



OHS legislation feedback 2020 – responses to discussion questions

HSCs

What are options, outside of HSC and HSR that could be considered to ensure workplace engagement in OHS in Alberta?

HSCs or HSRs of some form or another are important for employee engagement, but the standardized requirements from government have caused complications. The objective of employee engagement ought to be the identification of concerns, not the act of taking time to be in a meeting. Flexibility is required to reflect the realities of the jobsite, the work to be done and the crew doing the work. There is no need for a committee at every worksite so long as there is a mechanism for safety concerns to be identified and addressed in a timely way.

Regular safety meetings and tailgates are a form of engagement that relate to the experience of workers. Daily tailgates with a mechanism to raise safety concerns within the organization should meet the intent of legislated standards, provided the crew raising concerns receives feedback on their concerns. One problem with the rigid HSC/HSR structure is the delay in action from these options. On many sites, incidents are discussed, and actions agreed upon every morning so when the HSC/HSR comes to the crew, the issue has already been resolved. The best systems promote worker involvement on an immediate basis not on a delayed basis which is what happens in the HSC/HSR model. In many cases, the workers may be more knowledgeable than the HSC/HSR members either to provide advice or communicate the issue.

If there is no HSC or HSR, there should be evidence that leadership has developed a process to include engagement and participation in the workplace and the results are being achieved. The best systems empower all workers to bring their issues forward rather than being represented.

In the document there is a reference to the European Union's requirement for worker engagement and participation with a framework that has been developed to mandate worker consultation and participation in health and safety, but they are left with the flexibility to determine how to address this. There should be education available for employers and worker representatives to learn about these frameworks to give them options.

Ensure that employers have a way for employees to report and correct issues and hazards in the workplace. To provide evidence, employers can provide action plans, near miss reports with implemented actions, meeting minutes, etc. as requested.

What aspects of HSC, HSR and OHS programs are most critical to best support the IRS?

Worker involvement helps create buy-in. These programs are successful when input comes from the field, documents are reviewed and revised, and feedback occurs between management and workers. There should always be an avenue for management and workers to provide input on safety concerns and new initiatives. Additionally, focus should be placed on internal near miss reporting and positive recognition. Engagement and feedback are crucial but there is not a one-size-fits-all approach that is practical. On a positive note, some members have noted they've seen the most benefit with timeliness of implementing site specific corrective actions.

For the IRS to function, there must be management reviews that ensure commitment to the IRS and that people in the roles are recognized for commitment to their responsibilities. Additionally, those who do not demonstrate commitment should be coached and corrected to ensure continual improvement

The key to any successful safety program is management's commitment to the IRS with employee involvement. The main aspect of HSC/HSR that is critical is the ability of employees anonymously to go to representatives of the HSC/HSR to raise issues that they don't feel they are able to raise. A good, working safety system would address this in most companies without the need for an HSC/HSR.

Which areas, for example function, duties, training, meeting conduct, would benefit from more flexibility? Why is this the case?

All aspects of these programs need some measure of flexibility. While the training component is important it should be subjective and not an added expense. There is no reason for the legislated training to take longer than two hours online. The rest of the training required should be internal and based on a company's HSMS. Having flexibility with the committee's duties may help members feel more confident and comfortable in contributing to the group. Members feel there is little to no value in a mandated 16-hour class. The time could be spent correcting and addressing workers concerns. There needs to be a simple yet effective way for committee members to understand expectations.

In other provinces with mandated training it has become excessively difficult and expensive to provide. Training requirements should be flexible to allow the company and the HSC members to determine when and who takes what training once a basic standard has been achieved. For example, in Saskatchewan, there are Level 1 & 2 HSC training courses then after that, the standard is met. Then the company determines who and what training is required.

Some members would like to see the requirement for an HSC member to participate in an investigation removed. Some members feel the HSC role does not fully understand the confidentiality, legal requirements and contractor specs to properly complete an investigation. Many members prefer that the need for scheduled committee meetings be removed. These meetings are difficult to coordinate for crews that work out of town and with mobile operations.

What challenges have been observed in complying with the requirements for HSCs, HSRs and OHS programs?

It is often seen as an exercise in checking boxes. It can be difficult to meet the required number of members on the committee and employees become conscripted members rather than volunteers. This reduces the positive interactions of the group. It has been difficult coordinating the committee meetings, finding willing participants for committees and keeping members engaged. Projects may be over 90 days but people change/ transition and it's hard to keep consistent members and meet necessary training requirements.

