SENATE STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

QUESTIONS ON NOTICE BUDGET ESTIMATES 2009-10

Outcome 5

DEEWR Question No. EW0010_10

Senator Cash provided in writing.

Question

OHS Review Recommendation – Issue Resolution

I refer to the Occupation Health and Safety Model Legislation Recommendations. What are the public policy elements that underpin and support Recommendation 120, dealing with the introduction of a conciliation concept for resolution of issues and the power for Health and Safety Representatives (HSR) to stop work?

Answer

The National Review into Model Occupational Health and Safety (OHS) laws was conducted by an independent panel with OHS expertise and involved extensive consultation with a wide range of interested parties. The panel provided extensive rationale in its two reports for its recommendations. Chapter 27 (paragraphs 27.1 to 27.93) of the panel's second report deals with the resolution of OHS issues.

Recommendation 120 of the review panel's second report deals with the process that should apply to the resolution of issues at a workplace. The recommendation includes that "If the issue remains undetermined or unresolved after reasonable attempts have been made, any party can:

- a) seek the attendance at the workplace of an inspector, as soon as possible to assist in the resolution of the issue; or
- b) bring proceedings in a court of tribunal with powers to hear and determine such matters and exercising powers of conciliation and arbitration, such proceedings to be brought and determined in accordance with a process to be determined by regulations."

Recommendation 120 does not mandate conciliation for the resolution of OHS issues. The review panel noted in paragraph 27.88 that "The relevant court or tribunal will be a matter for each jurisdiction to determine, but it should be a court or tribunal with powers of conciliation and arbitration and power to deal with the substance of a matter. The procedure by which the court or tribunal deals with OHS issue resolution may either be provided by regulations made under the model Act, or by the rules of the court or tribunal."

Recommendation 120 also proposes that "The referral of an issue to an inspector or court or tribunal should not prevent the exercise of the right of a worker to cease unsafe work, or prevent the exercise of power by a HSR to direct a work cessation or issue a provisional improvement notice (PIN)." Further detail on this issue is provided in our response to Question No. EW11_10.