STRONGER TOGETHER

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THE AUSTRALIAN WORKERS' UNION
ABN 54942536069

29 July 2014

Dr Simon Blackwood
Deputy Director-General
Workplace Health and Safety Queensland
Office of Fair and Safe Work Queensland
Department of Justice and Attorney-General

whspolicy@justice.qld.gov.au

Dear Dr Blackwood

I refer to the request for submissions in relation to the 'Issues Paper and Consultation Regulation Impact Statement for improving the model Work Health and Safety laws'.

The Australian Workers' Union (AWU) represents workers from a large number of industries and has an interest in ensuring high-level safety standards in workplaces. The AWU covers workers in industries such as civil construction retail, sugar, water, manufacturing, healthcare, aged care, community services, gas and hydrocarbons, aluminium, steel, hard rock mining to name a few.

Having considered the proposals outlined in the 'Issues Paper' (the paper) it would seem that the outcomes being foreshadowed by Council of Australian Governments (COAG) are to decrease compliance and the standards of safety in workplaces, which will in turn increase risk and injury while at the same time reduce the accountability of employers and their office holders. This is unacceptable to the AWU.

The AWU submits the following comments on the issues outlined in the paper:

Regulations are a burden for business

It is suggested in the paper that safety regulations which ensure employer compliance are an 'unnecessary regulatory burden for business and individuals'. Further it is foreshadowed that requirements such as record keeping, notification obligations, first aid requirements, emergency planning and some plant registration are burdensome and redundant.

It is submitted by the AWU that the obligations contained in the current legislation are appropriate for the protection of workers against hazards and injury. The current Regulations and Codes of Conduct were developed with wide consultation between Governments and stakeholders and represent a thorough consideration of what is acceptable in the workplace. The proposed watering down of protections for workers under the guise of "red tape" reduction is duplicitous and insulting to our members. It is the view of the AWU that "enforcement" of obligations on employers is not a burden but simply a safeguard to ensure workplaces are kept safe. The logical conclusion of what is being proposed is that if specific obligations of employers are removed or reduced then workplaces will be less safe.

In essence, what is being proposed by COAG is a cost-benefit analysis of the financial cost to employers to keep their workplace safe versus the injury cost to workers with the conclusion being that some injuries or diseases are acceptable if they save the employer money. This is demonstrated in the following sentence on page 6 of the paper, "Regulatory burdens are the cost, time and effort necessary to comply with those rules. Unnecessary regulatory burdens outweigh the benefits of compliance." The "benefits of compliance" are minimising the risk of injury and disease to workers! Any injury or risk of injury to workers is abhorrent to the AWU and is not supported, condoned or endorsed in any way.

What is even more concerning is that the Federal Government currently has a draft Bill before the House proposing the reduction of rights and entitlements for workers who are injured under the Comcare workers' compensation system, which will become a "bargain basement" scheme for employers, meaning further disadvantage for injured workers.

Officer's duty under the WHS laws

When the original legislation was being framed, a balance was ultimately struck between two competing interests. On the one hand, permit holders were granted rights to access workplaces in order to support workers and enhance safety within those workplaces, especially in cases of emergent or serious incident. On the other hand, employers and their responsible officers were not subjected to a reverse onus of proof in order to demonstrate due diligence in court proceedings. The understanding was that right of entry access by permit holders would assist the responsible employer officers with their due diligence in the workplace.

It is submitted by the AWU that no change should be made to the legislation as far as providing a definition of due diligence. Further, that where the powers of entry permit holders and HSRs are removed or reduced, that the responsible officer/s bear the onus of proof in all matters at issue in court proceedings, and that a prosecuting authority or agency be relieved of discharging that onus, as it relates to an employer's exercise of due diligence. This will make some attempt at restoring the due diligence required in the workplace where union support and advice is removed.

Powers of Union Officials under the model WHS laws

The paper proposes removing the powers of entry permit holders to immediately access the workplace where they reasonably suspect a contravention is occurring and to assist workers. It is alleged in the paper, that right of entry provisions are being misused in the construction industry in Queensland and that entry permit holders should be required to give notice of 24 hours prior to entering a workplace to investigate a contravention.

It is submitted by the AWU that removing the ability of a trained permit holder to immediately enter a workplace and assist workers who are potentially exposed to an immediate risk will increase the likelihood of injury and/or disease, it will place thousands of workers who work across thousands of workplaces more at risk because they cannot immediately call upon the support of their union.

Further, placing a 24 hour space between a trained entry permit holder being able to access a site where there is a suspected safety contravention logically enhances the risk to workers on that site.

The purported reasoning for these proposed amendments is the alleged misuse by some permit holders. The AWU is not aware of any evidence put forward which justifies this assertion.

If an employer believes that there has been a contravention by a permit holder they have the ability under section 138 of the *Work Health and Safety Act 2011* (the Act) to have the holder's permit revoked by the relevant industrial tribunal. The AWU is not aware that any employer has taken up this option in Queensland.

