

FACT SHEET

Work Health and Safety Bill 2011 and Work Health and Safety (Transitional and Consequential Provisions Bill) 2011

- The purpose of these Bills is to give effect in Tasmania to national uniform work health and safety laws and make the necessary transitional arrangements and consequential amendments.
- The *Work Health and Safety Bill 2011* (the WHS Bill) mirrors the provisions of the national Model Work Health and Safety Bill, developed by Safe Work Australia under the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* and approved by the Workplace Relations Ministers' Council.
- The harmonisation of work health and safety laws is part of the Council of Australian Governments' National Reform Agenda aiming to reduce regulatory burdens and create a seamless national economy.
- The Bills are two of a package of Bills developed to give effect to the national model work health and safety laws in Tasmania.
- Two other Bills in the package include provisions for two matters not currently included in the Model Laws – mines work health and safety, and explosives.
- The objects of harmonising work health safety laws through a model framework are to:
 - protect the health and safety of workers;
 - improve safety outcomes in workplaces;
 - reduce compliance costs for business; and
 - improve efficiency for regulator agencies.

- The WHS Bill is one part of the proposed work health and safety legislative framework. Another part will be more detailed Work Health and Safety Regulations mirroring the requirements of the national Model Work Health and Safety Regulations.
- The intended commencement date for the new laws is 1 January 2012. However, in case this needs to be changed to accommodate any delays in the finalisation of the supporting regulations, the Bill provides for commencement on a day to be proclaimed. This will enable the provisions of the Bill and the Regulations to be coordinated to come into effect on the same day.
- The provisions of the WHS Bill are more expansive than those under Tasmania's existing *Workplace Health and Safety Act 1995*, in that they apply to a broader range of work relationships than the traditional employer/employee relationship of the current Act. This is intended to prevent any gaps in coverage that may arise by specifying particular work relationships.
- The primary duty holder is a person who conducts a business or undertaking (alone or with others, and whether or not for profit or gain).
- Rather than focussing on responsibilities to employees, duties under the proposed new arrangements will focus largely on workers, to take into account the different arrangements under which workers may be engaged and present at the workplace.
- Otherwise the requirements of the Bill are similar in principle to those that currently apply under the *Workplace Health and Safety Act*.
- The primary duty holder (a person conducting a business or undertaking) must, so far as is reasonably practicable, ensure

the health and safety of workers and others who may be affected by the carrying out of work.

- This primary duty encompasses the provision and maintenance of a work environment without risks to health or safety, safe plant and structures and safe systems of work. It also includes the safe use, handling, storage and transport of plant, structures and substances, and the provision of information, training, instruction or supervision.
- Persons conducting a business or undertaking have additional duties if they:
 - manage or control workplaces or fixtures, fittings or plant at workplaces; or
 - design, manufacture, import or supply plant, substances or structures for workplaces, or install, construct or commission plant or structures for workplaces.
- Officers of persons conducting a business or undertaking that have duties under the WHS Bill must exercise 'due diligence' to ensure compliance.
- Workers must take reasonable care for their own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons. They must comply as far as reasonably able with reasonable instructions given by a person conducting the business or undertaking to allow the person to comply with the person's health and safety duties, and they must cooperate with any reasonable policy or procedure relating to work health or safety.
- Other persons at the workplace have a duty to take reasonable care for their own health and safety and to take reasonable care that their acts or omissions do not adversely affect the health and safety of others. They must also comply, so far as they reasonably can, with any reasonable

instruction given by the person conducting the business or undertaking to allow the person to comply with their duties.

- Consultation and cooperation at the workplace is an important element of the Bill's provisions; including:
 - provision for consultation on work health and safety matters, participation and representation; and
 - provision for the resolution of work health and safety issues.
- The WHS Bill also provides protection against discrimination for those who exercise or perform or seek to exercise or perform powers, functions or rights under the Bill.
- The Bill establishes an entry permit scheme that allows authorised union officials to:
 - inquire into suspected contraventions of work health and safety laws affecting workers who are members, or eligible to be members of the relevant union and whose interests the union is entitled to represent; and
 - consult and advise such workers about work health and safety matters.
- There are also provisions of the Model Work Health and Safety Bill that allow for local arrangements or references to local laws and local courts. In particular, Schedule 2 of the WHS Bill provides for the appointment of the regulator and the role of the WorkCover Board in work health and safety.
- The *Work Health and Safety (Transitional and Consequential Provisions Bill) 2011* will repeal the Workplace Health and Safety Act and makes a number of transitional and consequential amendments arising from moving from the existing legislative regime.
- Although the provisions of the WHS Bill will generally apply immediately from commencement day, there will be some

activities such as designing, manufacturing, importing and supplying substances, plant or structures that may be part way through on commencement day.

- The transitional provisions provide that designers have up to two years after commencement day during which they may complete a design job, which was started prior to commencement day, in accordance with the existing requirements. For other duty holders, the transitional period is one year.
- This Bill also provides for the continuation of certain appointments, notices and processes such as the election of employees' safety representatives made, issued or commenced before commencement day.
- A number of legislative instruments refer to the current Workplace Health and Safety Act and a significant proportion of this Bill makes the necessary changes to those laws.