

## COMMUNIQUE

### NEW HEALTH AND SAFETY LAWS REFERRED TO WRMC

9 DECEMBER 2009

The Safe Work Australia Members met today for the second time since becoming an independent statutory body on 1 November 2009. The meeting moved Australia a step closer to harmonised health and safety laws with the majority of Members agreeing the model legislation progress to the Workplace Relations Ministers' Council (WRMC) for decision.

On 25 September 2009, WRMC agreed to release an exposure draft of the model legislation for a six week public comment period.

A total of 480 submissions were received and have been analysed and informed the amendment of the exposure draft.

Following feedback received, consequential amendments have been made throughout the draft model provisions to change the term 'occupational health and safety' to 'work health and safety'. The draft model Act will now be known as the model work health and safety provisions.

Key amendments to the model provisions following the public comment period include:

- adoption of the definition of 'officer' in accordance with the *Corporations Act 2001* and the definition of 'due diligence' to clarify officers' duties
- a duty for the persons conducting a business or undertaking (PCBU) to consult not only with workers directly affected by the health and safety matter, but with other duty holders who have a duty in relation to the same matter
- the requirement for a PCBU to provide training to a health and safety representative (HSR) within three months of a request for training
- removal of compensation orders as a sentencing option
- removal of requirements for union right of entry which are already prescribed under the *Fair Work Act 2009*
- restructuring of the most serious category of offence to a reckless endangerment offence when a duty holders' conduct has exposed a person to a risk of death or serious injury of another person
- monetary penalties, not penalty units, used to ensure consistency between jurisdictions
- a 14 day timeframe for commencing negotiations between a PCBU and workgroup
- allowing a PCBU to refuse entry on 'reasonable grounds' to a person chosen by the HSR to provide assistance, if no relevant assistance could be provided by the nominated person
- being subject to a criminal penalty regime, except in relation to right of entry offences in Part 7. Right of entry offences in Part 7 would be subject to a civil penalty regime consistent with that in the *Fair Work Act 2009*. A framework will need to be established for civil penalties, and
- penalties for the non-duty of care offences for corporations, ranging from a maximum of \$500 000 for serious breaches to a maximum of \$10 000 for minor administrative breaches.

The Decision Regulation Impact Statement, approved by the Office of Best Practice Regulation, identified a small net benefit across Australia from the implementation of the model provisions.

The model provisions will be presented to WRMC for consideration on 11 December 2009.



The Members agreed to seek WRMC approval to further refine the model provisions with technical and drafting changes and to address unintended consequences to give proper legal effect and workability to the policy endorsed by WRMC.

All refinements to the model provisions are to be made and agreed by Safe Work Australia Members by 30 March 2010.

Other key issues discussed and matters agreed are outlined below.

### **Comparative Performance Monitoring Report**

The Members agreed to recommend that WRMC endorse the Comparative Performance Monitoring (CPM) Report, Eleventh Edition.

The report looks at Australia's occupational health and safety (OHS) and workers' compensation outcomes.

The CPM is complemented by the Compendium of Workers' Compensation Statistics published by Safe Work Australia, which provides more detailed analysis of national workers' compensation data.

### **Safe Work Australia Awards**

The Members agreed to a minor amendment to the national Safe Work Australia Awards *Category 4: Best Individual Contribution to Workplace Health and Safety*, to better define the intention of the Award. There will be two Awards presented under this category:

- an employee, such as a health and safety representative, and
- an outstanding contribution by an OHS manager, or a person with responsibility for OHS as part of their duties.

Revised terms and conditions of entry for the 5<sup>th</sup> Annual National Safe Work Australia Awards were endorsed by Members. Finalists for the national Awards are winners of OHS awards in their jurisdiction and must meet these terms and conditions to be nominated for the national Awards.

The Safe Work Australia Awards are the premier national OHS awards and promote continuous improvement in OHS by recognising excellence at the government, organisational and individual levels.

The 5<sup>th</sup> Annual National Safe Work Australia Awards will be presented in a ceremony to be held on 28 April 2010 in Canberra.

### **Strategic Issues Group on Workers' Compensation**

The Members agreed to establish a Strategic Issues Group on Workers' Compensation (SIG-Workers' Compensation).

Part of Safe Work Australia's functions is to develop proposals relating to harmonising workers' compensation arrangements across Australia.

The group is required to guide and advise on the overall strategic planning and policy development for harmonisation of workers' compensation arrangements.



The role of the SIG–Workers' Compensation includes:

- providing advice on the identification and assessment of strategic issues that will improve national workers' compensation arrangements across jurisdictions
- providing advice on the development and resolution of issues relating to national workers' compensation policy for employers with operations in more than one jurisdiction
- providing advice on the development and implementation of the National Workers' Compensation Action Plan, and
- developing, harmonising and continuously enhancing national comparative information on workers' compensation arrangements.

In line with the 2009-2010 Operational Plan, Safe Work Australia is organising a National Workers' Compensation Forum to be held on 30-31 March 2010. Workers' compensation stakeholders and experts will be invited to participate in shaping the action plan for workers' compensation arrangements in Australia. This action plan will then be formally considered by Members and WRMC in 2010.

### **Model Regulations**

Members noted that the first complete draft of the model work health and safety regulations will be available for SIG-OHS comment in July 2010.

In October 2010, Safe Work Australia and WRMC will consider the exposure draft of the model regulations, an Issues Paper and the high priority Codes of Practice.

Subject to the approval of Members and WRMC, the public and stakeholders will have an opportunity to comment on these documents during a four month public comment period starting in late 2010.

### **Next Meeting**

Members agreed to hold a strategic planning day on 18 February 2010, followed by a Members' meeting on 19 February 2010.