KEEPING YOU UPDATED ON YOUR DUE DILIGENCE OBLIGATIONS AND SAFETY / ENVIRONMENT / KEY TRENDS AND IN WORK HEALTH • JANUARY 2017 • QUARTERLY UPDATE
INTRODUCTION

With so much change in environmental and work health and safety regulation, it’s easy to drown in a sea of paper when doing your due diligence.

Until now.

Our new quarterly newsletter, CU Up to Date, sorts through the last three months and gives you the most important trends and developments nationally — and explains how they will affect your business, now and in the future.

From officers’ duties to hazard reduction, industrial relations to regulator news, we’ll keep you Up to Date. And with our sights on the horizon, we’ll help you see and prepare for the challenges ahead.

Highlights in this issue:

➢ Victoria to implement labour hire licensing – In response to a recent review of the Labour Hire Industry and Insecure Work, the Victorian Government has announced that it will establish a labour hire licensing scheme to address the issues of "widespread exploitation" identified in the report.

➢ Regulation of underground water for mining activities – New laws passed by the Queensland Government tighten groundwater licence requirements for mines, impacting both new and established projects.

➢ Dreamworld tragedy prompts safety blitz – The tragic malfunction of the Rapid Rivers Ride at Dreamworld has led to a blitz of safety audits across Queensland and has wider implications for businesses and regulators across the county.

If you want to know more about how these and other developments will affect you, please don’t hesitate to contact us.
OFFICERS’ DUTIES AND LIABILITIES

FWO CONTINUES TO PURSUE ACCESSORIAL LIABILITY

Figures from the Fair Work Ombudsman’s 2015-2016 Annual Report published in September provide ample warning to anyone underpaying or exploiting their workers that the Fair Work Ombudsman (FWO) has them in its sights.

The figures, which show that 92% of matters that the FWO took to Court also sought penalties against an accessory (a party other than the employer who played a role in the exploitation of workers), demonstrate that the FWO is determined to use every avenue to address exploitation of vulnerable workers, particularly migrant workers and young people.

The FWO has stated that not only is it pursuing penalties against individuals involved in breaches of the legislation but is also seeking to recoup back-payments from accessories (including accountants and human resource managers), making them directly accountable for underpayments they were responsible for or involved in.

What it means for you

When it comes to failing to meet minimum pay and entitlements and compliance obligations the law is clear: officers and other individuals can be personally penalised for their involvement in those breaches. As the recent cases of 7-Eleven, Coles and Step Ahead Security show, community expectations are shifting, regulators are taking action, and courts are increasingly imposing higher penalties for wilful disregard for the law and holding individual officers accountable.

The impacts on officers of course go beyond monetary penalties, and can be wide-ranging and long-lasting – loss of reputation, and detrimental impact on business and public profile can be some of the more immediate consequences.

Directors and officers must take steps to assess a business’ exposure, obtain relevant advice where necessary and ask relevant questions to minimise exposure. In particular, to avoid falling foul of the law, some steps you can take are:

► understand your company’s operations, its legal obligations and your particular key risks;
► when making resource decisions ask – what is the impact on risk?;
► if the price looks too good to be true, particularly in terms of the engagement of contractors, ask why, and then carefully consider the response and its impact;
► set KPIs for managers that reward compliance; and
► ensure there is a process for compliance and have an expert undertake a systems review.

MINIMISING CLIENT-RELATED SITUATIONAL VIOLENCE

A recent case from New Zealand demonstrates the risks and issues facing businesses with a forward-facing workforce.

On 1 September 2014, a man entered a Work and Income New Zealand office with a shotgun and killed two employees. WorkSafe New Zealand successfully prosecuted New Zealand’s Ministry of Social Development for failing to take all practicable steps to ensure the safety of employees.

The Court found that the risk of client-related situational violence involving assault with weapons (other than firearms) was a "reasonably predictable hazard" and found that the implementation of a physical barrier to delay violent clients and provide caseworkers with an opportunity to retreat to a safe area was a "reasonably practicable" step which was open to the Ministry before the incident.
In reaching this conclusion, the Court took into account the following factors:

► the nature of the harm associated with the hazard was serious;
► objectively, the Ministry had knowledge of the likelihood of an assault with a weapon other than a firearm;
► a "zoning model" of interaction with clients – which allows clients to interact with case workers but impedes their access to the working area and allows case workers a point of egress to that working area – would have been effective in minimising the hazard, and was an option objectively known to the Ministry; and
► the cost of adopting these security measures was not "grossly disproportionate" to the risk of harm generated by the hazard.

What it means for you

Recent cases in Australia, such as the tragic death of a bus driver in Brisbane who was attacked by a passenger, highlight the importance of managing the risk that members of the public can pose to forward-facing employees.

Given the similarities in the New Zealand and Australia workplace, health and safety legislation, the New Zealand case offers useful guidance for Australian employers attempting to grapple with these concerns. For example, organisations could:

► consider getting reports from security experts on the level of risk of client-related situational violence to assist in determining whether a risk is a "reasonably predictable hazard"; and
► adopt any measures that are "reasonably practicable" to address the risk of violence (for example, ensuring there are physical barriers to delay a violent client from attacking employees and means of egress to safe zones for the employees).

