

Australasian Convenience and Petroleum Marketers Association (ACAPMA)

The relevance of ACAPMA; operating in the fuel industry

The Australasian Convenience and Petroleum Marketers Association (ACAPMA) is a leading association and national peak body responsible for the development and growth of the petroleum distribution and petrol convenience retail industries for the benefit of the national interest, its members and the broader Australian community.

- ACAPMA members include over 80% of the 120¹ businesses that operate in petroleum distribution and storage, while representing - through direct ownership, operation or supply - over 2600 service stations.
- ACAPMA's membership profile in the main is independent small-to-medium businesses operating in regional and rural Australia, as well as some of Australia's largest companies in our industries - 7Eleven, Neumann Petroleum, Caltex and BP.
- ACAPMA members operate as one or both of the following categories:
 - *Petroleum distributor* – transporter and wholesaler, and involved in a diverse range of petroleum-related activities, including operation of inland fuel storage depots, tanker fleets and aviation refuelling locations. Distributors supply a broad spectrum of businesses – primary producers, commercial and industrial, aviation, and mining – as well as fuel retailers.
 - *Petrol convenience retailer* – operates service stations, convenience stores, truck stops and related business, such as car washes. Petrol convenience retail outlets vary from the traditional service station with a mechanical workshop to large convenience stores offering a full range of related products. Petrol convenience retailers may operate under their own independent brand or that of a major oil company. They could be a large multisite operator controlling a network of locations or a small business with one or two service stations.

As the only national peak body representing independents in the downstream petroleum industry, ACAPMA is actively involved in the industry and is a trusted source of information, assistance, guidance and advocacy. The ACAPMA Assist Network brings members and suppliers together, provides information, training and support to members and the industry.

Members and the Industry²

Nationally ACAPMA's Member Register has 100 distributor and retailer businesses on it. Those businesses however represent;

- 80% of all businesses involved in petroleum distribution in Australia,
- 40% of the 6,500 petrol retail (service station) sites in Australia,
- 0.24% of Australia's GDP.

Collectively represent;	ACAPMA Petroleum Distributors	Collectively represent;	ACAPMA Petrol Retailers
• 15.4 billion litres of product		• 7.6 billion litres of product,	
• \$31.92 billion in gross revenue,		• \$11.4 billion turnover,	
• 5,160 people employed,		• 14,280 employees,	
• \$371.36 million paid in wages.		• \$335.8 million in wages.	

Today ACAPMA represents the whole cross-section of the downstream petroleum industry. From a single retail petrol site operator, to one of the largest independently owned companies in Australia, major oil companies and now on to industry suppliers and even stand alone convenience stores.

¹ IBISWorld Industry Report F4521, Petroleum Wholesaling in Australia, November 2010, page 4

² Figures in this section are calculated from ACAPMA surveys and IBISWorld Industry Report F4521, Petroleum Wholesaling in Australia, November 2010 and Report G5321, Automotive Fuel Retailing in Australia, November 2010.

The Bill

General Comments

By way of general comment this submission suggests further clarification on the level, timing and methodology of consultation required between PCBUs and suppliers. While the *Act* and the *Regulations* provide extensive detail on some of the methodologies, and the *Codes of Practice* collectively provide working examples, there is an emphasis on third party interaction and consultation without a clear picture being given as to the level of consultation expected with third parties to ensure compliance and deliver stated safe work culture benefits.

Without clarification on this matter providing comment as to the cost of compliance and the impact on businesses in the petroleum distribution and petrol retail industries that ACAPMA represents, is problematic at best.

The operation of joint consultation in a multiple supplier, retail environment particularly, is an area that requires clarification before such impact statements could be made intelligently.

Please note that further information on the perceived issues, impacts and suggestions and solutions are provided under the relevant headings below.

Health and Safety Representatives (HSRs)

In reference to the provisions for HSR under Part 5, Division 3 of the *Act* and Chapter 2, Division 2 of the *Regulations* ACAPMA perceives the following issues of concern:

- ***The election process requires further clarification within the Regulations and in the Code of Practice.***

While Chapter 2, Division 2 of the *Regulations* provides details as to the broad requirements of elections for HSRs, Part 5, Division 3, Section 61 (1) of the *Act* states:

61 Procedure for election of health and safety representatives

(1) The workers in a work group may determine how an election of a health and safety representative for the work group is to be conducted.

There is however, a lack of corresponding details in the *Code of Practice on How to Consult on Health and Safety*. It is foreseeable that confusion, tension and possible compliance issues may arise within the process of electing a HSR when there is little or no practical, common-language treatment of the process within the legislative suite of documents (*Act*, *Regulations* and *Codes of Practice*). In addition to the possibility of this lack of information causing tension in the workplace, the time required to digest and create procedures based on the *Act*, *Regulations* and the *Codes of Practice*, by workers for who this type of work is not commonplace, represents a real cost to business.

