Model Work Health and Safety (WHS) Laws

Wayne Creaser

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Overview

- Overview
- Model Work Health and Safety (WHS) Act
  - Duty holder structure
  - Risk management
  - Consultation
- Regulations
- Codes of Practice
- Implementation
- Future work
WHS Harmonisation

- Government announces development of model legislation to harmonise OHS across Australia (2007)
- Governments sign IGA committing to implement model legislation by end of 2011 (Jul 2008)
- Review into model OHS laws completed (Jan 2009)
- Safe Work Australia established (2009)
- Model WHS Act agreed by WRMC (Dec 2009)
- Model regulations agreed in principle by majority of Ministers (Aug 2011)
- Legislation commenced in 5 jurisdictions on 1 Jan 2012
- 21 Model Codes published to date (Aug 2012)
Model WHS Act

Duties of care – Primary Duty - PCBU

- Primary duty and related duties placed on a ‘person conducting a business or undertaking’ – PCBU
- Duty owed to workers and others
- Captures the broad range of work relationships and business structures currently being used (and into the future)
  - not defined by the nature of the employment relationship
  - does not extend to a person’s own private or domestic activities
Model WHS Act

Duties of care – ‘upstream’ duties

- Duties placed on PCBUs who design, manufacture, import, supply, install, construction or commission plant, structures and substances
- Plant, structures and substances used for work are to be as safe as possible before they enter the market
- Provides for flow of hazard and risk information through the supply chain and to the worker
Duties of care – Officers

- Must exercise due diligence to ensure the entity of which they are an officer complies with their duty of care
- Must take reasonable steps to:
  - acquire and keep up to date a knowledge of WHS matters
  - understand the nature of operations, hazards and risks
  - ensure appropriate resources are available and processes in place to manage health & safety
  - ensure PCBU has processes to comply with requirements
  - verify the provision and use of resources and processes for managing health and safety
Duties of care – Workers and others

• Broad concept of worker
• Workers must:
  - take reasonable care for themselves and others
  - comply with any reasonable instruction, policy or procedure.
• Other persons at a workplace must:
  - take reasonable care for themselves and others, and
  - comply with any reasonable instruction.
Model WHS Act

Risk management

• Must ensure risks are eliminated or minimised as far as reasonably practicable
• Focus on ensuring controls are in place
  - not on the process of risk assessment
Model WHS Act

Duty to consult

- PCBU must consult with:
  - workers
  - other persons conducting a business or undertaking with the same duty, to cooperate and to coordinate activities

- Provides guidance on what, when and how consultation should be undertaken
- Provides a flexible framework for consultation
- Provides for HSRs and committees
  - where initiated by workers
Model WHS Act

HSRs

• Can issue PIN’s
• Can initiate review of controls
• Right for workers to cease work where there is a reasonable concern that carrying out work would expose a worker to a serious risk to their health and safety
Other Provisions

- Notification of *serious incidents*
  - obligation to preserve incident site
- Offence provisions relating to licences, permits, registrations, authorisations
- Workplace entry by Unions
- Broad anti-discrimination provisions
- Functions of regulator
- Enforceable undertakings
- Broad availability of review of decisions made by inspectors and regulator
- Range of sentencing options
Model Regulations

- Representation and participation
- General risk & workplace management requirements
- Hazardous work & hazards
  - Noise
  - Manual tasks
  - Confined spaces
  - Falls
  - Electricity
  - Diving
  - High risk work (licensing)
- Plant & structures
- Construction
- Hazardous chemicals, asbestos, MHFs
- *Mining (NT, SA, Tasmania, Victoria, ACT, Commonwealth)*
Risk Management

- Requirement to:
  - identify hazards
  - manage risks by eliminating or minimising them
  - minimisation through application of hierarchy of controls
  - maintain controls
  - review and revise controls

- risk assessment only mandated for limited high risk activities e.g. confined space, diving, mining
High Risk Work Licensing

- New category:
  - Reach Stackers
- Revised categories:
  - Boilers – from 3 to 2 categories
  - Concrete Placing Booms – mobile and static
- Revision of assessment instruments for all categories
- Transition provisions for new and revised categories
Plant & Structures

- Design verification and design registration largely unchanged
- Plant item registration – 5 yearly renewal
- Greater flexibility with design standards
  - referencing of Australian Standards on plant design will be in a Code of Practice
  - allows for use of technical standards or application of design principles that can provide an equivalent or better level of safety
Workplace Hazardous Chemicals

- Classification
  - In effect, combines existing hazardous substances and dangerous goods frameworks using the GHS as the basis for classification
  - Adoption of GHS categories based on current Australian requirements
    - largely aligns with existing Australian categories
    - similar to the EU adoption of the GHS
  - Transition period of 5 years will apply for new and existing chemicals (classification, SDS, labelling)
Asbestos

- Asbestos register for all buildings erected before 31 Dec 2003
- National competencies and consistent licensing requirements for:
  - Class A (friable) asbestos removal
  - Supervisor (Class A removal)
  - Assessor (for clearance monitoring)
  - Class B (non-friable) asbestos removal
- Provisions for managing naturally occurring asbestos
Model WHS Codes of Practice

- 21 key codes published, including:
  - Risk management
  - Consultation, cooperation & coordination
  - Managing work environment and facilities
  - Hazardous Manual tasks
  - Falls (general, housing construction)
  - Confined Spaces
  - Noise
  - Asbestos (management, removal)
  - Chemicals (managing risks, labelling, SDS)
  - Plant (managing risks)
  - First Aid
Other elements

- Compliance and enforcement policy
- Transitional arrangements
- Guidance on legislation and its application

HWSA:
- extensive program of developing regulator material for consistent implementation
- alignment of existing guidance material
- regulator training and compliance guidance
Current and future Work

- Finalising ‘core’ mining regulations
- Fundamental review of areas of the regulation, including exposure standards, health surveillance, plant design requirements, high risk work licensing
- Maintenance of referenced documents (eg. GHS, exposure standards, referenced Australian Standards)
- Develop further codes and guidance material to support model Act and Regulations
- Evaluation of implementation
- Australian Strategy 2012-2022 being finalised to replace the National Strategy 2002-2012
Further Information

General information
www.safeworkaustralia.gov.au

WA implementation