Officers of such organisations also need give consideration to such measures as part of discharging their due diligence duties under the Workplace Health and Safety legislation, which include ensuring that the person conducting the business or undertaking uses appropriate resources and processes to eliminate or minimise risks to health and safety as a result of the work being carried out.

WorkSafe New Zealand v Ministry of Social Development [2016] NZDC 12806

HEAVY VEHICLE CHAIN OF RESPONSIBILITY – TIME TO GET INTO GEAR

Legislation to enact the next phase in national Chain of Responsibility Reforms and Heavy Vehicle regulation passed the Queensland Parliament in December 2016. The amendments restructure existing obligations to place a positive duty on all chain of responsibility parties to ensure, as far as reasonably practicable, the safety of their transport activities.

The new laws:

► restructure existing Heavy Vehicle National Law obligations on all current chain of responsibility parties to impose a positive primary duty of care, consistent with other safety laws such as the model Work Health and Safety Act;
► impose a due diligence obligation on executive officers relating to the new primary duties;
► improve compliance; and
► simplify enforcement.

The amendments will now be introduced in all participating States and Territories (excluding Western Australia and the Northern Territory) and are expected to commence on a date to be set in 2018.

What it means for you

These changes should not be cause for alarm for organisations and officers that were complying with the previous laws. However, now is a good time to for all executives and offices to review supply chain systems and practices to ensure your business is meeting its safety obligations.

For example:

► review and clearly map out the responsibilities of all parties in your supply chain;
check commercial arrangements to ensure you have appropriate compliance and assurance terms;

review your workplace WHS policies and procedures and amend if necessary;

review and update fatigue management plans; and

train staff and officers in their chain of responsibility obligations.

Directors should also seek instruction and briefing from executive officers on how the company meets its obligations, ask questions to clarify understanding and keep records of outcomes and planning steps as required to monitor and reassess compliance.

Businesses face prosecution and large fines if they do not have practices and procedures in place to ensure the safe operation of their transport activities. Ensure your organisation can demonstrate a robust due diligence system that promotes compliance in an auditable way.

Heavy Vehicle National Law and Other Legislation Amendment Act 2016 (Qld)

$688,000 TRIP IS NO HOLIDAY

The Victorian Supreme Court ordered Good Year and Dunlop Tyres (Aust) Pty Ltd to pay a former employee $688,000 who suffered injuries in 2010 after tripping over a protruding and exposed metal plate on the floor that was not removed after a previous office fitout.

The employee alleged that the metal plate which she tripped over was missing a screw, which made it become loose and require repair.

Evidence was accepted that Goodyear knew of risk caused by the metal plate but had not taken simple steps to secure or remove it. The Court found that the failure of Goodyear to respond to the risk, for example by erecting a sign or barrier, or taping the metal plate to the floor, was a cause of the employee's fall and injury, and constituted a breach of its duty to its employee.

The Court pointed out the need for systems of regular inspection and maintenance in a busy workplace to respond to the possibility that the condition of the workplace environment might, with use, change or deteriorate over time, thereby giving rise to a risk of injury.

It was noted in this case that an employer acting reasonably would have implemented a system for regular inspection and maintenance of the floor. The Court concluded that it was negligent of Goodyear to repair faults on a reactive basis after the risks became obvious, rather than maintaining a proactive system of inspection and maintenance.

What it means for you

Maintaining a safe workplace does not have to be an onerous task, but failure to do so can result in significant costs for businesses. This case shows that employers can minimise risks of injury to employees by:

► being proactive about monitoring risks posed by wear and tear in the workplace;
► immediately addressing risks to health and safety once they are identified, no matter how minor they may seem; and
► if risks can't be addressed immediately (for example because a tradesperson is required or parts must be replaced), taking steps to prevent employees and others from coming in contact with the risk, for example with signs, barriers or other warnings.

As officers and directors it is incumbent on you to seek regular updates from the business on safety risks, initiatives, and areas of improvement. Ensuring you are familiar with business operations and risk management will help you to meet your due diligence obligations.

In a busy workplace, small issues like fixing a trip hazard can easily get pushed to the bottom of the to-do list. However, this case is a good reminder that the tasks that seem little now can have a big impact.

Kalos v Goodyear & Dunlop Tyres (Aust) Pty Ltd & Anor [2016] VSC 715
An employer who alleged that a machine's manufacturer was partly responsible when an employee lost his hand was unsuccessful in the Western Australian District Court.

The worker deliberately put his hand inside a machine after it became blocked. A co-worker accidentally activated the hydraulically operated sliding gate in the discharge chute with the worker's hand still in it, causing severe amputation and laceration injuries to his left hand. The employer accepted liability and paid $950,000 but sought a contribution from the machine's manufacturer on the grounds that the manufacturer should have added a guard to the moving parts of the discharge chute gate.

The Court rejected the claim for the manufacturer's liability, holding that it was not reasonably foreseeable that a worker would "thoughtlessly, inadvertently, carelessly or deliberately" insert their arm into the discharge chute to manually clear a blockage despite the obvious hazards of doing so.

