

## Work, Health and Safety laws - Are you ready?

Persons conducting a business or undertaking (PCBU) should be ready for new safety news from 1 January 2013 following the passing of the *Work Health and Safety Bill* by State Parliament this month<sup>1</sup>.

The laws were passed after Independent MLC John Darley reached an agreement on changes with the Government. These changes came about after extensive lobbying by Industry Associations and prominent South Australian businesses.

The amendments moved by Mr Darley will see South Australia be the only State or Territory to have a first principle control test<sup>2</sup> in the so called "harmonised laws". This is a significant departure from what was originally proposed by the Government and represents a change which should be welcomed by all PCBUs.

The control test in the new laws places a responsibility upon a PCBU to eliminate or minimise risks to health and safety to the extent that they have the capacity to influence and control the matter, or would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

It appears that for a person to have a duty to ensure health and safety under the new laws, he or she must have both influence and control of the 'matter' at hand, that is, the specific risk to health or safety which it is alleged, sits behind the duty.

Another significant win for PCBUs is the placement of a clause providing protection against self-incrimination<sup>3</sup> which will have statutory force from 1 January 2013. This was an amendment moved by Liberal MLC Rob Lucas.

The commencement date of 1 January 2013 means PCBUs will have very little time to understand their obligations and to make any necessary amendments to their existing safety management systems. The new Regulations (which have yet to be passed) and the proposed Codes of Practice are voluminous and prescriptive totalling more than 1200 pages, with some of them 40 to 50 pages long.<sup>4</sup> It is difficult to know how a PCBU will have time to come to terms with what is required by 1 January 2013.

However, the Government says any new regulations or new parts of the Act will have a 12-month transitional period<sup>5</sup> and SafeWork SA will work with PCBUs to ensure they comply with all new aspects of the legislation<sup>6</sup>.

Some of the key elements of the legislation include:

- A PCBU will have OHS responsibilities in relation to workers<sup>7</sup> while they are at work in the business or undertaking.
- The term "worker" has been broadly defined to include contractors, employees, subcontractors, out-workers, apprentices, trainees, work experience students and volunteers<sup>8</sup>.
- The meaning of a "workplace" includes a place where a worker goes, or is likely to be, while at work<sup>9</sup>.
- Officers of a PCBU will have obligations to undertake due diligence to ensure a PCBU complies with the new laws<sup>10</sup>.
- Unions and other Entry Permit holders will be permitted entry to workplaces in certain circumstances<sup>11</sup>.
- PCBUs will be required to consult with their workers regarding work health and safety<sup>12</sup>.



- Significantly increased fines and penalties including jail terms in some circumstances<sup>13</sup>.
- Prescriptive laws regarding Health and Safety Reps and their powers and functions<sup>14</sup>.
- Broad powers to Inspectors to enter and seize a dangerous workplace<sup>15</sup>.
- Use of codes of practice in legal proceedings<sup>16</sup>.

The legal effect of these laws will undoubtedly be the subject of scrutiny by the Courts in due course. We will keep you informed of any significant developments.

*If you are concerned about how this legislation will affect your business, please contact Jodie Bradbrook on (08) 8227 2829.*

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#### Endnotes

1. <http://www.legislation.sa.gov.au/LZ/B/CURRENT/WORK%20HEALTH%20AND%20SAFETY%20BILL%202012.aspx> -
2. c17
3. c172
4. <http://www.safeworkaustralia.gov.au/sites/swa/legislation/model-cop/pages/model-cop.aspx>
5. Media Release: "South Australian parliament passes new work health and safety laws", 1 November 2012, <http://www.premier.sa.gov.au/index.php/news-archive>
6. <http://www.abc.net.au/news/2012-11-02/work-safety-legislation-clears-sa-parliament/4348880>
7. c19(1)
8. c7
9. c8
10. c27
11. c117
12. c47
13. c30-34
14. Part 5 Division 2
15. c176
16. c275

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