

## THE LAW

# Harmony hope for work safety

Model legislation aligns standards.

**N**ational companies will have reduced compliance costs and workers will enjoy consistent safety standards throughout Australia under new work health and safety laws introduced in parliaments around the country.

The Work Health and Safety Bill 2011 represents the Commonwealth component of the national harmonisation of occupational health and safety (OH&S) laws being undertaken by federal, state and territory parliaments throughout 2011.

The Commonwealth legislation only applies to federal government and former government agencies, as well as other companies and organisations currently covered by Commonwealth OH&S law.

However uniform legislation has been produced for each Australian parliament, allowing work health and safety standards to be aligned in all jurisdictions for the first time since modern OH&S laws were introduced in Australia during the 1970s.

The model bill introduces some significant changes for Commonwealth OH&S law, including penalties as high as five years imprisonment for serious breaches of the law.

Commonwealth workers will also have the right to cease work if they have reasonable concerns that carrying out the work would expose them to a serious risk to their health and safety.

For companies operating across state and territory borders, the changes mean no longer having to satisfy different safety standards and resolution processes depending on where they are doing business.

Regional Development Minister Simon Crean said harmonising work health and safety laws across Australia will cut through red tape for business and even potentially save lives at work.

“This new framework will replace nine separate occupational health and safety acts and over 400 pieces of occupational health and safety regulation which currently cause unnecessary confusion, complexity and higher costs for many businesses,” Mr Crean said.

“The national system will harmonise work health and safety laws so that they are consistently enforced by regulators, facilitating a stronger partnership with business to minimise the risks of workplace injuries and deaths.

“Having different OH&S systems creates a regulatory burden on businesses, increases red tape and means that workers are at risk of poorer safety standards than their counterparts in other states. In 21st century Australia, workers and businesses deserve better.”

Coalition parties support the general principle behind OH&S harmonisation, but are concerned about measures in the model bill they say remove the right to silence for those charged with workplace safety offences.

Shadow Minister for Employment Participation Susan Ley said the right to silence and protection from self-incrimination are basic human rights that stop abuse of power.

“This protection is a right we all have and is essential to community confidence in our criminal justice system and the rule of law,” Ms Ley said. “The model OH&S laws take away the right to silence and protection from self-incrimination.

“This will apply not only to employers but also to all managers and workers in workplaces. It will grant powers to OH&S inspectors that are not even available to the police.”

Ms Ley also took issue with the removal of the term ‘control’ from the legislation when defining duty of care as it applies to individuals and organisations.

**“These are landmark reforms which have been long in the making.”**

“The removal of the word ‘control’ not only creates confusion over who is responsible for what in work safety but is a major shift away from known OH&S principles in all Australian jurisdictions, except New South Wales,” Ms Ley said.

“People understand in a practical sense that if they control something, or even share control, they are responsible.

“With the word control removed, clarity and focus on personal responsibility for safety is diminished and becomes confused. This works against the objectives of achieving safe workplaces.”

The Coalition unsuccessfully moved various amendments to address these concerns, but ultimately supported the legislation in the House and Senate.

Mr Crean called on all parliaments to support the model legislation unamended, saying it will save nationally operating businesses \$179m per year and realise a reform that has been on the agenda for more than 30 years.

“Support for this legislation is support for a balanced and nationally harmonised framework to secure health and safety for all Australian

**“This new framework will replace nine separate occupational health and safety acts”**

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SAFETY FIRST: *Workers will enjoy consistent safety standards*

THINKSTOCK



workers and Australian businesses into the future,” Mr Crean said.

“These are landmark reforms which have been long in the making. Nationally harmonised work health and safety laws were first raised by the Whitlam government in 1974.”

The current push for uniformity began in 2008 when the National Workplace Relations Ministers’ Council (WRMC) agreed to develop the architecture for a national scheme, an approach endorsed by the Council of Australian Governments.

The plan gathered momentum when the WRMC released a draft model Occupational Health and Safety Bill in September 2009.

Following extensive consultation with the community and input from Safe Work Australia, the final model Work Health and Safety Bill was produced during December 2009, and has since been introduced into several state and territory parliaments.

However while most state and territory governments have signalled they will support the legislation, potential amendments and opposition in all parliaments means challenges remain for the full alignment of workplace laws.

### **“The potential benefits of harmonisation must not be outweighed by increasing regulation”**

The legislation needs to pass unamended through all nine Commonwealth, state and territory parliaments for national harmonisation of OH&S laws to occur by the beginning of next year.

Western Australia has yet to commit to introducing the model legislation at all, stating that its position on the new framework is under review.

The legislation also faces opposition from some business

groups, including the Australian Chamber of Commerce and Industry (ACCI). In a public submission ACCI said it supports the process of harmonisation, but not at any cost.

“Industry commends the effort to eliminate inconsistencies and duplication in WHS [Work Health and Safety] legislation across states,” ACCI said in its submission. “However, the potential benefits of harmonisation must not be outweighed by increasing regulation and accompanying administrative and regulatory burdens.

“The danger is Australia could end up with better harmony in work health and safety regulation but see business suffocating in red tape.”

The model legislation was passed by federal parliament on 24 November 2011. It has also been introduced into the ACT, South Australian, Queensland and New South Wales parliaments, with the new arrangements due to come into force from 1 January 2012. •