



**OCCUPATIONAL HEALTH AND SAFETY SYSTEM
IN DIRE NEED OF REFORM:
LAUNCH
OF
OHS BLUEPRINT
*MODERN WORKPLACE: SAFER WORKPLACE 2005-2015***

Speech
by
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Introduction

Commonwealth Minister for Employment and workplace relations, the Hon Kevin Andrews MP, Mr Jerry Ellis, Chairperson of the National Occupational Health and Safety Commission, distinguished guests, ladies and gentlemen.

I am pleased to speak to you today about the active role that Australia's employer organisations perform, and will continue to do so, on occupational health and safety (OHS) matters.

Who we are

Let me begin by giving a brief snapshot on the organisation I head up.

The Australian Chamber of Commerce and industry (ACCI) is the peak council of Australian business associations. Our motto is "*Leading Australian Business*".

ACCI's members are 36 employer organisations in all States and Territories and all major sectors of Australian industry.

Through our membership, ACCI represents over 350,000 businesses nation-wide, including the top 100 companies, over 55,000 enterprises employing between 20-100 people and over 280,000 enterprises employing less than 20 people.

That makes ACCI the largest and most representative business organisation in Australia.

The role of ACCI is to represent the interests of business at a national level as well as internationally. Through its network of businesses, each ACCI member organisation identifies the concerns of its members and plans united action.

OHS System in Dire Need of Reform

I am pleased to be able to announce that today ACCI is launching the first national Blueprint on occupational health and safety law and policy on behalf of the employer community.

Occupational health and safety is a core business activity in the modern management of workplaces.

The economic and human costs of workplace death and injury are profound.

Whilst Australia's health and safety performance is improving, it can and should be better.

Good safety records benefit business.

There is a powerful business case for industry to develop a strong and ongoing culture of safety and prevention.

These are some of the realities that have driven ACCI and our member employer bodies to embark on an historic project of preparing a ten year Blueprint for improving Occupational Health and Safety law, policy and management.

However, there are a number of other realities that have brought us to this point – and they are not as easily accepted or as comfortable to listen to.

They can be summarized in this way.

There is a lack of balance in some existing OHS legislation and court decisions.

The trend across jurisdictions has been to broaden legal duties beyond reasonable limits, increase penalties, extend liability to individuals, and seek to punish rather than prevent.

Many of you will know that modern OHS legislation is generally understood as based on the ‘Robens model’ of duty of care, named after Lord Robens who authored a landmark report in the United Kingdom in the early 1970’s.

In his original report Lord Robens said:

“As a matter of principle the legislation should not have the effect of imposing obligations on employers concerning circumstances over which they have no control.”

It is disappointing to see that the interpretation of Australian law has moved away from this intended and commonsense principle.

The signs of this have been emerging for a number of years.

The ACCI Pre-Election Survey of businesses released in 2004 showed that:

- OHS regulations and inspections rated fourth and fifth highest in the level of business concern with government regulation;
- over 60% of employers were concerned at the level of OHS regulation;
- 50.8% of employers regarded workplace health and safety inspections as a major or moderate problem;
- workers’ compensation was the dominant workplace issue of concern; and
- union OHS inspections caused greater concern amongst employers than industrial action.

In just the five years to 2003, apart from the nine governments and multiple regulators that make OHS laws affecting employers in Australia, there were more than a dozen principal OHS Acts, 166 amending OHS legislative instruments and 1,796 changes to rights and obligations of employers and employees on workplace safety.

As if quantity and frequency of change is not enough, the quality of regulation is also poor.

Over the past decade OHS laws have gradually imposed unreal obligations on employers.

The build up of OHS regulation and the distortion of the concept of 'reasonable and practical' liability by parliaments and the courts has caused a crisis of confidence amongst Australian employers with the way that OHS is regulated.

Breaking point has been reached.

Employers accept a reasonable and practical OHS duty of care – but not its expansion into the unknowable, uncontrollable or unforeseeable.

Employers should not be liable for conduct of others that cannot be foreseen, cannot be controlled or cannot be known by them.

Some of Australia's OHS laws and court decisions are straight out of 'Alice in Wonderland'.

They reek of employers being held liable out of convenience or retribution – irrespective of the facts or commonsense.

The duty of care, once based on the accepted notions of reasonable and practical, has been so distorted in some jurisdictions, especially in New South Wales, that new statements of the standard of duty of care are required.

For example in 1999 the Full Bench of NSW IRC said:

“The duties imposed by the Act are not merely duties to act as a reasonable or prudent person would in the same circumstances.... Under s15(1) the obligation of the employer is "to ensure" the health, safety and welfare of employees at work. There is no warrant for limiting the detriments to safety contemplated by that provision, to those which are reasonably foreseeable..... the terms of s15(1) specify that the obligation under that section is a strict or absolute liability to ensure that employees are not exposed to risks to health or safety.”

