

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

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## Public Submission:

Australian OH&S .Risk Management Services P/L  
T/A – A.R.M.S. and Ohsaustralia  
Web Page: [www.ohsaustralia.com.au](http://www.ohsaustralia.com.au)

## Legislative Approach:

The current legislative approach is in our view not consistent with the expectation of smaller companies throughout Australia.

Our recommendation would be to establish in all states a OH&S commission for the purpose of assisting companies to confirm and implement OH&S compliance strategies.

The difficulties which exist currently are the fact that there are too many variances in all state Acts and the complexity of such variances contributes to confusion.

The implication in all state Acts and Regulations must clearly identify all specific details and areas of responsibility by all involved.

The main problem we see is the fact that there is no involvement of sufficient stake holders (external) to assist in the development of common sense English based Acts and Regulations.

The hijacking of involvement by the academia in the development of OH&S, is in my view the biggest problem at hand, the subsequent suggestion would be the establishment of a external control commission which includes members of industry in particular OH&S professionals with practical expertise in the writing and implementation of OH&S safety management systems in the workplace.

## Scope, Application & Definitions:

The Combined Australian Workplace Safety Act of 2010 and The Combined Australian Workplace Safety Regulations of 2010.

Specific milestones need to be set in the overall expectation of national compliance for all organisations by the year 2010.

Companies are to submit OH&S compliance status statements six monthly to the independent evaluator or the external control commission.

The principle of health and safety protection must be the overriding statements within the acts and regulations and state as follows:

*“The protection of health and safety in any workplace is the primal functions of this regulation/act by assuring that all stake holders are involved in the discission making of the day to day confirmation in regards to OH&S safety in all workplaces which ever size”*

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

The provision of duty of care is a collective responsibility and in its current form does not clearly identify the individual responsibilities such as: Contractors, Staff, Volunteers, Management and Directors.

There are some cursory references in the information/brochures supplied by various government departments within each state (WorkCover NSW); however there is reluctance for those departments to provide more detailed and specific information to companies at large.

Subsequently the suggestion would be to provide more specific answers to question from companies by these departments, and additionally develop tools which are reflective of all sectors of industry and all levels of work force complexity.

Or establish an Australian OH&S Web based information service with free access to all industry specific checklists and assistance templates.

The present funding arrangement by state and federal departments in assisting Industry Associations is and was flawed in my view, it created an elite group of companies with access to information which others could not access.

In most cases the funding was and is used for most self funding purposes and the information supplied to the membership is of a very poor substance and not relevant to smaller companies, additional to that there is no on going support.

The suggestion would be to request a desk audit all associations in all states by an independent OH&S/Financial Auditor.

The recommendation would be to use the funding to establish an independent OH&S commission and provide access for all companies via the web with professional advice and assistance being given

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

We would recommend that the Victorian OH&S Act is used in the interpretation “Reasonably Practicable & Risk Management.

In our view Victoria is the most advanced state subject to OH&S assistance provided to companies and should be used as a model for OH&S advancement in the workplace.

In regards to the Risk Management provisions in Acts and Regulations the current interpretations are again insufficient to assist companies to fully achieve OH&S compliance.

Some states authorities are rude un-professional and need most importantly relevant training in industry specific expertise in particular customer relations.

It is subsequently my view that the Authorities are equally amiss in their obligations in the case of a breach of the Act by the fact that they have not provided access to quality information to the business community at large in each state excluding Victoria and Western Australia.

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

The current consultation processes are somewhat immature, the main problems we are experiencing is the fact that all consultative arrangements are similar but different.

As an OH&S systems implementation company we are currently experiencing numerous issues when installing and writing multi national OH&S systems for various Australian states and or Territorial jurisdiction.

The difficulties we are having are which guiding legislation we use to write a state specific OH&S management system.

Organisationally we use the most officious legislation and interpreted this is a national guide for the writing and implementing of an OH&S management system.

