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OH&S Law E-alert

NSW is gearing up to accept the *Model OH&S Act*

The NSW Government on the premise of combating reduced workload for the NSW Industrial Relations Commission (“**IRC**”) and to free Chief Industrial Magistrate Hart to return to the general bench to deal with the core business of the Local Courts, has introduced legislation, “the Industrial Relations Amendment (Jurisdiction of Industrial Relation Commission) Bill 2009.

The Bill, passed by both Houses (but not yet proclaimed) will:

1. abolish the position of Chief industrial Magistrate (“**CIM**”);
2. abolish the position of Industrial Magistrate (“**IM**”); and
3. transfer the jurisdiction of the CIM and IM to the IRC.

The CIM hears less serious offences of the *OH&S Act* and its jurisdiction is limited to **\$55,000**.

Impact of the Bill

- (a) removal of discretion by the Prosecutor to elect which forum to bring alleged offences (*S105 OH&S Act*);
- (b) potentially higher penalties for less serious offences. The maximum penalty in the IRC for a corporation is \$550,000 for first offence and \$825,000 in any other case and for an individual \$55,000 for first offence and \$82,500 in any other case.
- (c) Potential increase in legal costs for less serious offences.

Whilst there has been opposition to the introduction of the *Model OH&S Act* in NSW by the Union movement, the introduction of the 3 categories of offences in the Model Act would result in broadly the same regime as now exists in NSW.

The Workplace Relations Minister Council (“**WRMC**”) has agreed to a framework for Model OHS Laws which will be adopted in all jurisdictions throughout Australia. The Laws will correct the inconsistent OHS Laws across jurisdictions to the benefit of both employers and employees alike.

Safe Work Australia Council will prepare the draft of the *Model Act* which will be released for public comment at a date to be advised.

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