Besides the challenges noted above (training, investigations, delayed communication) the following additional concerns have been noted. HSC members volunteer for the committee because they are bringing a specific agenda and are not interested in other topics. Additionally, in construction, where prime contractors are required to coordinate OHS at multi-employer work sites, establishing an HSC for the work site can be challenging due to the transient nature of the workforce and changing activities on the work site as construction progresses. Another consideration for construction is the short time in which work must be completed. Focus for the employers should be on engagement and participation. If they are available and functioning, HSC should not be required.

Are there other options for low risk work sites other than an HSC? What would be considered a low risk site?

Members would like to see low risk sites allowed to have HSRs rather than HSCs. The only example of a low risk work sites is the office environment. Such an environment should be left to its own discretion for developing a system to identify safety concerns. That said, it seems the only reason to attempt this definition is because legislation has become so prescriptive it does not apply to all work environments. Again, if legislation returned to a less prescriptive approach such as a requirement to have a demonstrable process to resolve workplace safety concerns and hazards, this definition would not be required.

For work sites where there is a prime contractor, or multi-employer work sites, how could OHS requirements ensure effective engagement in OHS?

There are many different sites, with a large range of tenure by specific individuals and crews, and different needs regarding flexibility with specific crew/individual duration. Each company should be responsible for supplying an HSC that could then report to a Prime Contractor any issues or concerns that come from meetings.

The role of a Prime Contractor should be limited to the coordination of safety efforts, rather than establishing and approving operational procedures and practices along with program oversight. The responsibility and accountability for the compliance and outcomes of a functioning health and safety system rest with the party most in control of the work and the employees, i.e. the employer.

It is currently legislated that the PC is responsible for the IRS on their projects. Members feel that most PCs were effective managers of safety prior to implementation of an HSC and the HSC has not provided

any additional improvement. The best thing that OH&S can do is work with PCs to support and the Prime's program.

The obligations of a Prime Contractor in the new 2017 OHS Act are redundant to the obligations of an Employer which leads to conflict, and at times a reduction in safety for workers due to confusion and mixed messaging. This is especially true for shorter duration work where a crew could be exposed to multiple Prime Contractors in a single season – Each site may have different Prime Contractors who have different interpretations of how to comply with the OHS Code. This can be extremely frustrating and confusing to a worker whose long-term training regime has been, and should be focused on their Internal Responsibility System and HSMS.

There should be options and programs available for Prime Contractors to work with their other employers to ensure there is engagement and participation by all. The right to refuse is intended to address situations where the right to know and the right to participate have failed to address a health and safety concern. A worker may refuse work that may endanger themselves. However, the OHS Act does not define “danger” or place limitations on refusals where other workers or the public may be endangered. Providing more clarity in the OHS Act will help balance the protection of workers and others who may be impacted by a work refusal.

Right to Refuse Unsafe Work

How can “danger” be better defined to provide more clarity as to when the right to refuse unsafe work applies?

In previous forms of legislation, the term imminent danger was used. Many members prefer to go back to that term, and work on the definition to ensure employers and workers are clear in their expectations relating to completing the work safely. More explanation on what are considered acceptable risks should be provided. When it comes to the Right to Refuse Unsafe Work, members seek to educate employees that dangers can be looked at as a situation in which loss of life or serious possible harm can be caused to either themselves or other co-workers on the site. If all reasonable and practicable safety processes and precautions are in place, including but not limited to, hazard assessment and control processes and training, then imminent danger should no longer exist.

Are there circumstances in which the right to refuse unsafe work should be limited? Please explain and provide examples.

No. Workers do not need options to refuse to be limited; rather, they need to be encouraged to refuse unsafe work. Additionally, it could be a confusing and a higher risk to create circumstance to limit the refusal of work. The key is the process implemented to address this issue. In the case of fraudulent claims, companies should have a process in-place to address this issue and in certain cases there will be government rulings to determine the proper response. Members believe more education regarding this process for both workers and employers should be OH&S's focus. If both sides regard this as a positive process the entire IRS program will improve. The right to refuse should not be limited, we need to turn the perception of refusing work as a negative to a positive. We need to start identifying refusals as leading indicators to safe worksites. This is a clear demonstration the workers are engaged and participating and have the courage to speak up and if employers see this as a leading indicator they will see the returns of less incidents and safe production.

Although this right should not be limited, there should also be protection for an employer provided in the Act for frivolous accusations of unsafe working conditions.

