SENATE STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS

QUESTIONS ON NOTICE BUDGET ESTIMATES 2009-10

Outcome 5

DEEWR Question No. EW0014_10

Senator Cash provided in writing.

Question

OHS Review Recommendation - penalty levels

What are the public policy elements that underpin and support Recommendations 56-59, dealing with the level of penalties?

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 11 (paragraphs 11.13 to 11.33) of the panel's first report deals with offences related to work-related death and serious injury. Chapter 12 (paragraphs 12.1 to 12.26) of the panel's first report deals with sentences for breaches of duties of care.

The review panel has recommended significant penalties for the most serious breaches of duties of care. The review panel noted in paragraph 12.9 "in our view, the maximum penalties provided in some jurisdictions are too low to have a meaningful value as a deterrent or as a potential punishment for a breach." The panel went on to note in paragraph 12.10 "We consider that fines are a key part of achieving the deterrence required to give credibility to a process of graduated enforcement. We consider that higher maximum fines are necessary for the model Act and that they should be complemented by a range of other sentencing options."

The review panel further noted in paragraph 12.22 "that our overall objective is to increase compliance with the Act and decrease the resort to prosecution to achieve that aim. The higher penalties would, in our view, have a salutary effect in raising commitment to good OHS. It must be recognised, however, that the application of the highest levels of fines would, for a variety of legal and practical reasons, continue to be rare."

The review panel also noted in paragraph 12.25 "For the same reasons as we propose significant monetary penalties, we believe that there should be significant periods of imprisonment available for the worst (category 1) breaches." The panel went on to note in paragraph 12.26 "We consider that a maximum period of five years imprisonment is just. In this respect, we note that criminal law statutes provide for periods of imprisonment of 10 years or more for reckless conduct causing grievous bodily harm."