The machine was designed for a single person's use inside the cabin, had appropriate warnings inside the cabin and in the operation manual, and was not designed to be cleared manually given the dangers of doing so, which would include 4-5 tonnes of material suddenly flowing down a cleared chute. After considering the manufacturer's potential liability for breach of contract, breach of duty or breach of statutory duty, the Court rejected each one.

For manufacturers, the case highlights the importance of carefully considering all reasonably foreseeable risks and designing equipment accordingly. The manufacturer must consider what a reasonably competent engineer would have done in response to a reasonably foreseeable risk and consider how the machine is likely to be used and what measures should be applied to mitigate or eliminate each foreseeable risk.

This case underlines the importance of maintaining proper training and warnings to employees, even in relation to dangers that may seem obvious. Directors and officers should take positive steps to have their business review their safety practices to ensure that they are meeting their due diligence obligations.

Blame cannot be necessarily sheeted home to manufacturers when employees have used equipment in a way that is not reasonably foreseeable, or have behaved in a careless or deliberate manner that exposes them to risk. Regular safety training, maintaining appropriate warnings about workplace dangers and keeping records of the measures taken to protect and inform employees regarding the risks are crucial in avoiding such situations.

Simpson v Alliance Contracting Pty Ltd [2016] WADC 158
INDUSTRIAL ISSUES

VICTORIA TO IMPLEMENT LABOUR HIRE LICENSING

In response to the Forsyth review into the Labour Hire Industry and Insecure Work, the Victorian Government has announced that it will establish a labour hire licensing scheme to stop the "widespread exploitation" of workers in Victoria.

The Labor Government is currently considering the most effective and efficient structure of a licensing scheme. The Forsyth report recommends that the scheme require that any business supplying a worker to another person or organisation (whether directly or through an intermediary) in Victoria must be a licensed labour hire operator and must only carry on such activity through a registered business or company. It also recommends that the scheme initially be developed for the horticultural industry (including the picking and packing of fresh fruit and vegetables), and the meat and cleaning industries, with the capacity to be expanded to other industries in the future.

The Victorian Government hopes that the scheme will help address the underpayment of award wages, tax avoidance, non-payment of superannuation, poor occupational health and safety practices, and the maltreatment of workers and backpackers on visas, highlighted by the report.

⚠️ What it means for you

Companies operating a labour hire business or people utilising workers under labour hire arrangements should monitor these developments closely in order to be prepared for what are likely to be important regulatory changes to the Victorian labour hire landscape.

Businesses outside Victoria should also take note as the report recommends that Victoria actively engage with the Council of Australian Governments for the national adoption of sector-specific labour hire licensing schemes.

ONE PERSON'S TRASH, ANOTHER PERSON'S TREASURE

Waste producers not currently supplying their waste should be aware that there are even better opportunities to do so under Queensland’s new end of waste framework.

As of 8 November 2016, the beneficial use approval (BUA) framework under Chapter 8 of the Waste Reduction and Recycling Act 2011 (Qld) has been replaced by the end of waste (EOW) framework.

Under the EOW framework, waste is approved as a resource, if supplied under an EOW code (similar to the former general BUAs) or an EOW approval (similar to the former specific BUAs, however these are granted on a trial basis where an EOW code has not yet been developed).

Under the new system, EOW approvals can only be extended once. This encourages waste producers operating in this temporary space to make submissions, thereby facilitating and streamlining the creation of more EOW codes.

Waste Reduction and Recycling Act 2011 (Qld)

MANSLAUGHTER PROSECUTION FOR CONCRETE WALL PANEL DEATHS

The risks associated with the use of pre-cast and tilt-up concrete wall panels has been highlighted in a recent manslaughter prosecution that provides a timely reminder of the importance of a proactive and not a reactive approach to safety management.
Following the deaths of two construction workers on the $37m Brisbane Racing Club infield redevelopment in October, Work Health and Safety Queensland issued a Safety Alert highlighting the potential risks associated with the installation of concrete wall panels and outlining steps to address these risks. This was followed in November by Queensland Police taking the unusual step of arresting and charging Mr Claudio D’Alessandro, who was instructing the workers, with manslaughter in relation to the deaths of the men.

The Safety Alert suggests that incidents like the one at Eagle Farm can occur because:

► the panels are not properly restrained at their base or because they are not properly braced across their face;
► the panels are knocked by other panels or by lifting equipment;
► workers do not have adequate means of escape from falling panels; and / or
► inadequate work procedures and environmental factors (eg. wind or soft ground).

⚠️ What it means for you

The Safety Alert contains a number of strategies to minimise the risk in construction with concrete panels but notes that it is important that you have detailed planning tailored to your project. You should also be aware of and comply with your obligations under the:

► Tilt-up and Pre-cast Construction Code of Practice 2003;
► AS 3850-2015: Prefabricated Concrete Elements;
► Work Health Safety Act 2011 (Qld); and
► Work Health and Safety Regulations 2011 (Qld) or the equivalents in your State or Territory.