How can the process outlined in the OHS Act be streamlined to provide work site parties with more flexibility to address work refusals in the workplace?

Members would like government to remove the requirement for HSC and HSR to be involved in the process, and to remove the requirement to generate a report for distribution to various parties. The employer and worker should be able to work the process out and if there is no resolution the worker can then engage the HSC or HSR and the employer should elevate the refusal up the organization as well.

The only time a report should be required is if upon inspection an unsafe condition did exist that required correction. Then the report would serve the purpose of communicating hazard correction. Employees have always had the right and opportunity to report an unsafe working condition prior to 2018. There was no need for this process to become prescriptive in Part 4 of the 2017 Act.

Enabling Innovation

How can the OHS Act be amended to support flexibility and innovation

The act should be written in a manner that incorporates—first and foremost—feedback from industry, as well as workers and government. Countries like Australia have made significant strides in health and safety performance from the model they have developed. In the past, legislated changes are made from a group of people who serve their own personal interests rather than the interest of ensuring safe workplaces. Other employers know that by preventing losses is the most effective way to make money. We need to ensure our employers understand. In Alberta, an employer can start a business without a health and safety program. Alberta needs to get to a place where employers and workers have clear direction in what they need to do to work safely. Currently, many members believe the legislation contains overly prescriptive instructions regarding how employers should conduct their business, and a variety of definitions that are unclear which contributes to a lack of focus. Provide the clear direction and solutions it will make Alberta move productive and a safe place to work.

Prime Contractor obligations are over-reaching and create conflict with employers ultimately responsible for safety. Working under Prime Contractors has at times turned into a paper pushing exercise, and ties safety professionals to administrative due diligence exercises adding little value to safety. The requirements to involve HSCs in potentially sensitive matters ultimately leads to censorship and a delay in process, especially since HSCs are required to be made up of employee elected personnel, the committee may not be readily available to address the matter at hand, and potentially further compromising safety, potentially.

What areas in the OHS Act require additional clarification?

Member feedback in this area varied and included:

- Part 5 section 37 is not practical for many work environments and compliance is unrealistic, especially for low-risk employers with less than 100 staff.
- Legislation is a continuous development that is determined by judicial rulings, changes

in safety perceptions/beliefs and industry practices. Any attempts to provide clarification always end up missing something or driving results that were never intended.

- Competency – The government provides a definition that is left to the employers to determine. In Australia, government, workers and industry came together to define what is competent for each medium and high-risk job in the country. We need to look at this as it put the understanding of what is needed from employers and workers to determine what they need to complete work safely.
- Occupational Health and Safety Advisory Council – members would like to see more accountability/deliverables from this group, including the minister, in how they impact safety in Alberta.
- Serious Injuries and Incidents – more clarification is required. See below.
- ROPS
- Training for mobile equipment
- Bona fide occupational requirements

What are areas within the OHS Act that would benefit from being less prescriptive to enhance flexibility and innovation?

- Some members believe the OHC/HSR section is too prescriptive. Members would prefer that it is removed and made an optional guideline for company consideration where there is value for both the company and workers.
- Health and Safety Program – It is recommended, where an employer employs more than 100 workers, the employer is required to develop a health and safety management system in alignment to CSA Z45001 or ISO 45001. Ontario's COR program is going down this path.
- Health and Safety Committees – Put more emphasis on engagement and participation. Move the HSC and HSR to a guideline.

Are there areas of the OHS Act that should remain prescriptive? If yes, please explain how and why. If not, please explain.

- Part 1, obligations of worksite parties should remain well defined with amendments to Prime Contractor and supervisors. Supervisors can only train, advise and implement repercussions. This section needs rewording.
- The definition of roles and duties for all personnel. Additionally, it would be beneficial to define the serious injury/investigation process so all parties process. Imminent danger as it outlines expectations. Note: within the code areas such as testing methods for things like exposure limits must be specific.
- The obligations of each role should remain as defined in the act. It is foundational and needs to stay to keep all parties focused.

Providing Advice to Government

Should OHS legislation specify advisory bodies to address particular issues? If yes, for which issues and why? If not, please explain.

Yes, advisory bodies should be developed for each industry to determine competency this will take the guess work out of it and provide a clear direction for employers and workers. It will also place those employers who are diligent with competency to be on the same measure as those that do not.

