ a competent person to act as a safety and health officer at the place of work.

(3) The safety and health officer shall be employed exclusively for the purpose of ensuring the due observance at the place of work of the provisions of this Act and any regulation made thereunder and the promotion of a safe conduct of work at the place of work.

(4) The safety and health officer shall possess such qualifications or have received such training as the Minister may, by notification in the Gazette, from time to time prescribe.

- **China**

The Work Safety Law 2002

If a work unit handles hazardous materials or has more than 300 employees it needs to have a production safety management department or have a full-time production safety management team. A part-time safety team is still needed in smaller work units. These people must be provided with safety education, and pass exams set by an approved body. Safety training must be provided to all employees. SAWS issued opinions on work safety training providing more detail in late 2002. Work units such as subcontractors operating at the one site are required to develop a work safety agreement.

Employees must be provided with appropriate safety equipment and trained and supervised in its use. Certain types of operators of equipment. eg. boilers, cranes, welders, must be trained and certified by an approved body.

All work units must run checks on hazardous materials facilities, on their exits, and the separation of buildings such as dormitories from them. The unit must inform the local authorities of emergency procedures. Approval is needed before design and construction or renovation of certain facilities involving hazardous materials.

If two work units operate in the same area, such as subcontractors at a construction site, they must arrange a work safety control agreement.

Comment

I am sure that someone is going to say – but do workers in Spain, Malaysia and China really get those services? That is not really the point. The point is the principle involved.

In general, OHS services may be provided in a number of ways, such as

- public,
- direct employment by a workplace, or
- facilities serving a group of workplaces, or
- a large workplace also providing its OHS staff services to smaller workplaces.

Australia in general has not ensured that its OHS legislation reflects Convention 161, even if it hasn't ratified it. The employers of a large number of workers do not provide them with access to professional OHS services.

3.8

National Industrial Chemicals Notification and Assessment Scheme

Would it be better for this to be administered by the national OHS authority, as it used to be, rather than DHA, even though it involves community health and environmental issues?

6.2

Agency agreements

The UK HASAW Act provides for local government officers such as environmental health officers (EHOs) to be able to inspect designated (eg. smaller) workplaces on OHS matters, and for specialised inspectorates such as the nuclear inspectorate to perform the inspectorate functions under the Act. See Appendix 3. EHO's here receive appropriate training during their degree studies to make this a possibility. It makes a lot of sense, particularly in country areas and to avoid duplication of visits to small workplaces.

Appendix 1

This is a modified machine translation of the Mexican Reglamento on Safety, Hygiene and Work Environment but the idea is clear.

TITLE FIFTH

OF THE PROTECTION OF THE WORK OF MINORS AND THE WOMEN IN PERIOD OF GESTATION AND LACTATION CHAPTER FIRST OF THE WORK OF THE PREGNANT WOMEN AND IN PERIOD OF LACTATION

ARTICLE 153.

The dispositions of this Chapter intend to protect the health of the women pregnant workers and in period of lactation, as well as to the product of the conception.

ARTICLE 154. The work of pregnant women in workings will not be able to be used where:

- I. Teratogenic or mutagenic substances are handled, transported or stored;
- II. Exposure to radiation sources exists ionizing, able to produce contamination in the work atmosphere, in accordance with the legal dispositions, the regulations or Norms applicable;
- III. Abnormal environmental pressures or altered environmental thermal conditions exist;
- IV. The muscular effort that is developed can affect the product of the conception;
- V. The work takes place in drilling rigs or marine platforms;
- VI. Where submarine, underground workings take place or in open-cast mines;
- VII The work is done in confined spaces;

VIII. Welding work is done, and
IX. Other activities are done which are determined as dangerous or unhealthy in the laws, applicable regulations and Norms.

ARTICLE 155. The work of women in period of lactation will not be able to be used, in workings in which exposure to chemical substances exists which can act on the life and health of the suckling baby.

ARTICLE 156. A woman worker who is in the indicated places of work in article 154 of this Regulation, will have to inform to the employer that she is in gestation state, immediately after she has knowledge of the fact, exhibiting to him the corresponding medical certificate, in order that he can temporarily relocate her into other activity that is not dangerous, unhealthy or unhygienic.

ARTICLE 157. The employer will have to strictly observe the medical requirements for the protection of the health of the pregnant workers and the product of the conception.

Appendix 2

ILO Convention 161: Occupational Health Services Convention, 1985

Convention concerning Occupational Health Services Convention:C161 Place: Geneva Date of adoption:25:06:1985 Subject classification: Occupational Health Services Subject: **Occupational Safety and Health** Status: Up-to-date instrument This Convention was adopted after 1985 and is considered up to date.

