Safety Institute of Australia

2018 Review of Model WHS Laws

Submission from Safety Institute of Australia

About us

The Safety Institute of Australia Ltd is Australia's national association for the health and safety profession. Established more than 60 years ago, we provide support and services to more than 10,000 individuals who work in the field of health and safety each year. Our members work at all levels within Australian organisations in a variety of health and safety roles; from the shop floor, in the field as Health and Safety Representatives (HSRs), as qualified work health and safety (WHS) practitioners and professionals, right through to senior executive heads of health, safety and environment.

Our vision is for healthy and safe workers in productive workplaces. Our mission is to advance the health and safety profession, to deliver the highest quality advice; and be a voice for the profession to positively influence the development of health and safety policy and practice.

Background

Laws are generally binary (actions to be done – breach if not), whereas safety is dynamic and contextual. A dominating factor that determines whether safety outcomes are positive in a particular workplace is the culture of the organisation, which in turn is influenced by the world view of senior leadership.

The law is designed with a view to prosecution for non-compliance by the regulator and the Public Prosecutor's Office in each jurisdiction. Superior courts limit the powers of the regulator to what is explicitly included or can be implied by the wording in the Act and Regulations. It also seeks to attribute blame; a notion which is often contradictory to WHS theory. As such, the law has limited effectiveness in improving safety performance, particularly where the employer is not interested. Generally the law only works after the fact of an incident, often a fatality. While this may have some publicity effect, this quickly wears off as organisations return to "business as usual". In addition, the likelihood of an organisation being reviewed by a regulator, in the absence of an incident, is very low, given the ratio of Inspectors to organisations in each jurisdiction. All in all, the law overall is reactive, rather than proactive.

In our competitive economy, many companies have a focus on cost cutting. In WHS, this can reduce redundancy within systems, and is generally inimical to positive safety outcomes. Allied to cost cutting is outsourcing and sub-contracting, which is growing in prominence in today's 'gig economy'.

The 1970's shift towards the Robens' approach to regulation was driven by (a) the perceived excesses of over-regulation and (b) the participants in the workplace (i.e. employers and workers) were best placed to control unsafe issues, rather than the state. While the first attempts at modern OHS legislation in Australia followed the Robens approach, over time, the volume of regulation has increased. Today regulatory overload is commonly decried by a number of organisations, particularly lesser resourced small to medium-sized enterprises (SMEs).

The fragmentation and cost cutting in the workplace provides for a reduction in expertise by both employers and workers in understanding the fundamentals of safety. In addition, the reduction in the union base means that a key player envisioned by Robens has a much less role to play, except in a few industries. Low union density also has a negative impact on HSR numbers and effectiveness.

This submission is made with the above background in mind, so involves what can be done to improve work health and safety, not just improving the laws. As noted above, some of the attributes of the law's adversarial approach may hinder improved safety.

Broad responses

1 What works?

Specific action-based Regulations (Hale & Swuste, 1998) that are very clear and unambiguous (e.g. regulations relating to guarding, working at height, asbestos removal).

2 Why does it work?

Action-based regulations are easy to understand, and to enforce. It is very easy for inspectors to identify if a breach has occurred and to issue notices to correct these.

3. Will it continue to work as work practices and environments evolve?

Action-based regulations will always be applicable to certain tasks and work environments. However, like pre-Robens prescriptive legislation, such regulations can be superseded by technology and the law has always been and will always be behind the curve in this regard. For example, the machine guarding regulations are behind the latest Australian Standard (SAI Global, 2014) in terms of approach.

Process-based regulations based more on risk management overcome this. The problem is that once the action-based Regulations move to process-based, then the ability to regulate is decreased as the options to achieve the desired outcome increase, and Inspectors generally are not expert enough, nor have the time to deal with this flexibility.

