

National Model OHS Laws: what they mean for Queensland

Workplace Health and Safety
Queensland

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Background

- At its first meeting of 2008, the Council of Australian Governments agreed:
 - national harmonisation of OHS laws is a top priority
 - development of model OHS laws as the most effective way to achieve harmonisation
 - to a national OHS review reporting to the Workplace Relations Ministers' Council
 - the commitment to a harmonised system be reflected in an Intergovernmental Agreement

Benefits of harmonising OHS

- Greater clarity and simplicity for all parties
- Reduced costs for national businesses:
 - Lower compliance costs
 - Economies of scale in administration, training and OHS expertise deployment
 - Greater certainty and understanding of OHS laws
- Provision of consistent safety standards and rights for all employees in the country
- Reduced government expenditure in developing and administering OHS laws.



Harmonisation in Mine, Maritime and Rail

- **National Mine Safety Framework**
 - Nationally consistent mine health and safety regime across jurisdictions
- **National Maritime Regulation**
 - Australian Transport Council has endorsed a national approach to maritime legislation
- **National Rail Safety Regulation**
 - Australian Transport Council has endorsed a national approach to rail safety legislation



Harmonisation of Main OHS Laws - National Review

- Harmonisation is part of an intergovernmental agreement (IGA) for regulatory and operation reform to OHS
- Aim of OHS national review:
 - develop model OHS legislation – Act and regulations
 - state and territory-based laws, but nationally consistent
- Review conducted by 3 OHS experts (chaired by Robin Stewart-Crompton)
- Final report recommendations approved (with minor modifications) by Workplace Relations Ministers' Council (WRMC) in May 2009

Duties of care

- Broad general duty for ‘persons conducting a business or undertaking’ (PCBU)
- Duties are non-delegable
- A person can have more than one duty
- More than one person may concurrently have the same duty
- Each duty holder must consult and co-operate and co-ordinate activities with other duty holders in relation to the same duty

Duties of care (cont)

- General duty qualified by ‘reasonably practicable’
- Onus on regulator to prove a breach of duty
- Thus, no ‘reverse onus of proof’ – as is currently the case in Qld
 - ACTU and Qld Govt argued for a ‘reverse onus of proof’

Risk management

- Principles of risk management to be in Act
- The model Act should not require a process of hazard identification and risk assessment, or mandate a hierarchy of controls, but that the regulation-making power in the model Act should allow for the process to be established via regulation, with further guidance provided in a code



Duties of workers and officers

- Broad definition of worker
- Workers obliged to exercise 'reasonable care'
- Definition of officer to be dealt with during drafting
 - to include those persons who influence or make decisions that affect the whole, or a substantial part, of the entity.
- Officers obliged to exercise 'due diligence' (as defined by common law)

Specific classes of duty holders

- Person with management or control of the workplace, fixture, fittings or plant
- Designers
- Manufacturers
- Builders, erectors and installers
- Importers and suppliers

Offences: 3 categories

- **Category 1: the most serious breaches - recklessly endangering a person to risk of death or serious injury**
 - \$3 million corporations; \$600,000 individuals; 5 years imprisonment
- **Category 2: serious risk of harm without recklessness**
 - \$1.5 million corporations; \$300,000 individuals
- **Category 3: without recklessness or high risk of serious harm**
 - \$0.5 million corporations; \$100,000 individuals

Workplace consultation

- PCBU has an obligation to consult workers as far as reasonably practicably
- consultation that is 'reasonably practicably' is that which enables the PCBU to make timely, informed decisions about matters affecting the health and safety of their workers.



Health and Safety Representatives (HSRs)

- Health and Safety Representatives (HSRs)
 - Work group to elect
 - No limit on number of HSRs
 - Entitled to attend training at employer expense
 - A court or tribunal can disqualify or suspend a HSR for improper use of their powers

Powers of HSRs

- To inspect workplace
- Accompany inspector
- To represent members in interviews with management
- Receive information
- Request establishment of health and safety committee
- Monitor OHS measures
- Investigate complaints
- Issue provisional improvement notices
- Direct workers to cease work



Health and Safety Committees

- May be established in any business or undertaking
- At least half the members of an HSC should be workers
- Details of operation of HSC to be provided for in regulations to the model Act

