

### **Worker Responsibility under OHS law: When is it not the employer's fault?**

*It is not common to hold workers responsible for workplace injuries but what happens when an employee arrives to work so drunk and is injured attempting to do his work with the knowledge of co-workers?*

*In fact, this was the scenario in a recent court case. Norton Rose law firm partner Aaron Anderson will explain the new responsibilities faced by everyone in the workplace at the Queensland Safety Show, which runs from June 21 to June 23. We asked for his analysis of the implications for employers now and once the new national model Work Health and Safety Act is adopted by Australian states at the end of this year.*

It is generally accepted under statutory occupational health and safety laws across Australia that employers and other obligation holders cannot escape liability for failing to put in place a safe system of work even though a worker may have been wilful or neglectful in carrying out their duties.

This was recently highlighted in a decision of the Magistrates Court of South Australia in *Symons v Clean Seas Aquaculture Growout Pty Ltd* [2011] SAIRC 17 in which the employer pleaded guilty of an offence under the *Occupational Health, Safety and Welfare Act 1986* (SA) in circumstances where an employee affected by alcohol "blacked out" whilst performing a diving activity.

While the employee's actions and behaviour were contrary to the employer's policies, the employer acknowledged that there was a failure on its behalf to enforce compliance with those policies. In this case, the employer was let down by the actions of another employee, who was second-in-charge of operations, who was drinking with the other worker on the evening before the incident and dropped him off at the worksite that morning.

This case is illustrative of the ongoing requirement for employers and other obligation holders to be vigilant in ensuring that they develop appropriate systems of work, having regard to the nature of their activities and enforcing compliance with those policies. Only then will obligation holders be able to discharge their statutory OH&S responsibilities.

This position will not change as the model occupational health and safety legislation is enacted across Australia over the coming months. Under the model *Work Health and Safety Act*, workers will be required to take reasonable care for their own safety and for the safety of others but those obligations are concurrent with the obligations of persons conducting a business or undertaking (PCBU) who must also take reasonable practicable steps to ensure the safety of their workers.

Accordingly, we are likely to see similar outcomes in prosecutions under the new law once it commences.

Employers will also find that under the harmonisation process many tasks will be covered by specific regulations and, with them, compliance standards will change. Height safety and, coincidentally, diving, are examples.

Obligation holders under the model *Work Health and Safety Act* will need to consider whether the new regulations will apply and put in place appropriate procedures to ensure 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 from Safe Work Australia, the Chamber of Commerce and Industry Queensland, Queensland Fire and Rescue Service and Enterprise Connect are among those who 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](http://qldsafetyshow.com.au), email [safetyvisitor@aec.net.au](mailto:safetyvisitor@aec.net.au) or phone Australian Exhibitions & Conferences Pty Ltd on 03 9654 7773.

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