

# Workplace Relations Update

## Model Work Health and Safety Law: What you need to know

There is consensus in the business and legal communities that the occupational health and safety (“OHS”) regime is in need of reform. In June we discussed the changes brought in by the *Work Safety Act 2008* (ACT) from 1 October 2009. This month we will discuss the model Work Health and Safety Act (“**Model law**”). Each State and Territory will be required to enact their own legislation to mirror the Model law by December 2011.

Initially, the driving force behind the Model law was the need for a harmonised national OSH regime to reduce the compliance costs of businesses operating in a number of states, each with different OSH laws. However, the proposed reforms stretch further than harmonisation to change the concepts of duties and participation in the workplace. It has been heralded that the reforms are needed to address contemporary changes to work and employment arrangements, and to address emerging risks such as occupational violence, bullying, stress and fatigue.

The Model law imposes a primary duty of care on a “person conducting a business or an undertaking” (“PCBU”). This concept goes further in that people or entities who do not employ people but who are conducting a business or an under-



John Wilson, Partner, WLN Employment and Industrial Law Group

### Employer Alert:

**Contractors – the ATO’s recent focus on superannuation guarantee non-compliance**

Next month we will discuss the ATO’s recent focus on compliance with the superannuation guarantee and outline the implications it may have for those organisations currently engaging contractors.



taking will also owe a duty of care. The broad obligation is to ensure, as far as is reasonably practicable, the health and safety of workers and other people who are put at risk from work carried out by that PCBU.

The Model law introduces a duty of care on officers of companies and other organisations. This is new to the OSH regulatory framework. Presently officers are merely attributed liability for conduct that is committed by the company rather than being allocated a duty in their own right. Turn over the page for a detailed outline of this duty and how it may impact you.

The Model law also imposes duties on workers and other parties, and broadens the scope of people who are protected.

Each State and Territory will continue to have its own health and safety regulator. The Model law uses an ‘enforcement pyramid’ model of regulatory enforcement – i.e. there is a hierarchy of enforce-

ment options aimed at securing voluntary compliance, with prosecutions as a last resort.

You need to start making changes now to ensure you can comply with the Model law when it commences operation on 1 January 2012. Please contact us for details on how we can assist you.

### Did you know?

October is Safe Work ACT month. There are many ways your business can get involved to increase awareness and safety this month. These include events and activities and even the Safe Work ACT Awards. See <http://www.worksafety.act.gov.au/safe-work-act-month-2010> for more details or to get involved.

### ACT Work Safety Commissioner

The ACT Work Safety Commissioner’s website—<http://ohsc.act.gov.au>—is a good source of work safety information. It offers free information sessions on the new legislation, useful publications and courses as well as links to other relevant sites.

# Meet the Team



**Margaret Morton**

CEO

Margaret Morton joined Williams Love & Nicol Lawyers in December 2009, bringing with her a vast degree of experience, commercial skills and formal qualifications. These include an MBA from the Australian Graduate School of Management, a Bachelor of Education from the University of New England and the Diploma of Teaching from the University of Western Sydney. She is a graduate of the Leadership Program at Mt Eliza Business School and has extensive background in chief executive officer and senior business development roles .

## Officer's Duty of Care: a new OHS concept

Section 26 of the Model law imposes a duty on officers of bodies – bodies include corporations, partnerships and government departments. "Officer" has the same meaning as in the *Corporations Act 2001* (Cth) and includes a director, company secretary, a person who participates substantially in the decision making of the organisation, a person who has the capacity to affect significantly the corporation's financial

standing etc. The duty of officers is to exercise due diligence to ensure compliance by their bodies.

### What is due diligence?

Due diligence means:

To acquire and keep up-to-date knowledge of work health and safety matters;

To gain an understanding of the nature of the operations of the business and generally of the hazards and risks associated with those operations;

To ensure that the body uses appropriate resources and processes to enable hazards to be identified and risks eliminated or minimised;

To ensure that the body has appropriate processes for receiving and considering information regarding incidents, hazards and risks, and responding in a timely way to that information;

To ensure the body implements processes for complying with any duty or obligation of the body under the Model law; and

To verify the provision and use of these resources and processes.

The rationale for this duty of

care is based on the idea that safety leadership by senior management is required for positive safety outcomes. The provision creates a positive duty which applies immediately, as opposed to accountability only applying after a contravention by the company.

### Why is this important?

All Australian jurisdictions (except South Australia) currently impose personal liability on officers in an organisation, but they do not pose a positive duty on officers. In effect, the duty imposed by section 26 of the Model law means directors and managers are deemed to be liable for OSH offences committed by their company unless they can establish a defence (a defence will include if they have exercised all due diligence). The duty is onerous and will require vigilance by officers to personally ensure that their organisation is complying with its obligations.

### Introducing: Kate Harvey

Kate Harvey is the newest addition to our Local Government, Planning and Environment team. After working as a tipstaff to the Honourable Justice D H Lloyd of the Land and Environment Court, Kate developed strong practical legal skills working for several years within the specialist planning and environment division of a major commercial law firm in Sydney.

Kate has wide experience advising both public and private sector clients on a diverse range of planning, environment and local government issues, such as planning and development, council regulatory and business operations, environmental assessment and protection, and energy and water services and infrastructure. Please call Kate on (02) 6263 9900 for all your local government, planning and environment needs.

