

OCCUPATIONAL HEALTH, SAFETY AND WELFARE LEGISLATION;

A PUBLIC DISCUSSION DOCUMENT

OCTOBER 1983

MINISTER FOR INDUSTRIAL RELATIONS
HON. D.K. DANS, M.L.C.

Occupational health and safety is one of the most important industrial issues for our State and for Australia.

The misery and pain that injury and disease cause individuals and their families cannot be measured.

In the end the community bears the costs.

Earlier this year delegates to the National Economic Summit resolved that governments, employers and unions should work together to improve the safety and health of people at work.

My Government has a commitment to passing an *Occupational Health, Safety and Welfare Act*. Our policy was adopted last year after the circulation of a "green paper", and launched at a well-attended seminar held in October.

Consistent with our approach to industrial relations matters, we have engaged in consultation with employers, unions, technical people and professionals in the area. This document aims to expand and stimulate thinking and debate about occupational health and safety.

Your submissions are needed in order to shape the Act; not only in the way it is written, but in the way it will operate and meet its objectives.

Brian Burke, M.L.A. PREMIER

Introduction

It is with pleasure that I release this discussion document about the Government's proposals for occupational health and safety legislation.

The policy is a preventive one, and is not merely reactive. The aim is to develop ways and means of eliminating and/or reducing hazards in workplaces, through the participation of employers and workers in both formulating and implementing policy.

I know of a number of companies with positive attitudes to safety and with vigorous safety programmes, but the overall picture in WA is a cause for concern. The Government supports the International Labour Organisation's (ILO) contention that workers have a right to a safe and hygienic workplace: that working environments should be adapted to the needs of workers.

The ILO reports that industrial injury, disease and death account for about 4% of a country's gross national product: an Australian estimate of \$6.5b costs and 1,000,000 lost working weeks per year is a conservative one.

The review of occupational health and safety in WA takes place coincidentally with a review of the provisions made for injured workers. It takes place in a context of high unemployment, and while it is true that we want more jobs, those jobs must be safe jobs. The review takes place in a period of rapidly increasing interest in this field both nationally and internationally and throughout the community. Since this Government has taken office, debate on occupational health and safety has increased, and employers and workers are examining their practices and seeking improvements. I have already received a number of unsolicited submissions which favour the policy and state interest and support.

We are fortunate to be able to benefit from the experiences of other countries and other States and will take account of the advantages and problems which they have identified.

Essentially we plan to implement the system advocated by Lord Robens and the principles endorsed in the articles and recommendation of ILO Convention No. 155. This is also the commitment of the Federal Government. A major element is the rationalisation of existing laws, of administrative procedures and of resources. Occupational health and safety issues are complex, and while the role of the State has become increasingly necessary, the ILO advocates a tripartite approach through the involvement of employers and unions. This principle will be widely applied and implemented. Indeed, I have already established a tripartite committee comprising representatives of employers, unions and Government to consider, advise and report to me on items in this field.

We have good precedents for the use of law in controlling public health problems. It will be 20 to 30 years before the full impact of the *Occupational Health, Safety and Welfare Act* will be felt. I am predicting that there will be an early apparent increase in injuries as reporting and recording criteria will change but I am also confident that the Act will reduce the chances of work-related death, injury and disease in WA.

Consultation about the proposed Occupational Health, Safety and Welfare Act

The content of this document is set out in three sections:

1. The Reasons for Reform in Western Australia
2. An Introduction to Legislation Elsewhere
3. Government Policy.

The document does not represent draft legislation but sets out the Government's policy for an *Occupational Health, Safety and Welfare Act* and the philosophy underlying it.

While the goals and principles of that policy must be held intact, there are many ways of meeting its aims and a number of options can be explored.


When in Opposition the Labor Party promised that when in Government it would promote democracy in industrial relations matters. A consultation such as this is an extension of that promise, for we are

- canvassing a broad range of views before the legislation is introduced;
- contributing to reaching consensus where possible;
- seeking reliable information on the likely effects of Government decisions.

Views on the policy and on any options thought desirable are sought. We are particularly interested in suggestions of how to make the Act achieve its aims and views of the foreseeable and practical consequences of the Act. Submissions are invited from individuals, community agencies, companies, unions, educational establishments, etc.

All submissions will be viewed by the tripartite committee already established, and all submissions will be considered when drafting the Act. Those persons and organisations making submissions will receive a copy of a review compiled from that information.

Submissions should be sent to Ms T Hepponstall, Office of the Minister for Industrial Relations, 20 Barrack Street, Perth 6000, by 13 January 1984. Further copies may also be obtained from her on 325 4522.



Hon. D K Dans MLC
MINISTER FOR INDUSTRIAL RELATIONS

THE REASONS FOR REFORM IN WESTERN AUSTRALIA

Increasing costs of industrial injury; continuing and unregulated exposures to a range of chemical substances; fragmented and anachronistic statutory and structural provisions, as well as unenlightened management and union attitudes to safety are the major reasons for planning to enact one occupational health and safety law. These interdependent circumstances indicate a range of needs (elaborated on below) towards which is addressed policy, and legislation proposed.