The General Conference of the International Labor Organization,
Having been convened at Geneva by the Governing Body of the International Labor Office, and having met in its Seventy-first Session on 7 June 1985, and

Noting that the protection of the worker against sickness, disease and injury arising out of his employment is one of the tasks assigned to the International Labor Organization under its Constitution,

Noting the relevant international labor Conventions and Recommendations, and in particular the Protection of Workers' Health Recommendation, 1953, the Occupational Health Services Recommendation, 1959, the Workers' Representatives Convention, 1971, and the Occupational Safety and Health Convention and Recommendation, 1981, which establish the principles of national policy and action at the national level,

Having decided upon the adoption of certain proposals with regard to occupational health services, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this twenty-sixth day of June of the year one thousand nine hundred and eighty-five the following Convention, which may be cited as the Occupational Health Services Convention, 1985:

PART I. PRINCIPLES OF A NATIONAL POLICY

Article 1

For the purpose of this Convention-

(a) the term *occupational health services* means services entrusted with essentially preventive functions and responsible for advising the employer, the workers and their representatives in the undertaking on

(i) the requirements for establishing and maintaining a safe and healthy working environment which will facilitate optimal physical and mental health in relation to work;

(ii) the adaptation of work to the capabilities of workers in the light of their state of physical and mental health;

(b) the term *workers' representatives in the undertaking* means persons who are recognized as such under national law or practice.

Article 2

In the light of national conditions and practice and in consultation with the most representative organizations of employers and workers, where they exist, each Member shall formulate, implement and periodically review a coherent national policy on occupational health services.

Article 3

1. Each Member undertakes to develop progressively occupational health services for all workers, including those in the public sector and the members of production co-operatives, in all branches of economic activity and all undertakings. The provision made should be adequate and appropriate to the specific risks of the undertakings.

2. If occupational health services cannot be immediately established for all undertakings, each Member concerned shall draw up plans for the establishment of such services in consultation with the most representative organizations of employers and workers, where they exist.

3. Each Member concerned shall indicate, in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labor Organization, the plans drawn up pursuant to paragraph 2 of this Article, and indicate in subsequent reports any progress in their application.

Article 4

The competent authority shall consult the most representative organizations of employers and workers, where they exist, on the measures to be taken to give effect to the provisions of this Convention.

PART II. FUNCTIONS

Article 5

Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, and with due regard to the necessity for the workers to participate in matters of occupational health and safety, occupational health services shall

137

have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking:

- (a) identification and assessment of the risks from health hazards in the workplace;
- (b) surveillance of the factors in the working environment and working practices which may affect workers' health, including sanitary installations, canteens and housing where these facilities are provided by the employer;
- (c) advice on planning and organization of work, including the design of workplaces, on the choice, maintenance and condition of machinery and other equipment and on substances used in work;
- (d) participation in the development of programs for the improvement of working practices as well as testing and evaluation of health aspects of new equipment;
- (e) advice on occupational health, safety and hygiene and on ergonomics and individual and collective protective equipment;
- (f) surveillance of workers' health in relation to work;
- (g) promoting the adaptation of work to the worker;
- (h) contribution to measures of vocational rehabilitation;
- (i) collaboration in providing information, training and education in the fields of occupational health and hygiene and ergonomics;
- (j) organizing of first aid and emergency treatment;
- (k) participation in analysis of occupational accidents and occupational diseases.

PART III. ORGANIZATION

Article 6

Provision shall be made for the establishment of occupational health services-

- (a) by laws or regulations; or
- (b) by collective agreements or as otherwise agreed upon by the employers and workers concerned; or
- (c) in any other manner approved by the competent authority after consultation with the representative organizations of employers and workers concerned.

Article 7

1. Occupational health services may be organized as a service for a single undertaking or as a service common to a number of undertakings, as appropriate.

2. In accordance with national conditions and practice, occupational health services may be organized by-

- (a) the undertakings or groups of undertakings concerned;
- (b) public authorities or official services;
- (c) social security institutions;
- (d) any other bodies authorized by the competent authority;
- (e) a combination of any of the above.

Article 8

The employer, the workers and their representatives, where they exist, shall cooperate and participate in the implementation of the organizational and other measures relating to occupational health services on an equitable basis.

PART IV. CONDITIONS OF OPERATION**Article 9**

1. In accordance with national law and practice, occupational health services should be multidisciplinary. The composition of the personnel shall be determined by the nature of the duties to be performed.

2. Occupational health services shall carry out their functions in co-operation with the other services in the undertaking.

