

Slide 1

MONAHAN + ROWELL
LAWYERS

LEGISLATIVE CHANGES

- **Occupation Health & Safety Act 2004**
- **Federal Workplace Relations Proposals**

M + R

Slide 2

What we are looking at today

- The Act
 - Background
 - Key Changes
- Comparison with Workplace Relations Proposals
- Compliance

M + R

Slide 3

OH & S Act 2004

Key Changes

- Workplace Representation
- Designated Work Groups
- Health and Safety Representatives
- Entry Permits
- Liability of Officers
- Penalties
- Role of Inspectors

M + R

Slide 4

OH & S Act 2004

Entry Permits

- Entry Permits issued to authorised officers of unions
- Power to enter if reasonable suspicion of breach
- Power to inspect and consult employees

M + R

Slide 5

OH & S Act 2004

Employee Representation

- Employees now have the right to be represented
- Greater flexibility
- Existing arrangements can continue
- Inspector's can resolve disputes

M + R

Slide 6

OH & S Act 2004

Designated Work Groups

- Best grouping of employees for OH & S interests
- Flexible grouping to cover multiple workplaces and multiply employers
- Negotiation
- Inspector may be called in to determine disputes

M + R

Slide 7

OH & S Act 2004

Health and Safety Representative

- DWG will elect a HSR and also may elect a deputy
- Training of HSR
- Maximum term of 3 years
- Powers
 - Provisional improvement notices
 - In emergency HSR may act for another DWG

M + R

Slide 8

OH & S Act 2004

Consultation – 1 Jan 2006

Obligation for Employers to Consult Employees On:

- Identifying or assessing risks
- Decisions to control risks
- Decisions about adequacy of facilities
- Monitoring of health of facilities

M + R

Slide 9

OH & S Act 2004

Obligation for Employers to Consult Employees On:

(cont)

- Monitoring of health of employees
- Providing information
- Determining procedures for OH & S
- Proposing changes

M + R

Slide 10

OH & S Act 2004

Penalties

- Increased to:
 - \$184,050 as varied for individuals
 - \$920,850 as varied for company
- Adverse publicity orders
- Orders for improvement project
- Health and safety undertaking

M + R

Slide 11

OH & S Act 2004

Liability of Officer

- An officer of a company that is in breach of the Act may also be guilty of an offence if the officer failed to take reasonable care

M + R

Slide 12

OH & S Act 2004

Liability of Officer

- Failure to take reasonable care
 - What officer knew
 - Extent of officer's ability to make decisions
 - Whether breach is also due to the officer
 - Any other relevant matter

M + R

Slide 13

OH & S Act 2004

Employer's Duty

“Employers must, so far as is reasonably practical, provide and maintain a working environment that is safe and without risk to health” (s21)

M + R

Slide 14

OH & S Act 2004

Employer's Duty

- Provide and maintain plant and systems of work
- Ensure absence of risk in the use, handling and storage or transport of plant and substances
- Maintaining workplace in a safe condition
- Provide adequate facilities
- Provide information, instruction training and supervision

M + R

Slide 15

OH & S Act 2004

Employer's Duty

“so far as is reasonably practical”

Employer required to:

- Firstly eliminate risk
- If not reasonably practical to eliminate to reduce as far as is reasonably practical

M + R

Slide 16

OH & S Act 2004

Employer's Duty

"so far as is reasonably practical"

Issues to be taken into account:

- The likelihood of the hazard on risk eventuating
- The degree of harm that would result if risk eventuated

M + R

Slide 17

OH & S Act 2004

Issues to be taken into account:

(cont)

- What person concerned knows or ought reasonably to know about risk
- The availability and sustainability of ways to eliminate risk
- The cost of eliminating risk

M + R
