

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

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## SPECIFIC COMMENTS

Please complete this template to provide specific comments with supporting reasons against each chapter of the Issues Paper. If you are responding to a specific question in the Issues Paper, please include a reference to the relevant question number.

### Introduction

Group Training Australia Ltd (GTA) welcomes the opportunity to respond to the Issues Paper for the National Review into Model Occupational Health and Safety Laws.

GTA is the national industry association for a network of over 150 not-for-profit Group Training Organisations (GTOs) operating in over 200 locations across Australia.

GTOs employ apprentices and trainees (Australian Apprentices) and place them with host employers for varying periods until the apprentice or trainee has completed their training contract. A quick glance at some of the statistics on the number and characteristics of apprentices and trainees employed through group training arrangements is instructive. For example the group training network currently employs:

- over 40,000 apprentices and trainees
- 13% of all new entrant apprentices and trainees;
- one in five apprentices in the traditional trades;
- one in five Indigenous apprentices and trainees;
- one in five school-based apprentices and trainees;
- one in ten apprentices and trainees with a disability; and
- increasing numbers of adult apprentices in the traditional trades.

Our submission to the current inquiry reiterates a number of points that we made in a submission in June 2003 to the Productivity Commission's then Inquiry into National Workers' Compensation and Occupational Health and Safety Frameworks. Like the earlier submission, we have not attempted to respond to all the questions raised in

the discussion paper but rather have limited our responses to those on which we have formed a view and feel competent to comment.

### **1. Legislative Approach:**

No comment

### **2. Scope, Application & Definitions:**

No comment

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

#### **Questions 10, 12, 17, 21 and 23.**

GTA's principal concern in this area is in the relationship between the GTO, as the legal employer of the apprentice and trainee, and the host employer to whom the apprentice or trainee is hired out. The issue that interests us would appear to be encompassed by questions 10, 12, 17, 21 and 23.

Our concern relates specifically to the extent to which the GTO is made responsible for the occupational health and safety of the apprentice or trainee when it is the host employer who has control of the workplace and who directs the apprentice or trainee in the course of their working day.

Currently GTOs provide basic OH&S training to their apprentices and trainees as part of their induction. They also conduct an initial workplace health and safety inspection of their host employer's workplace, as well as an assessment of their capacity to train, given that the host employer is essentially responsible for the delivery and assessment of the on-the-job training.

In doing so, the GTO can only make an assessment of the OH&S standards in the workplace at a point in time and cannot realistically keep abreast of changes on a daily basis. The only time that any deterioration in standards might become apparent is when the GTO field officer visits the worksite to monitor the apprentice or trainee, however this might not necessarily occur for some time after the initial placement and only at other intervals deemed appropriate by the GTO. An apprentice or trainee would also be reminded that they should report persistent safety breaches to their GTO field officer.

The problem is exacerbated in the building and construction industry where the 'workplace' can be dynamic, that is to say it is changing on a daily basis as a building is being erected.

The situation is further complicated in this industry when an apprentice in a traditional trade is hosted by a sub-contractor who can be on a number of different sites in the one day.

It seems to us that under these circumstances it is not unreasonable to suggest that in this relationship it should be the host employer who bears the greater burden of responsibility and duty of care for the welfare of the apprentice or trainee.

As we indicated in our submission to the Productivity Commission, the Queensland government several years ago in recognition of the difficulty and indeed the ambiguity in the relationship between the GTO and host employers with respect to OH&S, enshrined in the relevant Queensland legislation that the 'host employer' of a GTO apprentice or trainee was the 'employer' for the purposes of the legislation. So far as we are aware, this provision has not been tested in the courts nor is it reflected in the relevant Queensland workers compensation legislation which has been of concern to our Queensland association.

We emphasise that we are not seeking to create moral hazard by absolving the GTO of any responsibility for OH&S whatsoever. Our principal concern is to ensure that the principle of duty of care is applied realistically and fairly to the relationship between a GTO and its host employers.

The consequences for failing to do so can be onerous and we address this in the section on prosecutions below.

#### **4. 'Reasonably Practicable' & Risk Management:**

No comment

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

No comment

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

No comment

#### **7. Compliance & Enforcement:**

No comment

## **8. Prosecutions:**

### **Questions 104, 105, 136-138**

In view of the uncertainty that exists in the legal relationship and the application of duty of care, the question of liability and legal sanctions is one that is of considerable importance to the members of this organisation. We believe that our concerns are encompassed by questions 104, 105 and 136-138.

As outlined in the introduction to this submission, the group training network is comprised of a number of not-for-profit companies which have become, as the statistics would suggest, absolutely critical to skills formation in this country. The other side of this equation is that the network provides career opportunities for many thousands of school leavers, and more recently mature age workers, who might otherwise never have been able to gain a toehold in employment-based training of the kind represented by apprenticeships and traineeships.

Anything that jeopardises the viability of the companies puts this contribution to national well being at risk.

The companies themselves rely on the willingness of members of the community to serve on their boards and accept all the responsibilities such a position entails. We know that those responsibilities are no less for being a director of a not-for-profit company. GTA has spent many years providing training to the directors of GTOs to ensure that they have the capacity to meet the highest standards of corporate governance.

It is sometimes a struggle to attract good people in view of what are increasingly seen as onerous responsibilities for directors. The prospect of criminal sanctions and even industrial manslaughter charges for serious breaches of OH&S laws when it is not possible to have any meaningful control over the workplace is a strong deterrent to what is still regarded by many as a form of public service.

## **9. Other Issues:**

No comment

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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:**

No comment