1. *Physical Hazards*

- 1.1 According to statistics which are available from the Australian Bureau of Statistics, Western Australian workers continue to be exposed to one chance in twelve of receiving a work-related injury each year. Justice Woodhouse estimated this same chance for Australian workers in 1974.
- 1.2 While the type of injury reflects the type of occupation, strain injuries, especially of the low back are common across all occupations.
- 1.3 Workers continue to be exposed to other known physical hazards to their health, such as noise, temperature extremes, dusts and low level radiation.
- 1.4 The increasing incidence of repetition strain injuries affecting the upper limbs of persons in the banking and manufacturing industries reflects the ways in which the introduction of new technology changes the nature of workplace hazards, and thus their consequences.

2. *Chemical Hazards*

- 2.1 Workers continue to be exposed to an increasing number of chemicals at all stages of their life cycle, viz development, manufacture, formulation, packaging, transport, storage, use, waste disposal and in emergencies.
- 2.2 Exposures to chemicals may promote a number of adverse effects:

acute effect - ranging from transient irritation of mucosa to sudden death, e.g. epoxy resins, trichloroethylene;

chronic/cumulative effects - irreversible conditions such as asthma, dermatitis and liver damage, e.g. isocyanates, organic solvents, detergents;

latent effects, notably cancer, engaging a delay of between 15 and 50 years from exposure to diagnosis of symptoms.

An increasing number of chemical agents are implicated as mutagens with the potential to cause cancer and/or to affect future generations.

Cancer accounts for one Australian death in five. In WA in 1981, 1,779 deaths were recorded as due to neoplasm. If, as calculated by some American researchers, 20% were work-related, then 356 of those cancer deaths had an occupational origin. The British Medical Research Council calculates that 6% of cancers are work-related, i.e. 107 Western Australian men and women died of cancer caused by work in 1981. Such disease is amenable to prevention.

- 2.3 People are rarely exposed to single chemicals and other hazards, or exposed sequentially, but to mixes of them with additive, cumulative and synergistic effects.
- 2.4 The Australian Chemical Industry Council estimates that there are about 20,000 chemicals on the Australian market, with about 5,000 in common use. Only about 600 have ever been tested for their carcinogenic potential. Few chemicals used in industry are subject to any systematic evaluation or any statutory controls mechanism.
- 2.5 A major difficulty is that employers and workers do not have the necessary information about chemicals in order to afford or to be afforded protection. This was a major finding of the recent House of Representatives Inquiry into Hazardous Chemicals.

3. *Lack of Data*

- 3.1 Workers' compensation claims reported from insurance companies to the ABS are the main source of information about industrial injuries. With all their faults, they indicate an injury rate some three times that of Britain and some five times that of Denmark.
- 3.2 Woodhouse found that Australian statistics on work-related injuries were inadequate and misleading, and under represented the true incidence. There are no uniform criteria for reporting and recording injury disease and deaths.
- 3.3 Apart from some mining related diseases, no data are systematically collected and reported on work-related illness in WA. We do not know the incidence of work-related dermatitis, noise induced hearing loss or asthma, for instance.
- 3.4 Data on industrial disputes and on road traffic accidents are collected systematically. In Australia two to three times more time is lost from work due to injury than to strikes, and six times more injuries occur in workplaces than on the roads.
- 3.5 There are only crude indicators of the size of the problem and of human suffering.

4. Occupational Categories and Risk

- 4.1 There is a clear social class, or occupational, gradient in illness and death rates. Despite improved morbidity and mortality overall, this gradient is such that in countries with a similar economic base to our own, unskilled workers and their families are always at more risk of dying at all ages. The infant mortality rate, death rates from cancer, heart disease, and diabetes for instance, are all higher amongst workers than amongst company executives.
- 4.2 Those in unskilled and semi-skilled occupations such as labouring, factory and service work are, according to injury and other health-related statistics, most vulnerable. In WA a large proportion of those workers are migrants and women. All such groups deserve close attention by virtue, not of their individual characteristics, but of the characteristics of their occupation. While consequences of 'lifestyle' cannot be ignored, occupational hazards are, or should be, preventable.
- 4.3 Young men aged 15-19 comprise 9.7% of the Civilian Labour Force (CLF) but account for 16% of the claims made by men in 1980-81: 12% of the total CLF is aged 15-19; yet this age group accounts for 16% of claims. (A French study revealing that 11% of claims were made by workers under 20 was the subject of ILO concern.)
- 4.4 We need reliable WA data about the incidence of occupational injury and disease among those identified elsewhere as being at increased risk such as migrants, sub-contractors, isolated workers and rural workers; comparisons between those in recognised high risk and low risk occupations; as well as comparison of rates between large and small, public and private enterprises.

