

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

1. INTRODUCTION

The NUW welcomes the opportunity to provide input into this most important and historical review. The NUW represents over 90,000 members nationally covering a wide range of industries including:

- Warehousing and distribution
- Cold storage
- Rubber and plastics and cable making
- Pharmaceutical manufacturing.
- Poultry and fish processing
- Food manufacturing
- Dairy product processing
- Market research
- Sales representatives
- Merchandisers

The NUW has a proud history of protecting our members' conditions and supporting many thousands of elected representatives over the years by providing training, advice and representation. Officials of the NUW have participated in many tripartite forums and activity relating to improving OHS standards and therefore have had substantial experience to provide informed input to the National Review.

The National Union of Workers supports the development of national model OHS legislation. The National Union of Workers believes that any review must be about assessing the success or otherwise of legislation and identifying those areas that have failed to protect workers. Therefore this review should be about fixing any failures and ensuring Australia has the best legislation possible to protect working people.

The NUW has provided input into the ACTU submission. The National Union of Workers fully endorses the ACTU submission to the National OHS Review. The National Union of Workers provides the following additional comments relating to the most important role unions play in improving health and safety standards. This in no way retracts from the role governments also play in enforcing the law. Unions play a more hands on and complimentary role and the NUW does not believe current OHS legislation in any one state sufficiently acknowledges or supports that crucial role.

2. OHS LAW

The purpose of any OHS ACT/ legislation is to protect workers from work related injury, illness and disease. The aim must be to ensure any work related injury, illness and disease is eliminated. Any OHS legislation must be all encompassing to ensure that workers are protected against anything relating to work that may affect a workers health, safety or welfare. And it must also be able to be effectively enforced.

To achieve this there must be a preventative approach with the aim of eliminating hazards and risks at their source. OHS therefore must have a holistic approach with OHS being an integrated part of an organisations day to day activity, including industrial activity. Workplaces must be proactive rather than reactive to achieve the highest level of protection and continuous improvement.

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

The fundamental framework of current OHS legislation in all states is about the participation of employers and employees.

The NUW believes that employers must continue to have a specific duty to provide a safe and healthy workplace and workers have the right to participate through the election of Health & Safety Representatives and support from their representative organisations. It was always assumed that HSRs would play a leading role at the workplace to achieve the above goals.

In “Understanding Occupational Health and Safety Law in Victoria” by WB Creighton, 1986, Breen makes comment in regard to conclusions drawn by the committee chaired by Lord Robens ...

“The most fundamental conclusion to which our investigations have led us is this. There are severe practical limits on the extent to which progressively better standards of safety and health at work can be brought about through negative regulation by external agencies. We need a more effectively self-regulating system. This calls for the acceptance and exercise of appropriate responsibilities at all levels within industry and commerce. It calls for better systems of safety organisation, for more management initiatives, and for more involvement of workpeople themselves.”

The question must be asked has self-regulation worked or does it work?

The answer must be yes and no.

It only works in achieving the highest possible standards when:

- The state plays an important role in enforcement;
- There are high penalties for non - compliance;
- Workers are organised and able to elect representatives without intimidation;
- Workers and their elected representatives are able to get assistance;
- Workers organisations are able to freely provide assistance
- in all aspects relating to an issue
- Elected representatives are able to participate freely without recrimination
- Employer and employee organisations are actively involved in the formulation of standards and provide advice to government and departments

Creighton makes the point in his book “Understanding Occupational Health and Safety Law in Victoria” about organised labour: “...it is *inherently unlikely that a workforce which was not sufficiently motivated or organised to have formed or joined a trade union would be sufficiently motivated or organised to adopt a very positive approach to self-regulation in the sense of joint participation.*”

Workers will not speak up and will not raise issues unless they feel safe and confident to speak up so for any legislation to be effective it must provide that safe environment.

3. OHS AN INTEGRATED PART OF WORKPLACE

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

To achieve the highest standards health and safety must be an integral part of all the day to day activities and systems of an organisation.

Work organisational factors have a major influence on health and safety and therefore must be a consideration in the workplace OHS program. However, without an integrated approach work organisational factors most often get overlooked as health and safety issues and placed in a separate “industrial box”.