Collectively the *Codes of Practice* provides a practical guide, in common-language, of the operation of work health and safety in the harmonized environment. The election, operation and obligation of HSRs, however, constitute one of the largest changes to the operation of safety in workplaces in many of the harmonized jurisdictions, and are not covered well within the *Codes*.

It is suggested that the process of election for HSR be covered in more detail in the Code of Practice on How to Consult on Health and Safety. Alternatively a 'Worker Handbook: HSR, Elections, Training and Obligations' be developed and incorporated into the Code of Practice.

- **The HSR training course details – costs, frequency and availability require further clarification.**

While Chapter 2, Division 2 of the *Regulations* provides details as to the broad requirements for training of HSRs, Part 5, Division 3, Section 72 (1) of the *Act* states :

72 Obligation to train health and safety representatives

(1) The person conducting a business or undertaking must, if requested by a health and safety representative for a work group for that business or undertaking, allow the health and safety representative to attend a course of training in work health and safety...

as yet there has been no indication as to the cost, locations and format of the HSR training courses that would be required. Already, five (5) day training courses pose a business cost, one that is exacerbated in high turnover and/or casual driven workforces and where the full 3 year term is unlikely to be completed. However, a true picture of the cost of this provision cannot be gauged until further information on the cost, locations and format of this training is provided.

It is recognised that the collaborative management of safety within the workplace produces superior risk identification, elimination and control, and engenders a culture of safe work. However, further information on the cost and operation of training is required for businesses to plan for the cost of compliance.

It is suggested then that the details of approved HSR training – costs, locations, formats and frequency – be released as soon as possible to allow businesses to prepare for the cost of compliance.

WHS Entry Permit Holders (WHSEPH)

In reference to the requirements for notification of WHSEPH to enter workplaces under Part 7, Division 2 and Division 3 of the *Act* and under Chapter 2 of the *Regulations*, ACAPMA perceives the following issue of concern:

- ***Notification is not required to be given in writing.***

While details are given throughout Chapter 2, Part 2.4.3 to 2.4.7 of the *Regulations* on what must be included in the 'notification of entry' as well as minimum notification periods for:

- a) entry based on a level of perceived risk/suspected contravention (as per Part 7, Division 2, 117-119 of the *Act*), notice after entry;
- b) entry to inspect employee records or the records of a third party (as per Part 7, Division 2, 120 of the *Act*), notice at least 24 hours prior to entry; and
- c) entry to advice or consult with workers (as per Part 7, Division 3 of the *Act*), notice at least 24 hours prior to entry...

In neither the *Act* nor the *Regulations* is there a requirement for that notification to be in writing. This opens the situation to confusion and may lead to disputes over 'who said what' as well as compliance issues.

While it is accepted that in some instances, such as a) above, that the WHSEPH may perceive a risk/contravention that is considered imminently dangerous and needs to be immediately addressed, without pausing to draft a letter, it is the other reasons for entry, such as b) and c) above that may have a larger impact if notice is not given in writing.

The possibility for confusion and later disputes is reduced dramatically if communication is given in writing, particularly in regards to the request for documentation from a third party. Written notice also allows those for whom English is not a first language, to take the time and seek assistance on clarifying exactly what is required to prepare in order to comply.

The *Act* and the *Regulations* treat each reason for entry to a workplace differently, so the mechanism exists to recognise that there are situations that require immediate action, while preserving the requirement to clearly document and communicate wherever possible in writing, exists.

It is suggested then that the Regulations be amended to specifically state that where entry is being notified under b) or c) above that the notification be made in writing.

Codes of Practice

General Comments

The *Codes of Practice* collectively provide a guide to the operational implementation of the *Act* and *Regulations*. As a whole they operate very well in communicating the focus on work and workers and on the need to consult with workers and other PCBUs to eliminate risk wherever reasonably practicable.

However, issues have been identified below around the need to provide more information on the operation of consultation with suppliers and other PCBUs as in a practical sense, particularly in a retail based environment. Confusion still remains over the level, form and timing of consultation.

Further details are provided under the headings below.

How To Consult on Work Health and Safety Codes of Practice

In reference to the requirements for consultation as laid out in the *How to Consult on Work Health and Safety Codes of Practice*, ACAPMA perceives the following issue of concern:

- ***Consultation requirements and methodologies between the primary PCBU and suppliers requires further clarification***

While the *Codes of Practice on How to Consult on Work Health and Safety* does provide options for consultation, ranging from formally structured through to informal or toolbox consultation with workers, there is little information provided as to the appropriate methods for consulting with other PCBUs, particularly in terms of the level of information to be shared at such consultations.