5. The Parties Concerned

- 5.1 Those who bear the risk of injury or disease have never been involved in making an assessment of that risk, or in making decisions as to elimination or reduction. Unions have, until recently, emphasised compensation either for injury or, for working in unsafe conditions.
- 5.2 Employers have a common law responsibility for providing a safe working environment and plant, a safe system of work, and safe or competent people to do that work. But most have not adequately attended to matters such as maintenance of the system or parts of it, nor to the training of workers. Few people in industry are sufficiently well trained in matters of health and safety. Involvement of employees in decision making is rare, and styles of supervision at workplaces are often authoritarian. Safety is seen to be a management prerogative.
- 5.3 Although there is a demonstrable and increasing need for technical and other expertise, the focus has only recently been directed towards prevention rather than detection of the effects of exposure. Occupational health services are under developed.

6. *The State and Existing Legislation*

- 6.1 The many separate statutes and the organization for their enforcement is, as has been the case elsewhere, a clear demonstration of the ad hoc and over specific approach to regulation of workplace safety.

For the 44 Acts and 58 sets of regulations or by-laws in WA, 11 Ministers (13 portfolios) and 19 departments are responsible. No agency is charged with co-ordination or with a liaison function. There is an inconsistent approach to enforcement.

- 6.2 Some employees, perhaps half of the workforce, such as those in banks, offices and hospitals, are not offered any specific statutory protection. Most Commonwealth employees are subject to a code of practice, or a number of recommendations. Some workplaces and employees in WA, however, are subject to many statutory requirements, e.g. the Main Roads Department is subject to 12 different Acts and numbers of regulations. The Fibreglass Regulations of the *Factories and Shops Act* make reference to seven other pieces of law. The focus is on safety rather than health. Some workplaces which have every appearance of a factory are designated as mines.
- 6.3 Present staff and support facilities of departments may not be engaged exclusively on matters of occupational health and safety, e.g. the Department of Labour and Industry has a responsibility through the *Factories and Shops Act* for shop trading hours.
- 6.4 Because of the way in which some statutes have been developed, the responsibility for their administration and enforcement is not appropriately assigned, e.g. the responsibility for the Carcinogenic Substances Regulations of the *Poisons Act* presently resides with the Department of Public Health.
- 6.5 Powers to stop work deemed to be unsafe vary widely. While Machinery and Construction Safety inspectors have the authority to stop unsafe work, Factories and Shops inspectors do not. Workmen's inspectors elected under the *Coal Mines and Mines Regulation Acts* have the power to stop unsafe work, and, with the consent of the district engineer, to initiate prosecutions.

Similarly, Timber Industry inspectors, one of whom is a workmen's inspector, have the authority to close a mill down where its equipment or processes are dangerous or defective.

- 6.6 These statutes have not been effectively enforced and, rather than prosecution, an educative, advisory, and cautionary quality has marked the approach to breaches here as well as in countries all over the world. There are clearly not enough inspectors to do the task effectively, and adequate resources have never been allocated.

Besides this administrative chaos, the laws are outmoded. They are developed from early British factory laws and are unable to take account of the changes in industry and occupations and the concomitant changes in hazards.

AN INTRODUCTION TO LEGISLATION ELSEWHERE

1. Since 1970 industrialised countries have enacted umbrella health and safety legislation. Few countries have carried out a general survey of their occupational safety and health measures and not all of those which have done so have disclosed the results ¹ (ILO 1980)².

The report of the British Committee of Inquiry under the chairmanship of Lord Robens provides, according to the ILO, 'an unprecedentedly thorough evaluation and analysis, the bearing of which extends far beyond the United Kingdom itself.' The Report presented in 1972 led to the *Health and Safety at Work Act 1974*, two objectives being:

- the creation of a unified and integrated statutory system to increase the effectiveness of the state's contribution;
- the creation of a framework for a more effective self-regulating system.

This section emphasises the British over other systems and focuses on changes at the workplace.

2. The Robens Inquiry

- 2.1 The findings (and the recommendations) of the British Robens committee were echoed in 1981 by Williams, the chairman of the New South Wales Inquiry into occupational Health and Safety. He concluded :

Such laws as may be in existence are not really effective at all. They do not take into account present occupational needs, nor the need for a comprehensive determination of the true relationship between management and labour, nor of the contributions which each not only could, but should, make to the overall occupational field.

Present circumstances in WA mirror those found in Britain by Robens and in NSW by Williams.

- 2.2 Robens identified a number of factors in the administration of the numerous statutes and among managements and workers which contributed to what he described as 'apathy . . . the most important single reason for accidents at work.' He therefore argued that :

1 For example: USA 1970; Japan 1972; UK 1974; Denmark 1976; Norway 1977; Sweden 1949→1974→1978; Members of the European Economic Community; Saskatchewan 1972; Ontario 1978; Quebec 1983; South Australia 1972; Tasmania 1977; Victoria 1981; NSW 1983. While 'Robens principles' are incorporated in most of these laws, some extend his recommendations, others represent a gross attenuation. Many of these countries have separate chemicals control legislation also for the protection of workers and the environment.

2 Two recent Australian reports have contributed to the shaping of policy: see those of Williams and of the House of Representatives.

The primary responsibility for doing something about the present levels of occupational accidents and disease lies with those who create the risks and those who work with them.

So in order to involve these parties the Committee argued that one piece of law should be concerned :

not with detailed prescriptions for innumerable day to day circumstances, but with influencing attitudes, and with creating a framework for better safety and health organization, and action by industry itself.

