



**THE HON JULIA GILLARD MP**  
**DEPUTY PRIME MINISTER**

Mr Jeff Lawrence  
ACTU Secretary  
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MELBOURNE VIC 3000

Parliament House  
Canberra ACT 2600

*Jc JL*  
Dear Mr Lawrence

Thank you for your letter of 15 September 2009 regarding the Commonwealth, State and Territory Governments efforts to harmonise occupational health and safety legislation.

The health and safety of Australian workers is a key concern of Australian government at all levels. As you are aware, OHS legislation and regulations affects every workplace in Australia. Despite this communality, there currently exist significant differences between jurisdictions in key matters such as duty holder responsibilities, defence mechanisms, compliance regimes, penalties and the role of workers in OHS matters.

All Australian governments agree that these differences represent unacceptable risk and uncertainty for workers and an unnecessary and costly regulatory burden for business. In March 2008 the Council of Australian Governments committed to working co-operatively to achieve the important reforms needed to harmonise OHS legislation by December 2011.

The Workplace Relations Ministers' Council established the National Review into Model OHS Laws which was tasked with making recommendations on the optimal structure and content of a model OHS Act. The Panel received 243 submissions and held consultations with key stakeholders and interested parties. I am aware of the substantial submission and contribution that the ACTU and its affiliates made to this process.

The two volume report produced by the Panel comprehensively set out the views of all parties but based its recommendations on demonstrable performance outcomes. Consequently, it is the view of WRMC that the proposed model legislation contains the best practices and standards from the nine jurisdictions.

The harmonisation of OHS laws is not limited to the creation of uniform legislation. The harmonisation process, that all Australian governments have embarked upon, includes important operational and administrative improvements such as:

- The capacity of regulators to share evidence across multiple jurisdictions will significantly enhance the ability of regulators to pursue upstream duty holders.
- Three categories of offences will be created;
  - A high level of risk and the duty holder was reckless or grossly negligent,
  - A high level of risk but without recklessness or gross negligence, and
  - A breach of duty without the factors present in category 1 or 2.
- Financial penalties will be significantly increased to up to \$3 million for corporations for category 1 breaches. Custodial sentences of up to 5 years will also be available for category 1 breaches and up to 18 months for category 2 breaches.

- The proposed model laws allow appeals to the High Court, which is currently not available in all jurisdictions and this will ensure consistency and provide strong legal precedence.
- Uniformity of OHS legislation will significantly enhance the efforts of Australian governments to achieve mutual recognition of licences and permits.
- The content and operation of the model laws will be subject to periodic review (at least once every five years) to ensure the laws remain relevant and take into account changes in workplace conditions or arrangements.

With respect to the right of victims to prosecute employers the Panel considered this matter in considerable detail, as did WRMC. All Australian governments recognise the need for victims and their families to be provided with confidence in a regulators enforcement activity. That is why the model laws contain very strong safeguards regarding inaction or a decision by a regulator not to prosecute.

These safeguards ensure that the process for deciding upon a prosecution must be transparent and consistent with publically available prosecution guidelines. A regulator's decision not to prosecute must be speedily reviewable by the DPP in each jurisdiction and that, in the case of category 1 and 2 breaches, such a process may be initiated by request.

Finally, the establishment of the tripartite Safe Work Australia ensures that there is an independent national body whose role is to improve OHS outcomes and workers' compensation arrangements across Australia.

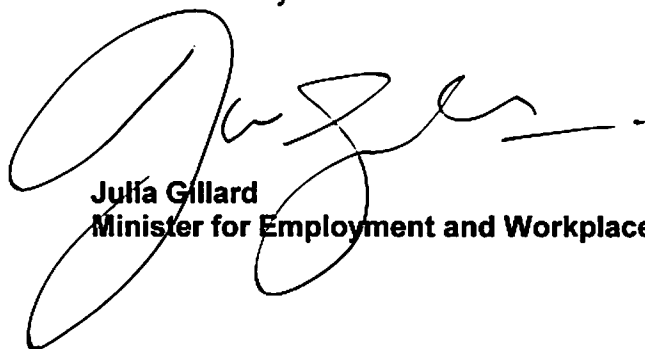
As you are aware, the ACTU has been a member of Safe Work Australia since its inception on 1 July 2009.

Safe Work Australia is undertaking the important task of developing the model OHS laws, model regulations and model codes of practice that will deliver significant outcomes for businesses and workers alike.

Through the ACTU's membership of Safe Work Australia, the ACTU will be able to continue to represent the interests of Australian employees on occupational health and safety.

I look forward to the ACTU's continued contribution in ensuring Australian workers are provided with the best OHS laws and outcomes.

Yours sincerely

A large, stylized handwritten signature in black ink, appearing to read 'Julia Gillard', is written over the typed name and title.

**Julia Gillard**  
**Minister for Employment and Workplace Relations**