Some of these work organisational factors include:

- Production levels
- Shift and rostering arrangements
- Work rates
- Bonus schemes
- Patterns of working hours
- Downsizing
- Casual employment

Casual workers are often used to perform the hard manual labour or outsource work that has been identified as a high health and safety risk. For example, the manual loading and unloading of containers or manual picking of orders in warehouses, or outsourcing mixing of toxic chemicals.

These risks, working hours etc, are usually not regulated, but they often cause long & short term health & safety related consequences for workers.

Some of the health effects resulting from these organisational factors include:

- Sprain and strain injuries or musculoskeletal diseases
- Stress (psychosocial health)
- Increased exposure to other physical hazards such as noise or substances
- Bullying or violence
- Fatigue

These trends indicate why it important for health and safety to be integrated into the overall systems of the workplace. It is therefore important to view OHS as an integral part of the whole workplace.

There are many provisions in collective agreements/industrial legislation that are relevant to protecting workers health, safety and welfare.

- Pay rate = good pay = happy worker
- Bonuses
- Breaks
- Holiday and sick day provisions
- RDOs – days off
- Shift arrangements
- Hours of work
- Overtime requirements

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

- Productivity rates
- Workload
- Types of jobs
- Staffing levels
- Casual employment arrangements
- Skill levels – training

To achieve a preventative approach then other relevant legislation such as, Accident Compensation, Discrimination and Industrial legislation need to be complementary and supportive of OHS legislation to ensure workplaces achieve the highest standards and highest levels of protection.

That is, employment contracts, collective agreements establish the frame and motor for workplaces to operate; the OHS laws need to be the driver to steer them in the right direction.

Also, current awards where there are OHS provisions are particularly outdated because the requirements to update them are very tedious and costly under the current industrial system.

3. LAWS ON THEIR OWN DO NOT ACHIEVE CHANGE OR IMPROVEMENTS

Case study example...

Let's examine a most tragic fire that occurred in the Kader Industrial (Thailand) toy manufacturing factory in Bangkok back in June 1993 when 189 women died.

The factory manufactured famous brand name toys such as Bart Simpson. A fire broke out and the women workers could not escape because they were trapped by exits to prevent workers stealing product and because the regulations in Thailand were very limited.

They were locked inside with a security guard who was employed to protect the property and product and prevent the women workers from getting through to escape the blaze through a secured area.

Many of the women just jumped out of the windows to escape and either died or sustained serious injury. Very few survived. Those who did survive did so by landing on the bodies of their co-workers below who had jumped before them.

There has been no compensation for those survivors and the employer has not been prosecuted and found guilty of any offence. They weren't even fined.

The overseas owned Kader factory relied on a low wage (\$30 a week) and non-unionised workforce to manufacture Bart Simpson dolls for sale in the West. (The Australian Financial Review, 3 June 1993)

Safety checks on 3000 factories following the fire found that over 60% had no fire alarms, lacked emergency exits or had blocked windows (Asiaweek, 23 June 1993:56).

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

There is a recent comparable example at an NUW workplace where an NUW official convened a meeting with night shift workers. At the end of meeting he asked everyone whether they had any other issues – the reply was yes and they explained that the fire exit doors had been locked by the management to prevent thieving. In the event of an emergency the company procedure was to ring security to get the fire exit doors unlocked.

To test this procedure the Official rang the mobile number provided and it went straight to an answering machine. The Official said this was outrageous situation and asked people to get bolt cutters and cut the lock straight away. He then rang the general manager to inform him of their actions and to explain that he expected that the company would rectify the problem.

Both examples demonstrate clearly why a strong union movement is essential to protect workers from death, injury and ill health as well strong laws. The laws only have effect if they are enforced. OHS legislation needs to be more than just words on paper.

To make OHS laws effective workers need to:

- Have confidence to speak up without fear of losing their job
- Have active elected HSRs who can speak up and act on behalf of workers
- Have confidence to take action
- Know they can freely get assistance from their union

4. HISTORY AND ROLE OF UNIONS IN OHS

Occupational Health and Safety and the development of laws to protect working people has been an integral part of our union movements' history of workers fight to improve conditions. Unions have led many important campaigns relating to improving workers conditions and improving OHS standards. This leadership and representative role must also be acknowledged and recognised in OHS legislation.