Necessary changes for effective action at workplaces mean that :

First there must be awareness of the subject of safety and health at work. Secondly, responsibilities, legal and otherwise, must be clearly defined. Thirdly, the nature of the problems must be methodically assessed, and the assessments translated into practical objectives and courses of action.

2.3 The *British Health and Safety at Work Act 1974* is directed to these ends and has created a more unified administration (the Health and Safety Commission and the Health and Safety Executive) as well as setting out the general duties of all parties: one aim being to shape positive attitudes. (It should be said that the less detailed the legislation, the greater the technical knowledge will be required of the inspectorate.) Legislation itself will not guarantee a safer environment: there needs to be, in conjunction, workplace activity and participation.

2.4 Robens emphasised that while safety and health at work are a matter for efficient management, they are not matters of management prerogative, for real progress is not possible without the co-operation and commitment of all employees. He advocated that there should be a statutory duty on every employer to consult with elected representatives and to provide for their participation in the development of preventive measures. The 1974 Act incorporated these recommendations.

2.5 However, the provisions of the Safety Representatives and Safety Committees Regulations 1977 of the Act go beyond those advised by the Robens Committee. The complementary functions of committees and of representatives are set out; the committees providing the mechanism for joint consultations and union elected representatives ensuring that policy and law are implemented in the workplace.

2.6 It should be noted that the Scandinavian laws and those of some of the Canadian Provinces extend further rights to workers' representatives than do the British Regulations. One of the most contentious of those is the right to cease or to refuse to start work perceived to be dangerous. According to Labour Office information, employers have come to realise that safety delegates will use these powers and have therefore become much more responsive to them, and in turn few stoppages have been called. The ILO has advocated this principle since 1974: it had long been ceded to miners (including those in WA).

Workers' safety representatives in Western Europe have a variety of statutory rights in the health and safety field, ranging from information and consultation rights to co-determination in policy making.

The Saskatchewan experience suggests that joint health and safety committees can play a major role in workplace health and safety. For example, of 23,100 issues brought before the Province's 2500 operating committees, 90% were resolved at committee level.

Where workers are given the statutory rights to information, to participate in policy formulation and implementation and to refuse to do unsafe work, it is claimed that they can influence the working environment positively and significantly.

2.7 In WA certain matters will have to be addressed and resolved, and these include the criteria for election as a safety representative

- Should this be e.g. two years experience in the industry and/or training?
- How will elections be conducted?
- How will shift workers be represented?
- What arrangements will be made where there are many unions: and no unions: and a variety of occupations? Will the representative be the shop steward or someone else?
- How will workers of very small employers best be served?

In Britain safety representatives are offered specific protection inasmuch as no legal duties, other than those normally recognised, are imposed on them in respect of their safety function.

3. Evaluations of the British Act

- 3.1 There is every reason for optimism about this approach, judging by the reports of evaluative studies. From experience elsewhere, including Canada and Scandinavia, we can apply those principles found to have been advantageous, and adapt or dismiss those that have not contributed.

A number of British studies have attempted to gauge the impact of their legislation on the functioning of safety committees and safety representatives.

- 3.2 The Health and Safety Executive (HSE) conducted a survey of 6630 workplaces (employing ½ m, people) and found that while the majority of medium and large size workplaces had functioning health and safety committees and safety representatives, most small places did not. However, the 17% of workplaces where safety representatives operated accounted for 79% of the employees in the sample. About 1/5 of the representatives acted for more than one trade union.

Most of the committees and representatives in small establishments had come into existence as a consequence of the Regulations. The study was done only a year after the Regulations came into effect, yet the initial findings of the HSE suggest that the new machinery, provided by the legal framework of the Act, is contributing to the solution of health and safety problems at the workplace. The authors of this paper (Glendon & Booth 1982) cite the findings of two other studies which described the practices of safety representatives. Two functions emerged from one study; one of a representative/welfare role, the other of problem identification and solving. In the other study nearly all the representatives saw themselves as hazard reporters, and about half as having a function in educating the workforce; less than a third were involved in enforcement.

- 3.3 The Centre for Research in Industrial Democracy and Participation at the University of Glasgow has conducted a number of assessments of the impact of the Act. Two years after the promulgation of the Safety Representatives and Safety Committees Regulations, a study to identify characteristics which contribute to the effective functioning of joint health and safety committees was conducted (Leopold & Beaumont 1982). It was found that managers now clearly recognise that health and

safety need not be their sole responsibility, and that employee representatives make a positive contribution. But the impact has not been uniform; for while there are more committees and while trade union training has been implemented, there is little evidence to show that some function much differently from those committees operating in the 1960's. Twelve factors within the immediate control of joint health and safety committee members are listed. While every point is not needed, the authors claim that any committee with less than a majority will not be effective.

- Regular meetings.
 - Co-ordinating committee in large (>1000) workplaces.
 - Agenda should deal primarily with policy issues.
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- Committee should be as compact as possible.

