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Blue Mountains Unions Council Inc



### Submission from the Blue Mountains Unions Council Inc re OH&S Model Legislation

Dear Madam/Sir

I am writing to you on behalf of the Blue Mountains Unions Council Inc about proposals to change our workplace health and safety laws.

We appreciate the Government's need to balance competing interests and that the initiative to harmonise OH&S laws across the country will considerably improve conditions for workers in some states. We welcome those improvements but we believe that harmonisation must not be at the cost of reducing OH&S conditions for workers in states that already have a high standard. Strong OH&S legislation is in the best interests of workers, employers, our community and our economy.

The proposed new laws are a great opportunity to improve life for all Australian workers by ensuring they are well, safe, alive and productive at work. They are also an opportunity to improve the productivity and competitiveness of our economy by reducing costs such as compensation insurance premiums health care costs, court costs, the costs associated with shutting down a workplace because of an accident and other costs of investigation.

Some employers would say that they need to cut red tape however the term "red tape" implies an unnecessary tangle of useless bureaucratic procedures with the single purpose of obstruction and we would agree that such "red tape" should be cut. We would also argue that the rules that we suggest should be kept or put in place are not "red tape" but important and necessary protections against the real dangers that threaten workers and the productivity and viability of their employers. We are suggesting clear and easily understood rules which are harmonised with related legislation such as the Fair Work Act and allow streamlining of the administrative procedures. Workers and the rest of the community should not have to pay for employers who can't be bothered putting sensible and reasonable procedures in place.

*We urge you to ensure the new health and safety laws:*

#### **1. Give workers a say**

Employees must have the right to be consulted by their employer over all work-related matters that affect their health and safety. The draft Act obliges employers to consult with workers on OH&S matters "as far as reasonably practicable" however this creates an unnecessary grey area. To ensure clarity, employer obligations to consult with workers must be unconditional. The hierarchy of controls and risk assessment should be prescribed in the principal Act and not in regulation as these are fundamental principles. Historically, OH&S policies are most successfully implemented in workplaces that have meaningful employee and employer involvement and consultation. These fundamental principles need to be included in the Act as they are, or should be, a part of the intent of the Act. To be effective, consultation needs to be a genuine involvement of workers and employers and their representatives. This not only means genuine consultation in the workplace but the legislation also needs to encourage unions and employers' organisations to take a constructive role in setting standards and monitoring the effectiveness of the laws and their implementation. This will have the added benefit of harmonising the legislation with Fair Work legislation and ensuring Australia's compliance with ILO Convention 155.

#### **2. Make employers responsible**

There must be an unqualified obligation on employers to provide a safe and healthy workplace and when something goes wrong, employers must prove they did not break the law. This reduces confusing differences between OH&S and other legislation, making it consistent with the approach in both discrimination law and the Fair Work Act General Protections.

#### **3. Empower Health and Safety Representatives**

Workers must be able to elect Health and Safety Representatives who, under the laws, have the highest standards of rights, powers and protections to do their job. We are concerned that it is proposed that Health & Safety Representatives cannot exercise their power until they have undertaken approved training. While we strongly support the need for training, an unscrupulous or poorly organised employer may legally avoid their OH&S responsibilities by failing to facilitate training in a timely manner as there is no time limit within which training is to be provided. Health and Safety Representatives must be able to fulfill their obligations under the Act to a reasonable standard from the first day they are elected. Training must be undertaken within a specified and legally enforceable period and expectations of the Health and Safety Representative must be in line with the amount of training received.

We welcome the codification of the right to cease work when a worker perceives an imminent risk to their safety however the Model law needs to harmonise with the Fair Work Act by adopting the same language used in the definition of industrial action, that is a reasonable "concern" about an imminent risk to safety.

#### **4. Respect the role of unions**

The proposed new laws must ensure unions can represent workers effectively and employees can call on their union to immediately inspect suspected safety breaches without notice. This role for unions is important as there are often not enough government workplace inspectors and unions have valuable OH&S expertise which should not be wasted. The

Public Comment Response Form - Exposure Draft for Model Act and Stage 1 Model Regulations

**This form must accompany all submissions Page or 3**

proposals also need to harmonise the union right of entry provisions with Fair Work Australia legislation. The right of entry provisions need to make it possible for a union official to obtain a permit for Fair Work purposes only, a permit for OH&S purposes only or a full permit for both purposes and all permits should be available for issue from one authority. Organisation of the issue of permits in this way meets a stated aim of the Rudd Labor government of cutting down on duplication, waste and inefficiencies in the provision of public services and still meets the objectives of the OH&S and Fair Work legislation.

If breaches of OH&S right of entry provisions are to be considered criminal ~~offices~~ offences, then in the interests of clear, consistent, efficient administrative procedures and harmonisation with related legislation, we ask that the right of entry provisions should be consistent with the Fair Work Act and that it is clearly set out in the Act that these and other procedural breaches will attract the same civil penalties as the Fair Work Act.

#### **5.Enable workers and unions to take court action**

When government regulators do not take action, the right for victims, with their unions, to take court action against employers for breaching health and safety laws is an important added protection. Unions have considerable experience in these matters and are a resource which can complement the role of government regulators. Unions have already shown that they use this power sparingly and in the past prosecutions have always been successful. Unions have nothing to gain in wasting resources on frivolous or vexatious court actions. We support the proposal that where the government regulator has chosen not to prosecute and have indicated within a reasonable period of time that they do not intend to prosecute, private prosecution should be available. This would also harmonise the OH&S laws with criminal laws in most jurisdictions.

#### **Conclusion**

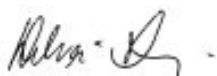
We support any initiative by the government which achieves these aims and a letter we recently received from the Deputy Prime Minister, the Hon Julia Gillard via our local Member for Macquarie the Hon Bob Debus outlined several very positive and welcome improvements for workers. We urge the government to ensure that these aims and initiatives are not undermined by details in the legislation that are not mentioned in Ms Gillard's letter and we oppose any measures that would have this result.

All governments concerned with drafting this legislation are well aware of the difficulties imposed by several jurisdictions working together. We would not like to see workers worse off under the new legislation simply because it is too hard to get multilateral agreement on a fix for any unforeseen consequences of the legislation. This legislation is a great opportunity but there are also hazards to be avoided and it is important to get it right the first time.

Workers in Australia deserve to be able to go to work and come home safely again – this has to be a high priority for all governments. Employers who work with their staff and the unions to take care of the health and safety of their employees deserve the resulting productivity and reduced compensation costs. Our community shouldn't have to pick up the costs incurred by employers who want to take short cuts. Workers shouldn't have to put their lives on the line for the sake of the bottom line.

We thank you and applaud the improvements that are proposed under the Model OH&S legislation. We urge you to implement the suggestions we have made so that our common goal of improving health and safety can be achieved by ensuring all workers and their families do not lose out but gain additional rights and protections.

Yours sincerely



Debra Smith  
Secretary

<http://www.bmucinc.com/>

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Copies to: The Hon Julia Gillard, MP, The Hon John Hatzistergos MLC, The Hon Joseph Tripodi, MP, Mr Phil Koperberg, MP, The Hon Bob Debus, MP, The Hon Bob Debus, MP.