In an industry that has multiple ownership arrangements of land, branding and product supplied, such as the retail and wholesale fuel industry, more guidance is required as to the extent, format, documentation and frequency of consultation between PCBUs.

Example: While not a 'worker' at a service station, the supplier of cans of drink is not only at risk while on site, but also through their own work practices – such as stacking delivered goods – could increase the likelihood of an incident occurring where one of the service station workers could be injured when emptying the boxes.

In this example the receiving and unpacking of boxes could be identified as a risk to the service station workers. Appropriate levels of elimination and control procedures implemented and these procedures could be communicated to the supplier, however, the

service station is very limited in its practical ability to control the actions of the supplier and their workers. What is required is further clarification over the requirement to consult with suppliers. Is the communication of site specific procedures to suppliers, along with any performance issue feedback acceptable, or would the service station be required to undertake joint risk assessments with each of the suppliers and come to a negotiated process of control? With literally hundreds of products being delivered by multiple suppliers, the latter option poses a significant time and cost burden onto service stations and similar retail businesses.

It is suggested that more detail on the level of consultation required with suppliers, particularly in a retail sense, is undertaken and incorporated into the Codes of Practice to avoid confusion and compliance issues.

- ***The operation of Safety Committees, the practical requirements and procedures around requests for HSRs and the election and training and powers of same requires more treatment in this Code of Practice.***

While the *Codes of Practice on How to Consult on Work Health and Safety* does provide information on Safety Committees and HSRs, the practical information given within the *Code* is very minimal.

As many of the jurisdictions that are harmonizing are new to the HSR format of representation and a reading of the *Regulations* in this area is legalistic and heavy, there is greater opportunity for confusion and compliance issues around these consultative roles and structures.

The Code of Practice informs the Regulations and has the opportunity to go into practical detail on the processes and responsibilities around Safety Committees and HSRs. It is suggested that more detail on these areas be incorporated into the Code of Practice to avoid confusion and compliance issues.

- ***The election process itself requires further clarification within the Regulations and the Codes of Practice.***

While Chapter 2, Division 2 of the *Regulations* provides details as to the broad requirements of elections for HSRs, Part 5, Division 3, Section 61 (1) of the *Act* states:

61 Procedure for election of health and safety representatives

(1) The workers in a work group may determine how an election of a health and safety representative for the work group is to be conducted...

There is however, a lack of corresponding details in the *Codes of Practice on How to Consult on Health and Safety*.

It is foreseeable that confusion, tension and possible compliance issues may arise within the process of electing a HSR, when there is little or no practical common-language treatment of the process within the legislative suite of documents (*Act, Regulations and Codes of Practice*). In addition to the potential for this lack of information to cause tension in the workplace, the time required to digest and create procedures based on the *Act, Regulations* and the *Codes of Practice*, by workers for who this type of work is not commonplace, represents a real cost to business.

The *Codes of Practice*, collectively, provide a practical guide, in common-language, of the operation of work health and safety in the harmonized environment. However, the election, operation and obligation of HSRs constitutes one of the largest changes to the operation of

safety in workplaces in many of the harmonized jurisdictions, and is not covered well within the *Codes*.

It is suggested then that the process of election for HSR be covered in more detail in the Codes of Practice How to Consult on Health and Safety alternatively a 'Worker Handbook: HSR, Elections, Training and Obligations' be developed and incorporated into the Codes of Practice.

Hazardous Manual Tasks Codes of Practice

In reference to the requirements for consultation as laid out in the *Hazardous manual tasks Code of Practice*, ACAPMA perceives the following issue of concern:

- ***PCBU and supplier consultation requires more explanation within the Code.***

While the *Hazardous manual tasks Code of Practice* details appropriate methodologies for identifying, eliminating and controlling risks associated with hazardous manual tasks, it references the *How to Consult on Work Place and Safety Code of Practice* in the area of how to consult with suppliers in the management of these tasks within a workplace.

The emergence of injury and potential injury from hazardous manual tasks is recognized throughout the *Act, Regulations* and the *Codes of Practice*, however, there is a lack of clarity on the level, timing and methodology of consultation between the primary PCBU and suppliers that could lead to compliance issues and potentially time consuming and costly hit-and-miss consultation.

As per the comments above regarding the operation of the How to consult on work health and safety Code of Practice above, it is suggested that more detail on the level of consultation required with suppliers, particularly in a retail sense, is undertaken and incorporated into the Code of Practice to avoid confusion and compliance issues.