It is crucial that a senior manager is present on the committee so that, as far as possible, decisions can be made on the committee and not continually referred elsewhere.
 - Members representing management and employees should have some training.
 - Health and safety officers' role should be ex officio and advisory.
 - Agreed balance between different unions and working areas
 - Representation operates through established trade union channels.
 - Members committed to objectives of improving workplace health and safety.
 - Members must attend meetings regularly.
 - Establish a two-way flow of information between the workforce and the committee.

3.4 The Employment Committee of the House of Commons recently invited submissions on the achievements made in the ten years since the Robens Report was presented. Evidence was taken from the Commission and a number of representatives of interested organizations.

While the Commission was criticised by this committee for 'an unjustifiably low profile', both the employer and union peak councils (and other bodies) claimed that the Commission has been instrumental in the Act achieving its objectives, especially in gaining consensus about new legislative proposals.

The Confederation of British Industry enunciated the advantages of the Act and also problems not yet resolved. The 'indications of success' include the development of policies and procedures for improved occupational health and safety, joint consultation, the clarification of responsibilities of employers and employees, and a more integrated approach by the inspectorates. However, they claimed that a huge work load has been created not only by British requirements but also by those of the European Economic Community. There are inconsistencies in standards demanded, and weaknesses in the criteria for the addition of projects directed to the Commission. Recommendations were directed to the functioning of the Commission, but

on balance we believe that the advantages of the system outweigh the disadvantages, at least in those areas of health and safety that are properly negotiated at the centre by representatives of management and unions...

The Trades Union Congress (TUC) in its submission stated that the legislation is one of the most far reaching and important reforms to be enacted in recent years.

The Act brought in eight million workers previously outside the scope of safety legislation, and a permanent focus for occupational health and safety was established in the Commission. Over 90,000 safety representatives had then been trained and the development of follow-on training and training for different industry sections was necessary.

While the TUC described difficulties in enforcement arrangements they also stated that the unification of inspectorates

has enabled these enforcement bodies to develop much closer working relationships and to benefit from cross-fertilisation of ideas and experience. The sharing of common services and back-up has also enhanced the work of the inspectorates.

The TUC recommended that the Health and Safety Executive be strengthened with a range of additional resources.

4. The International Labour Organisation Convention No. 155 and

Recommendation no. 164 were adopted at the International Labour Conference in June 1981. 'Robens principles' are incorporated.

- 4.1 The Convention lays the foundation for a national policy ensuring the establishment of a progressive, coherent, comprehensive system of prevention based on current realities at plant level. This new approach reflects growing international awareness of the need to protect the life and health of workers. The aim of the policy is to prevent

occupational injury and disease by minimising the causes of hazards inherent in the working environment. The principle of controlling hazards at source, and of adapting the environment to individuals is emphasised.

Workers' health is seen not merely as the absence of disease or infirmity, but includes physical and mental factors directly related to safety and hygiene at work. Co-operation between both sides of industry is an essential prerequisite for the success of any safety and health measures taken at the workplace.

- 4.2 Employers' responsibilities for safe workplaces, machinery, equipment and processes and for the control of chemical, physical and biological substances are listed; as is the requirement to provide, where necessary, adequate personal protection.
- 4.3 The Convention provides for arrangements under which workers shall be consulted on all aspects of safety and health connected with their work and shall be given adequate information on, and training in, occupational safety and health. Moreover, workers may report to their immediate supervisor any situation which they believe presents an imminent and serious danger and cannot be required to return to a work situation where there is continuing imminent and serious danger to life or health. Responsibilities of workers and their representatives are outlined. Other provisions cover workers' safety delegates, workers' safety and health committees and joint consultation machinery.
- 4.4 The Recommendation covers technical fields of preventive action, advocates the principle of eliminating hazards at source, and urges member States to review current legislation and to undertake research to identify and counteract health hazards - particularly in industrial zones where enterprises with high potential risks for workers and the surrounding population are situated.
- 4.5 The issue of records relevant to occupational safety and health is also addressed.

5. Australia

- 5.1 The Prime Minister is committed to the ratification and adoption of this Convention and its Recommendation
- 5.2 The Federal Government is currently engaged in the implementation of its occupational health and safety policy.

It will establish:

A National Occupational Health and Safety Commission and Office which will be tripartite in composition and responsible to the Minister for Employment and Industrial Relations. Its functions will include:

developing legislation for areas of Federal jurisdiction;
formulating and promulgating standards and codes of practice;
collecting and disseminating information.

Consultations with the States, employers and trade unions through the National Labour Consultative Committee and the Departments of Labour Advisory Committee continue. It is likely that an interim commission will be formed in the near future.

- A National Institute of Environmental and Occupational Health. This will be in the Health portfolio and its functions will include:

promoting and advising on standards of training for occupational health professionals;
establishing an occupational disease register for monitoring the incidence of, and environmental causes of, diseases.

An Environmental Contaminants Authority in the Environment portfolio will concentrate on the control of chemicals at all stages of their life cycle. Its functions include:

evaluating potential hazards of new and existing chemicals;
advising the Commission on control measures;
compiling an inventory of industrial chemicals in use.