Organisations are required to take a risk-based approach to safety. While alerts and codes of practice set out best practice approaches to reduce risk, you must still consult with your workers, health and safety representatives and sometimes external consultants to identify and appropriately manage risk. If you engage contractors, you should also have appropriate contractor management systems in place to comply with the organisation’s duties to subcontractors and their workers.

For anyone involved in construction in Queensland (which includes engaging a construction company), the effect of this prosecution and Safety Alert is clear: review your operation immediately. A proper risk assessment should include an assessment of all foreseeable hazards, including less obvious ones like access and egress, fatigue, and impairment.

Even if you are not in Queensland, regulators across the country will be paying close attention to the Safety Alert and may issue a similar safety alert, or step up their own enforcement activities. Therefore, it would be wise to run the rule over your own operations now.
HAZARD REDUCTION

WHS STANDS FOR SLIP, SLOP, SLAP AND SLIDE

In summer, as temperatures rise and everyone is enjoying the warm weather, it is easy to forget that an employer’s duty of care to employees includes protecting them from sun-related hazards. In a timely reminder, the Skin & Cancer Foundation Inc. recently found many employers are failing to provide even the most basic sun-protection products.

According to the Skin & Cancer Foundation’s 2016 Skin Health Australia Report Card, 56% of people surveyed work in jobs that require them to work outdoors, yet:

► 52% of employers do not provide sunscreen;
► 65% do not provide protective clothing;
► 74% do not provide sunglasses; and
► 75% do not provide gloves.

Alarmingly, the study also found that 30% of employers provide no protection at all for employees working outdoors.

With all the scientific evidence available on the dangers of too much sun, it is not surprising that the study also revealed 31% of people are factoring in the impact of the working condition on their skin when choosing their occupation. While individuals have a personal responsibility to look after their own skin, if they are being exposed to the sun in the course of their employment, employers also have a duty to provide proper protective equipment.

What it means for you

Employers should be aware that their duty to provide a safe workplace extends to ensuring that workers are protected from the elements if they are required to work outdoors. Just as you would provide safety equipment such as a hard-hat, so too you should provide sunscreen, protective clothing, cool drinking water and other similar items to protect workers from the sun.

You should also consider creating or updating policies and procedures relating to working outdoors, and ensure these are well communicated to workers and adequately enforced.

UNDERSTANDING YOUNG WORKERS

Statistics released by WorkCover Queensland suggest that around 4,000 workers between the ages of 15 and 24 are seriously injured every year in Queensland.

According to WorkCover Queensland, not only is inexperience a factor in the injuries of young workers, but there are intellectual, physical and social factors at play too. These include:

► ongoing brain development (parts of the brain associated with risk assessment, impulse control and decision-making do not finish developing until the mid-20s);
► the tendency of young people to alter their behaviour in order to fit in socially; and
► the possibility that young workers may not respond as well to traditional styles of learning and communicating information.
What it means for you

Young workers can be a valuable source of new life and ideas in a business. However, employers of young workers should keep in mind their particular traits to minimise potential risks. Possible strategies you could consider include:

► providing comprehensive training to give young workers important practical experience;
► ensuring clear policies and procedures are in place, and are adequately enforced, to help young workers identify and deal with workplace risks;
► create positive role models for young workers in the workplace; and
► incorporating modern technology and contemporary methods of teaching and learning where possible when interacting with young workers.

LEGAL DIESEL LEVELS LINKED TO LUNG CANCER

An Australian study led by Dr Susan Peters has suggested that exposure to workplace diesel exhaust (even within legal limits) has been linked to a heightened risk of lung cancer. This follows earlier studies with the same conclusion and a World Health Organisation warning in 2012 of "compelling" scientific evidence that diesel exhaust fumes are carcinogenic and can also raise the risk of bladder cancer.

Despite a current recommended exposure of 100 micrograms per cubic metre of elemental carbon by the Australian Institute of Occupational Hygienists, the study found that even 44 micrograms per cubic metre over a career underground was linked to an additional 38 lung cancer fatalities per 1,000 male workers. An earlier Dutch study had found that pre-2007 equipment is incapable of delivering safe emission levels. The risk is particularly heightened for underground mine workers who may also suffer other conditions as a result of diesel exhaust exposure.

What it means for you

These studies raise concerns regarding the future liability of employers for disease linked to diesel exhaust. Once a risk is identified, employers should consider implementing measures to minimise the potential health impacts on their workforce now and into the future.

For example, employers could consider:

► retiring older diesel vehicles in favour of newer models with lower exhaust levels; and
► implementing further control measures (such as working in open areas where possible and offering personal protective equipment where appropriate) to minimise workers' exposure to diesel emissions.

Mining and resources companies in particular need to consider how they will manage this risk given the heightened exposure of their workers.

While buying new equipment may be a considerable upfront cost, it is just one option to consider. Other measures such as mapping fleet changes and depreciation of assets over time, and taking into consideration your work, health and safety obligations as part of this process, can be utilised in to mitigate any future liability and help reduce the prevalence of long-term health problems for workers.
EXCESSIVE WORK HOURS DISTRESSING

Research carried out by the University of Nottingham reinforces the connection between working long hours and negative health outcomes.

