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From: Lorraine Johnson
Sent: Friday, 13 April 2018 3:57 PM
To: info@swa.gov.au
Cc: Ben Ohlmeyer
Subject: Review of The Model WHS Laws

To Whom It May Concern,

We appreciate the opportunity to provide feedback for the review of the model WHS Laws. The following comments and recommendations are written from a chemical aspect only, reflecting the industry we work in.

We understand that the main objects of the Model WHS Act relevant to chemical exposure were to:

- protect workers and other persons from harm by requiring duty holders to eliminate or minimise risk
- promote the provision of advice, information, education and training for WHS
- secure compliance with the Act through effective and appropriate compliance and enforcement measures
- provide a framework for continuous improvement and progressively higher standards of work health and safety

The purpose of the WHS Act (section 3) was to provide a framework to protect the physical and phycological health, safety and welfare of all workers at work and of other people who might be affected by the work. The WHS Regulations specified the way in which some duties under the WHS Act must be met and prescribed procedural or administrative requirements to support the WHS Act i.e. licence requirements for specific activities and record keeping.

The Codes of Practice are in place to provide practical guidance on how to meet the standards set out in the WHS Act. They are admissible in proceedings as evidence of whether or not a duty under the WHS laws has been met. They are also a point of reference for an inspector when issuing an improvement or prohibition notice.

As far as reasonably practicable (section 18) a *guiding principle* of the WHS Act is that all people are given the highest level of health and safety protection from hazards arising from work.

What is working and why?

We believe that the Model WHS laws have resulted in a greater awareness of health and safety requirements, including reducing the likelihood of a hazard or risk occurring and the degree of harm if that risk occurred. Cost is not normally the key factor in determining what it is reasonably practicable for a duty holder to do, unless it can be shown to be ‘grossly disproportionate’ to the risk.

The Model WHS Act has given Industry the opportunity to review current activities and has set the stage for workplace improvements and this review.

Will it continue to work in the future?

We believe that the WHS Act will continue to work in the future provided there is reinforcement in critical areas.

Our understanding is that compliance with Codes of Practice is not mandatory, providing that any other method used provides an equivalent or higher standard of work health and safety than that suggested by the Code of Practice.

What doesn't work and why?

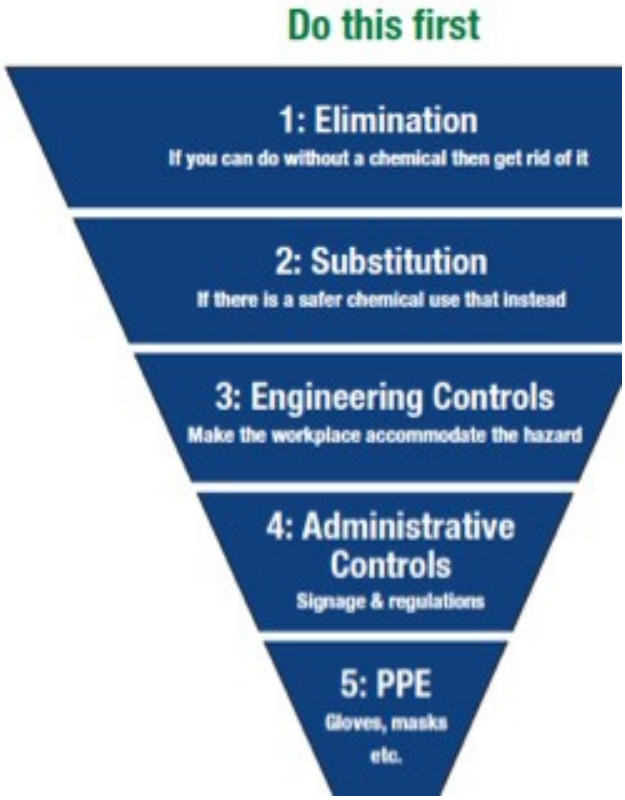
We live in a cost conscious environment and although theoretically cost should only be considered after assessing the extent of the risk and the available ways of eliminating or minimising the risk, industry is content to continue using known harmful chemicals until an incident occurs, or a complaint is lodged either from workers or environmental concerns.

