



Melbourne
Health



Eight Wonders of the OH&S Act 2004

Presented by

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What's Different?

Form of the Act



New Act - not just simply amendments.
Clearer, more logical layout

Jurisdiction of OHS Law



Geographically the same.
Scope clarified eg: psychological risks included

Interpretation of terms/ definitions



Some definitions clarified eg: broader definition of key provisions beyond 'employee'

Language



More modern, straight forward language

Impact on employers



Clearer obligation & definitions. Required to consult with employees + contractors.
Notification of HSR's

Impact on unions



Greater level of involvement, power of entry & enquiry for authorised reps

Impact on the employees



More information and representation. Greater involvement in appointment of HSR

Impact on WorkSafe



High - will impact operations, governance guidance and guidelines.



Principles

Principles of health and safety protection

- Highest level of protection to be given against risks to health and safety
- Anyone who controls or manage matters giving rise to risk, is responsible
- Employers should be proactive to ensure health and safety
- Workplace parties should exchange information and ideas
- Employees are entitled/should be encouraged to be represented

Business as usual!



What must we do?

The concept of ensuring health and safety

- Duties require person to eliminate risks “so far as is reasonably practicable” (SoFARP) and if not, reduce risks
- Ensure risk assessments are carried out
- Ensure safety audits/inspections are performed
- Ensure corrective actions are implemented
- Review control measures to ensure hazard is eliminated
- Share knowledge
- Educate, educate, educate



“So far as is reasonably practicable”

- Language changed to SoFARP
“so far as is reasonably practicable”
- Factors relevant to determining reasonably practicable have not changed, but the meaning of state of knowledge is clarified in the Act.
 - Reasonably practicable clarified to include likelihood and consequence of risk
- Knowledge element includes what the person knew or ought to have known about hazard risk and ways of eliminating it



Extra, Extra – read all about it !



Duty to consult employees

- Requires employers to consult SoFARP with employees (including independent contractors and their employees) from 1 January 2006
- Obligation limited to workers who are, or may be directly affected by OHS matters & for independent contractors, only in relation to matters over which the employer has control
- If employees are represented by a Health and Safety Rep (HSR), the employer must consult with the HSR, plus can consult with the employees directly
- Workplaces encouraged to develop consultation processes adapted for their needs, without undermining the important role of HSR's.

Business as usual!



What must we do?

- **Ensure that consultation processes are established and understood - policies**
- **Ensure that OH&S Committees are established and functioning –minutes documented & distributed**
- **Consult, consult, consult**
- **Educate, educate, educate**



Duties on designers of workplaces

- Designers of buildings and structures to ensure that workplaces are designed to be safe for the intended purpose
- Duties on persons who control and manage workplaces (including occupiers)
- Clearer duties on designers, manufacturers, suppliers where plant is used for reasonably foreseeable purpose
- New duty on persons who commission or install plant at a workplace



Extra, Extra – read all about it !



What must we do?

Ensure obligations are understood

- **Architects / Builders / Contractors**
- **Health Service Executive**
- **Engineering & Infrastructure staff**
- **Department Heads & managers**
- **OH&S reps**
- **Consultation with staff**
- **Document user group decisions**
- **Educate, educate, educate**



Employers' duties

- **Employers to provide a safe working environment ensuring:**
 - **Safe plant and systems of work**
 - **Safe arrangements in connection with handling etc of plant and substances**
 - **Maintains a safe workplace**
 - **Provide adequate welfare facilities**
 - **Information, training, supervision**
- **'Employer's duties' eg: duty to monitor conditions & duty to consult, will be extended to employees and independent contractors for matters over which the employer has control.**

Business as usual!



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Employees' duties

- Employees have a responsibility to take reasonable care not to put themselves or others at risk in determining whether reasonable care has been taken, regard is given as to what the employee knew about the relevant circumstances
- Employees must co-operate with the employer with respect to actions taken to comply with a requirement of the Act.

Business as usual!



What must we do?

- Ensure Consultation with staff
- Educate, educate, educate



Reckless conduct

- New offence of reckless conduct that places or may place another person at a workplace in danger of serious injury (max penalty \$920,250 and/or 5 years imprisonment)



Extra, Extra – read all about it !



What must we do?

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- Ensure safety audits/inspections are performed
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- Share knowledge
- Consult with staff
- Document, document, document
- Educate, educate, educate



Officer Liability

- “Officers” defined as per Corp’s Act (Cth)
 - Directors, Secretaries & person who can affect whole organisation (or substantial part of it)
- Officers will be liable for the contravention by their organisations (whether bodies corporate or otherwise) if they
 - failed to take reasonable care and
 - Offence attributable to officer’s failure to take reasonable care.
- In determining whether an officer took reasonable care the officer’s knowledge and ability to make or influence decisions in relation to the matter, whether the offence is attributable to any other person’s conduct and any relevant matter will be taken into account.



Extra, Extra – read all about it !