Working long hours has been associated with a range of negative health outcomes, including increased risk of poor mental health, mortality, depression and anxiety, compromised sleep, coronary heart disease, stroke and heavy alcohol consumption.

The researchers surveyed over 1,200 police officers and found that those who worked more than 48 hours a week (the maximum number of working hours under the European Union's Working Time Directive) were significantly more likely to score above the "common mental disorder" threshold and experience psychological distress, emotional exhaustion and "depersonalisation", which involves negative, cynical attitudes and feelings about clients.

The researchers referred to previous studies indicating police officers often choose to work long hours as they perceive it to be a measure of their performance.

What it means for you

Employers should monitor employees' working hours and take steps to modify excessive working hours to support psychological wellbeing and minimise the risk of workers' compensation claims.

Employers should address the reason behind excessive working hours and consider additional resourcing and influencing workplace culture as appropriate.

Given the evidence of the effects long hours have on attitude and performance, implementing such measures could have a positive effect for businesses and productivity in the longer term.
WORKERS’ COMPENSATION

THE HIGH COURT CLARIFIES REASONABLE ADMINISTRATIVE ACTION EXCEPTION

Employers do not need to shy away from making decisions affecting an employee’s employment where they have a sound basis for doing so, and can clearly articulate the reasons for the decision.

Ms Martin worked at the ABC and had been temporarily transferred to another position. She applied for this position permanently, primarily to avoid working with her old supervisor. Upon being told her application was unsuccessful, she broke down and sought medical treatment. She was diagnosed with an adjustment disorder, and claimed compensation under the Safety, Rehabilitation and Compensation Act 1988 (Cth) (SRC Act).

Similar to State workers’ compensation laws, diseases are non-compensable under the SRC Act if they are suffered "as a result of reasonable administrative action taken in a reasonable manner in respect of the employee’s employment" (section 5A).

The High Court considered whether Ms Martin’s condition was suffered as a result of the reasonable administrative action (and not whether it was "reasonable" or "administrative" action). It was accepted that Ms Martin’s condition was triggered by her contemplation that she now had to return to work for her former supervisor. Previously, the majority of the Full Federal Court found her condition was "a result" of the fact she had to work for her old supervisor (the perceived consequences of the decision), and was not suffered as a result of the decision not to engage her in the alternative position (the alleged reasonable administrative action).

The High Court unanimously disagreed with the Full Federal Court finding that a disease is suffered "as a result of" reasonable administrative action if "without the taking of the administrative action, the employee would not have suffered" the disease.

What it means for you

This is a sensible decision for employers to rely upon and indicates that the employee’s perceived consequences of a managerial or administrative decision may be considered as an aspect of "reasonable administrative action".

For employers under the SRC Act, they can have confidence that, if they engage in reasonable administrative action in a reasonable manner in respect of an employee’s employment, and as a consequence the employee suffers a disease or other injury, it will not be compensable.

Generally, employers should ensure that in taking administrative action, they comply with relevant procedural fairness requirements and follow appropriate processes as set out in their policies. Further, keeping detailed records and having a sound basis for decision-making, including documented reasons provided to the employee, will assist in mitigating the risk of an adverse finding as to whether reasonable administrative action has been made out.

Comcare v Martin [2016] HCA 43
The recently introduced Workers Rehabilitation and Compensation Amendment Bill 2016 proposes a range of changes to Tasmania's workers' compensation regime.

With the main aim of reducing excessive red tape, the changes will impact employers, employees and insurers in Tasmania.

Importantly, the proposed Bill will make the following amendments:

► the current age restrictions for workers being entitled to workers' compensation benefits will be removed and replaced with restrictions that are based on the worker's Commonwealth aged pension qualifying age;

► dependency claims provisions will be amended to clarify how compensation in the case of a worker's death are to be paid to spouses and children;

► medical practitioners will be able to issue medical certificates for up to 28 days instead of the current 14 days;

► medical practitioners will no longer need to be accredited to issue medical certificates;

► the schedule of diseases deemed to be work related will be removed. The Board will instead give notice of relevant diseases;

► employers will no longer be required to display their insurer's details and a copy of the workers' compensation legislation in the workplace; and

► employers will only need to appoint a return to work co-ordinator if they employ more than 100 workers rather than the current minimum of 50 workers.

What it means for you

If passed, the changes will commence on 1 July 2017.

While a number of changes are proposed, what does not change is an employer's liability for workplace injury and compensation entitlements. Accordingly, it is important that employers operating in Tasmania monitor developments in this area as the changes will make an impact to an employer's administration of workers' compensation claims.

Workers Rehabilitation and Compensation Amendment Bill 2016 (Tas)
REGULATION OF UNDERGROUND WATER FOR MINING ACTIVITIES

On 10 November 2016, the Queensland Government passed the Environmental Protection (Underground Water Management) and Other Legislation Amendment Act 2016 and the Water Legislation Amendment Act 2016 (as amended), both of which will tighten groundwater licence requirements for mines.

To obtain environmental authority for mining activities, the legislation will require applicants to provide detailed information with the application about potential groundwater impacts. Projects that are more advanced will need to obtain a "associated water licence" and undergo a public notification and consultation process. However, there are some exemptions for projects that had received a recommendation from the Land Court prior to 13 September 2016.

