

**NATIONAL REVIEW INTO MODEL
OCCUPATIONAL HEALTH AND SAFETY LAWS**

NSW GOVERNMENT SUBMISSION

July 2008

Occupational Health and Safety Laws in NSW

History

Occupational health and safety legislation in NSW has a long history dating back to the nineteenth century. Early safety legislation in NSW included the *Gunpowder and Explosive Consolidated Act 1876*; the *Factories and Shops Act 1896*; the *Shearers' Accommodation Act 1901*; the *Coal Mines Regulation Act 1901*; the *Mines Inspection Act 1901*; the *Scaffolding and Lifts Act 1902*; the *Explosives Act 1905*; the *Construction Safety Act 1912* (formerly the *Scaffolding and Lifts Act 1912*); the *Inflammable Liquids Act 1915*; and the *Factories Shops and Industries Act 1962*.

However, by the 1970s, many workplaces and occupational hazards were still not covered by health and safety legislation, while those that were had a complex network of prescriptive requirements with differing levels of health, safety and welfare across industries.

In 1979, Commissioner TG Williams was appointed to lead a commission of inquiry into occupational health and safety. Commissioner Williams' *Report of the Commission of Inquiry into Occupational Health and Safety* dated 3 June 1981, recommended sweeping legislative changes, based largely on the United Kingdom's 'Robens style' legislative reforms. This resulted in the enactment of the *Occupational Health and Safety Act 1983*, extending coverage to all workplaces and all hazards to secure the health, safety and welfare of persons at work.

From 1996 – 1998, the Legislative Council Standing Committee on Law and Justice conducted an inquiry into workplace safety. The *Standing Committee on Law and Justice Final Report on Workplace Safety* recommended a comprehensive overhaul of the 1983 Act and these recommendations are reflected in the current *Occupational Health and Safety Act 2000* (OHS Act).

Current Legislative Framework

In 2001, the NSW Government commenced the OHS Act and the *Occupational Health and Safety Regulation 2001*. These laws replaced the *Occupational Health and Safety Act 1983*, the *Construction Safety Act 1912*, Part 3 of the *Factories, Shops and Industries Act 1962*, and regulations made under these Acts. Together, the OHS Act and Regulation replaced three Acts and 37 Regulations, representing a significant consolidation and modernisation of occupational health and safety legislation in NSW.

The approach to occupational health and safety management, introduced with the OHS Act and Regulation in 2001, was reflective of broader Australian and international trends away from ad hoc prescriptive standards to a consolidated performance-based approach to occupational health and safety. In line with the new approach, WorkCover adopted a nationally uniform legislative approach of replacing the majority of prescriptive provisions with a consultation and risk management approach, and expressing more clearly the occupational health and safety obligations for each workplace in the State.

NSW also has specific OHS legislation in a number of industry sectors, including dangerous goods, mine safety and rail safety:

Dangerous Goods

The *Occupational Health and Safety Amendment (Dangerous Goods) Act 2003* and *Explosives Act 2003* commenced on 1 September 2005, repealing the previous *Dangerous Goods Act 1975* and creating a new regulatory framework for dangerous goods in NSW. This framework allows the regulation of dangerous goods whether or not at a place of work. The framework applies to all quantities of dangerous goods for workplaces, and to quantities over prescribed levels for non-workplaces.

The regulatory framework adopts the *National Standard for the Storage and Handling of Dangerous Goods*. The National Standard provides the framework within which Commonwealth, State and Territory regulatory authorities can achieve a nationally consistent regulatory regime for the storage and handling of dangerous goods.

A similar regulation in relation to major hazard facilities has recently been gazetted in NSW, to promote national consistency by adopting the National Standard concerning hazard identification and risk management. The *Occupational Health and Safety Amendment (Major Hazard Facilities) Regulation 2008*, will insert a new chapter into NSW's OHS Regulation to comply with the National Standard and require all major hazard facilities to be registered. The regulation is due to commence on 14 July 2008.

Mine Safety

In NSW, the OHS Act is the principal Act dealing with the health, safety and welfare of people at work, including people at work at a mine operation, while the *Mine Health and Safety Act 2004* and the *Coal Mine Health and Safety Act 2002* create additional protections, rights and obligations necessary because of the special risks associated with mining operations. The Acts apply in relation to general mines and coal mines respectively, and to the extent of any inconsistency, the OHS Act prevails.

Rail Safety

Similarly, the provisions of the *Rail Safety Act 2002* do not preclude the operation of the OHS Act, and to the extent of any inconsistency, the OHS Act prevails.