Workplace representation

- Preserves the role of DWG and expands it
 - Any employee may request a DWG
 - DWGs can cover multiple workplaces of same employer
 - Employees can elect more than one HSR per DWG and will be able to elect a deputy HSR
 - If employees and employers agree, additional DWGs may be established covering workers in multiple undertakings (ie. roving reps will be permitted by agreement)
 - A person must not coerce another person in negotiations to establish a DWG.



Extra, Extra – read all about it !



Workplace representation

- Improved provisions for HSR training
eg: annual refresher training
- Additional matters to be taken into account including languages spoken by employees
- Discrimination provisions amended to include discrimination and threats to discriminate
- An offence occurs if an employer dismisses or injures an employee or fails to offer employment if the “dominant reason” is because they are a HSR or made a complaint, etc



Extra, Extra – read all about it !



What must we do?

The concept of ensuring health and safety

- Consult with staff
- Review DWG's when requested
- Ensure processes are in place for nominations & elections
- Improve the OH&S reps database to ensure 3 year alerts
- Continue to facilitate on-site education for OH&S reps
- Notify WorkSafe of changes
- Educate, educate, educate



Authorised Representatives of Registered Employee Organisations (ARREO)

- Union representatives can apply for workplace entry permits where a course of training approved by VWA is completed
 - permits will be issued by Magistrates' Court
 - Minister may limit number permits granted
 - permits expire after 3 years, unless revoked sooner.
- Authorised union representatives (AR) will be able to enter workplaces if -
 - they suspect an OHS contravention and
 - their members, or persons who could be members, work there
- Powers upon entry limited to enquiring into the suspected contravention including to inspect, examine plant & consult employees



Extra, Extra – read all about it !



Authorised Representatives of Registered Employee Organisations (ARREO)

- Union reps will have no enforcement powers.
- Enforcement matters are to be referred to VWA.
- Controls to be in place include -
 - Minister may issue quotas
 - Permits can be revoked
 - Possible offences
 - Prohibition on obstruction, hindering and intimidation of an AR, or by an AR
 - Compensation for significant loss where AR convicted of an offence



Extra, Extra – read all about it !



What does it mean for us?

Business as usual!

- Ensure the alleged breach is defined
- Ensure internal processes are understood
- Ensure issue resolution procedures are functioning
- Communication to OH&S is essential



Inspector Powers

- Same powers, plus includes docs, person must give name & address, answer questions and provide assistance (subject to privilege of self-incrimination)
- No privilege against self-incrimination in docs
- Restrictions relating to working hours and residential premises
- Express power to request warrant
- Power to direct a person if necessary where there is an immediate risk



Extra, Extra – read all about it !



What must we do?

- Document, document, document
- Co-operate, co-operate, co-operate
- Educate, educate, educate



Inspector Notices

- Provisions for improvement notices and prohibition notices revised
 - No minimum term for compliance with improvement notice
 - Improvement notice may prohibit work if not complied in time
 - Notices are to be displayed in a prominent place
 - Formal irregularities do not invalidate notice
- Injunction may be sought to compel compliance
- New non-disturbance notice



Extra, Extra – read all about it !



Review of decisions – inspector decisions

- Internal review of
 - Improvement notices, prohibition notices, non-disturbance notice and forfeiture
 - Determination of matters re: DWGs and HSR elections
 - Decision to affirm or cancel PIN
- Decision includes failure to make a decision and delay
- Person who may request includes employee, employer, HSR – depending on decision



Extra, Extra – read all about it !



Review of decisions – inspector decisions

- Time limits apply
- Effect of notices not stayed by seeking review
- External review by VCAT
(Victorian Civil & Administrative Tribunal)



Extra, Extra – read all about it !



Penalties

- **New maximum penalty levels for breach of general safety duties (\$920,250 for corporations; \$184,050 for individual)**
- **Designers of workplaces maximum \$255,625**
- **Term of imprisonment applies to first time offenders in cases of high level culpability (i.e. where the person knew that the contravention would or would be likely to expose a person to risk of serious injury or death)**
- **Other penalties under the Act have been tiered according to their relative seriousness
(Note: some offences are now summary)**
- **Current penalties in regulations will be maintained for a 2 year period**
- **All minimum penalties removed**



Extra, Extra – read all about it !



Sentencing options

- Adverse publicity orders
- Improvement projects
- Health and Safety undertakings

Alternatives to prosecution

- Enforceable undertakings
- Infringement notices



Extra, Extra – read all about it !



What's in it for us?

- Opportunity to improve workplace safety without “fines or prosecution”.
- Value added solution for OH&S professionals.
- Increased support (indirectly) from both the VWA and the organisation.



Eight New Wonders of the OH&S Act 2004

“So far as is reasonably practicable”

Duties on designers of workplaces

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Officer Liability

Workplace representation

Authorised Representatives of Registered Employee Organisations (ARREO)

Inspector Powers; Inspector Notices; Review of decisions

Penalties; Sentencing options; Alternatives to prosecution



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