4 What doesn't work?

Process-based laws are very difficult to enforce properly. Manual handling causes a significant number of injuries, but being covered by a process-based Regulation (i.e. risk assess the task and using a hierarchy of control, apply the most appropriate control action for the context) it then becomes a problem for Inspectors, who may only check to see that some suitable system is in place, not whether it produces an adequate control action.

Psychosocial hazards are a growing part of work life, exacerbated by the changes in the workplace noted above, but totally unregulated in most circumstances. There are some specific situations that are covered within some form of legislation. Transport and mining have controls in relation to fatigue, but this is generally not in WHS legislation. Bullying is covered explicitly in the Fair Work Act, but WHS legislation does not use the word. It can be argued that the inclusion of psychological health in the definition of health goes some way to regulate. But in absence of explicit regulation, or even a Code of Practice, it can be argued that the WHS authorities do not regulate psychological hazards, although they may prosecute after the fact in egregious cases. Certainly, it is clear from prior studies that the absence of any regulation / codes / training hampers Inspectors in this task (PC, 2010).

5. Why doesn't it work?

If there are no regulations or Codes of Practice on a particular hazard, why should the law be expected to control risks related to those hazards?

Process based regulation, or goal based regulation such as including psychological health in the definition of health, depends on those making decisions in the workplace to (a) know that they have a duty to control such issues (e.g. psychological hazards), (b) to have access to competent advice to identify the risk associated with the hazard is significant and to propose appropriate control action, which may include task or workplace restructure and (c) to have a positive safety view that allows them to put capital and resources to achieve the good outcome. In the absence of these preconditions, generally second-rate solutions, such as lifting training, or increased procedures, are applied, but do little or nothing to effectively control the underlying risk.

6. What could we do to make it work?

We have divided our response into seven 'themes'. These are:

1. Mechanisms to sustain harmonisation
2. Regulation of health and safety practitioners and professionals
3. Changing the balance
4. Quadripartite model
5. 21st century regulation
6. Psychological health and safety
7. Health and safety representatives

1. Mechanisms to sustain harmonisation

There are many examples over many decades of state/territory governments coming together in the national interest to seek to create consistency in both (a) the content of legislation from state to state and (b) the application of that legislation through different regulatory agencies. The process of harmonisation of health and safety legislation has been very widely supported because it is well understood that the interests of government, industry and workers are all served by greater consistency in the law, as well as the application of the law.

In the case of health and safety legislation the model undertaken has been the national Model Legislation method - an approach which urges the states to adopt a negotiated model. Our understanding is that this approach was taken largely because it represents the least invasive approach to state and territory rights - at the time, state based labour councils were of a mind to take an approach whereby there was the least loss of control in regard to OHS/WHS law - and State Governments obliged.

However, as challenging as it is to achieve a harmonisation of the law, to achieve the long-term goals of harmonisation, the two most significant matters - and potentially greater challenges - are:

a) the maintenance of that law as consistent across all states and territories (when changes occur, they occur across all state and territory law); and
b) consistency in the application of that law. This is particularly relevant with WHS legislation which provides for significant interpretation and variation in application.

Unless a long-term strategy to address these two issues is in place, the goals of harmonisation cannot be achieved.

Considering the best method of harmonising law

Whilst the model laws approach provides for relatively less resistance in the harmonisation phase, it does not meaningfully address the sustaining of that model under the various pressures brought to bear.

Section 5.1.8 of the national model legislation states “The adoption and implementation of model OHS legislation is not intended to prevent jurisdictions from enacting or otherwise giving effect to additional provisions, provided these do not materially affect the operation of the model legislation....”

However, with this method certain realities must be faced. Today, even before all states/territories have signed into harmonised laws, events in Queensland have created pressures to change those laws, presenting a good demonstration of the following:

- Governments regularly change their political persuasions, and as they do, their interests in their own laws can change, resulting in an intention to change those laws for reasons which have nothing to do with a desire to be consistent with other states/territories.
- Significant incidents will occur from time to time, and differently in different jurisdictions, creating social and political pressures for legislative responses which may also work against the goals of harmonisation.

