

CONSULTATION REGULATION IMPACT STATEMENT

RECOMMENDATIONS OF THE 2018 REVIEW OF THE MODEL WORK HEALTH AND SAFETY LAWS

SUBMISSION ON BEHALF OF PROFESSIONALS AUSTRALIA

1. BACKGROUND

Professionals Australia (“PA”) is the trading name for the Association of Professional Engineers, Scientists and Managers, Australia a trade union registered under the Fair Work (Registered Organisations) Act 2009.

PA as the primary union representing technology- based professionals represents a broad range of professional and managerial employees employed in both the public and private sectors including but not limited to Professional Engineers, Professional Scientists, Professional Information Technology Employees, Architects, Pharmacists, Telecommunications Professionals, Transport Professionals and generalist Managers. The Association has a current membership of just over 24,000 members.

PA members work across a diverse range of industries including, but not limited to mining, construction, consulting services, manufacturing, informational technology, telecommunications, surveying, pharmacy, architecture, transport, oil, mineral exploration and so on.

Workplaces which employ professional and managerial employees cover the broadest possible range of working environments. These include the more traditional office - based locations; field work and remote locations. The hours of work reflect the nature of the industry where technology-based employees are employed and include both “standard” hours and unsociable hours.

PA welcomes the opportunity to comment on the Consultation Regulatory Impact Statement on the Recommendations of the 2018 Review of the Model Work Health and Safety Laws.

The issue of excess workload and the mental health impact of that workload is of great concern to PA. This submission focuses on the psychosocial hazards, the ability of health and safety representatives to seek and obtain assistance as and when required and the incident notification process. In respect of other recommendations of the Review including industrial manslaughter, PA supports the submission of the Australian Council of Trade Unions.

2. HOURS OF WORK SURVEY – PROFESSIONAL EMPLOYEES

Recently as part of the Review of Modern Awards currently being conducted by the Fair Work Commission PA has proposed a variation to the Professional Employees Award (“PEA”) in respect of remuneration for additional hours of work and the working of unsociable hours. The Professional Employees Award is the major non- government sector award for professional employees covering a diverse range of industries. As part of the preparation for the case Association conducted a survey of its members employed under this Award in order to ascertain the incidence of the working of additional hours and the reasons why.

The survey results were published in a report titled *“Professionals – Additional Hours and Unpaid Overtime: A Time for Action”* a copy of which is attached to this submission.

Whilst the main focus of the survey was on the issue of remuneration/compensation for the working of additional hours the survey results yielded valuable information as to the number of hours worked by professional employees and the reasons why.

Firstly, it was found that the average professional employee works 45 hours each week (Page 10). Whilst those are graduates or recent graduates employed in the lower classification levels under the PEA worked fewer hours than those at the more senior levels this still amounted to a quantum of an average of 43 hours per week for junior professionals (Page 10). The more senior professionals were more likely to report working longer hours including those who worked 50 hours or more (Page 10). In this regard 18% of employees at level 3 worked 50 or more hours and for level 4 the percentage was 30.2%

Secondly, the survey also canvassed the reasons why professionals worked additional hours (Pages 22 and 23).

As expected, there were a range of reasons given including the following;

<i>“My workload requires that I perform additional hours to get the job done”</i>	80.3%
<i>“There is an expectation in my workplace that you work additional hours”</i>	58.7%
<i>“My colleagues work additional hours”</i>	44.6%
<i>“I work additional hours to cover a shortfall in staffing”</i>	39.3%
<i>“My manager/supervisor works additional hours”</i>	38.1%
<i>“Working additional hours will assist with my career”</i>	24.6%
<i>“There would be negative consequences for me if I did not work additional hours</i>	24.2%
<i>“Working additional hours is looked favourably on during pay reviews”</i>	14.3%
<i>“I am regularly requested to work additional hours by my employer”</i>	9.3%
<i>“I work additional hours to compensate for being less experienced in my role”</i>	6.9%

Whilst it can be legitimately argued that the survey findings are simply a starting point for further analysis and investigation, they at least begin to quantify the problem. PA has much anecdotal evidence from members who are struggling with their work demands and the resulting impact on their mental health and relationships. It is interesting to note the strong “*cultural*” reasons that are given for the working of additional hours and it is these “*cultural*” factors which are of concern to PA as arguably they can lead to serious psychological hazards.

Further, the survey findings go to some extent to dispel the myth of the professional and managerial employee who “*self manages*” their hours of work and will work additional hours because they “*choose to*”. The implication that flows from this is that resulting mental health issues are at least to some extent “*self-inflicted*”.

3. WORKPLACE RESPONSES

Overall, PA believes there is little evidence that excess workload is generally acknowledged as a Workplace Health and Safety issue affecting professional and managerial employees who are often seen as “*invisible*” in this regard. This is even though the impact of excess work on the health of workers is internationally acknowledged with the World Health Organisation which now includes ‘Burn’out’ as an occupational phenomenon in the International Classification of Diseases.

It is acknowledged that some employers provide support for their employees who feel able to “*self-identify*” through the provision of employee assistance programmes and similar initiatives to workers who are at risk of workplace related stress from psychosocial hazards. In addition, employers will provide psychological support to workers once they are injured or self-identify as requiring assistance. However, there is little evidence to suggest that there is a recognition of the need for a consistent effort to prevent injury.

PA strongly believes that just as it is for physical, chemical and biological hazards the emphasis in psychological injury must be on preventing harm, not in providing treatment once harm has occurred.

4. RECOMMENDATIONS – PSYCHOSOCIAL HAZARDS

In recognition of this problem, the Boland Review of the model workplace health and safety laws has recommended that there be regulation of psychosocial hazards in the workplace, including how to identify risks, and the appropriate control measures to be applied once a risk is identified. Work intensification, work overload and long working hours are recognized psychosocial hazards but there is frustratingly little national guidance for employers or workers in assessing the extent of the risk or on the appropriate mitigation strategies to be employed. The Boland recommendations respond to that identified deficiency in the law.

RECOMMENDATION 2

PA strongly supports Option 2 for regulation of psychosocial hazards to be included in the model WHS laws

PA supports the inclusion of regulations on psychosocial hazards in the model WHS laws and further suggests that such regulation needs to be comprehensive in nature. Without regulation there will be little guidance for employers on psychosocial hazards and no incentive to address risk and psychological injury at source. PA believes that any regulation must use an internationally accepted definition of psychosocial hazard and workplace related stress that is objective and not dependent on the worker's perception of the hazard.

RECOMMENDATION 8

PA strongly supports Option 2 for work to clarify that union officials may assist without a Fair Work permit.

As mentioned in the introduction to this submission, professional and managerial employees are found in a diverse range of industries and workplaces. It is vital that Health and Safety Representatives can readily access knowledgeable support and assistance when performing their duties.

PA has field staff working throughout Australia and with the support of the PA legal and industrial team is well placed to be able to provide this support.

RECOMMENDATION 20

While recommendation 20 is listed as having no regulatory impact, PA nevertheless believes that it is worthy of comment and that there is an urgent need to evaluate whether the incident notification process is practically applicable to psychological injury which is often the result of cumulative impact.

Finally, PA would welcome the opportunity to contribute further to the discussion around these issues.

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