Some examples of these campaigns include:

- 8 hour day campaign to have more rest time to reduce fatigue and tiredness.
- Decades long struggle relating to asbestos.
- BHP- Australian Iron & Steel Equal Opportunity case focused around jobs for women resulting in the removal of the 16kg weight limit for women which had restricted their right to work in jobs of their choice. The laws today relating to manual handling reflects that campaign.
- Many campaigns and strikes within the mining industry have often been related to work related disease and safety in the mines dating as far back as the 1890's for improved laws and regulation that would place responsibility on the employer and on the right to compensation for those who had become ill or injured.

5. UNION EFFECT

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

University of Arizona professor Herbert Abrams' "Short history of occupational health," published in the Journal of Public Health Policy, notes:

"It is important to recognise that throughout the often tragic history of worker health and disease, the worker played a primary role as the basis of every significant improvement in legislation, factory inspection, compensation, correction, and prevention."

Abrams concludes: "Labour unrest, protests, strikes, lawsuits, and catastrophes were vital catalysts in obtaining action.

Organised labour has been the essential factor central to most workplace health and safety improvements, from the industrial revolution to the present."

Unions have fought for and won safety laws and employment protection, but the union safety effect, evident worldwide, shows that it is the presence of informed and active unions that give the laws meaning.

The true extent of the union protective effect was evaluated in a 1995 study of UK unions.

This study found that in workplaces with full union recognition and a joint management-union health and safety committee, serious accident rates were less than half those at firms with no union recognition and no joint committee.

The three key findings were that:

- Workers have played a primary role in getting ohs legislation
- Activity and collective actions were vital to achieving results
- Presence of unions that give the laws meaning

6. ACTU POLICY

Traditionally the union movement did not always focus on fixing the problem or controlling the hazard at source, e.g. provisions in awards for protective clothing and safety shoes. In the late 70's the ACTU Congress adopted the following principles:-

- Right to a work environment that is safe, healthy and free from stress
- Responsibility is with the employer to provide a safe work environment
- Hazards must be reduced at their source to prevent injury rather than workers adapting to hazardous situations
- Right of workers to take action to improve OHS at work

These principles form the basis for the union approach today as outlined in the ACTU Occupational Health, Safety, Compensation and Rehabilitation Union Charter of Workplace Rights.

7. ENABLING LEGISLATION

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

The NUW supports enabling legislation. Any OHS legislation must be all encompassing to ensure that workers are protected against anything relating to work that may affect a workers health, safety or welfare.

8. TRIPARTISM

The NUW supports a tripartite model that commits to the full involvement of the two key stakeholders – workers & employers. A genuine tripartite body to advise and make recommendations to the Minister in respect to legislation, standards, national and international development and the establishment of public enquiries and legislative reviews. This body should also have responsibility for developing national short and long term strategic plans for improving workplace health and safety. Representatives on the Committee must be nominated by the relevant peak employer or employee bodies.

10. OBJECTS AND PRINCIPLES

The NUW supports Principles and Objects that set a framework for all workplaces to follow and aim to achieve.

In particular

- what the legislation aims to achieve
- Rights of workers to work in a safe and healthy environment which considers both their physical and psychological needs,
- Codify obligations of all duty holders to take action to address health and safety issues in workplaces,
- Right of workers to participate in decisions,
- Right of worker representation and right to decide on who that might be,
- Establish mechanisms for enforcement,
- How legislation will provide for involvement of employers and their associations and workers and their organisations to participate in development of OHS standards which satisfies requirements of ILO Convention 155,
- How legislative framework is about continuous improvement and the achievement of the highest possible standards,
- Reference to physiological and psychological needs,
- Identify, assess and control provisions, following hierarchy of control and a sense of continuous improvement to ensure they reflect changing workplaces,
- Codify a commitment to control hazards at their source,
- Codify a commitment to consult with employer organisations and employee organisations in the provision of advice, development of new standards, policy and strategies.

11. DUTY OF CARE RESPONSIBILITIES

NUW supports each party having duty of care responsibilities as per ACTU submission:

12. ABSOLUTE DUTY VS REASONABLY PRACTICABLE

THE HIGHEST STANDARDS FOR HARMONISED LAWS
Submission by the National Union Of Workers

NUW supports OHS legislation having an absolute duty as per ACTU submission.

13. RISK MANAGEMENT

OHS legislation should impose an obligation on duty holders to systematically manage hazards, to *identify, assess, control, consult, and monitor following hierarchy of control*, but not prescribe an OHS management system.

