

# PROTECTING WORKERS' HEALTH & SAFETY

**Dear Minister,**

More people are dying at work each year than on Australian roads; and with hundreds of thousands more being injured or becoming ill because of work, there is an urgent need to improve occupational health and safety (OHS) standards to the highest level.

The two reports of the Model OHS Law Review Panel have, regrettably, compromised key aspects of OHS law. Their recommendations have not only fallen well short of the highest standards of protections needed in Australia, but have failed to meet their own terms of reference, which were not to reduce OHS standards.

The Workplace Relations Ministers Council meets on April 3rd to make recommendations on model OHS law. It is here that we urge you to provide the leadership so desperately needed to improve OHS standards in Australia.

## *SIX PRIORITIES FOR MODEL OHS LAW*

- 1 Consultation and Health and Safety Reps**
- 2 Union Right to Prosecute**
- 3 Risk Management**
- 4 Onus of Proof on Employers**
- 5 Tripartism**
- 6 Right of Entry**







## 3 Risk Management

Risk management is a critical task in terms of implementing effective OHS management. It should be noted that risk assessment has been the focus of attention with regard to a number of serious incidents; the most recent significant example was the inadequacy of risk assessment in the Beaconsfield mine collapse.

### The Problem

The Report recommends that risk management not be included in the model law for employers despite acknowledging it is an essential element for improving safety (Rec 136).

### The Solution

The risk management process must be legally enforceable to ensure it is activated. The Model OHS Act should require duty holders to implement risk management principles and those principles must be included in the Model law.

## 4 Onus of Proof on Employers

It is of vital importance in relation to the defences available under OHS legislation that the defendant bears the onus of proof. Any other approach would significantly compromise the prospects of the effective enforcement of the general duties imposed by OHS legislation and inhibit the achievement of its objectives.

Clearly, the defendant (whether employer, designer, supplier, manufacturer or person in control of work premises) is in the best position to know what has been done, what other available measures could have been taken and the expense, difficulty or inconvenience involved in adopting measures that would have reduced or eliminated risks to safety. Thus, whatever the relationship between the general duties and the defences in OHS legislation, it is critical that the legislation makes it clear that the defendant bears the onus in respect of the question of reasonable practicability or the absence of control.

### The Problem

The Report advocates that the onus should fall on the prosecutor to prove the employer failed to take reasonably practicable steps to avoid the breach (Rec 62).

### The Solution

It is critical that the legislation makes it clear that the defendant bears the onus in respect of the question of reasonable practicability or the absence of control.



