

Harmonisation of OHS laws Current situation for Victoria

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Who has done what by Jan 2012

- Model Act – passed in Qld, NSW, ACT, Commonwealth
- SA, Tas and NT – in or expected in the Parliaments
- WA & Victoria: called for 12 months delay in implementation

Vic response – Sept 2011

- “The Victorian Government supports the principle of OHS harmonisation, however we need to be able to assess the benefits and costs to Victoria, to ensure that the proposed package is in Victoria’s interests”

So...

- Supplementary RIS – commissioned in Sep 2011, (PricewaterhouseCoopers)
- No consultation with unions/workers
- Summary (only) released April 12

Results?

- A cost burden to Vic business of \$3.44 billion over five years
- 78% of transition costs and 74% of ongoing costs hitting small business.
- 69% of costs attributable to six of the 20 changes modelled

Issues?

- Based on figures provided by business – no checking
- Acknowledged business may have overstated costs
- Relied on WorkSafe input
- Small sample (110) of businesses sampled
- Have not provided full report for scrutiny

- “The information, statements, statistics and commentary contained in this report have been prepared by PwC from information sourced through business and industry consultations, publicly available material and from material provided by WorkSafe Victoria. PwC has not sought any independent confirmation of the reliability accuracy or completeness of this information. It should not be construed that PwC has carried out any form of audit of the information that has been relied on.” (Disclaimer)

Greatest ‘costs’

1. Extended definition of confined spaces
2. Changes associated with officer liability
3. Removal of the 2 m threshold for falls*
4. Broader definition of plant in the regs*
5. Absolute duty for development & testing of emergency plans*
6. Extended definition of worker

COAG – April 2012

- *“On occupational health and safety reform, of the nine jurisdictions, six have legislated the new workplace safety arrangements and one other is in the process of legislating the reform. COAG agreed that the current occupational health and safety laws will be reviewed by the end of 2014.”*

Vic Budget Speech, May 2012

"The Government will not sign up to the current proposal for harmonised legislation for occupational health and safety. It offers little benefit for Victoria to offset the \$3.4 billion of estimated costs, the majority of which falls on small business. Victoria will continue to work towards best practice legislation." (p14)

So.. No longer 'when', but 'if' (looks unlikely!)

- We continue under the Victorian legislation:
 - 2004 OHS Act
 - 2007 OHS Regulations
 - Those Compliance Codes that were finalised

Outstanding issues

- What about the codes which were not updated? Manual Handling, Plant, Hazardous Substances (inc MSDS and Labelling)
- What status do the National Model Code have? (issues with the chemicals ones – GHS compliance)

Issues

- Lack of uniformity:
 - Asbestos regs (licensing, working on Comcare sites)
 - Businesses working across jurisdictions will continue to face differences

Lack of consistency: fines

- Recent case: confirmation of \$750,000 fine for Orbit Drilling Pty Ltd & \$120,000 for director, first 'reckless endangerment' prosecution under Vic 2004 Act
- corresponding provision in New South Wales (which includes, in addition, reckless exposure to a danger of death) carries a maximum fine of \$3 million

- Under the WHS model: up to 5 years imprisonment for the most serious breaches, the maximum penalty for a corporation \$3 million and for an individual \$300,000
- Even the AiG commented:
“Significant increase in penalties to act as a deterrent and to encourage compliance.”
- Kevin Jones: “The decision by the Victoria government of Ted Baillieu may be saving Victorian businesses from punitive OHS penalties (and trumped-up business costs) but has the government’s decision made Victorian workers any safer?”

