

## Workplace Law Legal Update

### Occupational Health and Safety Harmonisation: Are you prepared for the great safety change?

The Australian Government has identified workplace health and safety ('WH&S') as a key area for reform and in particular the need to move towards one set of workplace health and safety laws - harmonisation. The harmonisation of workplace health and safety laws will aim to reduce the incidence of death, injury and disease across Australia.

The final terms of the *Model Workplace Health and Safety Act* ('**Model Legislation**'), have been approved and will be implemented by the states, territories and the Commonwealth as the most effective way to achieve harmonisation in Australia. The model workplace health and safety laws will consist of the *Model Workplace Health and Safety Act* supported by the *Model Workplace Health and Safety Regulations* and the *Model Codes of Practice* ('**Model Laws**').

Queensland has now passed the Model Legislation which will take effect on 1 January 2012. These changes have significant implications that all employers must consider.

#### Definition of Worker

Under the Model Legislation, the definition of 'worker' has been expanded to include a contractor, a subcontractor and a person of a prescribed class which includes sportspeople and self-employed individuals. The significance of this change is that an employer's duty of care extends not only to employees but to almost any person who enters the worksite.

#### 'Person Conducting a Business or Undertaking'

Under the Model Legislation, there is a broad general duty for 'persons conducting a business or undertaking' ('**PCBU**'). A person, which does not have to be a natural person, may be a PCBU under the new laws even if they are not classified as an "employer" under the current legislation. A PCBU now includes:

- Employers;
- Sole traders;
- Bodies corporate;
- Unincorporated bodies;
- Associations;
- Partnerships; and
- Volunteer organisations with any employed workers.

We note that more than one person may concurrently have the same duty and each duty holder must consult and co-operate and coordinate activities with other duty holders in relation to the same duty. Given the various changes, it is important to consider, plan for and revise the health and safety management systems of a business to ensure that the organisation and the workers are adequately covered.

#### Health and Safety Representative

Under the Model Legislation, workplace health and safety representatives ('**Representatives**') are elected

by their co-workers to represent them with regards to workplace health and safety issues.

The Representatives can carry out inspections and review the circumstances of workplace incidents and can participate in the workplace health and safety committee. A Representative does not need any experience or special qualification but are entitled to paid training, if requested.

Under the current legislation, a workplace health and safety officer ('**WHSO**') is appointed by an employer as responsible for health and safety issues at the workplace. However, the Model Legislation provides that WHSOs are no longer required as of 1 January 2012.

#### Penalties

The penalties that apply under the Model Legislation have significantly increased up to three times the amount provided under the current legislation. Additionally, the Model Legislation has separated the applicable penalties into three categories as shown below:

- Category 1: Recklessly exposing a person to risk of death or serious injury or illness;  
\$3,000,000 for corporations and \$600,000 for individuals, and maximum 5 years imprisonment.
- Category 2: Serious risk of harm without recklessness; and  
\$1,500,000 for corporations and \$300,000 for individuals.
- Category 3: Failure to comply with OHS duty.  
\$500,000 for corporations and \$100,000 for individuals.

#### What does this mean?

There are various changes under the Model Laws that will have significant effects on both employers and employees Australia wide.

It is important for employers to review their policies and procedures to ensure their obligations under the Model Legislation are satisfied so as to avoid penalties of up to \$3,000,000 in the event of an accident.

Additionally, employers should ensure that WHSOs are retrained to become Health and Safety Representatives.

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