

LEGISLATION UPDATE

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WORKPLACE DEATHS LEGISLATION

On 15 June 2005 provisions of the *Occupational Health and Safety Amendment (Workplace Deaths) Act 2005* were commenced.

Provisions relating to workplace deaths form a new Part 2A of the *Occupational Health and Safety Act 2000* (the OHS Act). These provisions make it an offence for a person who owes a duty of care under that Act to engage in reckless conduct that causes death at a workplace, and apply to all NSW workplaces including mines.

Those to whom the workplace death provisions may apply include employers, controllers of work premises, directors and managers, employees and persons hindering the aid of injured workers.

An essential element of the new provisions is the need for “reckless” conduct to have taken place in order to constitute an offence under these provisions. This is aimed at a small minority of “rogues” whose indifference to health and safety in the workplace results in death. It is not intended that people whose conduct was not “reckless” would face the risk of prosecution under the new workplace death provisions.

In this regard, “recklessness” has been defined as heedless or careless conduct where the person can foresee some probable or possible harmful consequence but nevertheless decides to continue with those actions with an indifference to, or disregard of, the consequences¹.

The main effect of the changes is to provide for higher penalties for such conduct that occasions death at the workplace. The penalties reflect the gravity of the consequences of the reckless behaviour.

Some other legislation changes made to support these provisions are:

- A defence of a “reasonable excuse” has been included in addition to the general defences already provided under the OHS Act.
- Proceedings for an offence may be instituted only with the written consent of a Minister or by an inspector appointed under the OHS Act (that is; in the case of a mine, an inspector in the Department of Primary Industries).
- An appeal to the Court of Criminal Appeal may be made in certain circumstances against a person’s conviction under the workplace death provisions.

Further information on the new workplace death laws are available on WorkCover’s website and can be found at <http://www.workcover.nsw.gov.au/workplace+death.htm>.

¹ The Hon Kerry Hickey MP, Minister for Mineral Resources, Legislative Assembly *Hansard*, 27 May 2005

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