

5 May 2011

NSW steps closer to WHS harmonisation

Yesterday the newly elected NSW Government introduced legislation into parliament to harmonise work health and safety laws.

The introduction came in the form of two bills, the Work Health and Safety Bill 2010 (WHS Bill) and the Occupational Health and Safety Amendment Bill (OHS Bill). The WHS Bill will introduce the model laws proposed by Safe Work Australia and the OHS Bill is intended to implement some important work health and safety reforms pending the enactment of new legislation.

The text of the WHS Bill and OHS Bill and explanatory notes have today become available online.

Consistent with the model work health and safety laws released by Safe Work Australia, the WHS Bill **does not include** union prosecution rights or a reverse onus of proof. Directors and officers will have duties under the WHS Bill but will not be deemed liable for contraventions of a corporation.

WorkCover will continue to be the relevant regulator under the WHS Bill and have powers to prosecute offences. However the jurisdiction of the Industrial Court to hear and determine prosecutions has been removed. Proceedings for offences brought before the Local Court or District Court (summary jurisdiction). Offences involving recklessness will be dealt with on indictment.

The Industrial Relations Commission will be the authorising authority for work health and safety entry permit holders and have the power to deal with disputes about rights of entry under the WHS Bill.

In his media release yesterday, the Honourable Greg Pearce MLC, Minister for Finance and Services stated that "in line with comments made in the High Court Kirk case, the prosecution now bears the onus of proof".

Comments by Greens NSW Industrial Relations spokesperson David Shoebridge have criticised the move away from prosecutions being heard and determined by the Industrial Court to the District and Supreme Courts.

The introduction of legislation has been welcomed by industry groups as an important step in facilitating better health and safety outcomes for employees and employers by addressing the disparity in work health and safety regulation between jurisdictions and focusing on consultation and continuous improvement.

However Unions NSW has been more critical, expressing concern about the removal of union rights to prosecute and claiming the legislation has been introduced without prior consultation.

Stay tuned for further updates.

For more information:



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