The national Model legislation approach does not strongly enough address the long-term sustainability of the laws under these pressures, and this is its primary weakness.

By contrast, the Intergovernmental Agreement of Heavy Vehicle Regulatory Reform decided to adopt the applied laws model:

3. The Parties agreed on 25 February 2010 that national legislation regulating all vehicles over 4.5 tonnes, and establishing a National Heavy Vehicle Regulator (NHVR), will be established under legislation of the Queensland Parliament, with each state and territory passing enabling legislation to give effect to the legislation as passed in the Queensland parliament.

Queensland was chosen to be the host parliament for both this law and the national law regulating health practitioners. South Australia looks after harmonised gas and electricity laws, as well as national rail safety law.

Using the applied laws model, the issue of changes to law are addressed in detail. The parties create processes whereby the removal of that state/territory from the applied law process actually requires legislation of its own. This is a critical barrier which – without taking away the right of the state to withdraw- mitigates against them doing so, throughout changes of government and exceptional circumstances, by having the considerable requirement to change their own legislation to do so. This provides a stronger glue to sustain consistency in the law.

Although it successfully places short term barriers to change which help drive the sustainability of consistency, the applied law approach does not necessarily mitigate against legislative change that is needed, demonstrated by new changes in the chain of responsibility laws currently going through. These are significant changes and notable in that they relate to the introduction of a primary duty format, not dissimilar to WHS law.

Considering the best approach to consistence in application

Even under an applied law, there are still significant barriers to consistent application, without which, the original intentions of harmonised law are not achieved.

It has become increasingly understood through current regular demonstration of highly variable interpretation and application of the current law by different regulatory agencies, that the harmonisation of the law alone is not solving the problem of inconsistency for Australian business.

There are many potential approaches to this with existing examples covering other jurisdictions, which can be drawn on for knowledge. In effect, all of them require at least some level of ceding of responsibilities in application, from the States/territories to the Commonwealth. Although it is well understood that this is hard to achieve, we would argue that these different models be explored. We believe that SWA must ultimately take a stronger role in the functions that must apply to achieve greater consistency in the application of the law.

Recommendations

We propose that Safe Work Australia explore the following:

- The cost/benefit of the application of the applied law model for WHS legislation; and
- The various examples of nationally consistent application of state/territory laws including the potential to establish a national regulatory function, strongly guided by states/territories.

2. Regulation of health and safety practitioners and professionals

Of all the myriad advice, assistance and services provided to organisations by various professions, we believe that advice related to the health, wellbeing and lives of people make the strongest case for regulation. This includes health, medical and also WHS advice. The advice provided by the health and safety profession - and the subsequent actions of employers based on that advice – has a direct effect on the health and safety of millions of Australian workers. There are undoubtedly cases where poor quality advice has resulted in loss of lives, and the profession is ready to take up greater responsibilities in this area. Australian Industry has the right to have an increased level of confidence that when they accept that advice, they are receiving it from a health and safety practitioner or professional suitably skilled and capable of giving advice at that level. The requirement for certification/accreditation of health and safety professionals is a powerful approach to removing poor quality advice from the market, will provide greater confidence and certainty to industry, and make workplaces safer as a result.

The importance of this topic is captured in Safe Work Australia's National Strategy 2012-2022, with 'those providing work health and safety education, training and advice have the appropriate capabilities' listed in the strategic action area of 'Health and safety capabilities' (SWA, 2012). What the law refers to as suitably qualified, and what the plan refers to as appropriate capabilities, demands further definition. And that definition demands a proven level of combined education and experience, to give advice at specific levels.

Today, Health and Safety Professional Certification has been established in Australia via an international-standard program, articulated against the OHS Professional Global Capability framework, which has been adopted by key organisations from 22 countries. The program is in the final stages of meeting all elements of the international standard for certification of professions, and stands extremely well alongside other higher performing certification frameworks in the USA and Canada. In the first stages of the national program already more than 1,500 people are now formally certified.