It should be noted that COAG has agreed to the implementation of model national rail safety legislation and regulations in all mainland jurisdictions as part of its National Reform Agenda.

The NSW Government is committed to implementing the model rail safety legislation by 31 December 2008, as agreed by COAG on 26 March 2008. In the process of adopting the model legislation, NSW has made allowable local variations to maintain current NSW rail safety standards and to ensure consistency with other NSW legislation, including the OHS Act.

Review of the Occupational Health and Safety Act 2000

The following information and documentation regarding the review of the OHS Act is provided by NSW to assist the panel. This review documentation covers many of the same issues raised in the National Review into Model Occupational Health and Safety Laws Issues Paper.

Statutory Review of the Occupational Health and Safety Act 2000

Under section 142 of the NSW *Occupational Health and Safety Act 2000*, the Minister is to review the Act after five years, to determine whether the Act remains appropriate and whether its objectives remain valid. In accordance with this requirement, the then Minister for Commerce announced a review of the Act on 16 June 2005.

As part of the review, a discussion paper was released on 28 June 2005 for public comment until 19 August 2005. Late submissions were received until 26 October 2005. A further five issue papers were released on 22 December 2005 for public comment, to obtain additional information on specific issues raised in public submissions:

- Clothing outworkers;
- Recognition between safety inspectorates;
- Offences for fraudulent activities;
- The role of codes of practice in the occupational health and safety framework; and
- Controllers of work premises.

These discussion and issue papers are available on the WorkCover website at:

http://www.workcover.nsw.gov.au/OHS/OHSAct2000Review/discussion_paper.htm

Public submissions to the review are also available at:

http://www.workcover.nsw.gov.au/OHS/OHSAct2000Review/ohs_act_public_submissions_2005.htm

An extensive public engagement process was also conducted, with the establishment of an OHS Act Reference Group, as well as public information sessions, issue based workshops and briefings to Industry Reference Groups.

Following consideration of these submissions and consultations, a report on the review was tabled in Parliament on 2 May 2006. This report is attached to this submission at attachment A.

A draft Occupational Health and Safety Bill 2006 was also released on 2 May 2006, for public comment until 7 July 2006. This draft bill is attached to this submission at attachment B.

Stein Inquiry

Following consideration of comments made on the 2006 Draft Bill, the Government referred the Bill to an independent inquiry for advice and review, to be conducted by the Hon Paul Stein AM, QC, former judge of the NSW Court of Appeal. The Government requested that the Inquiry:

1. Review the proposals arising from the Report on the Review of the *Occupational Health and Safety Act 2000*, tabled in the NSW Parliament on 2 May 2006, and consider whether these, or any changes, are required to the occupational health and safety legislation to better secure the health, safety and welfare of people at work; and

2. Consider the impacts of the above proposals, having regard to best practice solutions that will remove unnecessary regulatory burdens on business, without compromising safety.

Submissions to the Stein Inquiry were called for and closed on 15 December 2006.

Public submissions to the review are available on the WorkCover website at:

http://www.workcover.nsw.gov.au/OHS/OHSAct2000Review/ohs_act_public_submissions_2006.htm

Mr Stein's report was submitted to the Minister on 30 April 2007. The report is attached to this submission at attachment C. It should be noted that the recommendations made by the Mr Stein have not been adopted by the NSW Government and so they should not be considered to be the policy position of the NSW Government.

Comment

The NSW Government has a strong record of protecting workers and promoting workplace safety. NSW has continued to reduce work-related injuries, which are now at their lowest levels since the WorkCover scheme commenced in 1987. NSW is committed to continuing to promote and improve workplace safety and wants to ensure that any changes to workplace safety laws strengthen our high safety standards. For this reason, the NSW Government does not support any compromise or reduction in workplace safety standards.

NSW also recognises that existing inconsistencies in OH&S laws across Australia create unnecessary compliance costs and red tape for businesses, particularly businesses operating across state borders. These costs can be significantly reduced by the introduction of uniform legislation, complemented by consistent compliance and enforcement.

NSW is therefore committed to working with the Commonwealth and other jurisdictions to harmonise workplace safety laws. NSW believes that this harmonisation process can achieve reduced costs for businesses without compromising the safety of workers.

Ultimately the Government wants to ensure any changes to workplace safety laws strengthen our high safety standards, reduce red tape and maintain a culture of workplace cooperation.

Attachments:

Attachment A – Report on the Review of the Occupational Health and Safety Act 2000 – May 2006

Attachment B – Draft Occupational Health and Safety Bill 2006

Attachment C – Inquiry into the Review of the Occupational Health and Safety Act 2000 (Stein Inquiry) – April 2007