

Victoria's Controversial OHS Bill Cont.

It also introduces a new duty on the designers of workplaces - similar to that existing in WA, Queensland and SA - to ensure the safety of a building or structure to be used as a workplace. The intent is that hazards and risks that may be inherent in the design of a workplace are eliminated or reduced at the design stage.

Senior officers more easily prosecuted for breaches

The Maxwell Report found that the current officer liability provision (which requires proof that the officer consented or connived in the organisation's breach or that the breach was attributable to the officer's wilful neglect), effectively renders officers immune from prosecution in the vast majority of cases.

While it readily applies to small and medium-sized workplaces - where officers are closer to the work being performed - it has rarely been able to be applied to officers in larger corporations.

A new provision in the Act applies to officers who make, or participate in making, decisions that affect the business of an organisation. It is intended to apply to officers at the most senior levels of organisations who are genuinely in a position to prevent contraventions of the Act, with responsibilities extending only to matters over which a particular officer has control.

Volunteers will be specifically excluded from liability

OHS Committee to advise VWA board

The Act provides for a new OHS Advisory Committee to advise the VWA board. It will be made up of 19 members representing employers, employees, public sector, VWA and independent OHS experts.

Two employer representatives will be specifically appointed to represent the interests of small business.

Psychological health to be specifically protected

The Bill defines "health" to include psychological health, to place it beyond doubt that workers must be protected from work-related hazards and risks to both their physical and psychological health.

These hazards and risks may include work-related stress and workplace bullying.

WorkSafe plans to build on guidance material currently available and develop further guidance on preventing risks to psychological health.

New duty to consult

In line with other states such as NSW, the Act introduces a general duty on employers to consult with employees about health and safety issues that could affect them. The duty is limited to what is reasonably practicable in the circumstances.

Workplace representation more flexible

The Act aims to address inflexibilities in the current arrangements for establishing designated work groups and electing health and safety representatives (HSRs).



It provides that a work group may agree to elect more than one HSR; allows for the election of deputy HSRs; and makes clear that employees who work at different work sites of an employer can be represented by the same HSR.

It also allows for the establishment of designated work groups to cover employees of multiple employers. All the arrangements must be made by agreement, and coercion in negotiations by either party is not permissible.

HSRs must give notice before training

The Act provides that a HSR must consult his or her employer and request to attend an OHS course at least 14 days before it commences.

This provision is in addition to the training entitlements in the current Act, which requires an employer to allow a HSR to take time off to attend OHS courses approved or conducted by the VWA, and to cover the costs of initial and refresher courses.

Discrimination on OHS grounds prohibited

The old OHS Act prohibited discrimination solely based on the fact an employee complains or raises concerns about health and safety, and prohibited discrimination against HSRs in the performance of their statutory role.

However, the new Act provides that liability for discrimination or threatening conduct will now arise if making a health and safety complaint or raising concerns about an OHS issue is the "dominant" reason for the discriminatory or threatening conduct.

Right of entry subject to permits, "reasonable belief"

The Act enables authorised representatives of employee organisations (ie unions), who hold a permit issued by the Magistrates Court, to enter workplaces where they reasonably suspect that a contravention of the Act has occurred.

No right of entry will be available where there is no reasonable and genuine belief.

Upon entry, the representative will be required to notify the employer or person in charge of the workplace, as well as any HSR, of his arrival.

The Government believes that these provisions do not confer a broad right of access, but enable access only to those parts of the workplace necessary to consult affected employees and the employer and to enquire about the specified contravention.

The VWA will put in place clear guidelines for the entry provisions, and tough sanctions will apply for improper use of the right.

Two-year limit on prosecutions

The Act provides for clearer definitions of WorkSafe inspectors' powers and the rights of persons subjected to those powers.

It also imposes a two-year limit on launching OHS prosecutions, but WorkSafe will be able to seek written authorisation from the Director of Public Prosecutions to prosecute outside the limit.