14. ENFORCEMENT

(a) Role of Union

OHS legislation should allow for both workers and HSR's to have the right to request the involvement of their/a union representative and have multi –tiered processes for resolving issues and enforcing the law. As mentioned above unions historically have always been at the forefront of fighting for safer and healthier workplaces.

Workers pay money to be a member of their union, why shouldn't they be able to have assistance and representation?

Unions are already involved in many workplaces playing a positive role.

Workplaces will achieve more significant improvements where there is a clear role for unions.

There are many workplaces with poor OHS standards and the only way workers can get improvements is through the support they receive from their union. Some examples include:

(b) Meat trading Cold Store

The company has always appointed HSRs.

Workers have never had an election and the company controls the appointed HSR.

There are numerous ammonia leaks at the site and everytime there is a leakage workers complain but the management tell people that it is not bad enough and to keep on working.

Just recently there was another ammonia leakage and the workers rang the union organiser. It was only after the organiser threatened action that the company agreed to evacuate the workers.

There was a similar situation 12 months ago when the organiser was away and another organiser attended the site responding to a request from workers. When he got there, the ammonia leakage was so severe that he had difficulty breathing. He rang WorkSafe Victoria and they didn't want to know about it.

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

Same workplace again recently had a severe fire that quickly took place sweeping through the insulation within the walls and ceiling. The fire brigade came and everyone was evacuated. The company then began to re-organise everyone to go back in to salvage pallets of meat that had been left on the loading dock. For protection they had the HSR handing out paper breathing masks to people as they went back in. The union delegate rang the union organiser who told the delegate to get everyone out, which he did so stray away.

Another example

Clothing warehouse

Women members were not happy with the safety boots the company had provided as they were ill-fitting and hurting their feet. They reported this to their manager who sought advice from WorkSafe Victoria Advisory service. The Advisory service sent the company a letter advising that the company was correct and had to provide a safe working environment; if they identified risks and provided shoes as a control measure then the employees would have to comply in accordance with their duty to cooperate with their employer. Therefore the employees would have to wear the boots and would incur heavy fines if they didn't.

The workers called in their Union organiser who intervened in the matter. It was identified that the shoes were extremely uncomfortable and causing pain to the women's feet. One woman was walking around with heel hanging out the back of the shoe. After numerous discussions and investigations with union representatives the company agreed to purchase new more comfortable and suitable shoes.

Throughout these negotiations the company continually kept going back to the advice of WorkSafe Victoria to support their argument for not purchasing new more comfortable footwear. This is a good example of how the union is able to understand an issue more clearly and to investigate the facts more closely, than an inspector, as they have a more hands on role and a more constant and direct involvement at the workplace.

(c) Union Right to Prosecute

Union right to prosecute exists in NSW. It operates as a cost jurisdiction and although there have been a limited number of prosecutions their impact has been significant. Every union initiated prosecution in NSW has been preceded by a union request to NSW WorkCover to prosecute, and only proceeded when this was refused.

The examples below depict situations in Victoria where the government agency failed and if the NUW had had the right to prosecute in Victoria there probably would have been a more favourable outcome.

(i) Document Security Company

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

A document security company decided to build new warehouse changing the traditional design and layout from using order picking trucks to move up and down to access documents at 1x2 boxes in rack to 3x3x3 boxes in racks using hand trolleys along a mezzanine floor.

The new proposed system was clearly an unsafer process and would increase the likelihood of sprain, strain injury. WorkSafe Victoria said they were unable to do anything about it being built. It was built and has resulted in many workers being injured. If union had right to prosecute or was able to bring case before a tribunal may have been able to prevent these workers from being injured as a result of this new process and system.

(ii) Chemical handling site

Handle and re-pack bulk dry chemicals. Major issues on site include manual handling, lack of extraction or other systems to address significant airborne dust and chemicals, no OHS committee or HSR and unsafe forklift use. While WorkSafe Victoria have visited the site on a number of occasions they have let the company know they are coming each time. As a result unsafe practices and machinery were shut down for the duration of the inspectors visit - on the direction of the supervisor, they then commenced again as soon as the inspector left.

(d) Union Right of Entry

The NUW supports recognition of the right of entry of an industrial organisation to enter a workplace relating to all health and safety matters with powers to resolve and enforce. Union officials with an OHS entry permit should have at least the same powers as elected HSRs.

The vast majority of NUW workplaces that have recently joined the NUW have numerous OHS problems and rarely do workers know their rights or have elected representation.

