

Important changes to the ACT's Occupational Health and Safety Law commenced 1 October 2009

The *Occupational Health and Safety Act 1989* (ACT) (the OHS Act) was repealed with effect from 1 October 2009. It is replaced by the *Work Safety Act 2008* (ACT) (the Act).

The Act is supported by a Regulation, Codes of Practice and other Guidance Material. All of the pre-existing Codes of Practice have been extended for 12 months from 1 October 2009 during which time they will be re-written to incorporate the terminology and content of the new Act and Regulation.

The Act contains a number of significant changes to the OHS Act which aim to modernise health, safety and wellbeing issues at work. Reforms include:

Extended Coverage

The Act introduces a number of new definitions to extend coverage. Changes include;

- a broader definition of 'worker' to replace the old definition of employee so as to capture employees, independent contractors, outworkers, apprentices, trainees, people on work experience and volunteers who work in employment like settings;
- a new broader definition of 'employer' to capture any person who engages a worker to carry out work in the person's business or undertaking. This definition captures employers in relation to employees, a principal in relation to a contractor, a head contractor in relation to a subcontractor and a person who engages a volunteer or work experience student to carry out work; and
- the definition of 'work safety' to mean 'the health, safety and well being of people in relation to work', which captures both physical and psychological well being.

Expanded Safety Duties

Under the Act persons "upstream" from traditional duties holders, such as people in control of the design, manufacture, importation and supply of plant, workplaces and systems of work, hold safety duties along with employers, principals, head contractors, franchisees and people in control of premises. The aim of this extension is to ensure that responsibility attaches to those who control the generation of risks as well as those who are in a position to eliminate or minimise them.

The main obligation on duty holders is to "manage risk" by eliminating or reducing risk as far as reasonably practicable by weighing up the seriousness of the risk and the availability and suitability of eliminating or minimising the risk.

All persons directly or indirectly involved in organisational risks will need to familiarise themselves with the new steps for managing risks that are introduced by the Act.

Workers and persons at a workplace (which covers third parties and visitors) hold a duty not to expose others at the workplace to work safety risks because of the person's conduct.

Penalties exist for breaching of safety duties (which are a strict liability offence), these relate to the severity of the offences that range from a general failure to comply (\$10,000.00 for individuals or \$50,000 for corporations) to reckless or negligent exposure to substantial risk of serious harm (\$200,000.00 for individuals and \$1,000,000.00 for corporations, 7 years imprisonment or both)

Workplace Consultation Arrangements

The Act introduces significant changes to what is required of employers in consulting with their workers about work safety issues.

The Act places a general duty on all employers (broadly defined) to consult all workers, through the use of worker consultation units (WCU), on matters that may affect their work safety. The WCU replaces the 'designated work group' (DWG) under the OHS Act, **but importantly** applies to all employers not simply to those who employ 10 or more employees.

The Act provides greater flexibility than the OHS Act on how consultation can occur. An employer may consult with all the employer's workers, in which case all workers are part of one WCU or where not reasonably practicable to do so, or on request of an employee, the employee must establish two or more WCUs. A WCU may consist of workers from one or more workplaces or workers from one or more employer. Alternatively, each WCU may elect a work safety representative (WSR) and/or a work safety committee (WSC) through which consultation will occur. The Act also allows the employer and the WCU to agree on an alternative method of consultation or to use a combination of the above mechanisms.

Employers, principals, head contractors and persons who engage volunteers or persons on work experience placements should familiarise themselves with their consultation obligations under the Act, including when

and how they should consult, in what circumstances it is compulsory for them to arrange for the election of a WSR and WSC, the changed eligibility and training requirements of WSRs and their strict record keeping and review obligations in respect of each WSU. Failing to consult workers and to keep records are strict liability offences under the Act.

Other Matters

The Act provides an express right of private prosecution for unions and employee organisations along the lines of the common law position.

The Act grants workers a right to refuse work where they reasonably believe that there is a significant risk to their health or safety. It is an offence for an employer to discriminate against an employee who complains or proposes to complain about a work safety matter or to assists or proposes to assist an investigation into work safety.

Could your occupational health and safety practices do with a check up?

As of 1 October 2009 it is compulsory for employers who do not currently have consultation arrangement to put an arrangement in place. The Act allows all employers who have valid workplace arrangements under the OHS Act to carry these over (including existing representatives and committees) to the new Act however changes may need to be made to accommodate any workers who did not need to be consulted before.

There are many ways in which Bradley Allen can assist you to ensure that you are protected and that your occupational health and safety practices are compliant including:

- providing specific advice in respect of your safety and consultation obligations under the Act including whether previously uncaptured employers and workers under the OHS Act are now captured by the Act;
- assist you to review your existing OHS policy or to draft a new one;
- assist you and your workers to draft a workplace consultation arrangement; and
- acting on your behalf when disputes arise.

Bradley Allen can also assist you in other areas of employment law including drafting employment policies and procedures on other important topics such as bullying, harassment, discrimination, information technology,

privacy, confidentiality, intellectual property and business systems.

If you are not sure whether your business and employment systems, documents, policies and procedures cover all the legal basics and will protect you in the event of a dispute then you may benefit from Bradley Allen's "Workplace Relations Health Check."

Our Workplace Practices Health Check is a service we offer for no charge where we review your existing business and employment systems, documents, policies and procedures to identify and analyse the employment risks that exist in your business and make recommendations for improvement.

For more information, please contact:

Allyson Hine, Lawyer
allyson.hine@bradleyallen.com.au

(02) 6274 0824