



HENRY DAVIS YORK
LAWYERS



WORKPLACE RELATIONS & SAFETY INSIGHT

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NSW poised to 'fast track' adoption of key safety reforms

A Bill to amend the NSW Occupational Health and Safety Act to 'fast track' the adoption of certain key work health and safety reforms was introduced into NSW Parliament today.

The Occupational Health and Safety Amendment Bill 2011 proposes to amend the Act imminently by the following changes:

- The general duties to ensure health, safety and welfare will be qualified by the inclusion of 'so far as reasonably practicable'. This will abolish the current reverse onus of proof in NSW.
- The "deemed" liability provisions for directors and managers will be removed and will be replaced with a new provision which requires "officers" to exercise due diligence for safety matters. Officers of corporations will face personal liability if they fail to discharge this duty.
- The ability for unions to initiate OHS prosecutions will be abolished.

It has also been reported that OHS prosecutions will no longer be heard by the NSW Industrial Relations Commission and instead will be conducted in "mainstream courts".

WHO DOES THIS AFFECT?

Anyone who conducts a business or undertaking including: employers, building owners, designers, manufacturers, importers, suppliers.

All officers of body corporates.

HIGHLIGHTS

The introduction of the Occupational Health and Safety Amendment Bill 2011 into NSW Parliament today reinforces the NSW Government's commitment to enact the national "model" safety laws.

Officers of corporations will need to act quickly to ensure compliance with their new positive duty to exercise due diligence.

While the removal of deemed liability will be a relief, the Bill confirms that personal liability for officers clearly remains on the table.

The amendment Bill builds on the NSW Premier Barry O'Farrell's commitment to enact the national model safety laws with the Model Work Health and Safety Bill 2011 also being introduced into Parliament today.

It is expected that the OHS Bill will be passed quickly by the NSW Parliament given the balance of power held by the NSW Liberal Coalition Government. This is expected to be a "stop-gap" before the WHS Bill is passed.

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