

9. The role of governments and regulators is to focus on what is reasonable, practical and achievable and to make the right interventions if and when they are needed. This means a framework that is consistent with the realities of operating businesses in the modern economy.
10. Regulation must adequately recognise differing capacities of employers, especially small and medium enterprises. OHS regulatory frameworks that are more responsive to SME business realities should be examined as well as the creation of a network of OHS business advisers focusing on this sector.
11. OHS regulation which is complex, out-of-date, impractical or uncertain is of no value to employers or employees in the workplace. It is unacceptable for an employer to not know what is expected of them by OHS regulators.
12. Multiple problems exist with current OHS regulation. These include: poor quality; excessive quantity; frequency of regulatory change; too much red-tape; little national consistency; inconsistent interpretation by regulators; unbalanced prosecution-oriented enforcement; and distortion by extraneous agendas.
13. Poor regulation significantly undermines the commitment of employers and employees to improved safety performance, and for employers, can diminish the capacity to comply.
14. To be effective, Australian OHS regulation needs to be changed so that it reflects the following characteristics: reasonableness; practicality; balance; mutuality; independence; and consistent national principles.
15. Duties of care should apply independently to all parties. The fact that a workplace injury has occurred should not automatically mean that a breach of law has occurred. These duties must not impose absolute or unreal obligations, whether by legislation or court interpretation. The concepts of 'reasonably practicable', 'foreseeable' and 'control' have been significantly distorted in several Australian jurisdictions, to the point where they no longer reflect what is reasonable, practical and achievable. New statements on the standard of the duty of care under OHS laws are required in those jurisdictions where the concepts of 'reasonably practicable', 'foreseeable' and 'control' have been significantly distorted. A standard based on the implementation and maintenance of a safety management

system relevant to the industry, size and resources of each particular business, developed within a set of national principles is an alternative. More realistic defences also need to be available to employers, designers and other persons in the supply chain.

16. Whilst recognising the past and current role of State and Territory governments, there should be an informed debate whether a national set of OHS laws should apply in Australia. Where national OHS standards are appropriate, they should be developed through tri-partite consensus, and be nationally consistent in the implementation. In this context they should include:
 - National Standard;
 - Model Regulation;
 - Code of Practice; and
 - Guidance Materials.
17. OHS legislation should generally create civil duties, rather than criminal offences. Penalties should be monetary, judicially determined and based on the seriousness of offences and the circumstances of breach, not on the nature of the injury. Enforcement requires a mix between education and persuasion on the one hand and, prosecution and penalties on the other. A system of enforceable undertakings should be an alternative approach to prosecution. There is no justification for creating a new offence of industrial manslaughter given the already existing criminal law of manslaughter and related offences.
18. There should be no absolute or strict liabilities, deemed guilt, reverse onus of proof in any civil or criminal proceedings, nor any other basis on which persons are treated less favourably than defendants in prosecutions under any other equivalent law or legislation. Criminal offences should only be decided by established criminal courts.
19. There should be increased awareness and training on OHS issues. Governments and regulators would achieve greater levels of OHS compliance if they invested, in conjunction with business organisations, more directly in information, assistance, advice, education and training. OHS regulators should increase national co-ordination of communications activities.
20. OHS issues in the workplace should be dealt with in a non adversarial and non ideological manner.

Like To Find Out More?

The full ACCI OHS Blueprint Modern Workplace: Safer Workplace is available on the ACCI website www.acci.asn.au



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AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY

Modern Workplace: Safer Workplace

An Australian Industry Blueprint for
Improving Occupational Health and Safety

2005-2015

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LEADING AUSTRALIAN BUSINESS

The Vision 2005-2015

Occupational Health and Safety policies and systems that support employers, employees and all those in the supply chain to develop cultures and attitudes, and accept responsibilities, that achieve safer places of work and safer methods of working so that Australian workplaces are free from death, injury and disease.

