



UNIONS NT

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UNIONS NT SUBMISSSION INTO THE FEBRUARY 2018 REVIEW OF THE MODEL WHS LAWS

Posted by Unions NT

References

- A. 2018 Review of the model WHS laws.

In February 2018, a review of the model WHS laws was conducted, focusing on: how the laws are utilized, adhered to and governed. The review consists of 37 Questions (as per Reference A), and Unions NT have made 12 comments to submit:

Submissions to questions and recommendations:

1. Due to the simplistic approach and detail contained in Codes of Practice (COP) they are the real go-to document for PCBU's, WHS Advisors and HSRs. It is stated that COPs are a "practical guideline" to enact parts of the WHS Regs and the Act. It is recommended that the wording for COPs needs to be changed, as a "guideline" holds no power legislatively. It is thought that a COP is the minimum standard to maintain compliance to the Act and they "should" form the minimum standard.
2. Mental Health issues in the workplace is said to contribute to suicide or self-harm. Rostering of workers, accommodation, travel, management styles and pressures, family issues/contact, and resources contribute to these mental stresses. It is believed that if COP's are further enforced as a "should" this would alleviate a number of stresses.

3. An example of public exposure to hazards is believed not to be covered enough. The safety of the public has to be considered at all times. This could be covered in the Act with more detail but it would only be better supported in COPs.
4. The consistent influx of Multinationals running major projects in the jurisdiction of Australia there has seen a major decline in the understanding of the roles of Duty Officers and PCBU's. Some examples of concerns include: working conditions, accommodation, meals, transport, fatigue, mental health. In the NT, we have a situation where the Regulator is reluctant to go to trial because the penalties are much less than the court costs. It is suggested for Duty Holders, a penalty of Industrial Manslaughter be introduced, and for PCBU's, a major increase in penalties for individuals and body corporates as a deterrent for non-compliance.
5. Clients and Principal Contractors (Officer) are clearly covered in all aspects of the WHS model. There is an issue with Multinationals not understanding/complying with their roles, duties and responsibilities. Contractors and Sub Contractors alike are totally, either unaware of what the Officer is accountable for, or, they are not interested in using the WHS model to ensure compliance is met.
6. The WHS model mentions consultation is part of a worker's (or his/her representative) right. All duty holders are to consult and PCBU's are to consult with the worker/workers. Absolute lip service is paid to this clause. In most cases if the PCBU does not get a solution they want they will use the One week notice clause to make change. It is thought a consultation check list could be included as a supporting document, to ensure the correct consultation process is followed as it was intended.
7. HSR numbers in a work group has always been an issue. PCBU's are known to take it upon themselves to dictate how many HSRs are allowed in a work group. Some workgroups have consisted of over 50 workers per HSR. The WHS model clearly states, in Section 50(1), that, "A workgroup is to be determined by *negotiation and agreement* between the PCBU and the workers of the proposed workgroup". A HSR cannot effectively represent workers with a large number of workers in a workgroup. This especially comes about when most interaction is forced to be done at lunch breaks in the workers' own time by PCBU's. It would be suggested that meetings with workers for safety-related issues be conducted in work time, and that this must be negotiated and agreed upon as part of the PCBU's responsibilities.
8. HSRs responsibility to represent the workers should not be restricted to allowing 24hrs to seek assistance. The only time the 24hrs should apply, as it already does, is for Union Officials Right of Entry. To hold a job up for 24hrs is not conducive to a good Employer/Employee relationship.

9. The role of a HSR is one of importance. Their function is good for the worker and the PCBU. If a HSR is proactive and his/her achievements are measurable, then less underhanded tactics would be used to sack them. In most cases the HSR is only representing what the worker wants, or suggesting to the PCBU how to maintain governance/compliance. A deterrent for unfair dismissals of HSRs could be the use of a performance-based review for HSRs stated in the guidelines of a PCBUs' responsibilities; in addition, if found guilty of unfair dismissal, then greater penalties should apply.
10. There is strong evidence that Inspectors and the Regulators have a bias toward operations in the NT. They are reluctant to issue penalties for none compliance and turn a blind eye to big or small companies/agencies alike. There is the opinion that NT Worksafe are the custodians of the WHS model, and should enforce the intent of the model without fear nor favor. It is thought a major increase to penalties available to the regulator or commission would re-inforce their posture in the WHS space.
11. Incident notification is vital for lessons learnt. There is a real stigma behind the finding or actions behind an incident. Transparency is the key to building confidence in the workforce: to hide, manipulate, conjure, or tamper with evidence should not happen. It is suggested that a PCBU should, as part of their responsibilities, disseminate all reasonable evidence and updates on incidents, and this is only to be stopped when it is actioned and completely closed.
12. Enforcement within the NT is virtually a non-event. At most NT work sites the workers are dealt harsher penalties and feel more intimidated than the PCBU. PCBUs have no fear of legal consequences of unsafe decisions and will take complete advantage if poor enforcement of the WHS module is allowed to continue. The proposal of harsher penalties must be considered. A system where there is a direct relationship between penalties and enforcement could accurately measure compliance, and, therefore save injury and lives.