Environmental Protection (Underground Water Management) and Other Legislation Amendment Act 2016 (Qld)

Water Legislation Amendment Act 2016 (Qld)

A NEW AUSTRALIAN DANGEROUS GOODS CODE

The Australian Code for the Transport of Dangerous Goods by Road & Rail Edition 7.5, 2017 has been released.

The Code is intended to ensure that everyone involved in transporting dangerous goods understands their responsibilities to help prevent and / or reduce damage to people, property and the environment. Dangerous goods includes explosives, gases, flammable substances, toxic and infectious substances, among others.

The introduction to the Code recommends that all members of the supply chain understand and work to the requirements of the Code, including the consignor, packer, truck driver and dangerous goods transport companies, along with dangerous goods professionals and trainers.

There are a number of amendments from the last edition of the Code, which you should familiarise yourself with, including changes to:

► definitions and interpretation;
► classifications;
► dangerous goods lists, special provisions and limited quantities exceptions
► packing, tank, container, vehicle and equipment provisions; and
► consignment procedures.

The Code does not stand alone and should be read in conjunction with each State's and Territory's laws dealing with the transport of dangerous goods. These laws contain a range of important provisions, including supply chain member duties, licence requirements and competent authority panel powers.

The National Transport Commission has said that the Code is an important technical resource to help Australia’s transport and logistics industry to operate safely when carrying dangerous goods.

What it means for you

A person involved in a supply chain transporting dangerous goods by road or rail should familiarise themselves with the revised Code. You can follow the Code from 1 March 2017 and must follow it from 1 March 2018. Until then, you must comply with either the Code edition 7.4 or the Code edition 7.5.

Transport of Dangerous Goods by Road & Rail Edition 7.5, 2017

RELEASE OF WA'S NEW EIA FRAMEWORK IMMINENT

On 17 December 2015, the Western Australia Minister for Environment announced an independent assessment of the Environmental

Environmental Protection (Underground Water Management) and Other Legislation Amendment Act 2016 (Qld)

Water Legislation Amendment Act 2016 (Qld)
Protection Authority (EPA) legislation and policy following the Supreme Court decision in Save Beeliar Wetlands v Jacob [2015] WASC 482, which went ahead despite the Save Beeliar Wetlands decision being overturned on appeal.

Released on 17 May 2016, the Legal and Governance Review into Policies and Guidelines for Environmental Impact Assessments Report, recommended the adoption of a new, hierarchical policy framework reflecting the objectives and principles of the Environmental Protection Act 1986 (WA).

In light of these recommendations, the EPA implemented a new Environmental Impact Assessment (EIA) framework on the 13th of December 2016.

All policy and procedures arranged in a hierarchy under three pillars
► EIA procedures.
► Environmental Considerations in EIA.
► Advice and reference material (non-EIA documentation, such as strategic and other technical advice).

Some policies have been withdrawn and remain under review, and further policies are expected.

The EIA assessment process
All previous fixed Levels of Assessment (API-A, API-B, PER) having been removed. The form, content, timing and procedure for the environmental assessment will be determined on a case-by-case basis.

The EPA's requirements for the environmental assessment, including any environmental review will be set out in the notification of the decision on whether to assess and in the Environmental Scoping Document (if an environmental review is required).

There are now five steps (the first three of which are optional) for the assessment of proposals:
► scoping for an environmental review (using an Environmental Scoping Document);
► preparation of additional assessment information (including the Environmental Review Document);
► any public review of additional assessment information (including the Environmental Review Document);
► preparation of the EPA's draft assessment report; and
► completion of the EPA's assessment.

NSW NOT COASTING ON COASTAL MANAGEMENT REFORM

A new coastal State Environmental Planning Policy (SEPP) for NSW aims to balance social, economic and environmental interests and provide adaptable and consistent State-based development controls. The SEPP review follows the NSW Government’s overhaul of managing its coastline and introduction of the Coastal Management Act 2016 (NSW).

The policy seeks to introduce a range of development controls that aim to protect and manage sensitive coastal environments, mitigate coastal hazard risk and guide appropriate development in coastal locations. In addition to consolidating provisions across a number of existing SEPPs, the policy complements the Act’s redefined “coastal zone” (one area has become four “costal management areas”), as key
development controls are directed at particular coastal management areas.

**CHANGES TO THE WHS REGULATIONS THAT APPLY WHEN WORKING OVERSEAS**

The Federal Government recently amended the Work Health and Safety Regulations 2011 (Cth) to specify which regulations apply to workers and persons conducting a business or undertaking (PCBUs) when working overseas.

When working overseas, workers and PCBUs who are covered by the Commonwealth laws now only need to comply with the listed regulations, which include:

- cessation of unsafe work; and
- managing risks to health and safety.

However, as the Explanatory Statement makes clear, "the amendment does not affect the scope and application of the primary duty under the Act — which is to do what is reasonably practicable to ensure the health and safety of workers, including those located outside Australia."

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**What it means for you**

Previously it wasn't always practical to apply certain Australian standards and regulations outside its borders. Employers and employees of a PCBU with workers overseas should take note of their compliance obligations but remember that the overarching duty to ensure the health and safety of workers, even workers overseas, still applies despite the amendments.

