



executive resolution

Thursday 4 March 2010

OHS and Workers' Compensation National Harmonisation Process

OHS Harmonisation

Executive reaffirms its position in relation to the national harmonisation of OHS laws, in particular the key principle that harmonisation must not reduce protections and rights for workers and their unions.

The following threshold issues remain outstanding and of concern:

1. HSR rights/powers
 - a. HSR to have the power to issue a PIN and cease work upon election and the power to stop work if an activity puts at risk any person
 - b. HSR to have choice of training provider
 - c. HSR to notify employer with at least two weeks notice of intention to attend training (ie deletion of cl 71.2.a and replacement with Vic provisions)
 - d. Rights to number of training days as per the South Australian provisions
 - e. Total protection from civil liability
2. Workers obligations: removal of reference to employer policy and procedures (deletion of cl 27 c (ii) , to be replaced with reference to workers knowledge, as in the Victorian Act)
3. The use of the term “so far as reasonably practicable”, for the purposes of PART 5 of the Act must be the dictionary meaning, not as defined by cl 17 Model WHS Act

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4. Disqualification of HSR: removal of the right of regulator to disqualify HSR and removal of the cl 64.1.a, replace with “intent to cause harm” and insertion of a time period (3 years) for a disqualification
5. Risk management processes for all risks to be a Regulation, noting that is not in the Model WHS Act which is the ACTU policy position. Risk management regulation must include requirements re consultation, review and monitoring of risks as well as application of the hierarchy of control.
6. Right of victims and their representatives to initiate prosecutions and reverse onus of proof
7. Genuine tripartisim

Furthermore, Executive is dismayed that Federal and State Governments have failed to honour repeated undertakings that OHS harmonisation would not result in lower standards and reduced protections for workers. We note that business bears only 3% of the total costs of work related illness and injury, with 97% borne by workers, their families and the community. To focus on further cost reduction is fundamentally flawed.

We reject Governments’ approaches to harmonisation if the outcome is a dismantling of legal protections (legislation, regulations and codes) which have been developed over many years with the aim of protecting the lives and health of workers. The current national commitment to a 10 year strategy to reduce injuries will be unobtainable if this de-regulatory approach proceeds.

OHS harmonisation process

In relation to the process of national harmonisation of OHS regulations and the consideration of the harmonisation of Workers’ Compensation, Executive notes that ACTU officers will immediately adopt the following objectives and process for the rest of the harmonisation process:

- As OHS laws largely reside in state jurisdictions, state Labor Councils (TLCs) and their affiliates will be included in any process in order to be effective in influencing the law or regulations and ensuring the important gains in each state and territory are not diminished by the national process.
- Key unions have expertise and experience in specific areas of the regulations that relate to their industry and this expertise will be utilised in the process.
- There is an urgent need to increase the resources in this area in order to tap this expertise and ensure thorough consultation with and feedback to TLCs and Unions during the process of regulation review. Executive therefore notes that the ACTU will:

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- Utilise its available resources for the purpose of ensuring effective consultation, analysis and accessing relevant expertise from unions and elsewhere.
- Provide to affiliates and TLCs a detailed timeframe of the regulation review process and seek to influence that timeframe in order to enable unions to provide quality and timely feedback on proposals for change and TLCs time to adequately lobby and influence state & territory officials prior to meetings being held.
- Establish a national structure that ensures TLCs and unions are properly consulted before meetings and then receive feedback after all SWA meetings, including SIGs.
- In consultation with affiliates and TLCs, consider options for action if we are not successful in achieving our objectives in the process. These options will include state level action including the possibility of campaigning to block draft legislation in state parliaments.
- In the SWA processes ACTU representatives make it clear and have it recorded that we cannot endorse the Model WHS Act if our threshold issues have not been met.

As a matter of urgency, it will be made clear to governments that the ACTU and its representatives regard the current drafts of the Administrative Regulations (which include requirements for HSR Elections, HSR training and Union right of Entry) and the Hazard Specific Regulations provide lesser protections than exist in current law, are deregulatory and that this must be rectified.

Given the disease and cost burden caused by psychosocial risks (Productivity Commission Report 2009) ACTU representatives will insist that psychological risks be addressed by regulation and supporting codes of practice.

Workers' compensation

Executive notes the 2009 ACTU Congress comprehensive Rehabilitation and Compensation for Injured Workers Policy, which supports a national workers compensation system in Australia conditional on the improvements of rights and entitlements of workers.

Executive recognises that in recent years employers and all state Governments have and/or have attempted to reduce entitlements for injured workers and remove obligations for employers in their workers' compensation systems.

The harmonisation of workers' compensation therefore has the strong potential to diminish the rights and fair treatment of injured workers even further.

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After the experience of the OHS harmonisation the ACTU Executive does not support the harmonisation of workers' compensation if it replicates the process undertaken for OHS harmonisation.

Support for the harmonisation of workers' compensation would be conditional on the guarantee that no workers' entitlements would be reduced, and that Governments would ensure there would be a transparent consultation process involving workers through their unions.

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