

MAKING WORK SAFE

AUSTRALIA DESERVES THE RIGHT APPROACH: A BUSINESS CALL FOR SAFETY

Making Work Safe was compiled by a number of business and industry associations. A copy of the full paper can be accessed at www.bca.com.au or at www.minerals.org.au.

Business aspires to zero harm in the workplace, but is frustrated in achieving improved OHS outcomes by inconsistencies in legislation and its application, in particular, where there is conflict with a safety culture of continuous improvement.

Current problems and barriers

The contention of *Making Work Safe* is that some OHS legislation and its application hinders rather than assists business in achieving its objective of improved work safety outcomes.

A key business concern is the perception by some public authorities responsible for enforcing OHS laws that:

- 'business doesn't care' about safety;
- managers, executives and directors have the power to control every functioning aspect of a corporation;
- every workplace injury or death is the result of systemic failure, and that such failure is always management's fault.

Factors that deflect business from the practical things that need to happen every day in the work place include:

- inconsistent and impractical OHS legislation;
- conflicts within jurisdictions between OHS regulations and other regulations;
- lack of understanding and emphasis by governments of the role of risk management;
- shortage of good managers attributed in part to concerns about criminal liability;
- enforcement policies where the penalty is disproportionate to the level of fault; and
- increasing emphasis on prosecution as an initial response to non-compliance.

The role of business

OHS outcomes are inherently dependent upon business behaviour.

The practical reality of work is that the people who own, manage, influence, are employed in, engaged to, or supply to business, are the people who most directly affect OHS outcomes. Without the active participation of all businesses in OHS policy design and implementation, OHS laws lack the vital, practical elements so intrinsic to high quality OHS results.

This paper totally rejects the 'business doesn't care' model as having any validity in the modern business environment. It details the common motivations within all forms of business, which are much greater personal spurs to action than any legal duty to deliver profit to remote third parties.

Legislative principles

The key OHS legislative principle supported and adhered to by people in business relate to 'duty of care' obligations, and are known internationally as the Robens principle.

The basis of the Robens principle is that 'everyone who is involved in work is held responsible for what they practically and reasonably control'. This should guide the design and application of all Australian OHS laws. It means that everyone involved in work has shared responsibilities for work safety.

State of play

Key characteristics of OHS regulatory regimes across Australia include:

- zero harm in the workplace is yet to be achieved;
- lack of national consistency in legislation and its application;
- lack of consistency and clarity in relation to 'Duty of Care';
- lack of adherence to the 'Robens principle';
- perception by some that corporate profits come before safety;
- role and quality of regulators needs to be enhanced;
- increased tendency to prosecution of corporations and individuals;
- lack of emphasis on sharing of information and learning from experience; and
- union influence on government OHS policies, particularly in relation to enforcement.

The way forward

To make workplaces safe and achieve business's goal of zero harm, this paper advocates:

Legislation

- nationally consistent OHS legislation based on the 'Robens principles' of 'practical and reasonable control';
- OHS regulations and codes of practice consistent with the legislative frameworks under which they operate;
- practical support for business operations rather than excessive prescription;
- clearly defined duties of care, with everyone at work held responsible and liable for work safety, according to what they 'reasonably and practically control'.

Role of Business

- a key and active role for business in the OHS debate and the practical delivery of policy outcomes;
- risk management implemented as an integral part of open safety management systems;
- a culture of transparency and information exchange, where OHS apathy or complacency does not feature;
- every individual in the workplace to maintain a focus on safety, and to accept and take responsibility for their actions;
- management to establish safety systems, constantly review them, ensure training, provide practical backup and have active and responsive engagement with all staff at every level.

Regulatory practice

- practical administration of OHS legislation, to enable business to achieve improved OHS outcomes;
- the cultures of OHS inspectorates to be open, engaging, educative and orientated to exchange and dissemination of practical information that will aid safety.

Prosecution

- prosecution should be limited to situations where flagrant breaches of safety have occurred, involving gross negligence or wilful misconduct;
- Where prosecution is necessary, this should occur in an open and transparent way with the accused entitled to full criminal justice rights, including prosecution in criminal courts, presumption of innocence, trial before jury and full rights to appeal.