

**Submission by**

**Shop Distributive and Allied Employees Association  
(Victorian Branch)**



**to the**

**National Review into Model  
Occupational Health and Safety Laws**

**Dated: 4 July 2008**

**Background:**

The SDA is a registered Trade Union under the Workplaces Relations Act and has recently celebrated its 100<sup>th</sup> year as a Trade Union.

The SDA is the largest Union in Victoria and has currently approximately 50,000 members. The Union covers a variety of industries including Retail stores (including Supermarkets, and Department Stores), Fast Food outlets, Petrol Stations, Warehouses and Distribution Centres, Hairdressing and Beauty Salons, Pharmacies, and Models and Mannequins.

This Union, as well as employing a large number of Organisers, also employs a full time Occupational Health and Safety Officer, a full time WorkCover Officer, a full time Return to Work Officer and two full time Trainers. These Officers deal with OHS and WorkCover matters daily, dealing with matters concerning the health and safety of our members throughout Victoria.

**The ACTU submission to the Review:**

The SDA has been involved in the formation of the Position Paper by the Australian Council of Trade Unions and agrees with the contents of the Position Paper and will therefore not give a detailed response, as this Union is in agreeance with the ACTU's views. However there are a number of matters that this Union wishes to emphasise to the Review Panel.

**The SDA's submission to the Review Panel:**

The SDA believes there should be an outcome from the Review that emphasises the highest standards for harmonisation of OHS Laws. It is the view of the SDA that the end result of the harmonised laws will result in the highest standards being obtained so that all workers throughout Australia are protected from injury whilst at work, as far as possible. If a worker is injured then that worker is compensated fully and is offered a Return to Work Program as soon as possible. Furthermore the proposed changes to occupational health and safety laws must not result in a diminution of the rights and entitlements of any workers

The SDA believes in a tripartite system where Government, employers and employee representatives are involved. The objective of the Review should be to ensure the health and safety of all workers and other persons at work are protected.

**Consultation:**

It is very clear that there is a permanent need to have an open and transparent way of consultation between employers and employees. Under Section 36 of the Victorian Occupational Health and Safety Act 2004 (the Act) there is a legal requirement for employers to consult with Health and Safety Representatives, if the employees are represented by a HSR by sharing with the HSR matters on which the employer is required to consult, and giving the HSR a reasonable opportunity to express their views about the matter, and the employer is required to take the HSR's views into account.

The harmonised Act needs to ensure that both HSR's and employees are involved in the consultation process when the employer is to change the workplace, bring in new equipment or change the way the work is attended to. The employees and through their HSR's are often able to assist the employers in designing the way the work is done so that the work is done productively and safely.

It is the belief of the SDA that appropriate consultation should involve employee representatives such as Unions that have a legal right to represent members of the Union at the site.

### **Health and Safety Representatives:**

The SDA has hundred's of HSR's throughout the Companies that the Union has coverage with that represent the members in that workplace (Designated Work Groups – DWG's). If the HSR is a member of the Union then the HSR is initially trained and annually retrained by this Union. The SDA is approved by WorkSafe Victoria to do this. The employers are generally happy for the SDA members to be trained on OHS matters by this Union. Many employers welcome the input of the HSR's in their workplaces to assist in the health and safety issues that arise at the workplaces. Therefore the HSR's are a vital part in the health and safety of workers and the position must be retained in the new laws. If not the SDA believes that the workplaces may deteriorate in the safety of staff and unfortunately the injury rate may increase dramatically.

### **Protection of Health and Safety Representatives:**

The position of a HSR can be onerous and confrontational in its nature. As a result there must be legally enforceable protection provided to employees who undertake the position of a HSR. The position is a voluntary one and therefore is undertaken by that person without an increase of wages or salary. It can be rewarding but it is always time consuming. It must be a requirement that the HSR is allowed time to undertake their duties as a HSR.

Furthermore there must be legal protection for the HSR against discrimination by the employer towards the employee. As advised above the position can be confrontational in nature. If a process of work is dangerous then the HSR can undertake to issue Provisional Improvement Notices (PIN's) in Victoria. There must be a strengthening of the reverse onus of proof on the employer with a consistent interpretation of the "dominant reason".

Some managers take exception to being served with a PIN and it is found soon after that the HSR is being discriminated by the employer, and in extreme cases the employment of the HSR is terminated on spurious grounds.

If this is allowed then there will be no employees that are prepared to become HSR's and the safety of the workplaces will deteriorate

### **Right to cease unsafe work:**

Employees have a common law right to refuse unsafe work.

The SDA agrees with the ACTU views that supports the rights of HSR's to direct employees to cease work when there is a reasonably perception or actual threat to workers' health and safety. Consultation should commence as soon as possible between management and the HSR to attempt to resolve the concerns. There should be strong protection for the HSR for taking the cease work action.

### **The requirement for retaining Provisional Improvement Notices:**

A Provisional Improvement Notice is a Notice issued by a Health and Safety Representative under the Act wherein he or she believes on reasonable grounds that a person is contravening a provision of the Act or the regulations, or has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated. It requires the person to remedy the contravention or the matters or activities causing the contravention or likely contravention.