Issue Resolution

- Model Act to provide for an default issue resolution procedure where a dispute or concern about OHS remains unresolved after consultation between the affected worker(s) and the PCBU
- Parties encouraged to develop own procedure
- Person entitled to be involved in the resolution of an OHS issue:
 - HSR
 - if no HSR, the affected worker(s)
 - *PCBU*
- Any party can obtain assistance from other persons



Right to cease work

- The report recommended that worker(s) may cease work if serious risk from immediate or imminent hazard
- The Workplace Relation Ministers agreed that this right should be drafted to be consistent with the *Fair Work Act 2009*.
- HSR also has right to order cease work

Discrimination, victimisation and coercion prohibited

- The model Act prohibits discrimination, victimisation and coercion relating to exercise of rights, functions or powers under the Act
- Reverse onus of proof

‘Obtaining advice’ recommendations rejected by WRMC

- Report recommended PCBU employ or engage a suitably qualified person to provide advice on health and safety matters .
- Report recommended that provision should be made along the lines of the Queensland Act for the appointment by PCBU of Workplace Health and Safety Officers.

Role of inspectors

- provide information and advice;
- undertaking interventions (e.g. advice, risk management and enforcement in relation to the industry, occupation or hazard and risk concerned);
- assisting in the resolution of issues at workplaces;
- reviewing PINs and work stoppage on safety grounds;
- issuing of notices and giving directions; and
- investigating suspected breaches



Union right of entry

- Elected officers and/or employees of registered unions have right of entry powers
- Must hold current authorisation
- To achieve authorisation, person must
 - receive training;
 - be a ‘fit and proper person’;
 - hold a current permit;
 - has not, had their OHS authorisation revoked or suspended within the previous three years; or
 - has not within the previous three years, had revoked a permit to enter workplaces under state or Federal labour law.



Summary

- **Only minor change for Queensland as many elements of national model based on Queensland OHS laws**
 - OHS obligations placed on persons conducting a business or undertaking
 - risk management approach built into the legislative framework
 - the functions, rights and powers of Health and Safety Representatives
 - union right of entry and the governance arrangements around the issuing of provisional improvement notices (PINs)
 - enforceable undertakings
 - nationally consistent qualifications and training for inspectors
 - union right of entry is consistent with Queensland's provisions.



Model OHS Regulations

Stage 1 – Administrative matters covered by recommendations

- WHS Representatives
- WHS Committees
- Union right of entry
- Incident notification
- Issue resolution

Stage 2 – Existing National Standards

for example—

- Construction work
- Manual tasks
- Noise
- High risk work – licensing
- Lead
- Hazardous substances/D'Goods/MHFs

Stage 3 – Matters in two thirds, or more, of the jurisdictions

for example—

- First aid
- Amenities
- PPE
- Risk management
- Electrical safety

Stage 4 – matters in one or several of the jurisdictions

for example—

- ROPS
- Diving
- Spray painting
- Signage
- Traffic management

Key dates

| | |
|------------------------------|--|
| September 2009 | WRMC approves model legislation exposure draft and consultation Regulation Impact Statement for public comment. |
| September 2009 | Stage One: model regulations associated with core functions, obligations or powers, arising from the recommendations from the national review released for public comment. |
| December 2009 | Model legislation submitted to WRMC for agreement. |
| December 2009 | Draft model regulations developed and progressively submitted to WRMC for decision. |
| Progressively from late 2009 | Stage Two: model regulations on matters addressed in existing national OHS standards. |
| Progressively from late 2009 | Stage Three: model regulations on matters currently included in regulations in two thirds, or more, of the jurisdictions. |
| Early 2010 | Stage Four: model regulations on matters currently included in regulations in one or several jurisdictions. |
| Progressively from late 2010 | Development of model Codes of Practice. |
| December 2011 | All jurisdictions have implemented the model Act and regulations. |

What next?

- Queensland will continue to consult with employer and union stakeholders on the development of the model OHS laws
- Queensland's influence will be achieved through continuing to use national structures (e.g. Ministerial Council, Safe Work Australia) to influence OHS policy development and bringing issues to the national arena where relevant
- Queensland also commits to assist local stakeholders in addressing changes arising from the new national OHS

QUESTIONS ?

More information

- www.worksafe.qld.gov.au
- Workplace Health and Safety Infoline
– 1300 369 915



The most important reason for making your workplace safe, is not at work at all.

Workplace Health and Safety Queensland

www.worksafe.qld.gov.au



Queensland
Government