

WHS Act - Enforcement Review

The WHS Board is reviewing key issues in the enforcement of the WHS Act. So far comprehensive review papers have been prepared by WHSQ on Directors and the Crown issues. The following issues will be considered by the Board throughout 2007.

Prosecutions based on Risk

In 2005 the WHS Act s28 was modified to impose an absolute obligation on employers to ensure workers are not exposed to Risk of harm as well as the existing requirement to ensure they are not actually harmed. This opens the way for prosecutions based on risk in line with the objectives of the WHS Act.

New administrative arrangements will need to be in place in WHSQ to facilitate these prosecutions and to educate employers.

Prosecuting Directors

A paper has been developed by WHSQ acknowledging difficulties in prosecuting executive officers and company directors due to difficulty in obtaining direct evidence of their liability. The paper discusses the role of s167 WHS Act which gives defenses to executive officers based on 'reasonable diligence' or 'not in a position to influence'. For larger or more complex companies these defenses allow senior managers to hide behind a veil of ignorance. NSW is arguing a Code of Practice for Executive Officers setting out safety policies and procedures. Vic is drafting guidelines for OHS in the boardroom and WA is clarifying their Act. Canada and ACT have introduced corporate manslaughter legislation.

The UK HSE has published guidance material for Directors Responsibility for H&S, including:

- Providing H&S leadership,
- Monitoring performance,
- Ensuring worker participation,
- Keeping informed on significant failures,
- Ensure H&S management systems are

effective.

The paper recognizes opportunities for influencing safety culture within organizations through clarifying director responsibilities.

WHC has requested the Board prepare a Regulation or Code based on the UK responsibilities.

Prosecuting government departments (Crown)

A paper has been developed by WHSQ recognising that government departments are protected by law from prosecution and that this may have a perverse effect on OHS management. Union experience indicates that some Queensland departments have the worst attitudes to OHS and compliance with the WHS Act. Existing sanctions include Inspector notices and Ministerial intervention.

A multi pronged approach is being considered including; Notices, Enforceable Undertakings, Name and Shame, QIRC Inquiries

Inadequate penalties

There is a wide difference in OHS penalties between Qld and NSW/VIC. In recent years the southern states have awarded penalties of \$1.4 million for cases involving multiple fatalities. The highest fine in Queensland to-date is \$80,000. Frequently fines of \$60,000 are awarded for significantly lower infringements.

It is felt that the Magistrates Court has limited powers and may be inadequately aware of risk and safety management. Specific sentencing guidelines may be considered in this review.

Targeting Designers of plant

Many workers have died as a result of mechanical failure and design inadequacies of plant. It is often difficult to obtain evidence of liability by designers and suppliers to support a prosecution. However, it is agreed it is

desirable to improve standards in this area.

Communicating case information

WHSQ presently publish selected summaries of prosecutions in their newsletter SAFE. This newsletter is only published every 6 months. Employers and worker representatives on the Board have expressed a need for current and comprehensive information on prosecutions to assist employer awareness of legal standards and interpretations.

One suggestion is to have a web published database of cases, summarised by a recognized academic group. As of 11/1/2007 a prosecutions database has been published on the WHSQ web site. Worth looking at. www.dir.qld.gov.au/publications/workplaceprosecutions/2005/index.htm

Recently the Australian Government has published a Guideline on Principles of Safe Design www.ascc.gov.au/ascc/healthsafety/safedesign/guidelines. This Guide is not intended as legislation however it acknowledges OHS responsibilities for designers throughout the life of the plant. Consideration may be given to including legislative and administrative measures to enforce these responsibilities.

Section 29 development

WHC is recommending a Code of Practice to give support to this important section.

Workers afraid to claim compo

The Australian Bureau of Statistics has released injury statistics which show 6.4% (690,000) workers were injured in 05/06. This rate is up from 5% in 99/00. The survey also showed 7% workers did not claim compo because they were afraid it may affect their jobs or future employment. Queensland is now the most dangerous state, and 43% injured workers had not received OHS training.