Further, the AWU is not aware of any employers who have raised concerns about any entry permit holders entering sites for the purpose of investigating and consulting on suspected breaches of the Act. In correspondence dated 22 July 2013 the AWU pressed the department to outline where permit holders had breached the Act and where employers had accessed section 138 of the Act to manage alleged contraventions. The department responded in correspondence dated 12 August 2013 and was unable to provide any evidence of breaches or employers accessing the commission to resolve alleged misuse.

The assertion that "employers advised that they were too intimidated" to use the provisions of the Act are hearsay and pathetic. Further, they are inconsistent with the alleged methodology of the issues paper that the consultation be "evidence based".

It is submitted by the AWU that the reasoning put forward for the proposed amendments is disingenuous and that the right of employees to ensure suspected safety contraventions are immediately dealt with far outweighs the ability of employers to be unaccountable and relax their safety standards.

This risk is all the more serious when statistics in the Safe Work Key Work Health and Safety Statistics 2012 (the report) are considered. The report provides that "in 2009-2010, four industries (agriculture, forestry and fishing, transport and storage, manufacturing and construction) had incidence rates substantially above the all industries rate ... these industries ... were identified as priority industries …" These priority industries are also areas where the AWU has substantial membership and the proposed changes will certainly have a negative impact on managing safety risks in these industries.

Power of HSRs to direct unsafe work to cease

The AWU submits the proposal to remove the power of health and safety representatives (HSRs) to direct workers to cease unsafe work will seriously reduce the protection of thousands of workers.

This proposal will remove the last line of defence that a worker has in their workplace to prevent injury or disease. HSRs are trained and committed workers who look out for their fellow workers during the course of their duties. The power given to a HSR at section 85 of the Act to direct workers to cease work only allows such direction to occur when there is an immediate or imminent risk and also requires consultation with management. It also provides for workers to undertake alternative duties until the risk is mitigated. This power is not unreasonable.

The logical outcome of the proposal in the paper is that workers who may not be aware the work they are undertaking is unsafe must continue performing unsafe work notwithstanding a trained HSR knows that it is unsafe. This does not make sense.

When you consider this proposal in conjunction with recent amendments made to the *Workers' Compensation and Rehabilitation Act 2010* in Queensland which imposes a 5% threshold to common law damages for permanent impairments there will be an increased potential of workers to suffer a permanent injury or disease due to an unconscionable employer without adequate compensation. This will have a profound impact on that worker and their family. This will be compounded by foreshadowed changes to the Comcare workers' compensation scheme which will dilute the rights of injured workers.

The assertion in the paper that "the power for HSRs to direct unsafe work to cease is duplicative and unnecessary given workers also have the right to cease unsafe work" is a nonsense. Either way the end result at the worksite is the worker ceasing unsafe work. However, the powers exercised by HSRs and entry permit holders ensure that where a duty holder is not exercising due diligence or the seek to coerce an employee to undertake unsafe work that worker is protected. The assertion in the paper that HSR training isn't competency based is also weak easily fixed – make the training competency based.

Regulatory Burden

The paper asserts that there are a number of regulatory burdens that are “disproportionate to the risks they seek to address” and are “costs for businesses.” The AWU rejects this premise and submits that any risk to a worker is unacceptable and trading off risk against cost is deplorable.

Some of the proposed changes include relaxing record keeping, licencing requirements, monitoring and notification requirements for employers using chemicals, plant, removing or working with asbestos, undertaking diving work and using amusement devices.

This is not acceptable to the AWU as it will reduce compliance and increase risk as well as potentially destroy evidence for workers who may have contracted mesothelioma or asbestosis. This proposal is an explicit attempt to cheat vulnerable workers and their families.

The model WHS Codes of Practice

It is submitted by the AWU that the proposal to replace Codes of Practice with “fact sheets” is short-sighted and will increase risk of injury in the workplace. The Codes of Practice were developed following a period of consultation by all jurisdictions and stakeholders and represent the minimum acceptable practices by a diligent employer to meet their obligations under the Act. The view of the AWU is that the Codes of Practice should retain their status as admissible as evidence in court proceedings.

Complexity

The AWU submits that the Codes of Practice do not appear complex and that any employer who seeks to carry out a calling or operate a business in a particular industry has an obligation to be competent in the relevant legislation including the Codes of Practice. The higher the safety risk of the industry and/or venture the higher the capability of management to maintain safe workplaces.

It is submitted by the AWU that the purpose of this paper is too reduce the obligations of employers, reduce the responsibility of office holders, reduce the ability of workers to seek assistance from their union and increase the risk of injury and disease to workers to save a few dollars for employers. It is our view that rather than reduce costs for employers, such watering down of obligations will lead to higher rates of injury and disease and therefore increases in premiums, claims and rehabilitation costs.

The AWU opposes the suggested changes outlined in the Issues Paper as it will be detrimental to workers and encourages COAG not to implement them.

If you require further information in relation to this matter please contact Mark Raguse on 3221 8844.

Yours faithfully

Ben Swan

SECRETARY