



29 November, 2011

Ms Jocelyn Ashcroft

Via email: jocash@bigpond.net.au

Dear Jocelyn,

As discussed in our telephone conversation, please find attached the following information which will provide guidance for your canteens.

On 1 January, 2012, the new *Work Health & Safety Act 2011* will be introduced into Queensland and will be replicated through all other jurisdictions within Australia as part of a national strategy to harmonise the legislation. There are minor variations between the new legislation and what we are currently working with, however, for those companies with good safety management systems who provide training for their staff to ensure they are competent, who maintain their plant and equipment to acceptable standards, who develop procedures on how to complete tasks safely, etc., it will be 'business as usual'.

There are many organizations and individuals out there promoting a fear campaign that dramatic changes will occur and that companies must spend large amounts of money to ensure they are compliant. The ACCC recently issued a warning notice on such OHS scams. The ACCC stated " Safety Compliance Pty Ltd, which operates from Tweed Heads in NSW, engaged in harassment, coercion and misleading or deceptive conduct by telling employers they were required to purchase wall charts, flip charts, fire escape plan posters and CPR charts it sold, in order to comply with safety laws. It falsely claimed to be affiliated with Workplace Health and Safety Regulators and warned employers they were likely to be fined by inspectors if they did not have posters and charts in place."

To avoid this opportunistic behaviour, people must ask simple questions of the supplier of goods and services. If a supplier of a good or service says you **must** do this to comply with the legislation, ask where it states that in the *WHS Act or Regulation 2011*. If they cannot show it to you, then show them the door. If the supplier of goods or services states that you **should** buy their goods or services then ask them to show you where it states that in a relevant Code of Practice. If they cannot show you the Code of Practice then show them the door. Also, it is important to note Australian Standards are only a guideline and not enforceable by law unless referred to directly within the Regulation or a Code of Practice. Australian Standards are a community expectation but are not applicable to all industries and therefore, normal risk management processes can apply where a

system you developed, which is as good as or better than the Australian Standard, or more suitable for your workplace, will be acceptable to the Regulator.

Responsibilities of P&F Groups

The crux of the new legislation is that a person conducting a business or undertaking (PCBU) has a duty of care to ensure, so far as reasonably practical, the health and safety of workers engaged or caused to be engaged by the person and whose activities in carrying out the work are influenced or directed by the person while the worker is at work in the business or undertaking – refer Section 19 *WHS Act 2011*. A PCBU is defined in Section 5 of the *WHS Act 2011*, and it clearly states in paragraph 7 that a volunteer association does not conduct a business or undertaking for the purposes of this Act. A volunteer association means a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly, with any other volunteers, employs any person to carry out work for the volunteer organization.

In plain English, if the P&F group engages a convenor to run a tuckshop through the proceeds of the tuckshop, then the P&F will become a PCBU and are obliged to comply with the *WHS Act 2011*. If the P&F do not engage any persons in a paid position, then they are exempt from this legislation. It would, therefore, be my professional advice that any funds raised by the P&F are provided to the school, so that the school can engage a convenor to run the tuckshop.

Liability of Officers who are Volunteers

If the P&F do engage staff and are a PCBU as defined under Section 5 of the Act, then the Directors of the P&F are “officers” as they meet the definition in Schedule 5 of the Act. The Directors will also be classified as “workers” as they meet that definition in Section 7. The Directors of the P&F are also volunteers as they receive no remuneration. Directors have a duty to exercise “due diligence” as detailed in Section 27 of the Act but they do not commit an offence and would not be liable for a penalty if they failed this duty as they are specifically exempted as a “volunteer” under Section 34 (1) of the Act. Directors would have a duty as a worker to take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons under Section 28 (b).

In summary, volunteer officers of a PCBU are given a broad exemption under the new *WHS Act* but are still liable as a worker. All this can be avoided if the P&F do not employ a person to carry out work for them. It should be noted that getting an accountant to do the accounts at the end of the year is not considered employing a person.

Making an Informed Decision

It is not a legal requirement but it is highly recommended that if a P&F seeks to get health and safety advice that they obtain it from a Certified Practicing Safety Professional. This is a person who has a tertiary qualification in a health and safety related field, has a minimum of 5 years experience and has been accepted into the Safety Institute of Australia, as a Certified Practicing Member. Unfortunately, anyone can say they are a Safety Professional which is leading to the current poor quality advice and misinformation. DRA Safety Specialists currently has Safety Management Systems

in over 75 schools within Queensland and consult regularly to 25 schools on all their health and safety needs. Every consultant is a Certified Practicing Safety Professional and we are here to provide advice and assist in your safety needs.

Please feel free to contact us through our website at www.drasafety.com.au or through our Office Manager, narelle@drasafety.com.au.

Yours faithfully,

DRA SAFETY SPECIALISTS PTY LTD

A handwritten signature in black ink, appearing to read 'D.J. Randall'.

David J. Randall

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