3. Measures shall be taken, in accordance with national law and practice, to ensure adequate co-operation and co-ordination between occupational health services and, as appropriate, other bodies concerned with the provision of health services.

Article 10

The personnel providing occupational health services shall enjoy full professional independence from employers, workers, and their representatives, where they exist, in relation to the functions listed in Article 5.

Article 11

The competent authority shall determine the qualifications required for the personnel providing occupational health services, according to the nature of the duties to be performed and in accordance with national law and practice.

Article 12

The surveillance of workers' health in relation to work shall involve no loss of earnings for them, shall be free of charge and shall take place as far as possible during working hours.

Article 13

All workers shall be informed of health hazards involved in their work.

Article 14

Occupational health services shall be informed by the employer and workers of any known factors and any suspected factors in the working environment which may affect the workers' health.

Article 15

Occupational health services shall be informed of occurrences of ill health amongst workers and absence from work for health reasons, in order to be able to identify whether there is any relation between the reasons for ill health or absence and any health hazards which may be present at the workplace. Personnel providing occupational health services shall not be required by the employer to verify the reasons for absence from work.

PART V. GENERAL PROVISIONS

Article 16

National laws or regulations shall designate the authority or authorities responsible both for supervising the operation of and for advising occupational health services once they have been established.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labor Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labor Organization whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labor Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labor Office shall notify all Members of the International Labor Organization of the registration of all ratifications and denunciations communicated to him by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 21

The Director-General of the International Labor Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary the Governing Body of the International Labor Office shall present to the General Conference a report on the working of this

Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.

Appendix 3

From the UK HASAW Act.

Authorities responsible for enforcement of the relevant statutory provisions.

18. (1) It shall be the duty of the Executive to make adequate arrangements for the enforcement of the relevant statutory provisions except to the extent that some other authority or class of authorities is by any of those provisions or by regulations under subsection (2) below made responsible for their enforcement.

(2) The Secretary of State may by regulations

- make local authorities responsible for the enforcement of the relevant statutory provisions to such extent as may be prescribed;
- make provision for enabling responsibility for enforcing any of the relevant statutory provisions to be, to such extent as may be determined under the regulations transferred from the Executive to local authorities or from local authorities to the Executive; or
- assigned to the Executive or to local authorities for the purpose of removing any uncertainty as to what are by virtue of this subsection their respective responsibilities for the enforcement of those provisions; and any regulations made in pursuance of paragraph (B) above shall include provision for securing that any transfer or assignment effected under the regulations is brought to the notice of persons affected by it.

(3) Any provision made by regulations under the preceding subsection shall have effect subject to any provision made by health and safety regulations or agricultural health and safety regulations in pursuance of section 15(3)(C).

(4) It shall be the duty of every local authority

- to make adequate arrangements for the enforcement within their area of the relevant statutory provisions to the extent that they are by any of those provisions or by regulations under subsection (2) above made responsible for their enforcement; and
- to perform the duty imposed on them by the preceding paragraph and any other functions conferred on them by any of the relevant statutory provisions in accordance with such guidance as the Commission may give them.

(5) Where any authority other than the appropriate Agriculture Minister, the Executive or a local authority is by any of the relevant statutory provisions or by regulations under subsection (2) above made responsible for the enforcement of any of those provisions to any extent, it shall be the duty of that authority

- to make adequate arrangements for the enforcement of those provisions to that extent; and
- to perform the duty imposed on the authority by the preceding paragraph and any other functions conferred on the authority by any of the relevant statutory provisions in accordance with such guidance as the Commission may give to the authority.

(6) Nothing in the provisions of this Act or of any regulations made thereunder charging any person in Scotland with the enforcement of any of the relevant statutory provisions shall be construed as authorising that person to institute proceedings for any offence.

(7) In this Part

- "enforcing authority" means the Executive or any other authority which is by any of the relevant statutory provisions or by regulations under subsection (2) above made responsible for the enforcement of any of those provisions to any extent; and
- any reference to an enforcing authority's field of responsibility is a reference to the field over which that authority's responsibility for the enforcement of those provisions extends for the time being;

But where by virtue of paragraph (A) of section 13(1) the performance of any function of the Commission or the Executive is delegated to a government department or person, references to the Commission or the Executive (or to an enforcing authority where that authority is the Executive) in any provision of this Part which relates to that function shall, so far as may be necessary to give effect to any agreement under that paragraph, be construed as references to that department or person; and accordingly any reference to the field of responsibility of an enforcing authority shall be construed as a reference to the field over which that department or person for the time being performs such a function.