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Legislative framework

The current penalty regime needs enhancing. Larger companies who do not discharge their duties as required should face a stiffer maximum penalty for a Category One offence. The current \$3 million cap for larger corporations is minimal. A capacity to pay system could be looked at based on the previous 2-3 years profits declared by the company. Smaller companies could still be capped at \$3 million dollars. Same for some increases in Category 2 and 3 offences.

Duties of care

Consideration should be given to make it mandatory for PCBUs to have a work health and safety management system (WHSMS) commensurate with their size and the hazard and risk context of their industry. Understand that most organisations will have some form of WHS or OHS documentation but that doesn't mean they have an appropriate system in place. In relation to the current incident notification categories I strongly believe the previous categories used in the Commonwealth jurisdiction were a far better reflection of workplace hazards, incidents and risks. The current categories miss SO MUCH information especially in relation to mental health, bullying and harassment, transport and related industry sectors. Improved and broader notification obligations would provide SafeWork Australia and the WHS Regulators with greater intelligence capacity to direct regulatory resources towards hot spot areas. It would also seek to enhance the PCBU's focus on those areas that they may currently not be paying enough attention to.

Consultation representation and participation

In theory the consultation provisions provide good opportunities for workers to select a preferred consultation mechanism and find consensus views on WHS issues. The reality that I have seen since January 2012 through my TAFE students who come from varied industry sectors and through my work as a senior WHS inspector suggests very few workers are given a real opportunity to avail of the HSR concept. Workers are not told about the opportunities and in many cases when they ask, excuses such as costs, 'its a union job' and we don't need that sort of thing around here are the response. There should be more obligation on the PCBU to advise workers of the consultation opportunities that are available. This should be mandatory and backed up by Regulators undertaking proactive visits to work-sites to ensure compliance. Also workers need better education and training on all aspects of the legislation. The majority of the Australian workforce is unfortunately ignorant of the WHS legislation including duty holder obligations (including penalties) and consultation options and opportunities.

Compliance and enforcement

In the previous Commonwealth OHS legislation a HSR who has issued a provisional improvement notice (PIN) had the right to request Regulator intervention within the 7 day period if they believed the employer (PCBU) was not intending to comply with the PIN. This has been removed from the harmonised legislation and should be included in any review to ensure equity and fairness for all stakeholders. Having been a senior inspector the resourcing that is provided is not enough to undertake comprehensive pro-active and reactive programs in all jurisdictions. If governments are serious about improving WHS in the long term more resourcing is required.