- 5.3 Co-ordination of the efforts between these bodies and their advisory committees is essential so that national improvements can be made.
- 5.4 The Federal and Western Australian Governments recognise that each approach to the implementation of policy must be consistent and co-ordinated, and that their joint efforts also be complementary.

GOVERNMENT POLICY

Lord Robens' remarks about the state of legislation and protection from harm in Britain in 1970-72 are applicable to WA in 1983. He argued that the defects could be remedied only by a 'thorough going overhaul', not by piecemeal improvements to the existing system. Policy is based on Robens' recommendation for legislation and for new structures and organization.

1. Legislation

1.1 It is planned to provide one Occupational Health, Safety and Welfare Act in order to :

- ensure that work and workplaces are as free from hazards to safety and health as is feasible;
- rationalise existing administrative arrangements;
- set and enforce legal standards on health and safety;
- establish statutory rights and responsibilities of workers, unions and employers;
- provide a licensing system for workplaces, work processes, equipment and chemicals;
- promote tripartite consultation and the observation of ILO standards both in formulating policy in a Commission and in implementing policy at workplaces.

1.2 The broad aims of the Act will be to prevent work-related injury, disease and death for all workers in all workplaces. A statement of its objectives will be incorporated.

Objectives derived from other Acts are suggested :

- to create a working environment which affords employees full protection against harm and promotes their health and welfare;
- to ensure that occupational health, safety and welfare standards correspond to current levels of technical knowledge and development;
- to place and maintain people in working environments which are adapted to their physical and other individual capacities and needs;
- to provide the means for the resolution of working environment problems at the workplace by employers and workers with guidance from Government officers and agencies;
- to provide for research, information, statistics, education and training in occupational health and safety.

1.3 The Act will be written in plain English.

- 1.4 The Act will be 'enabling legislation' providing a legislative framework which specifies the statutory duties, rights and responsibilities of all parties concerned, viz employers, workers and unions, supervisors, suppliers and inspectors.
- 1.5 Existing statutes will act as regulations for the proposed Act, and be gradually repealed and replaced by regulations under the Act.
- 1.6 Regulations and codes of practice which cover specific work processes and environments will be introduced. While regulations have the force of law, and codes of practice generally do not, their regular review by parties concerned will prevent obsolescence.
- 1.7 Breaches of the legislation will attract substantial penalties. The Division will initiate prosecutions under the Act, to be brought in the Magistrates' Court and subject to normal appeal procedures.

2. Commission of Occupational Health, Safety and Welfare

- 2.1 An interim commission, tripartite in structure, will be formed:
 - to administer existing legislation
 - to advise the Minister on matters of occupational health and safety including the manner in which the Act should be implemented.

It will be headed by the chairperson designate of the Commission to be established by the Act.

- 2.2 The Commission (permanent) will be tripartite in nature having equal representation (three to five each) from employer and union peak councils, and three expert or professional commissioners, all elected for a three-year term. The Commission will meet as often as required.

The chairperson will have direct access to the Minister. It will be a full-time position needing a deputy: the Commission will be serviced by a small secretariat and research group.

- 2.3 The functions of the Commission include:
 - to develop and review policy and legislation and to recommend statute in the form of regulations and codes of practice to the Minister;
 - to examine existing and proposed licensing schemes for workplaces, individuals, chemical substances, etc., as forwarded by the Division;

- to provide advice to Government departments, employer and union organizations;
- to commission and co-ordinate relevant research;
- to promote safety education and training as widely as possible;
- to liaise with other States and the Federal Government especially in relation to proposed standards;
- to prescribe reporting and recording procedures for injuries, etc., and monitoring arrangements.

2.4 Such a Commission should not have an enforcement function.

2.5 The Commission will be advised by a number of advisory committees, some standing (e.g. women and young workers; chemicals; radiation; safety education and training) and some ad hoc for regulations (e.g. vibration; machinery guarding; working with manmade mineral fibres). The committees would have a duty to consult and make recommendations. The composition of these committees would be tripartite, but individuals (including members of the Division) will be asked to submit their names for membership, so that as wide a range of expertise and experience as possible can be canvassed.

3. Division of Occupational Health, Safety and Welfare

3.1 When the interim commission is formed, so amalgamation of existing inspectorates, technical resources and professional people having an occupational safety and health function will proceed. A steering committee of Government officers will be formed to effect these moves at about the time that this document is released. There must be some urgent action taken by Government to rationalise its existing administrative arrangements and responsibilities for workers' safety.

3.2 The Division as established under the Act will be the administrative and enforcement arm of the Commission. Its officers will also mediate, advise and inspect.

3.3 It is suggested that three branches of the Division be formed and that the structures be as non-hierarchical as possible:

- an inspectorate with advisory, enforcement and monitoring functions - a team system should eventually be established on a geographical and/or industry basis. Further, branches of the Division's inspectorate should be developed regionally;
- a resources branch for the inspectorate, e.g. design engineers, medical officers - direct access to be provided. It can also develop codes and

standards; conduct special investigations; engage in research;

- administrative - clerical and accounting, registration and fee collection, review and evaluate corporate aims and objectives, training and staff development.