Sections 46-49 states that the WHS laws require duty holders with shared responsibilities to work together to make sure someone does what is needed. This requires consultation, co-operation and co-ordination between duty holders. The duty to 'consult' does not require agreement, although each duty holder retains responsibility for discharging their health and safety duty. A PCBU with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace and anything arising from the workplace does not put the health or safety of any person at risk. Nevertheless there are a number of dangerous myths about chemical safety in the workplace and unfortunately, like many myths, these beliefs are common and ingrained in many organisations. Busting some of these myths is an important step towards safer and healthier workplaces. When things have been done a certain way for a length of time, a normalisation process occurs. Chemical products and processes become familiar and familiarity can breed a false sense of acceptance comfort and trust.

Many chemicals still commonly used in workplaces need to be banned or highly controlled. As we learn more about chemicals and their effects on the human body and on our environment, alternative safer substitutions are sought. However, this process of fighting against the inertia of familiarity takes time, while illness and environmental harm continue. For example, a common industrial solvent Acetone is still typically used for surface cleaning prior to welding. This chemical is both flammable and explosive and has been the cause of severe workplace accidents including multiple deaths. However, it is still widely used.

An example of chemical exposure and risks to human health are clearly set out in the following account of a worker's contact with Trichloroethylene (TCE) and the consequent legal ruling acknowledging the exposure risk. The recent decision by the Veterans' Entitlements Appeal Board could have far-reaching consequences for many Australian institutions and industries, including the possibility of class action lawsuits. Ultimately, the only safe course of action is a complete ban on TCE across all Australian industries. Click on the following link to read the ABC article regarding a legal ruling on TCE (Trichloroethylene) and Parkinson's Disease.
https://envirofluid.com/info-library/toxins-and-dangerous-chemicals/trichloroethylene-parkinsons

Sections 90-102 state that a PIN may include recommendations that may be taken to remedy a contravention. These recommendations may refer to a Code of Practice and offer the person a choice of solutions. It is not an offence to fail to comply with any recommendations in a PIN and a PIN can be complied with by taking alternative actions to those recommended in the PIN to remedy the contravention. Nevertheless although a substitution chemical that performs as well or better than the chemical of concern is often recommended, too often this is negated by warranty issues or manufacturers prescribing certain products
Under the WHS laws, workplaces handling or using hazardous chemicals must manage health and safety risks by using the hierarchy of controls. The model WHS Act and Regulations require those who have a duty to ensure health and safety, achieve it by eliminating health and safety risks, so far as is reasonably practicable. Safe Work Australia strongly encourages businesses to strive to go beyond minimum compliance. The model WHS Regulations require duty holders to work through this hierarchy when managing health and safety risks.



Too often the first line of defence for protecting workers is Personal Protective Equipment PPE and ventilation systems etc.. All other efforts must be made to remove, substitute or control the risk through means further up the Hierarchy of Controls before implementing this option. PPE is only effective at managing risks if the equipment is used correctly and consistently with proper training and supervision. An NHEWS survey conducted in 2012 found that provision of washing facilities and provision of gloves were the most commonly reported control measures. Training on the safe handling of chemicals was reported by 61% of NHEWS survey participants and was one of the least frequently reported control measures. According to the National Code of Practice the actions above should be followed in order. This means that all efforts possible must be made to Eliminate the Hazard completely or find a Safer Substitute before looking for ways to reduce risks associated with a hazardous substance.

Another area of concern expressed by a government is inconsistency between Safety Data Sheets. The biggest concern is the lack of cohesion between SDS's.
e.g. a company may buy in inferior products from China or the UK and put their own SDS on it. There is also a lack of information regarding a chemical's composition and physical properties. Some SDS's are hazardous and don't even have pictograms. Anyone can compile a GHS SDS and put whatever they like on it – this can even include the SDS compiler putting his own after hours contact number! This raises the question "when does an SDS stop being an SDS?"