Additionally, the in-person review meetings with stakeholders worked very well. Members support the use of committees to recommend future actions in the future. Members feel the key is to ensure the right representatives participate in any advisory bodies and their recommendations go out for comment and review prior to submitting to the department. An OHS has generalist who inspects sites may not understand the operations. This is not valuable use of employers' or OHS' time

What are other ways government could leverage the expertise of stakeholders and specialists to get advice?

Use the expertise of stakeholders and specialists to provide direction and real-life examples of success in safety. This level of engagement would build trust and create buy-in from the employees and employers. It is important that government be a partner in injury-prevention rather than just a regulator. Many members would like government to return to the partnership model rather than the government/safety model currently in use and implement advice and expertise of industry associations rather than safety associations.

Enhancing Accountability

Reporting Potentially Serious Incidents (PSIs)

How should work site parties be accountable for PSIs?

This should be determined by companies not government or safety personnel. There are clear obligations to report serious incidents that need to remain prescriptive. PSI reporting is for awareness only as it is too subjective. Additionally, how it is currently written would require every near miss to be reported which provides little to no value. Government can support companies by supporting and educating both companies and workers on the value of PSIs as a prevention tool rather than as a punishment tool. Responsibility must remain with the employer not clients or government.

Many members feel employers have a fear of reporting because government might look negatively on the employer. Great employers are now recognizing employees for reporting near misses and supporting interventions rather than focusing on the negative.

Is there value in mandating reporting for PSIs? Please explain and provide examples.

The only way for there to be value in reporting PSIs is for the submission to be anonymous and classified by industry code. Although there could be value in reporting PSIs, those that are reported don't constitute a representative sample as many companies most likely do not report for fear of negative consequences. To achieve the desired result of improved worker safety it CANNOT be used as a compliance tool. There can be extreme value in PSI reporting if employers subscribe, but this buy-in will only be found with security. To date there has been zero feedback after a year of PSI reporting, and

therefore questions arise of its intent and value for employers.

Furthermore, if the aggregated results and trends of PSI reporting are to be shared, there needs to be some common framework to create apple-to-apple comparisons. Different employers assess risk and causation differently. The process for reporting should address this to achieve consistency in results. It is important for industry to work with their employees and government to develop common controls to prevent similar incidents from happening. Right now, each employer must learn on their own. If we work together, we can work to prevent incidents as an industry.

How should a PSI be defined? Where should it be defined?

Members are not clear on what the definition should be, but the current definition does not work. ANY incident could have resulted in a serious injury under different circumstances. If industry is going to continue reporting PSIs, there should be a clear and simplified definition and it should be inserted into the definition section of OHS.

If the reporting requirement were to be maintained, how should government use information from PSIs?

As previously mentioned, PSI reporting should not be used as a compliance tool. It is recommended that the results of the information be shared to continually improve controls to prevent injuries. Look to share the industry specific results with the funded safety associations and charge them to build recommended practices, training and competency definition and verification tools. Near miss reporting is valuable information used correctly. We need to be sure it that OHS requirements affect good learnings. Provide results to the specific industries so they can use the information to develop action items to address trends, certain high- risk tasks.

Due Diligence

Should the due diligence onus on work site parties be codified in the OHS legislation? Please explain.

Yes, explain what this means for each party as expectations are confusing for all involved. This is extremely cumbersome to manage and leaves companies liable when they may not know it. Many employers and workers do not understand what is needed to provide a safe workplace. We need to ensure the responsibilities of all parties are clearly understood.

Government, industry, and workers should be working together to provide employers the tools to be successful in safety rather than letting each employer figure it out on their own. Whether it is in legislation or not, the focus needs to be in giving the employers the tools for success.

Conclusion

1. Are there any other ideas or suggestions for improving the OHS Act?
 - HSCs are extremely prescriptive and things that need to be prescriptive are vague such as Confined Space policies. Right now, there is room for interpretation regarding what is involved in a very hazardous task and what the requirements are. This puts employers in a difficult

position in determining what is the right thing to do. Industry needs to get back to industry driving initiatives rather than government or safety associations. The successes of the past (i.e. COR, Modified Work, D&A, the creation of safety associations, CSAs, etc.) were driven by associations such as the ARHCA and you could see the corresponding improvements.

- The concept of HSC was good but in reality, it is challenging to get the quarterly meetings and workplace hazard assessment completed. Member companies are having trouble meeting all the rules / restrictions, and are having trouble getting all committee members together due to restrictions on their time and field commitments etc.