If a PIN is issued then the matter concerned in the PIN is required to be dealt with a specific time frame, as disclosed in the PIN. If it is not resolved in the time frame advised, then the HSR can request the assistance of an Inspector from WorkSafe Victoria.

Legal protection of HSR's is essential as is the provision of the issuing of PIN's.

### **Consultation with WorkSafe Inspectorate:**

If there is a need for an Inspector to attend a workplace as a result of a PIN being issued and not complied with, then there must be a legal requirement for the Inspector to consult with the HSR before any consultation takes place with the employer. The rationale for this is that the HSR has taken the action to issue the PIN and that the HSR has called in the Inspector. If requested by the HSR then the HSR can have the right to have a Union Official in attendance to assist the HSR in any discussions with the Inspector.

### **Health and Safety Committees:**

Health and Safety Committees are important in any workplace and should be supported by the employer. However the Committee should never have the power or responsibilities of a HSR. In Victoria the HSR is the only person that can issue a PIN and this must remain. In most workplaces the members of the Health and Safety Committee receive no training in relation to health and safety matters and this is a matter that should be looked at. The SDA is not suggesting that the members of the Committee are required to receive the training that HSR's receive but the committee members need to receive some training in their duties.

In Victoria, the numbers of members on the committee are stipulated in that there cannot be more management representatives than employee representatives. The SDA believes that if there is a HSR at the worksite then the HSR must be a member of the Committee before any other employee representatives join the committee.

### **Duty of Care by employers:**

It is the belief of the SDA that there must be a **duty of care** provided by the employer to ensure that “employees health and safety is protected”.

The employer manages and controls the workplace, gives directions and allocates resources and thus is therefore is best placed to protect the “employees” health and safety whilst at work.

### **Duty of Care by employees:**

There is obviously a requirement for employees to act with care at work but it must be restricted to following reasonable instructions given by the employer, these instructions that are given are required to be safe to follow. Further the employee is not to endanger any other person at the workplace and to report any injuries or near misses to the employer.

### **Authorised Representatives of a Registered Employee Organisation (ARREO):**

An ARREO is a person who holds an Entry Permit issued under Part 8 of the Act. The rights of the ARREO are such that the holder of an ARREO may enter a workplace where the holder reasonably believes that there has been a suspected contravention at the workplace in relation to health and safety issues. This provision of the Act is very important in that employees are able to seek the assistance of an ARREO to investigate matters of concern in relation to health and safety matters. Under the Permit the holder does not need to provide prior notice of the visit to the workplace which allows the holder to attend the site and see first hand the alleged suspected contravention. In the case of the SDA this provision of the Act is used very sparingly as the Union has a generally good working relationship with employers. As such the employers are happy for the holder of the Permit to enter the site without giving any notice. However in the rare occasions the ARREO Permit is a useful tool and should be included in the new Laws.

Under Section 58 of the Act, the HSR is able to call on any person to assist him or her in their duties and thus calls on the ARREO Permit holder as and when required.

### **The Inspectorate:**

For there to be an effective Health and Safety Act in Australia there needs to be a sufficiently resourced Inspectorate.

In Victoria there is a large Inspectorate (in excess of 200) that enforces the OHS Act 2004. It is the view of the SDA that sufficient resources must be made available in each State and under Comcare to adequately cover the areas of responsibility of the Inspectorate. Inspector numbers must be adequate enough to be able to attend a serious incident (such as a serious trauma incident or death of an employee) within hours of the incident occurring and in other cases to be able to attend the incident – for example in the case of a PIN not being complied with – within 7 clear working days.

**Prosecutions:**

The SDA believe that prosecutions are a serious matter and must be heard in an appropriate superior court in each jurisdiction. If breaches of the OHS laws are not prosecuted by the relevant Authority and it is believed by the Union concerned that the matter should be brought before the Courts, then the relevant Union should be able to bring a prosecution matter before the Courts. This right has been used in New South Wales, by a small number of Unions, successfully. That right has not been abused.

**Corporate Penalties:**

The SDA agrees with the ACTU that the highest sanctions for breaches of the OHS laws by a Corporation should be available under the Model OHS laws. The Union agrees that any penalty imposed as a result of serious and/or permanent injury, both physical and psychological, and workplace deaths should include the option of levying portions of the Corporations revenue.

**Conclusion:**

The SDA (Victorian Branch) believes that the National Review into the Model Occupational Health and Safety Laws is worthwhile in eventually bringing all OHS Laws under one law.

However the Model Laws must without exception raise the OHS Laws to the highest standard available, and give the highest level of protection against risk to the health and safety that is reasonably practicable in the circumstances to all workers. It is imperative that the Regulator is sufficiently resourced and has the required powers to enforce the laws.

Further the new laws must allow for workplace HSR's and Deputy HSR's to have a strong voice in making the workplaces safe to work in without risk to health.

The Unions have had an important role in OHS laws and for there to be active safety in the workplaces then the laws must allow the right of entry for ARREOS to attend workplaces and allow Unions to train the HSR's to enable them to undertake their duties properly.

If you require further information in relation to this submission, please contact John Dowling, OHS Officer, telephone 9698 1400.