The members find it very difficult to resolve or even discuss those issues without any assistance. For them it is an issue of knowledge and experience as well as job security. If workers are casually employed it is even more difficult.

For those workers who have not yet been able to join the union it is an even greater problem. In a number of instances workers have been sacked when they have spoken up about OHS matters.

Government departments have a massive workload and cannot possibly be on top of every workplace in Australia. Unions can help alleviate this workload with OHS entry permits.

Unions make a difference because they have members onsite, have an ongoing dialogue with workers and management and they know and understand the issues in their own industry.

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

Unions have a better holistic understanding of the ongoing issues at a site, and are less likely to be misled and are more able to follow up on issues to make sure changes are made.

An NUW new members organiser describes the following conditions at a non union workplace he recently visited....

"After eventually finding access to this non-descript, poorly signed plastics factory via a side entrance; I was stunned by the appalling working conditions.

"The heavy smell of rubber was immediate as was the heat; lighting was poor and ventilation non-existent.

"Through a half opened door I could see a woman sitting at a bench surrounded by packaging adjacent to a large injection moulding machine.

"I tentatively approached her as even the most basic understanding of OHS initiatives entails that you enter a workplace with caution. She caught my eye and gestured to come forward.

"As I did I, and as my peripheral vision increased allowing to quickly survey the factory floor; I realised that there were no safety or warning signs, no marked walkways, no body was wearing safety glasses, high visibility vests or safety boots.

"It was dirtier, smellier and dustier the closer you got to the machinery and the areas occupied by the workers.

"An endless number of large boxes and containers were scattered along the ground, as were pallets, some with stock; it was difficult to see a clear or unobstructed pathway.

"I watched the female worker for a moment.

"The machine beside her was spitting out plastic jugs into a box on the ground, when the box was almost full she would turn around in her seat, bend over, pick up the box, remove the contents and place them on her bench, then return the box the original position.

"She would then proceed to trim the plastic edging of the jugs with a Stanley knife blade, she had at least two bandages on her fingers that I assumed were due to cuts.

"I asked where the boss was and she pointed to an office at the top of a short flight of stairs.

"I entered the office which could easily have been abandoned in the 1950's it's dishevelled nature was indicative of the factory as a whole.

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

"From the office I could look out onto the factory floor, observing the workers and all that was going on. It gave me a sense of superiority, just as that which would have been enjoyed by the early merchants during the Industrial Revolution. For the work environment I had entered was just that, one that I thought no longer existed, one that was not only unsafe and dangerous, but one that clearly demonstrated who was the boss, who was the worker and who had the power.

"The conditions were just as oppressive physically as they were mentally.

"OH... and the toilets – oh god I couldn't believe it – these facilities were being used by people.

"In case you had forgotten, we are talking about a plastics factory, in Melbourne, in 2008, legally operating for over 20 years.

"Over the course of the next 2 days, in a cold, damp and dirty lunchroom; I met with all the workers and attempted to get a better understanding their working conditions and their own personal understanding any rights they thought they may have had.

"This proved to be quite difficult as only a handful of workers spoke English.

"During the nightshift one of the workers convinced a colleague to show me his hand, I had noticed that he had kept it still while his other hand was quite animated during discussions.

"His hand was pink where skin had been burned away and heavily scarred across his palm. His colleague told me that he tried to clear a blockage in a machine and burned his hand on the hot plastic that started pouring out.

"He immediately went to a doctor who told him that he needed 2-3 weeks off work and further treatment.

"The injured worker returned to work after 4 days, his hand in a rudimentary bandage without a Workcover claim nor a report to WorkSafe Victoria.

"Morale amongst the workers was not high and they tolerated the appalling working conditions because they needed the money and did not want to jeopardise their job security by alerting authorities or making complaints.

"After gaining their trust and assuring them of the legislative right to free association, their rights under the Industrial Relations Act, the Victorian OHS Act and the Rubber, Plastic and Cable making Award; 16 workers joined the NUW and commenced some dialogue with their employer to improve conditions. "

At another biscuit making site, management had refused to purchase hearing protection until the union became involved. Since the union has been involved there are now elected HSR and they will be coming to NUW training.

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

In summary some of the recent NUW union entry OHS inspections conducted in Victoria:

Window Frame Manufacturer –

- High levels of sawdust in the air due to an inadequate extraction system and lack of PPE.
- Powder coating rooms had insufficient PPE and poor ventilation.
- Pedestrian walkways not marked in forklift traffic area.
- Unlicensed use of forklifts.