Ensuring a higher quality of the provision of health and safety advice need not be highly complex nor costly. Rather it would be a very powerful driver for better quality health and safety advice to Australian industry.

Recommendation

That the government consider the inclusion in model Law that businesses receive their health and safety advice from suitably certified health and safety practitioners and professionals. Such certification would include minimum entry requirements for education and experience at each of the three levels of health and safety work, and the certification process assesses capability at each level.

3. Changing the balance

The model WHS framework consists of the model Act, Regulations and Codes. All three elements seek to regulate hazards (e.g. noise), activities (e.g. manual handling), and industries (e.g. construction). There are also combinations of the three, for example falling from heights, whilst working at height, within high risk construction work.

Generally speaking action- or rule-based laws will be limited in their effectiveness to regulate complexity. Rule-based laws work well for tightly constrained, narrowly defined tasks or activities, industries or hazards. They are easy to understand, and to enforce, based on typically binary outcomes of compliant or non-compliant. Notices and other citations are easier to issue based on these laws.

Without contextual examples, goal or outcome-based laws are more suited for more complex processes. Goal-based laws generally require more advanced capabilities, and potentially more resources, to interpret and implement.

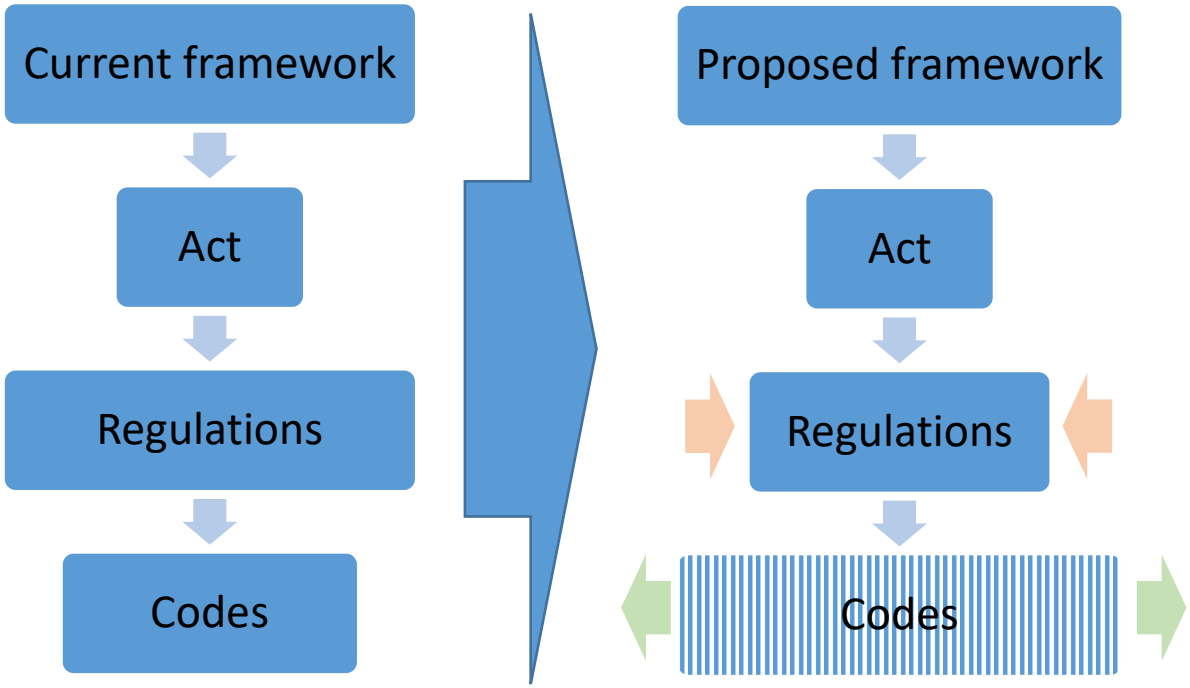
For well-resourced organisations, those elements of the current framework that relate to consultation provide comprehensive expectations and guidance on how to consult with workers. But there needs to be a greater focus on providing dynamic, customised, industry tailored regulation, based on fair and balanced laws.

