

## Workplace Health and Safety Queensland

## Harmonisation of WHS laws in Australia—a brief introduction

Currently all states, territories and the Commonwealth are responsible for making and enforcing their own health and safety laws. Although these laws draw on a similar approach for regulating workplaces, there are differences in the application and detail of the laws. Inconsistent laws:

- cause confusion for businesses and inequitable safety standards across jurisdictions and industry sectors
- lead to duplication and inefficiencies for governments when providing policy, regulatory and support services.

In response to industry calls for greater national consistency, the Commonwealth, states and territories have agreed to implement nationally harmonised WHS legislation to commence on 1 January 2012. The harmonisation model will be one where the Commonwealth and all states and territories will be responsible for making and enforcing the model laws. Harmonisation aims to:

- develop uniform, equitable and effective safety standards and protections for all Australian workers
- address the compliance and regulatory burdens for employers with operations in more than one jurisdiction
- create efficiencies for governments in the provision of OHS regulatory and support services
- achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

A national model Act has been developed and includes the following key elements:

- a primary duty of care requiring persons conducting a business or undertaking to ensure, so far as is reasonably practicable, the health and safety of workers and others who may be affected by the carrying out of work
- duties of care for upstream parties such as designers, manufacturers, importers, suppliers and installers
- a requirement that officers of corporations and unincorporated bodies exercise due diligence to ensure compliance
- reporting requirements for notifiable incidents such as the serious illness, injury or death of persons and dangerous incidents arising out of the business or undertaking
- authorisations such as licences, permits and registrations (e.g. for persons engaged in high risk work or users of certain plant or substances)
- provision for worker consultation, participation and representation at the workplace
- provision for the resolution of health and safety issues
- protection against discrimination for those who exercise or perform, or seek to exercise or perform, powers, functions or rights under the Act
- an entry permit scheme that allows union officials to inquire into suspected contraventions affecting workers who are members, or eligible to be members, of

the relevant union and to consult and advise such workers about health and safety matters

- compliance and enforcement measures and sanctions, including enforceable undertakings
- regulation-making powers and administrative processes, such as the review of decisions.

While the Act is largely similar to the current Queensland *Workplace Health and Safety Act 1995*, there are a number of important differences:

- Business operators must do what is **reasonably practicable** to eliminate or minimise risk to health and safety.
- Company directors will have a positive and proactive duty to exercise **due diligence**. This represents a shift away from attributed liability (i.e. being held liable for contraventions by the company) and requires directors to:
  - acquire and keep up-to-date knowledge of health and safety matters
  - gain an understanding of hazards and risks associated with the company's operations
  - ensure appropriate resources are available for use to eliminate or minimise risks from work carried out
  - ensure appropriate processes for obtaining information about incidents, hazards and risks, and responding to them
  - ensure processes for complying with duties are implemented, e.g. reporting, consultation arrangements, training and instruction
  - verify the provision and use of resources for the matters listed above.
- Workers must exercise **reasonable care** that their acts or omissions do not adversely affect the health and safety of all persons at a workplace.
- There will be no requirement for business operators to appoint workplace health and safety officers (WHSOs). However, as it is

a requirement for business operators, including company directors, to be familiar with the risks and hazards associated with their operations, and to provide appropriate control measures to ensure a safe working environment, businesses are encouraged to have access to trained safety personnel.

- Health and safety representatives (HSRs) will represent defined work groups at a workplace. These will need to be negotiated with the business operator.
- Health and safety issues are to be resolved in accordance with an agreed procedure. Where there is no agreed procedure at a workplace, the national model laws set out a default procedure.
- HSRs will be able to issue provisional improvement notices and can direct workers to cease work after consultation and an attempt to resolve an issue, or without consultation, if there is an immediate and imminent threat to health and safety.

National model regulations and priority codes of practice are currently being developed. While these are largely consistent with Queensland provisions, there are some additional areas of regulation, such as fatigue, emergency procedures, work at heights, surfaces and floors, movement around workplaces, and remote and isolated work. While most of the remaining regulations are essentially similar to current Queensland regulations, there will be some altered provisions for construction work.

It is proposed that the regulations and codes of practice will be available for public consultation from late 2010 to early 2011. Further information can be obtained from [www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au).

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