Recycling –

- Excessive line speed caused cuts from recycled glass through rubber gloves used as PPE.
- Use of chainmesh gloves resulted in needle-stick injuries.
- Workers request to set up a DWG was ignored by management.

Warehousing –

- Racking not bolted to floor.
- Racking still in use after being damaged by forklift.

Poultry –

- Insufficient PPE to prevent cutting injuries when dissecting carcasses.
- Repetitive strain injuries due to insufficient workstation rotation.

Plastics Production –

- Employees unaware of any evacuation plan.
- Machinery guards poorly designed / not in place.

Food Manufacturing –

- Insufficient wrapping of products stored in warehouse racking was creating hazards of falling product.
- Power cords across aisles in warehouse.
- High level of flour dust causing respiratory problems due to an insufficient extraction system.
- Emergency stop switch in a production area was out of reach of the operator during normal operation.

The new member Organiser said “Generally there is a very minimal awareness of OHS rights and the HSR powers and processes at sites I visit.”

(e) Courts & Tribunals

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

The NUW supports the establishment of a Federal Industrial tribunal that enables workers and their representatives to quickly bring before it any issues for resolution.

Preference is for a separate Tribunal (low cost and accessible to the workplace) with industrial/OHS expertise to deal with appeals, inspectors' decisions, etc.

Under its Forward with Fairness Policy Plan, the Rudd Labor Government has stated that it will create a genuinely independent umpire called Fair Work Australia.

Fair Work Australia will be a **one stop shop**, making it easier for employers and employees to understand and enforce their rights and obligations at work. Fair Work Australia will provide information and advice, undertake formal and informal dispute resolution and contain an inspectorate to monitor compliance with Labor's new industrial relations system.

Within Fair Work Australia there will be an independent judicial division created and operating in accordance with the Australian Constitution.

The jurisdiction of Fair Work Australia (FWA) could be extended to cover OHS so that it truly will be a one stop shop for employers and employees. The very employers who are covered by industrial legislation have obligations under OHS legislation and employees who have industrial rights at work also have OHS rights under OHS legislation. It makes sense that the same independent umpire enforce both, providing it is properly resourced to do so

For example, An OHS division with OHS specialisation could be set up within FWA. Having a one stop shop for both industrial and OHS matters means there would be one body for employers and employees to deal with which would be user friendly and cost effective. It would also aid in quicker outcomes and consistency in monitoring compliance.

Under the current Victorian system there is no process for enforcement other than prosecution. This means that there are many matters that are not being dealt with or the prosecution loses its impact because the process takes so long. The following are excerpts from a recent prosecution in Victoria which is a good example of just how long and drawn out the current process takes to deal with matters.

Thornton Engineering Australia Pty Ltd - a structural steel fabrication business in Corio, Victoria.

"On 29 December 2005 and 6 January 2006 a WorkSafe Victoria Inspector attended the defendant's premises as a result of allegations of breaches of the Occupational Health and Safety Act 2004.

"On 20 January 2006 the inspector again attended the premises, to follow up his previous visits. As a result of his observations inspector Jones issued 11

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

improvement notices.

“None of the improvement notices were complied with; charges were issued in respect of 5 improvement notices only.

Incident Non complied notices

- In sentencing relevant factor is degree of risk, WorkSafe Victoria says in this matter the risk was high - to employees and to 3rd parties.
- When defendant eventually decided to comply with improvement notice in charge 3 took just 6 weeks to comply. If defendant unable to comply within time there are mechanisms to apply for extension of time, to appeal notice - doing nothing is not appropriate. Deciding it is not necessary to do what notice requires is not a defence to charge of failing to comply.
- The purpose of this legislation is to reduce risks so far as reasonably practicable. Prohibition notices and improvement notices are the primary tools WorkSafe Victoria has and therefore it is very important that court send message that compliance with notices is very important. WorkSafe Victoria considers defendant displayed indifference to compliance. Therefore general and specific deterrence are important, notwithstanding defendant's lack of prior convictions.

If cost was not factor in non-compliance it raises the question what was the reason for non-compliance?”

It took approximately two and a half years for WorkSafe Victoria to prosecute a company for non-compliance with Improvement Notices. There is something terribly wrong here. There really is no deterrence.