Action-based laws will always be applicable to certain tasks and work environments (e.g. machine guarding). However, like pre-Robens prescriptive legislation, such regulations can be superseded by technology. Regulations have always been and will always be 'behind the curve' in this regard. For example, the machine guarding regulations are behind the latest Australian Standard in terms of approach (SAI Global, 2014).

Process-based regulations based more on risk management overcome this. The problem is that once the action-based regulations move to process-based, the ability to regulate is decreased. This is because the options to achieve the desired outcome increase, and Inspectors generally are not expert nor have enough time to deal with this flexibility.

Process-based regulations are more difficult to enforce. For example, manual handling causes a significant proportion of injuries, but being covered by a process-type law (i.e. risk assess the task and using a hierarchy of control, apply the most appropriate control action for the context) it then becomes a problem for Inspectors, who may only check to see that some suitable system is in place, not whether it produces an adequate control action.

Figure 1: Proposed re-balancing of the model WHS legal framework



Recommendations

We are of the view that the balance between the three elements requires revision. We propose the following series of recommendations related to the balance of the model framework:

- The implementation policy should be that Codes are created more widely, and are updated more frequently to ensure that advances in technology and work practices are included in the updated Codes, which should represent the current state of what is "reasonably practicable". A streamlined development and delivery model, which would require refining the current Code development process, would better meet industry's evolving needs and areas of risk.
- In addition to codes which need to be expanded, the fourth advisory level – guidance – needs to also be expanded to provide more dynamic resources.
- Given the increased speed of change in the workplace, it may be appropriate that Regulations on all aspects have less prescription within the WHS Regulations (which is consistent with the original Robens' model), and include that detail within Codes of Practice. An important issue in terms of Codes of Practice is that they should be more industry based. One size does not fit all.
- In addition, the Codes should be split into more industry-focused, narrower scoped resources. Codes currently average 55 pages. E.g. rather than having one manual handling Code that most find difficult to adapt to their situation, split it into industry-specific manual handling Codes.

4. Quadripartite model

At the macro level, the roles of the members of the tripartite model (i.e. regulators, employers and unions) have evolved. As organisations, government bodies are scrutinised by increasingly demanding citizens, and expected to deliver higher value services with less resources and restricted capabilities. As our economy becomes increasingly complex and fragmented, regulators are expected to respond more rapidly to emerging challenges. They are also expected, by citizens, industry, and legal mandate, to maintain and indeed increase preventative initiatives across more workplaces. As the division of labour and specialisation increases, maintaining expertise is expected to become more difficult.

Recommendations

We propose policy-makers facilitate the next evolution of the tripartite model into a 'quadripartite' model. As independent, qualified professionals, the health and safety profession is ideally positioned to provide evidence-based input into WHS policy development, from a position which both understands and respects the roles that employers and unions play in the process – but which is different. The profession is ready to support policy makers in all jurisdictions to expedite the development of guidance, facilitate industry input, and providing technical expertise.

5. 21st century regulation

Technology has had a profound impact on the world of work. WHS has also had impacts, both positive and negative. Technology as a trend is not going to disappear, and many businesses are facing the stark prospect of adapting or perishing.

Recommendations

We recommend regulators focus on using technology to:

- Reduce development time of Codes
  Technology provides modern means for rapid communication, access and surveying. There are disappointingly few efforts made to reach out to the WHS community for input. And submission frameworks, which have effectively remained unchanged for decades, are ripe for disruption.
- Disseminate guidance
  The model Codes and the 4th tier guidance need to be more applicable, comprehensible and accessible. Exploring digital platforms via modern social media is critical to reaching younger demographics.
- Make the regulator websites more accessible
  Organisations, particularly those that have less skilled and experienced capabilities, can find it difficult to access resources on regulators' websites, particularly in today's 'information on-demand' environment.

