




OH&S Update

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Workplace Law Queensland is a division of  **msl**
MELBOURNE SOLICITORS & LAWYERS

National OHS Act - how will it affect you?



Why do we need national OHS laws?

COAG identified harmonisation of OHS as a priority area for reform to contribute to the development of a seamless national economy with benefits to both employees and employers. Currently all states and territories are responsible for making and enforcing their own OHS laws; and despite general similarities there are some differences in the application and detail of the laws. This regulatory inconsistency is being addressed through an IGA which provides for harmonisation of OHS laws nationally so all businesses can comply with one set of laws regardless of which jurisdiction they are operating in.

What are the national OHS laws?

By December 2011, each jurisdiction will be required to enact their own identical version of the agreed national model law, consisting of a model OHS Act and model regulations, supported by model Codes of Practice.

National OHS Act - how will it affect you?



How will the model legislation affect workers?

- The model OHS Act will provide additional protection to workers in some jurisdictions as the duties of care will extend beyond the employer/employee relationship that currently exists in most OHS laws.
- The model Act will also require businesses to consult with their workers about matters affecting their health and safety.
- All Australian workers will have the right to stop unsafe work.
- All workers have the right to elect health & safety representatives (HSRs) to represent them.
- All trained HSRs in Australia will have the power to issue Provisional Improvement Notices (PINs) and direct others to cease unsafe work.

National OHS Act - how will it affect you?



How will the Model OHS Act affect businesses?

- National laws mean national businesses will only have to comply with one set of consistent laws, reducing compliance costs.

What is Safe Work Australia?

- Safe Work Australia is an independent body established on 1 July 2009 to progress national OHS harmonisation in partnership with COAG, employers and workers, who are all represented on the Safe Work Australia Council.
- On 7 September 2009 the Senate passed the Safe Work Australia Bill 2008 [No. 2], establishing an independent statutory agency from 1 November 2009.

National OHS Act - how will it affect you?



How long will jurisdictions have to implement the Model Legislation?

- The model Act has been completed and agreed and is available for consideration. Each State and Territory has voted in favour of adopting the model Act and enacting it through their own parliamentary processes before December 2011.
- Model Regulations should be available later this year for adoption before December 2011.
- Some model Codes of Practice may be developed and implemented at the same time as the model Regulations.

What will happen to existing OHS laws?

- Existing OHS laws will be repealed as of December 2011.

National OHS Act - how will it affect you?



Timeline - national harmonisation

- **September 2009** - Model OHS Act and Regulations are released for public comment.
- **December 2009** - Model OHS legislation submitted to Workplace Relations Ministers' Council (WRMC) for agreement.
- **September 2009 – 2010** - Model regulations for all other matters (including matters covered in existing national OHS standards) developed.
- **October 2010 - January 2011** - Model regulations for all other matters released for public comment.
- **June 2011** - Model regulations submitted to WRMC for agreement.
- **December 2011** - All jurisdictions to enact model OHS Act and model regulations and complete all related transitional arrangements.

National OHS Act - how will it affect you?



Duties under the Model Act:

- Persons conducting a business will owe workers and others a health and safety duty of care. The duty of care is qualified by the term 'as far as is reasonably practicable' and the onus of proving this will be on the regulator (Safe Work Australia).
- The Model Act places an obligation on workers to exercise 'reasonable care' to ensure that their acts or omissions do not adversely affect the health and safety of other persons.

Penalties:

- The Model Act substantially increases penalties. In a new categorisation, Category 1 offences involving recklessness will be dealt with on indictment in the courts.
- The maximum fine for corporations is \$3 million. Individuals can be fined up to \$600,000 with a maximum term of five years imprisonment.

National OHS Act - how will it affect you?



Consultation:

- The Model Act contains detailed provisions for the election of HSR's.
- For the purposes of consultation, work groups can elect HSR's; and the number and composition of work groups to be represented will be negotiated.
- The Model Act requires OHS issues to be resolved in accordance with an agreed procedure or the legislated procedure. A representative of a party may enter the workplace to assist resolving the issue or else the issue is referred to the regulator.
- The Model Act will allow workers to cease work if they have reasonable grounds to believe that to continue to work would expose them to a serious risk from an immediate or imminent exposure to a hazard. Workers can be redeployed to other suitable duties.
- HSRs also have a right to direct workers to cease work if there is immediate or imminent hazard.

Codes of Practice



[Abrasive Blasting 2004](#)
[Asbestos management code & Asbestos removal code](#)
[Cash in Transit 2001](#)
[Children and Young Workers Code of Practice 2006](#)
[Concrete Pumping Code of Practice 2005](#)
[First Aid 2004](#)
[Formwork 2006](#)
[Foundry 2004](#)
[Hazardous Substances 2003](#)
[Manual Tasks 2010 & Manual Tasks Involving the Handling of People 2001](#)
[Mobile Crane Code of Practice 2006](#)
[Noise 2004](#)
[Plant Code of Practice 2005](#)
[Prevention of Workplace Harassment 2004](#)
[Risk Management 2007](#)
[Rural Plant 2004](#)
[Safe Design and Operation of Tractors Code of Practice 2005](#)
[Scaffolding Code of Practice 2009](#)
[Steel Construction 2004](#)
[Tilt-Up and Pre-cast Construction Industry Code of Practice 2003](#)
[Tower Crane Code of Practice 2006](#)
[Traffic Management for Construction or Maintenance Work Code of Practice 2008](#)

Children & Young Workers Code of Practice 2006



Young workers

Young workers include the following:

- Children leaving school and entering full-time employment for the first time, including apprentices and trainees.
- Children engaged in part-time or casual employment.
- Children who work but are not paid for the work done, such as unpaid work done for a family business (excluding domestic chores).
- Work experience students and vocational education and training students who are still attached to the education and training system.