15. STRUCTURAL ARRANGEMENTS

Representation

Worker participation is one of the central pillars of performance legislation so any legislation must have strong provisions to support the involvement and participation of workers in determining their own OHS standards and needs. This means supporting and protecting their right to have an elected representative who is able to speak up and act on their behalf.

16. CONSULTATION

Legislation must proscribe for:

- A duty on employers to consult with workers and their elected representatives
- A provision that affirms workers right to be represented
- Acknowledgement of the role of the HSR
- Allocation of specified resources to support role of the HSR
- Allowing elected representatives regular and ongoing opportunities to consult and report to members as part of the consultative process and their representative role

17 ELECTORAL BOUNDARIES

Any representation group/system must:

- Make it easy for workers to elect a representative
- Based upon needs of workers
- Consider flexible work and shift arrangements
- Consider flexible employment arrangements
- Workplaces may be mobile
- Multi-skilling and rotating of work throughout all areas
- Protect workers from discrimination
- Ensure workers are able to be represented by their peers

18. ELECTIONS

OHS Legislation must ensure that workers are able to:

- Make it easy for workers to quickly elect a representative of their choice
- Determine how an election should be conducted, for example; ballot or show of hands.
- Conduct own election without interference from management

There are numerous examples depicting situations where employer appoints or controls election of HSRs to ensure that workers do not get a voice and consequently are unable to resolve their numerous OHS issues. The following provides some examples:

(a) Retail warehouse

- New site
- Company appoints supervisor as HSR
- Company starts to employ workers
- Size of workforce increases to approximately 300+
- Small fulltime workforce with everyone being casual
- Lots of sprain and strain injuries
- No voice or ability for workers to get OHS issues resolved
- Company refuses to discuss OHS issues with union as there is no legal role for unions
- WorkSafe failed to act because HSR supported management
- Workers continued to get injured for many years
- Workers leave because of their injury and because they are casual

(b) Retail Warehouse

- Nominations and conduct of elections controlled by company
- Confusion by workers about process
- Workers not sure of their rights
- Workers not sure of who could nominate and who could vote
- Unlocked ballot box in the supervisors office for 2 weeks before ballot closes

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

- All supervisors and leading hands get elected

(c) Biscuit manufacturer

- Lots of OHS issues
- Many manual handling risks
- Large percentage of workforce women and migrants
- Many women sustaining sprain and strain injuries
- Company conducts election of HSRs
- All HSRs are leading hands
- Company refuses to negotiate with union
- HSRs support company and say there are no issues
- Women are in real pain but continuing to work because they need money
- WorkSafe attend site but say that everything is OK and that HSRs have no problems
- Five years later the site has been identified as worst OHS performer and driving industry premium up
- Union organiser conducts election for one HSR
- Company is notified of election of woman HSR
- Company refuses to acknowledge election
- Company holds another election by secret ballot
- Same HSR gets elected
- Company still refuses to acknowledge election of HSR
- Company conducts a further secret ballot and same HSR gets elected
- Company has to acknowledge her election

(d) New site

When visiting a new site the new member Organiser was speaking to management about getting a HSR elected and the management replied “but we have a OHS rep – I appointed Bob last year/ he’s our production manager” “but my company is small – surely this only applies to big companies”

These examples demonstrate clearly why there must be strong provisions to ensure that workers are easily able to elect a representative and to ensure that employers are not involved in the conduct of any election for a HSR. HSR’s should not be appointed. It is important that HSR’s are clearly elected by their co-workers to represent them.

19. POWERS AND RIGHTS

The legislation must clearly

- Support and define specific powers and rights for any elected representative (HSR)
- Protect HSRs in carrying out their role
- Distinguish between management role and HSR role
- Clarify that HSR’s do not have any duty in their capacity as HSR’s.

Legislation should not impose any duty upon a HSR.

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

The elected representative and their role should only be to represent their members. They are not experts.