6. Psychological health and safety

Psychosocial hazards are a growing part of work life, exacerbated by the changes in the workplace, but not regulated in most circumstances. There are some specific situations that are covered by regulation, such as transport and mining have controls in relation to fatigue. But these instances are generally not in WHS or OHS legislation. Bullying is covered explicitly in the Fair Work Act, but WHS legislation does not use the word.

It can be argued that the inclusion of psychological under the definition of health goes some way to regulate, but in the absence of explicit regulation, or even a Code of Practice, it can be argued that the WHS authorities do not regulate psychological hazards. They may prosecute after the fact in egregious cases. Certainly, it is clear from prior studies that the absence of any regulation, Codes or training hampers regulators' Inspectors in this task.

In March 2018, the SIA called for a wider national conversation about Australian organisational and workplace culture, to address what it believes are disarmingly common problems of harassment, bullying and abuse in organisations and workplaces across a wide range of Australian industries (SIA, 2018).

Recommendations

There are model actions overseas that can be utilised to increase the profile of the forgotten hazards:

a) The UK has developed a series of Management Standards based on best evidence that identifies actions managers need to take to control stress within the workplace (UK HSE, n.d.). This has been adapted and incorporated into Italian Labour Law (Ronchetti, et al., 2015).
b) Scandinavian countries have made changes to their regulations, and their inspectorate so that Inspectors can aid organisation to improve the situation regarding psychosocial hazards within workplaces visited.
c) Canada Has developed a National Standard of Canada for Psychological Health and Safety in the Workplace that organisations can utilise as part of their safety systems to control for psychosocial hazards (MHCC, 2013).
d) The US provides awards for organisations which score highly on OHS and work health issues, and research has shown that such organisations generally have consistently a higher rate of share price increase than their contemporaries on the S&P500 (Fabius, et al., 2016).

Some of these approaches can be picked up either nationally or by individual states. Current work in Queensland on the People at Work program (Jimmieson, 2014) and the development of the Australian Workplace Barometer by Safe Work Australia can be utilised as part of a national system to improve safety culture. The important issue is that psychosocial hazards are recognised in the WHS legislation (apart from the definition of health) and a willingness to change is achieved by the Ministers. There is also a plethora of evidence-based methods of controlling stress in the workplace, so there is no need to "re-invent the wheel" through additional reviews (LaMontagne & Keegel, 2012).

7. Health and safety representatives

Health and safety consultation is critical to the effective management of WHS. Successful organisations contain dialogues based on trust between those who control a workplace (i.e. management) and those who are exposed to the hazards (i.e. workers).

Whilst research is fragmented and dependent on specific industrial contexts, health and safety representatives (HSRs) have an important role to play in the Robens legal framework (Milgate, et al., 2002). HSRs appear to have a net positive influence, as indicated by examples in mining (Walters, et al., 2016).

As Australia's economy and demographics have evolved, several macro-trends have emerged. These have influenced and likely restricted the effectiveness of HSRs. These include:

- Declining rates of union density - we know that effective consultation is important for achieving high levels of health and safety performance. With the functions of unions changing as industrial tribunals, courts and legal frameworks have been installed, the ability for unions to support worker representation has declined.
- Increasing cultural diversity - workers from a diverse range of cultural and ethno-social backgrounds may be less likely to possess values aligned with those attuned to collective bargaining. Their cultural power dynamics and relationships may also be less challenging and more hierarchical. This has impacts on WHS, for example as instructions from superiors are less likely to be challenged. Gaps in language comprehension can be a significant barrier to the accessibility, communication and comprehension of WHS guidance.
- Growing proportion of casual and less secure work – as new business models have emerged, the way businesses harness organised labour to extract value has changed. These new models are based on new structures, which include different stakeholders interacting in different ways. For example, the peer-to-peer economy sees platforms connect members of the public to exchange goods and services. Even businesses in the more traditional industries like consumer products are recognising the value of labour being performed by different stakeholders (e.g. Ikea furniture assembly, or self-checkout supermarkets). These changes have impacts on WHS lines of responsibility, exchanges of information, and outcomes.