- Thank you
- Questions?
- www.ohsrep.org.au
- *SafetyNet Journal – to keep up with all the latest news.*

Confined Spaces

Current Vic definition:

Confined space means a space in any vat, tank, pit, pipe, duct, flue, oven, chimney, silo, reaction vessel, container, receptacle, underground sewer or well, or any shaft, trench or tunnel or other similar enclosed or partially enclosed structure, if the space –

- (a) is, or is intended to be, or is likely to be, entered by any person; and
- (b) has a limited or restricted means for entry or exit that makes it physically difficult for a person to enter or exit the space; and
- (c) is, or is intended to be, at normal atmospheric pressure while any person is in the space; and
- (d) contains, or is intended to contain, or is likely to contain -
 - i. an atmosphere that has a harmful level of any contaminant; or
 - ii. an atmosphere that does not have a safe oxygen level; or
 - iii. any stored substance, except liquids, that could cause engulfment -

but does not include a shaft, trench or tunnel that is a mine or is part of the workings of a mine;

WHS definition:

confined space means an enclosed or partially enclosed space that:

- (a) is not designed or intended primarily to be occupied by a person; and
- (b) is, or is designed or intended to be, at normal atmospheric pressure while any person is in the space; and
- (c) is or is likely to be a risk to health and safety from:
 - (i) an atmosphere that does not have a safe oxygen level; or
 - (ii) contaminants, including airborne gases, vapours and dusts, that may cause injury from fire or explosion; or
 - (iii) harmful concentrations of any airborne contaminants; or
 - (iv) engulfment,

but does not include a mine shaft or the workings of a mine.

Plant

Current Vic definition:

Plant is defined in the Occupational Health and Safety Act 2004 ('the Act') as:

- any machinery equipment appliance implement and tool; and
- any component of any of those things; and
- anything fitted, connected or related to any of those things".

3.5.1 Application of Part (What plant is covered by the regulations?)

The following types of plant:

- plant which processes material by way of a mechanical action that:
 - cuts, drills, punches or grinds the material; or
 - presses, forms, hammers, joins or moulds the material; or
 - combines, mixes, sorts, packages, assembles, knits or weaves the material, and
- plant designed to lift or move people or material - eg: lifts, escalators, cranes, fork-lifts, hoists, vehicle hoists; and elevating work platforms.
- pressure equipment - eg: boilers; and pressure equipment such as sterilisers, autoclaves, LPG road tankers, air receivers, refrigeration and air-conditioning vessels.
- Tractors
- earth-moving machinery - eg: bulldozers, excavators, front-end loaders, backhoes, skid steer type front-end loaders, scrapers, dredges, draglines, and face shovels.
- lasers - eg: those used in the building and construction and agricultural industries for levelling and aligning; and industry for cutting work-pieces.
- scaffolds - eg: prefabricated scaffolds (modular, frame, tower frame), swing stages, tube and coupler scaffolds, bracket scaffolds; and ladder bracket scaffolds
- temporary access equipment - eg: abseiling equipment, workboxes suspended by cranes; industrial safety nets; and individual fall arrest systems
- explosive power tools
- turbines - eg: hydroelectric, steam and gas turbines
- amusement structures - eg: coin in the slot amusement rides; ferris wheels; roller coasters; toboggan rides; merry-go-rounds; and train rides.

Is all plant covered by the regulations?

No, the regulations deal with certain types of plant, and do not cover the following:

- plant which is manually powered;
- plant which is primarily supported by hand;
- ships, boats, or aircraft; or
- vehicles designed to be used primarily as a means of transport on public roads or rail.

WHS definition:

plant includes:

- (a) any machinery, equipment, appliance, container, implement and tool;
and
- (b) any component of any of those things; and
- (c) anything fitted or connected to any of those things.

plant, in Parts 5.2 and 5.3, includes a structure

Employee vs Worker

WHS Act

Meaning of *worker*

- (1) A person is a *worker* if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:
 - (a) an employee; or
 - (b) a contractor or subcontractor; or
 - (c) an employee of a contractor or subcontractor; or
 - (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
 - (e) an outworker; or
 - (f) an apprentice or trainee; or
 - (g) a student gaining work experience; or

 - (h) a volunteer; or
 - (i) a person of a prescribed class.
- (2) For the purposes of this Act, a police officer is:
 - (a) a worker; and
 - (b) at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise.
- (3) The person conducting the business or undertaking is also a *worker* if the person is an individual who carries out work in that business or undertaking.