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Safe Work Australia

Via email: WHSframework@swa.gov.au

Improving work health and safety for workers using crowd platforms

The Housing Industry Association (HIA) takes this opportunity to respond to Safe Work Australia (SWA) on the *Consultation Paper: Improving work health and safety for workers using crowd platforms*.

The Consultation Paper seeks feedback on any gaps in the regulation of crowd platform arrangements under the model Work Health and Safety Act (Model Act) and proposes introducing a new duty that would apply to crowd platform operators.

What is the issue to be addressed?

There is no denying the nature of work is evolving, including the emergence of crowd platforms, which have resulted in new ways of organising work beyond the traditional employer-employee relationship. However, these changing conditions don't necessarily mean a problem exists with the existing WHS framework.

The Consultation Paper identifies several perceived challenges associated with digital labour platforms including variations in the application of labour standards and regulation, business or operational models, influence over the nature and extent of contractual relationships, and the organisation and allocation of work. Yet none of these conditions point to a specific safety issue, or any shortcoming of the Model Act.

Ambiguity in the application of the terms 'PCBU' and 'worker' to crowd platform arrangements are framed as an issue. While these terms are specific to the safety framework, the ambiguity is not necessarily a result of the laws being insufficient, but more likely related to whether they are properly understood by duty holders.

Further, there is no evidence provided in the Consultation Paper to demonstrate the use of crowd platforms is a causal or contributory factor in workplace safety incidents. Nor does it provide any data demonstrating a rise in incidents in any industry, workplace or work activity correlating with the increased presence of crowd platforms in the labour market. This may be a factor contributing to the lack of clarity in the target worker group and the Consultation Paper's definition of the role of a 'crowd platform operator', which requires further development.

Notwithstanding the above, crowd platforms may provide an alternative point of entry to the workforce and increased visibility for a broader range of workers, who would likely be required to be independent contractors and have both PCBU and a worker duties. Further data is necessary to explore whether this presents any real issue before consideration is given to any potential solutions.

Is there a legislative gap?

HIA considers that the challenges presented in the Consultation Paper are not genuine legislative gaps and are essentially the same conditions that may arise in traditional forms of worker engagement.

As the Consultation Paper correctly identifies, the primary duty of care under the Model Act is tied to work activities and is not limited to a specific workplace, PCBU or contracting arrangement. We agree the Model Act remains sufficiently broad to capture crowd platforms and likely any further modernisation in the workplace or workforce.

Introducing a parallel duty for crowd platforms that is essentially the same as the existing duty does nothing to improve safety, and simply creates duplication and ambiguity in the laws, increases red tape and may have unintended consequences.

In addition to the primary duty of care, the Model Act and regulations provide further, more specific duties for PCBUs and workers that equally apply to crowd platform arrangements, such as the requirement to hold a high risk work licence or prepare a SWMS for high risk construction work.

Guidance and information are appropriate

Although we disagree that there is a legislative gap, PCBUs involved in crowd platform work might find it challenging to ascertain what is reasonably practicable for them to keep workers safe. This can be appropriately addressed with supporting national guidance.

Such guidance could explain how the duties apply and what is reasonably practicable subject to the extent of influence and control that crowd platform operators and other PCBUs in the chain exert over the work. This would avoid confusion and deliver better safety outcomes, without the potentially risky impacts of new duties.

The SWA guide "*The meaning of 'person conducting a business or undertaking'*" could also be reviewed to clarify who is a PCBU in crowd platform arrangements.

Additionally, a targeted awareness campaign for parties using crowd platforms across a range of media types, such as short social media videos and messaging on key concepts, would be appropriate.

Next steps

HIA supports retaining the existing WHS duties, alongside the development of additional guidance and communications. However, if the proposed new duty is progressed, it must be subject to further public consultation and supported by a robust regulatory impact assessment including a positive cost-benefit analysis.

Should you wish to discuss this in further detail, please do not hesitate to contact me on 0418 507 377 or by email, s.collins@hia.com.au.

Yours sincerely

HOUSING INDUSTRY ASSOCIATION LIMITED



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