The model framework, whilst representing an improvement on previous versions of WHS regulation, is essentially based on their historical predecessors. Without factoring in the changing demographics of Australia's workforce, subtle changes to model laws are limited in their effectiveness.

A measure of the seriousness with which organisations take safety should be viewed in terms of access to competent safety advice for organisations. Medium to large organisations should have Certified OHS Professionals on staff, or directly contracted to provide advice. Small to medium enterprises (SMEs) should be able to access such advice through their trade or industry association. The critical issue is that such advice is available and utilised by **all** organisations.

The reintroduction of the prior Queensland concept of the Work Health & Safety Officer (WHSO) for organisations having above a minimum number of equivalent full-time employees should be reviewed. For well-resourced organisations, those elements of the current framework that relate to consultation provide comprehensive expectations and guidance on how to consult with workers.

Recommendation

The Queensland model of WHSOs is recommended to be re-considered. The requirements for organisations engaging WHSOs or other competent advice can be based on a categorisation scheme. This may be based on their remuneration (data for which already exists in workers' compensation sources). Regulators could mandate various categories of organisations to either contain or have access to various levels of WHS support/advice.

Individual Review Questions

The questions of significant interest to the Safety Institute of Australia are canvassed in this section.

Questions 1, 2 and 3: The three-tiered approach is appropriate, where there are three tiers. There is a tendency in the second and third tiers to neglect the "health" component within WHS, particularly psychological health. In addition, Inspectors have difficulty in adequately assessing risk management based decisions by employers, which may be a function of lack of time and/or of appropriate expertise.

Question 4: Given the increased speed of change in the workplace, it may be appropriate that regulations on all aspects have less prescription within the WHS Regulations (which is consistent with the original Robens' model) and include that detail within Codes of Practice. The implementation policy should be that Codes are updated more frequently to ensure that advances in technology and work practices are included in the updated Codes, which should represent the current state of what is "reasonable practicable".

An important issue in terms of Code of Practice is that they should be more industry based. For example, manual handling in the health sector is significantly different from that in the construction or mining industry. One size does not fit all. Finally, information should be more accessible. Some regulator web sites are very poor so that finding information is very difficult – in some cases it is easier to find regulator information though a Google search. SMEs are generally overwhelmed when seeking applicable information.

Questions 5 and 9: Current laws do not support employers and workers in managing risk to psychosocial health. Some States, such as Queensland and Victoria have advisory guides on this, but these do not have the same regulatory impact as Regulations or Codes of Practice, so employers do not generally take them seriously, even if they know about them. Again, there is a range of evidence-based information, and some guidance from jurisdictions, but there is no appetite to promulgate these as Codes and have Inspectors better trained to educate employers on their duties in this area. There needs to be some mention of psychosocial hazards within the regulations so that the subsequent Codes can have an impact.

Question 19: Consultation was developed within the Robens' model as an appropriate mechanism to have parties creating the risks and those working with the risks to get together to propose appropriate controls. However, in the near 5 decades since that model was proposed, the configuration of organisations and the degree of unionisation in workplaces has dramatically changed. Both those factors were essential assumptions in the original model.

Consultation works well where there is an active union presence in a workplace (Walters, 2003), or where the workplace safety culture is positive so that the employer understands the value of requisite variety in consultation before significant decisions are made. The reduction in union membership over the past decades has reduced their effectiveness in the tripartite model at the workplace, and in some of the areas where unionisation is reasonably strong, OHS consultation has been subordinated to industrial relations (e.g. construction). The law does not impact in any meaningful way to improve workplace culture where the employer does not see safety as important.