*Work Health and Safety Regulations 2011 (Cth)*

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**REDUCED REGULATION REQUIREMENTS FOR NSW COMPANY TITLE CORPORATIONS**

In October, SafeWork NSW issued an exemption from certain requirements of the Work Health and Safety Regulations 2011 (NSW) for "company title corporations".

A company title corporation is a company registered under the Corporations Act 2001 (Cth) that is the owner of land where shareholders in the company have exclusive use and occupation of residential premises on that land. It does not include an "owners corporation" within the meaning of the Strata Schemes Management Act 1996 (NSW) or an "association" within the meaning of the Community Land Management Act 1989 (NSW).

The legislation adopts reforms recommended by the Russell and Pratt Housing Acquisition Reviews and seeks to make the system fair and transparent, so as to provide landowners with more time, support and clear information. Key legislative and administrative changes will affect time-frames, how acquisitions are managed, compensation and what might happen after the acquisition.

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**What it means for you**

Businesses that are company title corporations can be relieved that they are subject to a little less red tape. However, do not get complacent. Your duties as an employer and as a Person Conducting a Business or Undertaking under New South Wales work health and safety laws still apply and must be properly managed.

*Work Health and Safety Regulations 2011 (NSW)*
DREAMWORLD TRAGEDY PROMPTS SAFETY BLITZ

The tragic incident on the Rapid Rivers Ride at Dreamworld has led to a blitz of safety audits across Queensland. Following the incident, safety audits have been carried out at Movieworld, Wet'n'Wild, Seaworld, Aussie World and Australia Zoo.

Workplace Health and Safety Queensland issued seven improvement notices and three probation notices to Dreamworld relating to safety of staff and maintenance workers.

The Palaszczuk Government has also announced it will review Queensland's workplace health and safety laws, and consider introducing a new offence of gross negligence causing death and increased penalties for work-related deaths and injuries.

What it means for you

The Dreamworld tragedy has shone the spotlight on workplace health and safety standards and serves as a stark reminder of the damage that can flow from safety incidents. This includes not only the potential loss of life or serious injury but also damage to business, reputation and market share. It also shows that the most severe incidents can also impact on a business sector as a whole, with the Dreamworld fatalities potentially damaging tourism in South East Queensland.

The incident highlights the importance of continually reviewing your operations, and assessing foreseeable hazards to ensure you take appropriate steps to address risk, for example by:

- implementing thorough safety management policies and procedures;
- periodically maintaining and servicing important plant and equipment; and
- remembering that your health and safety duties extend outside of the workforce and apply to members of the public and others.

Businesses, particularly those with a high degree of public interaction, should also consider how they would respond to high-profile incidents, including in relation to crisis management and communication strategies. In the event of a severe incident involving your business, how your organisation responds immediately after it occurs, including responding to the families of persons affected by the incident, can have lasting impacts on how quickly the business can recover and limit the impact to its brand and reputation.
On 14 September 2016, the NSW Parliament passed the Scrap Metal Industry Bill 2016 to regulate criminal activity within the scrap metal industry in three major ways:

- scrap metal dealers can no longer pay cash;
- new record-keeping measures and registration requirements will ensure that the sale of stolen scrap metal can be traced; and
- police officers now have powers of entry, inspection and seizure.

The Scrap Metal Industry Act 2016 (NSW) is designed to address the rapid and anonymous disposal of stolen property such as cars, hot water systems, building materials and parts of critical infrastructure.

Scrap metal dealers should contact their local police station to organise registration.

Scrap Metal Industry Act 2016 (NSW)

On 22 November 2016, the NSW Land and Environment Court imposed penalties totalling $360,000 on a company for routinely pumping contaminated wastewater into a pond that was partly on neighbouring land over a period of almost a year, in breach of section 120(1) of the Protection of the Environment Operations Act 1997 (NSW). Chemicals in the wastewater included hydrochloric acid, sulphuric acid, caustic soda and sodium hypochlorite.

The company carried out basic checks of pH levels and volume before discharging the liquid, but did not determine the pH of sludge at the base of the holding tank. It was discovered that an automatic pH dosing system and an air system that was designed to mix the contents of the tank did not work.

It was found that the discharges were likely to cause significant and clearly foreseeable environmental harm.

Environment Protection Authority v Custom Chemicals Pty Ltd [2016] NSWLEC 146
COMMONWEALTH

DRAFT NATIONAL OFFSET STANDARDS RELEASED FOR CARBON NEUTRAL BUILDINGS AND PRECINCTS


The draft Standards will assist building owners to measure, reduce and offset any operational emissions and give tenants guidance as to the carbon neutrality of their building or precinct. The draft Standards allow for various carbon neutral certification options, including as an extension of a National Australian Built Environment Rating System (NABERS) Energy or Green Star Performance rating.

The draft Standards will be available to the public until 10 February 2017. Building owners and developers should review the draft Standards and consider making a submission and / or formulating a plan to seek carbon neutral certification for a building or precinct on commencement of the Standards.