Why The ACCI OHS Blueprint Is Needed

- Managing a business and employing requires OHS issues to be addressed. Australian law requires employers, employees and everyone in the supply chain to take active steps to make workplaces safer.
- Many employers, especially small and medium businesses, who want their workplaces safer do not alone have the resources, expertise or assistance that will make this happen.
- Good safety records benefit business. They can be undone unless the commitment to safer workplaces is ongoing.
- Whilst Australia has an improving OHS record, it can be better.
- The human and economic costs and consequences of fatalities, injury and disease in the workplace, like the costs of road trauma, are profound.
- There is too much red-tape and lack of balance in existing OHS laws and regulations. All governments contribute to this red-tape, and some are enacting inappropriate and heavy-handed laws which seek to punish rather than prevent.
- Leadership on OHS issues is required at all levels. The Australian Chamber of Commerce and Industry (ACCI) and employer and business organisations are taking leadership on OHS issues through this Blueprint.

The Proposed Outcomes and Achievements 2005-2015

1. A significant and sustained reduction in workplace fatalities and injuries

- by employers, employees, designers, manufacturers, contractors, governments and regulators working co-operatively together and each with responsibility in their areas of influence to identify, eliminate, reduce or avoid risks and hazards in the workplace;
- by governments and regulators understanding their proper role to put in place a framework of laws and programs that is reasonable, balanced, meaningful and practical;
- by OHS being integrated into design and supply, business management and the way employees work.

2. Reduced human and economic costs from workplace fatalities and injuries

- by a significant reduction in workplace fatalities and injuries through the implementation of relevant safety management systems in the workplace.

3. Increased awareness, communication and co-operation on OHS amongst employers, employees and all persons in the supply chain

- by active communication and sharing of information and solutions on OHS issues;
- by accepting mutual responsibilities for making workplaces safer;
- by improving OHS knowledge through training, information and education;
- by a network of OHS business advisers providing small and medium businesses with relevant, accessible and meaningful advice and resources.

4. Reasonable, balanced, and practical Occupational Health and Safety regulation that contributes to Australia having world class systems and performance

- by regulation that is achievable and relevant (including appropriate and reasonable standards, codes and meaningful guidance materials);
- by duties of care based on what is reasonable, practical, foreseeable and controllable;
- by implementing reasonable and relevant safety management systems; giving priority to prevention over enforcement; putting outcomes above process and reducing red tape; by consistent national principles on key issues;
- by allowing businesses with significant OHS skills and resources to apply appropriate common systems across the nation; sympathetically crafted regulation to meet the special needs of businesses with lesser skills and resources; regulation developed on its merits, on the basis of scientific evidence.

5. Safer communities

- by inculcating, from an early age, safer habits, practices and procedures into everyday life away from work that lead safer communities and feed into personal approaches when entering the workforce;
- by increasing awareness, knowledge and skills about personal and community safety and responsibility;
- by access to information and training on safety and responsibility in workplaces and in day-to-day life.

Conclusions and Recommendations

1. Making workplaces safer starts and finishes with workplace culture and attitude, not regulation. A commitment to prevention, to assessing and managing risks does not just happen.
2. An effective health and safety culture requires all persons in the supply chain to accept shared responsibilities. This includes employers, employees, manufacturers, product, process and workplace designers, employer representatives, trade unions, governments, politicians and regulators.
3. It is recognised internationally that sensible health and safety is about managing risks, not necessarily eliminating all of them. The people best placed to make workplaces safer are the employees and managers who work in them.
4. Australian industry is investing more time, effort and capital in making workplaces safer. Many Australian employers have very good OHS systems which compare favourably with equivalent employers across the globe.
5. The principles that underpin good workplace relations - communication, mutual respect, co-operation and personal responsibility, are the values that generate a culture of shared responsibility and individual and collective pursuit of better outcomes.
6. There is a powerful business case for safer workplaces and, over time, achieving a significant and sustained reduction in workplace fatalities, injury or disease. Employees whose working lives are injury-free, make a valuable contribution to the business that engages them, the wider community and their own personal well-being.
7. So far as is reasonable and practical, safety should be incorporated into workplaces at the design stage. Barriers which inhibit safe design of work environments, plant and equipment need to be addressed.
8. Not even the best performing workplaces can guarantee a perfect safety environment. Despite the excellence of safety systems, accidents and injuries still occur.