If the future scenario is that the numbers of elected HSRs continue to reduce across all workplaces, then an appropriate approach may be to revive the Queensland concept of a Work Health & Safety Officer nationally, where more than a minimum number of equivalent full time employees are

employed or contracted. This is clearly not replacing the formal HSR structure within the legislation, but does provide a worker voice and point of contact on WHS matters, and also provides SMEs with some modicum of WHS expertise. It did work in Queensland. The current legislation does not **mandate** that all organisations have HSRs, but only where the workers request this to happen. In the absence of understanding of worker's rights in this context, large numbers of organisations do not get asked to set up HSRs.

Question 20: Prior reviews have shown that casuals, labour hire, contract and other contingent workers were unlikely to be involved in consultation, and such workers are in fact unwilling to raise OHS issues for fear of losing their jobs (Consultative Arrangements Working Party , 2001). Recent trends in the gig economy and increased casualization have only exacerbated this issue. The law provides for all workers to be included but is ineffective where the safety culture is poor.

Question 21: As noted above, the issue is more about whether HSRs are present in most industries which have low union densities, rather than their effectiveness.

Question 26: As discussed in the introduction, where Inspectors have to work with action-based regulation (guards present or not), they work well. Where this is process based regulation (e.g. adequacy of risk assessment and control of manual handling) they are reluctant to interpret the actions of employers for fear of the internal regulator reviews that may see their decisions overturned. Clearly, they have no effectiveness on issues such as psychosocial hazard as these are not explicit in regulation so they see themselves as having no power. This situation will not change unless appropriate regulation and training is provided for them to work on (PC, 2010).

In addition, if Inspectors do have to work on process type issues, these are more time consuming and require much more additional training / expertise, so this has a resource implication for the numbers and training of Inspectors by Regulators.

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Appendix A – SIA position statements

Health and safety policy development

The health and safety profession recognizes the role of regulatory authorities in the establishment of policy and sees itself as having critical stakeholder role to play in the ongoing development of policy. The SIA strongly supports the critical role that Safe Work Australia plays in providing national policy leadership in the workplace health and safety sector.

Health and safety law

Legislation reflects the minimum requirements for health and safety management, and establishes a benchmark of compliance. However, it should never be seen as the main reason for providing safe and healthy work environments. It is critical that health and safety law in Australia is consistent, and is articulated appropriately to fit the times.

A nationally consistent WHS legal framework removes unnecessary duplication and regulatory burden on business, providing greater clarity, certainty and economic efficiency for organisations operating in more than one jurisdiction. Accordingly, the SIA strongly supports the harmonisation of WHS legislation across all Australian States and Territories. In addition, while the SIA acknowledges that separate legislation regulating safety in specific industries or in relation to specific hazards may be necessary, it considers that, where it is possible, this legislation should be aligned with the nationally harmonised WHS laws.

Health and safety enforcement

Effective enforcement is an important component of the suite of measures which produce healthier and safer workplaces. Regulators play a critical role in providing advice on, monitoring, and investigating compliance, as well as incident investigation, determination of causes of incidents, and establishing penalties associated with non-compliance. Organisations are responsible and accountable for meeting the legislative health and safety requirements applicable to their own organisations. The SIA agrees with the policy of appropriate use of Enforceable Undertakings ('EU'), to advance health and safety knowledge and practice.

Health and safety standards

Setting health and safety related standards for industry, and monitoring progress toward meeting those standards, is critical. The health and safety profession has a role to play in the ongoing maintenance and development of standards. The SIA is committed to drawing on the wide ranging expertise of its members to contribute positively to the ongoing development of workplace standards which affect the health and safety of all people. The SIA believes that all Australian Standards related to the management of workplace risks should be made more freely available in order to provide small to medium sized businesses with health and safety management structures that are measurable and auditable. This action would encourage health and safety compliance and accountability as well as supporting productivity.