Children in workplaces

- Children who are part of the work process, such as customers in a shop.
- Children not engaged in a work activity, but brought to a workplace by a parent or other adult at any time.
- Children who live in the workplace.
- Children who enter workplaces unexpectedly at any time.

Children & Young Workers Code of Practice 2006



When is a child at a workplace?

Examples include when children:

- participate in work experience programs
- attend special work programs for disabled people
- go to work on a casual basis after school or during school holidays
- go to a parent's workplace at any time, for example, during school holidays
- receive treatment in a hospital, medical centre or centre for the disabled
- live on a farm or other workplace
- ride in a truck, tractor, or other vehicle used for work
- help with farm work
- help in a family shop or business, and
- enter a backyard shed or work area used by a person who works from home.

Children in workplaces may be playing, they may have strayed onto the workplace, a parent or person who works at the workplace may have taken them onto the workplace, or they may be workers themselves. The reason children are in the workplace makes no difference.

Recent Prosecutions



Industry:Construction

ANZSIC code:4111

Defendant:Aireplus Pty Ltd

Date of offence:22 May 2008

Location of offence:Noosa

Injury:Fractured pelvis and fractures to the spine

Circumstance of aggravation:Bodily harm

Legislation:s.28(1) *Workplace Health and Safety Act 1995*

Plea:Guilty **Decision date:**23 October 2009

Penalty:Fined \$18 500

Maximum fine available:\$281 250

Investigation costs:\$1500

Conviction recorded:No

Recent Prosecutions



Industry:Manufacturing
ANZSIC code:2712
Defendant:Austcast Pty Ltd
Date of offence:29 January 2008
Location of offence:Northgate
Injury:Laceration to the left wrist
Circumstance of aggravation:Grievous bodily harm
Legislation:s.28(1) *Workplace Health and Safety Act 1995*
Plea:Guilty
Decision date:2 September 2009
Penalty:\$37 500 **Maximum fine available:**\$375 000
Investigation costs:\$1832.97
Professional and legal costs:-Court costs:\$65.40
Conviction recorded:No

Recent Prosecutions



Industry:Retail and Wholesale
ANZSIC code:5110
Defendant:Macquarie Assets Services Limited
Date of offence:10 December 2005
Location of offence:Nambour
Injury:Fatal injuries
Circumstance of aggravation:Fatality
Legislation:s.28(1) and 24 *Workplace Health and Safety Act 1995*
Plea:Not guilty
Decision date:25 September 2009
Penalty:Fined \$90 000 **Maximum fine available:**\$375 000
Investigation costs:\$6049
Professional and legal costs:\$36 590
Conviction recorded:No

Recent Prosecutions



Industry:Construction
ANZSIC code:4210
Defendant:Clifton Park Turf Supplies Pty Ltd
Date of offence:22 May 2008
Location of offence:Chambers Flat
Injury:Fractured left leg
Circumstance of aggravation:Grievous bodily harm
Legislation:s. 28(1) *Workplace Health and Safety Act 1995*
Plea:Guilty
Decision date:07 August 2009
Penalty: Fined \$30 000
Maximum fine available:\$375 000
Investigation costs:\$1646.70
Professional and legal costs:-Court costs:\$71.70
In default period to pay: Six months to pay, in default levy and distress
Conviction recorded: No

Recent Prosecutions



Industry:Retail and Wholesale
ANZSIC code:4799
Defendant:Wendy Anne Hearn
Date of offence:2 October 2008
Location of offence:Geebung
Injury:Fatal head injuries
Circumstance of aggravation:Fatality
Legislation:s.167 *Workplace Health and Safety Act 1995*
Plea:Guilty
Decision date:24 February 2010
Penalty:Fined \$5 000
Maximum fine available:\$75 000
Investigation costs:-Professional and legal costs:-Court costs:\$65.40
Matter referred to SPER for registration for time to pay
Conviction recorded:No

Recent Prosecutions



Industry:Health and community services
ANZSIC code:8113
Defendant:Sunshine Coast Regional Council
Defendant ACN:37876973913
Date of offence:20 May 2008
Location of offence:Nambour
Injury:Fractured pelvis
Circumstance of aggravation:Bodily harm
Legislation:.s.28(1) *Workplace Health and Safety Act 1995*
Plea:Guilty
Decision date:12 October 2009
Penalty:Fined \$5000**Maximum fine available:**\$56 250
Investigation costs:\$1375**Professional and legal costs:**\$750
Court costs:\$65.40
Conviction recorded:No

Contact Details



Our offices:

Brisbane

Level 10, 410 Queen Street
Brisbane QLD 4000
GPO Box 3246 Brisbane QLD 4001 Australia
T 61 7 3226 9099
F 61 7 3220 1300
E brisbane@workplacelaw.com.au

Gold Coast

Level 5, Corporate Centre One
Cnr Bundall Road & Slatyer Avenue
Bundall QLD 4217
PO Box 9073 GCMC QLD 9726 Australia
T 61 7 5597 8888
F 61 7 5597 8899
E goldcoast@workplacelaw.com.au
W www.workplacelaw.com.au