

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

SPECIFIC COMMENTS

Legislative Approach:

I think it is important that the term 'Occupational Health' remains prominent in the title and purpose of overarching OHS legislation, as well as the administering bodies. It has been of some concern in the occupational health community that 'occupational health' was removed from the title of the national body some years ago, suggesting that safety and compensation should have greater emphasis than occupational health and disease prevention. I believe this aspect of OHS is grossly under-recognised, as documented in the Occupational Disease profile reports developed for ASCC and many publications in this area. I also think that having some guiding principles in the legislation is a good idea, but these should reflect both workplace health and safety and not just workplace safety.

Scope, Application & Definitions:

One of the key challenges for any new OHS legislation will be to ensure suitable provisions are in place to protect those on non-traditional employment arrangements, as there can be confusion about who is responsible for contract workers, for example. There is considerable research which documents that precarious workers (often low status and/or non English speaking backgrounds) are at greatest risk of workplace injury and disease and are less likely to gain access to appropriate preventive measures and suitable compensation.

Emerging hazards are usually related to health, rather than safety problems, such as the psychosocial examples mentioned in the Issues Paper, but also the hazards involved with emerging technologies, such as nanotechnology (potential respiratory and cancer health outcomes), and also emerging hazards related to existing work arrangements (such as classification of shift work as a Group 2 carcinogen by the International Agency for Work on Cancer in late 2007). The approaches to assessing and minimising risks from these types of emerging health problems can be more complex than approaches to safety risks and clearly the model OHS legislation needs to be broad enough to handle such problems.

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

'Reasonably Practicable' & Risk Management:

Consultation, Participation and Representation:

Regulator Functions, Powers & Accountability:

The 9th dot point under section 6.1 of the issues paper about the role and function of regulators refers to encouraging research. Unfortunately, the occupational health research capacity in Australia is in serious decline, especially with the cutting of intramural research

programs in the previous NOHSC (now ASCC) and funding for extramural research. This decline has been highlighted in reviews of the Federal Government Public Health Education and Research Program (PHERP). This has led to a widening gap between the Australian Occupational Health research community and regulators. To make occupational health more relevant to regulators and for researchers to have a better understanding of the research needs of regulators there should be increasing interaction between the two groups.

Compliance & Enforcement:

Prosecutions:

Other Issues:

One of the major concerns of many in the occupational health community is the inadequate data sources relating to occupational diseases, leading to gross under-recognition of the extent of these diseases, particularly when relying on workers' compensation statistics, which tends to be the main driver for prevention activities by the regulators. This problem was highlighted in the Occupational Disease Profiles commissioned by ASCC about 3 years ago and again (in the case of occupational asthma) in a 2008 report by the Australian Institute of Health and Welfare (which concluded that about 15% of occupational asthma is occupational, but claims are almost non-existent), as well as in many scientific publications (usually relating to the situation in other countries, but relevant to the situation in Australia). This has also been reflected in the current National OHS Strategy developed by ASCC, which set targets for occupational injury reduction, but was unable to set such targets for occupational disease reduction because of the inadequacy of available sources of occupational disease data.

To gain a better understanding of the extent of the problem of occupational diseases in Australian workplaces and why they are not adequately reflected in workers' compensation, Australia needs to put in place alternative ways of measures the extent of occupational diseases. I published a paper on the need for more effective occupational disease surveillance in Australia in JOHSANZ in December 2007 (Sim, 2007). One model is the SABRE program (Surveillance of Australian workplace-Based Respiratory Events), which Monash University established several years ago in Victoria to improve incidence data related to occupational lung diseases (Elder et al, 2004). In a Senate Committee report into Workplace Exposure to Toxic dusts in 2006, SABRE was endorsed by the committee as a useful program for gaining better quality information on the occurrence of occupational lung disease than relying on workers' compensation data. Therefore, Model OHS legislation should acknowledge this problem related to poor recognition of occupational diseases and include measures to more adequately reflect their true importance in Australian workplaces.

Elder D, Abramson M, Fish D, Johnson A, McKenzie D, SIM MR. The SABRE (Surveillance of Australian workplace-Based Respiratory Events) scheme: notifications for the first 3.5 years and results of a validation study for occupational asthma. *Occup Med* 2004; 54: 395-399.

SIM MR. The need for an occupational disease surveillance system in Australia. Invited paper for *Journal of Occ Health Safety - Aust NZ* 2007; 23: 557-62.