Another incident was quoted within an organization where they were using a product that was a known mutagen. The suppliers concerned even sent 2 persons over from overseas to address the issue. OEM's were alerted however they said that particular chemical had to be used even though a pregnant woman was working in that area. (Mercifully the baby was perfectly formed). In this instance we are told that COMCARE even seemed hesitant to take major action towards fixing the problem due to its complexity and as a result, industry is slow to take on substitution.

A flawed workplace safety culture leads to accidents. Safety issues arise from a wide range of faulty thinking within an organisation including:

- Normalisation of risk (this is the way we do things around here)
- Viewing near misses as successes rather than near-failures
- A premium placed on maintaining operational efficiencies over safety
- Conflicting safety messages to employees (saying one thing but doing another)
- Resistance to new information and change

We believe that the Act itself is not explicit enough, as even though there is a growing desire to do the right thing WHS 2011 chemical legislation tends to be ambiguous. Conforming to the new Safe Work Australia Act is often seen as a legal minefield.

We live in a democratic society and the only reason much of industry is remaining static is because WHS is letting them continue as is. We feel that Government is letting Australia down by not supporting its people and not being able to enforce laws, due to ambiguities.

What we could do to make it work better?

Changing ingrained beliefs and patterns of behavior within an organisations takes time, commitment and support from all levels. Every person in an organisation must take responsibility for their personal safety and the safety of others. Our recommendations include the following:

1. We suggest a review of the chemical side every 2-3 years to keep pace with the changes occurring in the chemical industry. Advancements in chemical technologies have produced excellent substitutes for many hazardous and harmful workplace products, and in most cases these products work as well as, or better than, the traditional chemicals they replace.
2. A higher education effort is needed around the benefits of compliance. This should be documented within a the WHS legislation i.e. improved safety is not the only outcome, but safer chemicals will also give organisations holistic benefits such as:

    - Reducing inventory requirements
    - Decreasing PPE, ventilation and other risk management strategies
    - Cutting waste disposal costs
    - Simplifying transportation, storage and usage procedures
    - Reducing worker sick days
    - Avoiding expensive fines and penalties

3. There are many elements in current Codes of Conduct that should be made law.
4. WHS statements also suffer from State interference and should be mandatory across the nation.
5. As GHS formatted SDS's are global by their own definition, there needs to be an ISO regulation that audits SDS providers, so that manufactures etc. cannot cheat the system and provide inaccuracy's within SDS documents for their own self-centered gain.
6. Schedule 10 chemical listings need to be expanded to include additional substitutable products
7. Chemical manufactures are state that their products are 'green' even though they have serious health implications, and this in turn clouds the clarity needed around worker safety. We believe that it is necessary that some legislation is imbedded to prevent this.
8. As an OEM or engineer may disapprove of the proposed substitution and a PIN cannot be issued to override an inspector's decision on a matter (subsection 90(5)), we suggest that mechanisms be put in place where the user must report back to the OEM stating that under WHS guidelines the safer product must be used and ask for engineering approval.

In conclusion, we thank you for the opportunity to complete this review, Suggestions and any constructive criticism of the current policy is not meant to undermine the current legislation, but rather facilitate or the enhancement of the same.

Envirofluid Management is deeply passionate about this subject, and has a number of articles on LinkedIn https://www.linkedin.com/in/ben-ohlmeyer-85a67983/detail/recent-activity/posts that revolve around chemical safety. Mr Ben Ohlmeyer General Manager has specifically requested that he is given the opportunity to meet with the panel regarding this important review, and would be glad to provide numerous case studies around this subject if required.

We look forward to your feedback and our further involvement.

Best Regards,

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Letter of Recognised Supply Defence