Some government department suggested that we use 4801:2001 as a preliminary guide to write management systems.

It is the writer's view that each federal & state legislation must provide the appropriate assistance material from its own recognition sources such as the: (example)

Australian New Zealand Risk Management Association INC9884778

Web Page: [www.anzrma.org](http://www.anzrma.org)

Or

[www.ohsaustralia.com.au](http://www.ohsaustralia.com.au).

The view by governments, to use material provided by a private organisation is inappropriate, so much so that currently (government departments relevant to OH&S), are insisting that OH&S systems should be accredited and recognised by this organisation and the guidance material is to be purchased from them.

This most certainly is against any fair trading practices in any state and should be discouraged.

The establishment of an external commission would assist  
in achieving this aim and objective.

The first step which needs to be taken is to uniform the current individual state processes which are in place such as:

- Committee Training
- Committee Requirements
- OH&S Representative
- Possible other arrangements
- Numeric statutory requirements as to numbers of staff
- Size of the organisation
- Location of the organisation
- The uniformity of government departmental powers
- Transparent processes by government departments

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

The regulator has the obligation to in-force the law and subsequent has a responsibility to the people to provide appropriate safety controls.

Currently the individual enforcement agencies subject to OH&S are understaffed and under qualified to do the job required from them in an objective manner and greater assistance is required to enforce more stringent rules of obligations on them such as:

- Personal accountability for actions taken
- Penalty provisions for inspector level staff (non compliance with LSS standard)
- Compulsory training points (as per legal service standards) every year
- Review the powers of inspectors (to immediate danger only)
- Industry specific training (to understand historical practice's in industries)

## **Compliance & Enforcement:**

The suggestion would be to create a matrix of industries including a generic risk rating for each sub-heading using a numeric interpretation lets say from 1 - 16,

### **Example 1.**

Retail Sector Clothing:

Level:	Low Risk Sector
Rating:	two (2)
Inspection:	Status twice yearly – thence every year
Cost:	\$ 80.00 per visit to the company
Powers:	Can recommend prosecution

Inspection Requirements: Independent Organisation

The recommendation subsequently is to use an external OH&S professional organisation from within each state.

### **Example 2.**

Spray Painting:

Level:	High Risk Sector – every six months to full compliance
Rating:	10 (ten)
Inspection:	Status
Cost:	\$ 80.00 per visit to the company
Powers:	Can recommend prosecution
Inspection Requirements:	Government Authority

The recommendation subsequently is to use an internal (governmental) OH&S auditing structure from within each state.

## **Prosecutions:**

Establish uniformity of prosecution, the current fee and service costs to defend an action from to state enforcement agency is a costly factor.

We subsequently recommend the establishment of an initial arbitration commission which will oversee any disputes without legal representation at that time.

- However the injured party can have union representation in attendance if so desired

Arbitration Commission Structure:

The commission should consist:

1. Chairperson - With final approval Government appointment
2. Vice Chairperson - appointment from industry relevant to the industry
3. Independent - Person General public
4. Union - appointment from industry relevant to the claim
5. Claimant and Other Party

- Powers to make recommendations for further action or collective arrangements to benefit particular outcomes

### **Other Issues:**

There are many other issues relevant to the subject matter; however the recommendation would be to address these issues in an open forum such as a National Seminar or Event under the control of a Federal Jurisdiction.

There are several OH&S Industry Specific Association which must form part of this possible event such as the, Australian New Zealand Risk Management Association.

Ralf Hartmann J.P.  
Fellow ANZRMA, AFCIA.

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### GENERAL COMMENTS

Please list any general comments you would like to make on any other matters not already highlighted in the Issues Paper. Ensure your general comments fall within the Terms of Reference of the National Review into Model OHS Laws (refer to Appendix A of the Issues Paper).

**General Comments:**

**Thank you  
Not at this stage.  
Ralf Hartmann**