3.4 It must be emphasised that the special expertise of the different inspectorates will be retained, but that their effectiveness can be enhanced through closer co-operation and co-ordination.

3.5 It will be necessary to increase the size of the inspectorate by appointing more inspectors. Criteria for their recruitment and training need to be reviewed. Inspectors will be given a number of important new powers in order to enforce the Act:

- They will be empowered to issue 'Improvement Notices' (subject to appeal), requiring the people to whom they are directed to take specific action to make the relevant workplace, process, etc., conform with existing statutory standards.
- They will be empowered to issue 'Prohibition Notices' (subject to appeal), requiring that particular processes, machines, etc., be closed down on the grounds that they pose a serious threat to the health and safety of workers or the general public.
- They will be required to mediate (when requested) in certain disputes between workers and their employers over safety issues.

These procedures should provide a means of securing practical improvements quickly.

3.6 The Division would also be responsible for all licensing functions and for State responsibilities for chemicals licensing and registration as applied to the protection of workers' health and safety.

3.7 A computer-based register of toxic effects of chemicals, together with emergency and first aid procedures, would be available to all legitimate inquirers.

3.8 It has recently been proposed that a second Division of the Commission be established with responsibility for workers' rehabilitation and compensation. These and related issues are being canvassed in other arenas. The current Workers' Assistance Commission would logically be the kernel of such a Division.

Further, a data base compiled from information collected by a sole management authority would be transferred from the Division of Compensation and Rehabilitation to the Division for Occupational Health, Safety and Welfare.

The issue of whether a small percentage (e.g. 1% or 3%) of collected premium funds should be used to finance the Commission is also canvassed.

4. Workplaces

Robens recommended that a unified and integrated system would increase the effectiveness of the state's contribution to safety and health at work.

The effective 'self regulation' that he advised involves the active participation of those who create the risks and of those who work with them, the joint involvement of employers and workers. In practical terms this means workplace regulation.

4.1 The Act will specify the general duty on all parties for the maintenance of a safe and hygienic workplace, and for the safety, health and welfare of employees.

4.2 Employers

The matters to which the general duty extends include:

- providing and maintaining safe systems of work, plant and machinery;
- arranging the safe use, handling, storage and transport of articles and substances;
- providing all information, instruction, training and supervision necessary to ensure a safe and healthy workplace.

4.3 In addition, there will be the following duties on employers

- Every employer will make available to all employees a written statement of the employer's health and safety policy, rules and procedures.
- Every employer will, at the request of safety representatives at the workplace, establish a safety committee for joint consultation on measures for promoting safety and health at work. Such committees shall have access to all safety and medical records pertaining to the workplace with appropriate safeguards to protect confidentiality and shall have access to any person who may reasonably be expected to assist the committee.
- Safety committees, where established, shall draw up such policies, rules and procedures. The policy, rules and procedures shall be in a form readily understandable by all employees (e.g. translated for migrants: audiotapes).
- Employers will be required to recognise and consult with safety representatives.

4.4 Duties on self employed persons

There will be a duty on self employed persons to take reasonable care for the safety and health of themselves, workers and the general public.

4.5 Duties on occupiers and owners

There will be an obligation placed on occupiers and owners to provide safe access, safe, healthy and secure conditions and equipment in relation to work performed on their premises.

4.6 Designers, manufacturers, suppliers and importers and installers

- There will be a duty on those who manufacture, import or sell plant, machinery, equipment or appliances which may be used for work purposes to ensure the article is designed, manufactured and marketed to be without risk to the health and safety of workers using it as directed.
- There will be an equivalent duty on those who install plant, machinery, equipment or appliances to ensure it is installed to be without risk to health and safety.
- Those who manufacture or import chemical substances (or materials containing them) shall be under a duty to ensure any new chemical substance made available is safe when used under the conditions recommended.
- In each of the above categories, the duty will include a requirement on the persons concerned to :
 - carry out or arrange for such research, pretesting, inspection and quality control procedures which might be necessary and sufficient to ensure compliance with the duty; and
 - to provide to the user, including individual workers, adequate information on the use(s) for which articles and substances have been tested and on conditions for their safe use and storage.

4.7 Employees, workers

The matters to which the general duty extends include:

- to take reasonable care for their own health and safety and that of co-workers;
- to co-operate with the implementation of safety policy developed in joint safety committees;
- not to interfere with or to misuse anything provided in the interests of health and safety;
- to act with good intentions.

No worker shall be dismissed, demoted or in any way discriminated against in his/her employment because of any action taken concerning occupational health and safety under this legislation.

4.8 Safety representatives

The Act will provide for persons who are bona fide employees of an employer to be elected or appointed (dependent on their union rules) as safety representatives.

