

OHS harmonisation – from the Act to the codes

No matter who you are, it will be almost impossible to escape responsibility for workplace safety when the national model Work Health and Safety Act is adopted by Australian states at the end of this year.

Norton Rose law firm partner Aaron Anderson will tell visitors to the Queensland Safety Show, which runs from June 21 to June 23, that the new laws will close the loopholes in accountability.

Significant changes in all jurisdictions will include:

- Moving from employment as basis for duties, obligations and rights
- New positive duty of care for officers, with due diligence defined
- Broadened consultation obligations – vertical and horizontal
- Broadened union right of entry
- Greater protection against discrimination and coercion
- Emphasis on graduated enforcement but higher penalties
- Easier modification of notices
- Changes to powers of questioning and reduced rights of individuals

A significant change in some States will be that health and safety representatives will have powers to issue PINs and direct a work stoppage (not currently available in NSW, Queensland, Western Australia and Tasmania).

OHS no longer the domain of employers

One of the biggest changes under the new laws will be a shift in emphasis from the employer-employee relationship.

"Rather than focusing on the duties of employers, the model Work Health and Safety Act refers to the Person Conducting a Business or Undertaking (PCBU), which is a very broad term and everyone contributing to work will have a duty of care. The concept is similar to what we have under our existing legislation in Queensland, however the duty will be subject to what is 'reasonably practicable', which is new," says Mr Anderson.

The definition of worker under the legislation is expanded significantly. Contractors, employees of contractors, sub-contractors, labour hire workers, apprentices, volunteers as well as employees are all caught by the definition.

Clearer but positive obligations for senior officers

Senior officers of companies and other organisations will have a more positive, proactive duty of care, beginning with an understanding of hazards and risks.

"Due diligence means ensuring the company has appropriate resources and processes to work safely and that they are used," Mr Anderson explains.

"Officers will need appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information. It also means verifying the implementation of those processes through regular audits and verifying legal compliance."

Consultation is critical

The new Act obliges the PCBU to consult so far as reasonably practicable with all workers in the business of the PCBU not just direct employees. Also added will be a duty of every PCBU to consult, co-operate and co-ordinate activities with every other duty holder. "This should assist the parties to work more effectively together for health and safety protection, with nothing 'falling between the cracks' and may provide the biggest boost for OHS" says Mr Anderson. "There are also significant penalties attached for failing to meet the new obligations".

Issue resolution processes and default procedures must also be in place to ensure engagement of workers and their representatives with PCBUs.

Why it's urgent

"Model OHS laws are no longer just a possibility," says Mr Anderson, "They are close to being passed, and contracts are being entered into now that will operate after the commencement of the new laws on 1 January next. Though experience shows that effective implementation of new laws like these takes 18 months to two years, the clock started ticking months ago and you have only a few months still available to prepare."

"Detailed requirements in regulations will be imposed from the day the uniform Act commences, so it's wise to get the strategic, structural and consultation issues resolved first."

Draft regulations are out for public comment

Safe Work Australia has released draft model regulations and the public comment period in relation to the draft model regulations ended on 4 April 2011.

"The regulations will bring about a lot of changes in the detailed obligations in each State. Everyone should review these to start preparing, and contribute to the public comment process to help make sure they are right," says Mr Anderson.

How to prepare

Norton Rose recommends preparing for the new WHS Act in 10 steps:

1. Undertake a legal risk analysis
2. Undertake a gap analysis
3. Review, revise and supplement policies and procedures (remember current consultation obligations)
4. Implement – including training and ongoing review
5. Review contracts – many will operate under the new laws
6. Design and implement interface co-ordination processes and plans
7. Develop effective representation and consultation processes
8. Develop robust issue resolution processes
9. Ensure effective processes for union right of entry
10. Review and revise all aspects of corporate governance in WHS to ensure effective management and 'due diligence' compliance

Aaron Anderson's free seminars addressing the model WHS Act forms part of a line-up of very practical free manufacturing and workplace safety seminars at the Queensland Safety Show. Experts will explain how to attract funding, what to expect from new WHS laws, how to meet obligations manageably and within budget.

Sponsored by myosh, the Queensland Safety Show, Materials Handling Show and co-located Queensland Manufacturing Show run from June 21 to 23, 2011, at the Brisbane Convention & Exhibition Centre. For more information, visit qldsafetyshow.com.au, email safetyvisitor@aec.net.au or phone Australian Exhibitions & Conferences Pty Ltd on 03 9654 7773.

#ENDS#

**Australian
EXHIBITIONS
& Conferences**

Organised by: Australian Exhibitions & Conferences Pty Ltd
Level 2, 267 Collins Street, Melbourne, VIC, 3000, Tel 03 9654 7773 Fax 03 9654 5596
Email safety@aec.net.au Web safetyinaction.net.au or melbmaterials-handling.com.au