

11 May 2009



❖ NOTICE ❖

25 Stoney Creek Rd Bexley 2207 NSW
Ph: (02) 9554 9399 Fax: (02) 9554 9644
Email: alaea@alaea.asn.au
Web: www.alaea.asn.au
ABN: 84 234 747 620

TO: ALAEA MEMBERS

RE: NATIONAL MODEL OH&S LAWS

The ALAEA has grave concerns in relation to proposed national OH&S Model laws known as OH&S harmonisation, by a panel to the Federal and State Ministers for Industrial Relations - Workplace Relations Ministers Council (WRMC). The recommendations include "cherry picking" the lowest OH&S standards in the various state jurisdictions instead of the highest standards.

On 2 April 2009 I wrote to some State IR Ministers raising the Association's concerns. Some of our concerns in the letter to Ministers relating to the panels recommendations to Ministers are as follows;

Re National Review into Model OHS laws: first and second reports to WRMC

The ALAEA notes with great concern the recommendations as provided by the panel to the Workplace Relations Minister's Council (WRMC) as part of the National Review of Model Occupational Health & Safety laws.

The proposals for so called harmonisation, if adopted by the WRMC, will result in a lowering of health and safety standards and severely undermine the role of volunteer workplace health and safety representatives that have been a pillar of Australia's OHS system for 30 years.

The ALAEA makes this request as the Review Panel has not met one of the key principles set by the Minister for Employment and Workplace Relations, the Hon Julia Gillard MP on 4 April 2008. That is;

the observance of the directive of the Council of Australian Governments that in developing harmonised OHS legislation there be no reduction or compromise in standards for legitimate safety concerns.

Many health and safety rights which have been enshrined in legislation and have stood the test of time, including updating of state OHS laws, will be lost. Recommendations of particular concern to us include, but are not limited to:

- Every duty holder (and others), except employers, will be required to use the risk management process. The proposed exemption of employers, in the Model Act, from a verified and coherent approach to risk control is baffling. (Rec 9, 34, 136 and 207(d));

"To undertake supervise and certify for the safety of all who fly."

- Elected Health and Safety Representatives, who are worker volunteers, will have obligations placed on them which are more onerous than those on an employer. If Recommendation 113 is accepted a Health and Safety Representative may be disqualified, by a court, for repeatedly not performing their functions. A Health and Safety Representative's function includes inspecting a workplace; employers face no sanctions for failing to perform such activity. In current laws, sanctions can be taken against volunteer Health and Safety Representatives if their actions intended to cause harm. From discussions we have already had, it is clear the effect of this recommendation will be a reduction and exodus of workers willing to volunteer as health and safety representative and OHS Committee members.
- The recommendations on issue resolution will remove the right of a worker to anonymously report health and safety concerns to a Health and Safety Representative. Instead, it is proposed that workers must be in dispute with their employer prior to the Health and Safety Representative becoming involved in any issue resolution process. Additionally, the removal of anonymity will be very detrimental for those facing job insecurity (e.g. bad economic times) or for psychosocial risks (e.g. bullying, stress) (Rec 97, 116);
- The recommendations support the shifting of costs away from the employer and on to employees, particularly in relation to Health and Safety representative training. The report suggests that a Health and Safety representative and the employer must negotiate who should pay the cost for the training. This will lead to employees, for the first time in NSW, paying for their own training when agreeing to undertake the voluntary role of Health and Safety Representatives. (Rec 111);
- Elected Health and Safety Representatives access to OHS support from others will also be seriously undermined (Rec 107(f));
- Employers will be able to elect whether or not they consult with their workers and representatives about issues affecting their health and safety (Rec 97).

One of the key determinants of good health and safety performance is active worker participation and the involvement of their representatives in pursuing health and safety improvements. If adopted, the fine print of this Review will undermine that basic tenant of trained worker representation and consultation around OHS issues.

The Review Panel requested that positions put in public submissions be supported by evidence. The Review Panel publicly noted on a number of occasions the exemplary manner in which the trade union movement had produced high quality submissions, backed by substantial evidence and the openness and generosity with which the Panel was received. Despite this, the Panel has failed to adopt trade union movement recommendations of union right to prosecute (a right for 25 years in NSW and only exercised when regulators have failed to prosecute), union officials right of entry (as currently in NSW, the report places limitations on union right of entry) and adoption of the reverse onus of proof (as in UK, NSW and Qld) (Rec 224, 216, 207).

The ALAEA is therefore asking that Workplace Relations Ministers not accept the recommendations in the report. An adoption of these recommendations will set health and safety in Australia back to the 1970's. The panel have clearly failed State and Federal Governments by not delivering according to the principles as set by Hon Minister Gillard and the WRMC. (End letter).


On 30 April 2009 senior ACTU officials met with Federal Minister Julia Gillard in Canberra, to express serious concerns relating to the proposed Model Laws. By the end of this meeting the ACTU in no uncertain terms relayed a message to Minister Gillard, that proposed Model OH&S Laws are totally unacceptable in their current form. The ALAEA support this position.

Six key OH&S points that that ALAEA in conjunction with the ACTU support are as follows;

1. Strong Health and Safety Representative rights
2. The right for Unions' to prosecute employers for breach of OHS laws
3. Mandating risk management
4. Burden of proof resides with employers'
5. Tripartite bodies
6. Union right of entry

To date no State or Federal Minister has signed off on all of the above 6 points.

I write to you to make you aware of our Union's concerns with the proposed Model OH&S Laws. As from 11 May 2009, there will be a media campaign to raise public awareness. In future it may be necessary to participate in appropriate campaigns to help persuade Federal and State Ministers to uphold the highest standards in OH&S - not the lowest.



STEVE PURVINAS
Federal Secretary