These representatives will have duties and rights which will be agreed with their employer but will include these minimum rights:

- to require that their employer establish a health and safety committee. As well as the representative/s, the other workers on the committee should reflect the composition of the workforce and its vulnerabilities, e.g. women, apprentices.
- A major function of these committees is to keep under review the measures taken to ensure the health and safety at work of employees. This involves contribution to policy and in some instances the development of agreements and codes of practice;
- to regularly inspect the workplace - or part of it. This would be subject to the size of the establishment, the type of industry, the unions involved (cf. a hospital and a garage) and the policy developed by the committee;
- to have access to and receive health and safety information from their employer and the Division;
- to accompany inspectors on inspections of the workplace; to represent workers in safety disputes or internal inquiries after accidents;
- to prevent a continuation of work under unsafe and unhealthy conditions - pending the mediation and assessment, within 24 hours, by an inspector. This principle has been endorsed by the ILO since 1974 and incorporated into a number of statutes;
- through their unions to take complaints in respect of breaches and regulations to the Commission where Division staff fail to act;
- to be consulted on all changes in the workplace which may predictably affect health and safety. This makes the Scandinavian laws outstanding;
- to be paid time off to carry out their duties, and to participate in relevant training programmes provided by their union and/or the Trade Union Training Authority or other appropriate courses approved by the union.

4.9 No action taken by a safety representative under the legislation shall be construed as imposing any duty other than the ordinary duties of an employee.

4.10 A person shall cease to be a safety representative only when the relevant trade union notifies the employer the appointment has been terminated or when he/she resigns, or ceases to be employed in the workplace.

5. Implications of the Proposals

Issues including those outlined below will have to be canvassed in some depth. Some are not reliant on a legislative framework though the law, as its regulations develop, will expand to cover such areas.

5.1 Education and training

Education and training in accident prevention and occupational health needs to assume much greater importance in schools, tertiary institutions, the workplace, nursing, medical and other relevant professions, the community generally and in trade union training. One of the functions of the proposed Commission is to promote safety education and training and disseminate information. It will do so in conjunction with relevant bodies, to ensure:

- general education of the working population as to occupational hazards, and attitudes to health and safety. This includes multi-lingual services for migrants;
- training of management and supervisors;
- training of safety officers and training of first aid officers to be upgraded;
- training of safety representatives;
- an occupational health and safety component in all trade-school and tertiary education vocational courses;
- development of a technically competent inspectorate.

5.2 Occupational health and welfare services

Health services may be required to be provided at workplaces where either the size and composition of the workforce, the type of work, the degree of uncertainty of hazard introduces a risk. Some (larger) employers may establish and maintain services, and others will need to be provided through the Division; the same statutory requirements will apply. Besides the promotion of health and prevention of disease, doctors, nurses and allied professionals practising in this field would contribute to epidemiological research information, to standard setting and to the education of health and safety professionals. There is a policy commitment to promoting the appointment of a Fellow in Occupational Medicine at the Medical School.

5.3 Research

Uniform reporting and recording methods will be required and all work-related injury and disease data collected, whether or not compensation is claimed.

Additionally, the Commission will facilitate and/or initiate:

- research to evaluate the impact of the Act;
- research into occupational diseases, emphasising epidemiological studies. These studies would include the epidemiology of cancers and reproductive

anomalies, and links with the cancer and the perinatal morbidity registries established;

- ergonomic research and workplace design factors;
- investigation of special needs of special groups of workers (e.g. young persons; paint manufacturers);
- a study of the extent of work-related stress induced disease and of alcohol and drug related problems in workplaces.

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REFERENCES

Because of the style and purpose of this document, it has not been referenced in traditional style. However, the policy was developed, and the discussion paper written, with reference to these reports, etc.

- Beaumont P B et al (1982) *The Determinants of Effective Joint Health and Safety Committees: A Report of a project funded by the Leverhulme Trust*. Centre for Research in Industrial Democracy & Participation. University of Glasgow.
- Doll R & Peto J (1981) Avoidable Risks of Cancer in the U.S. *J. National Cancer Inst.* 66 (6).
- Glendon A I & Booth R T (1982) Worker Participation in Occupational Health and Safety in Britain. *Int. Labour Review* 121 (4) 399-416.
- House of Commons 6th Report from the Employment Committee Session 1981-82 (1982) *The Working of The Health & Safety Commission & Executive: Achievements Since the Robens Report*. HMSO London.
- House of Representatives Standing Committee on Environment & Conservation (1982) *First & Second Reports of the Inquiry into Hazardous Chemicals* AGPS Canberra.
- International Labour Conference **66th Session** (1980) *Safety & Health & the Working Environment*. ILO. Geneva.
- International Labour Organisation *Occupational Safety & Health Convention 1981* (no. 155).
- International Labour Organisation Chemical Industries Committee (1976) *The Chemical Industries & the Working Environment*. ILO. Geneva.
- Lord Robens - Chairman (1972) *Safety & Health At Work: Report of the Committee 1970-72* HMSO London.
- Williams J G - Chairman Woodhouse (1981) *Report of the Commission of Inquiry into Occupational Health & Safety*. Govt Printer. NSW.
- A 0 - Chairman (1981) *Report of the Commission of Inquiry into Occupational Health & Safety*. Govt Printer. NSW.
- (1974) *Compensation & Rehabilitation in Australia; Report of the National Committee of Inquiry Vol. 2*. AGPS Canberra.