

20 May 2009

Employment Law e-alert

Is it safe to assume a national occupational health and safety system will become a reality?

Yes, national occupational health and safety laws are a step closer to becoming a reality.

On 4 April 2008, Julia Gillard announced a national review into OHS laws and appointed a 3 person Advisory Panel to report in accordance with Terms of Reference on the structure and content of model OHS legislation capable of being adopted in all jurisdictions.

The Advisory Panel submitted a 2 volume *National Review into Model OHS Laws*, on 31 October 2008 and 30 January 2009.

Significant recommendations include:

- The primary duty of care will:
 - cover new and evolving working arrangements beyond employer/ employee relationship; and
 - include a reasonably practicable qualification – an employer's duty of care to look after the health and safety of individuals in the workplace will be confined to what was reasonably able to be done, at a particular time taking into account and weighing up all relevant matters.
- Workers and other persons at the workplace will have a duty to exercise "reasonable care".
- Corporate officers will have a positive duty to apply due diligence to ensure compliance with the duties of care of the entity of which they are an officer.
- The prosecution will bear the onus of proving beyond reasonable doubt all elements of an offence relating to non compliance with a duty of care, including the reasonably practicable qualification.
- Significant increase in penalties for some jurisdictions of up to \$3,000,000 for corporations and \$600,000 and 5 years jail for individuals.
- Enforceable undertakings will be available as an alternative to prosecution.
- Unions will continue to have right of entry, with formal authorisation, to workplaces containing union members or persons eligible to be members.
- Appeals will be available against a guilty finding, with leave, to the Supreme Court and ultimately to the High Court. No appeal right from acquittals will exist.

Timetable

On 3 April 2009 the Workplace Relation Ministers Councils (WRMC) agreed that the Safe Work Australia Council would commence developing the model national *OHS Act*.

An exposure draft is expected of the new laws is expected in August 2009.

On 18 May 2009 the WRMC agreed to a framework for uniform OHS laws.

All jurisdictions have agreed to implement the agreed model *OHS Act* and regulations by December 2011.

The difficulty will be reaching agreement on the precise content of the model Act and regulations.

Although these reforms have received unanimous support from the Federal, State and Territory governments, there has been opposition expressed by the union movement. It remains to be seen whether the proposed changes will survive this opposition particularly in NSW.

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