AUSTRALIA TO PHASE OUT COAL-FIRED POWER STATIONS?

On 13 October 2016 it was announced that a Senate inquiry would be established to evaluate the case for planned mass closure of coal-fired power stations.

Matters referred by the Senate to the Environment and Communications References Committee for inquiry included the experience of closures of electricity generators and other large industrial assets on workers and communities (both in Australia and overseas) and policy mechanisms to encourage retirement.

Since the inquiry was commissioned:
► the Greens MP Adam Bandt introduced a Renew Australia Bill 2016 (Cth), which included a schedule proposing a default closure timetable for each coal-fired plant (21 November 2016); and
► an interim report was released in which Labor and Greens Senators recommended that the Government, through COAG, develop a mechanism for the orderly retirement of coal-fired power stations.

The final report is due in February 2017.

NEW SOUTH WALES

NSW CLEARS THE AIR WITH FORWARD-LOOKING REGULATORY REFORMS

The NSW Government is proposing wide-ranging strategies to improve air quality that will affect manufacturing, energy generation, mining, construction, waste management and transport.

At the end of October 2016, the NSW Government released "Clean Air for NSW", a draft consultation paper that focuses on improving NSW's air quality over the next decade. The paper is both forward-looking and broad, outlining a series of actions affecting industries such as transport, shipping, energy and is a precursor to a Clean Air Summit to be held in Sydney in 2017.

NSW REVIEW OF THE WORK HEALTH SAFETY LAWS

In December 2016, the public consultation period closed on the NSW Government's review of its work health and safety laws. A discussion paper was also published to assist with submissions.

The review will now examine the objectives of the Work Health and Safety Act 2011 and the NSW-specific provisions of both the Act and the
Work Health and Safety Regulation 2011. The review will also examine the NSW-specific codes of practice, which were introduced in NSW before the adoption of nationally harmonised work health and safety laws in 2012.

December and January will involve further stakeholder consultation and drafting of the review report, which will be tabled in Parliament at a date to be determined by the Minister.

QUEENSLAND
DRAFT GUIDELINES FOR QUEENSLAND’S CHAIN OF RESPONSIBILITY LAWS

The Queensland Government has released a draft statutory guideline for the new environmental chain of responsibility laws, with the aim of providing increased certainty about the definition of a "relevant connection" and the decision-making process for issuing a related person environmental protection order (EPO). This guidelines must be considered before a decision is made to issue an EPO to a related person.

In addition to identifying 11 key principles of enforcement, the guideline also provides information on what "position of influence" and "significant financial benefit" means, and highlights the general considerations for issuing a related person EPO.

The submission period has now closed, and a final guideline is expected in early 2017.

QUEENSLAND REVIEWS HOW STATE INTERESTS ARE EXPRESSED

The Queensland Government is currently reviewing its planning policy to better reflect state interests in land use, planning and development. As part of delivering a new planning system through the Planning Act 2016 (Qld), which will commence in 2017, the Queensland Government is currently conducting a planning policy review of the State Planning Policy, the State Development Assessment Provisions and the Planning Regulation 2017 (Qld).

The objective of the review is to ensure that the new planning system is as efficient as possible and reflects the priorities of: affordable and social housing, climate change (including planning for renewable energy), coastal planning, cultural heritage, urban design, transport and infrastructure, and economic growth.

Fact sheets and copies of the draft instruments can be downloaded from the Queensland Government Planning Reform website. The changes will be open for submission until 10 February 2016 and it is expected that the instruments will come into effect in 2017 with the commencement of the Planning Act 2016 (Qld).

SOUTH AUSTRALIA
SOUTH AUSTRALIA REVIEW OF WORK HEALTH SAFETY LAWS

In November 2016, SafeWork SA sought stakeholder feedback as part of the three-year review into South Australia’s nationally harmonised work health and safety laws.

In most respects, South Australia’s laws closely align with national model laws. As a result, SafeWork SA Executive Director, Ms Marie Boland, stated that the three-year review would primarily focus on the operation of the South Australian provisions that differ from the model laws and examine the impact of these provisions to help ensure the continued effectiveness of South Australia’s work health and safety laws.

A consultation paper was developed to assist in review submissions and provide an overview of the current laws. The discussion paper states that stakeholder feedback would be valuable in ensuring that the WHS laws continue to provide adequate protections for workers while meeting the needs of workplaces and those doing business in South Australia.

It also states that all feedback received will also be used to inform the national review of the model WHS laws (likely to occur in 2018).

Duty-holders in South Australia should closely monitor developments to the WHS regime to ensure they are aware of any developments that affect them and their business.
LEGISLATION

CTH
Work Health and Safety Regulations 2011

NSW
NSW Land Acquisition (Just Terms Compensation) Amendment Act 2016 No 59
Scrap Metal Industry Act 2016

QLD
Heavy Vehicle National Law and Other Legislation Amendment Act 2016
Waste Reduction and Recycling Act 2011
Planning Act 2016
Environmental Protection (Underground Water Management) and Other Legislation Amendment Act 2016
Water Legislation Amendment Act 2016

TAS
Workers Rehabilitation and Compensation Amendment Bill 2016
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