In an earlier case a single judge in New South Wales said:

“The Act was designed to protect against human errors including inadvertence, inattention, haste and even foolish disregard of personal safety as well as foreseeable technical risks in industry.”

In one sense these are not wholly surprising developments.

OHS laws have historically been based on the same legal foundation as public liability laws – the common law concept of negligence and a duty of care based on what is reasonably foreseeable.

Just as tort (that is, negligence) laws got out of hand and created major public liability problems in recent years, OHS laws are now, for similar reasons, out of control.

As they have started to do with public liability laws, governments and the courts now need to reign in the excesses of OHS laws when they impose unreal liabilities.

OHS Blueprint *Modern Workplace: Safer Workplace*

In this national OHS Blueprint Australia's leading employer bodies are calling for a fundamental re-think by governments about OHS law and policy.

We say this not because we as employers want to avoid our proper role and responsibilities for occupational health and safety.

Indeed the opposite is the case.

We say this because we want workplaces to be safer.

They will only be safer if there is a culture of mutual and shared responsibility throughout the supply chain and by all stakeholders.

If workplaces are to become safer then a more enlightened approach is needed than a one-sided 'employer blame-game'.

It should be obvious. If an employer is guilty of an OHS breach no matter what they do, then where is the incentive to do more?

If an employer is liable for a safety breach arising from a manufacturing defect in plant that they did not know about, where then is the incentive for the manufacturer or importer to get it right?

If an employer is liable for a safety breach arising from an employee not working in the way they have been trained then where is the incentive for employees to take OHS training seriously?

OHS laws which make employers liable no matter what they do remove incentives to invest in OHS prevention and undermine a culture of shared responsibility.

There are some signs that authorities are becoming aware of this problem.

A couple of recent decisions by the High Court, although not specifically in the context of OHS legislation, are encouraging.

They suggest that OHS liability at common law has gone too far, and that individual and shared responsibilities must be factored back into the duty of care.

In saying this, I also want to emphasize that the OHS Blueprint is much more than a criticism of the shortcomings of OHS law and regulation.

It is as much directed to industry, as it is to governments.

It also highlights the importance of OHS awareness – not just industry training but community based education from an early age.

This is a shortcoming that if remedied could have big spin offs for the community as a whole.

If young people - if school age children - are at an early age taught basic principles about safety – such as about how to climb a ladder or about the correct way to lift – then those habits will be brought into the home and into the workplace.

Parents have a role in this.

As the High Court said last week, just like a workplace – there are no risk free dwelling houses.

The management of risk is needed at all levels – even where the elimination of all risk may be beyond us.

The OHS Blueprint urges industry, of all sizes and capacities, to develop safety management plans according to their size and capacity.

It presents a clear way ahead – in a Vision statement, in five core Outcomes, and in twenty specific Conclusions and Recommendations.

It is a unique document.

It has been developed by Australia's State and Territory chambers of commerce and leading national industry organizations.

These 36 organizations that form ACCI represent more than 350,000 businesses employing more than four million people.

At ACCI we take our OHS responsibilities seriously.

We are signatories to the National OHS Strategy.

We represent employer bodies and employers on the National Occupational Health and Safety Commission, and look forward to doing so on the new body – the Australian Safety and Compensation Commission.

We are pleased that the new body is continuing the tri-partite approach to policy debate and development.

We say to all governments – Commonwealth, State and Territory – if you do not actively involve employers in your consideration of OHS law and policy then you will fail to meet the targets of the National OHS Strategy.

We also represent Australian industry in international forums, such as the International Labour Organization, where international standards on OHS are debated.

The fact that ILO Convention 155 on OHS was ratified by the Australian government last year and came into operation in Australia last month, shows how important international representation needs to be.

This OHS Blueprint takes the role of ACCI and our employer organizations to a new level.

It has been a two-year process.

The power of the document is that it is a collective statement of employer organizations across all industry sectors – and it has been examined and endorsed at the highest level of those bodies - from President and Chief Executive down.

That in itself provides leadership to industry.

Conclusion

Business owners and executives from the top down need to engage in OHS issues.

I would like to thank ACCI staff and members of the ACCI OHS Working Party who developed the Blueprint.

It is a sign of the priority given to OHS issues by ACCI that this Blueprint now sits with our two other ten year Blueprints – on Workplace Relations and Taxation.

I now hand over to ACCI Board member and Victorian small businessman Owen Brown OAM to formally launch the ACCI Occupational Health and Safety Blueprint.