Legislation must clearly define HSR rights and powers. The ACTU charter sets out the framework for the minimum powers and rights for HSRs. The NUW position is as per the ACTU submission. However HSR powers must include but not limited to:

- Consulted by management prior to: any proposed new measures which may affect health and safety; training arrangements; the appointment of people to advise or undertake work; etc
- Get assistance from any person at any time
- Investigate complaints by members, eg the causes of accidents, dangerous occurrences and diseases at any time
- Inspect their workplace at any time
- Choose which OHS course and training provider
- Request establishment of an OHS Committee
- Consulted on purpose and function of OHS committee
- Consulted on development Return to work plans for workers the HSR represents
- Provided with information (and records)
- Accompany an inspector
- Present at interviews with the inspector and/or employer and a member
- Notified of an accident or dangerous occurrence
- Provided with paid time to carry out their role, including time to attend OHS committee and network meetings
- Provided with paid time to consult with members to carry out their role
- Able to meet together, and meet with their members
- Right to resolve disputes

Right to cease work

HSRs should be empowered to immediately direct a Cease Work.

See ACTU submission.

20. PINS

PINs are an effective enforcement tool. See ACTU submission.

(a) Appeal

Workers and their elected representatives must have rights of appeal.

A Dispute Tribunal or Conciliation process needs to be established.
See above.

(b) Discrimination

Within the current industrial environment workers are far more vulnerable than ever. The federal governments' removal of the unfair dismissal laws has also had

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

a big impact on removing any protection for workers in raising health and safety matters. See ACTU submission. The following examples support the need to have strong discriminatory provisions.

For example, recently a member in his 50's rang the NUW office about a potential sprain injury to his wrist and arm. There are approximately 50 workers at his worksite and he is the only member of the union. He is working on an assembly line constantly folding boxes and he is beginning to have serious problems with his wrists. He desperately needs the job and is scared to raise anything with his manager because he believes he would be immediately sacked. He had already been threatened that there were plenty of other people wanting a job. He was too scared to get WorkSafe Victoria or the union to come to the site in case he got sacked.

Likewise if you are casually employed, the moment you speak up, you just don't get any work the next day.

If you are an elected representative who speaks up you get bullied and harassed, your work performance becomes under constant scrutiny or you get put into an isolated area away from everyone else or you get moved from department to department.

Over the years many HSR's have quit because of the harassment and intimidation. It is very difficult if you are isolated and on your own. HSRs and workers must have specific protection against discrimination.

The following statement from a HSR explains his experiences:

"I have been a HSR for 2yrs with a steel distribution company and in that time I have encountered difficult issues that I was neither prepared for or protected from under current legislation.

"The company I work for considered itself an industry leader in safety, they had a Hazard Alert System at employee level, Clear Reporting Protocol, Risk Assessment Procedure, Investigation Procedure, Complex Documentation Systems, monthly Safety Committee Meetings they had us convinced we could not be safer they said they are consultants to Worksafe.

"Early days of my roll as HSR, I had 5 days of training with the NUW (invaluable) It opened my eyes to the activities of my workplace. Someone has an issue with a hazard, it gets reported, I take notice, time passes with no resolution? Another worker is injured and does not seem too happy with the outcome? More issues arrive? What is wrong here? System is failing, Why? For how long? I need more information and try to get it. I follow protocol and the trail leads finally to the Safety Committee and all i get are diversions and excuses. Something is rotten here and what to do about it, I decide to become a member of the Safety Committee and start at the top."

Outcomes

THE HIGHEST STANDARDS FOR HARMONISED LAWS

Submission by the National Union Of Workers

The GM also Committee Chairman was found to be manipulating the Hazard Reporting System to gain advantage in the company recognition scheme, (in breach of the act under section 21). He transferred to another position after a few months. The Safety Officer, Committee Secretary left the business.

The Safety Committee dissolved and I was left to run the safety of three shifts as best I could. The HSRs on the other shifts had become inactive all I could do was make myself available to everyone on site.

The Operations Manager also a Safety Committee member chose to mount a campaign of persecution against me, I was not being considered for overtime, I was accused, bullied and harassed by this person for around 5 months and wound up on a fabricated final warning. If the union had not been there for me I would not have survived it is that simple, Worksafe can say what they like produce all the brochures they like but the if the employer is not listening? Goodbye HSR.”

*Today we have a new GM happy to be involved in Safety
The Constitution of the Safety Committee has been re written to exceed the requirements of the Act.*

The Safety Committee is now functioning again and all shifts have active HSR's on the Committee

The tyrant Operations manager has been replaced and the jury is still out on his replacement.

It has been a hard road a hard lesson and I am probably a bit harder from the ordeal but we fight the good fight.

Another example explained by a new member organiser: “One member who was sacked four days after joining the union, is coming in to the union office this week to swear an affidavit detailing the unsafe work practices (as well as the anti-union threats made by his supervisor.)”