

November 2005

PROPOSED CHANGES TO IMPROVE CORPORATE RESPONSIBILITY

In response to the significant number of deaths and serious injuries in the workplace, the Crimes Amendment (Corporate Manslaughter) Bill 2005 ("Bill"), was introduced into Parliament in May this year to amend the Crimes Act 1900 (NSW) ("Act").

The Bill is similar to the Bill that has already been passed in the Australian Capital Territory which became the first state or territory in Australia to enact legislation that makes industrial manslaughter a crime.

The Bill has been given a second reading in Parliament.

The Bill proposes to create an offence of corporate manslaughter with a maximum fine of \$5 million for a corporation. It also proposes to create an offence by a senior officer who participates in a corporation's commission of the offence of manslaughter, with imprisonment for five years or a fine of \$180,000, or both.

Workplace safety is often sacrificed when short cuts are taken by a corporation and employees' safety issues are not properly or adequately considered.

If the Bill is enacted, it will go to some length to protect employees and innocent citizens who become victims because of the negligent conduct of a corporation.

NEGLIGENT CONDUCT

Under the proposals, evidence that the conduct of a Corporation was negligent will include failure by the Corporation to:

- adequately manage, control or supervise the conduct of its officers, employees or agents.
- provide adequate systems for conveying relevant information to relevant persons within the corporation.
- take reasonable action to remedy a dangerous situation which an officer, employee or agent has actual knowledge.
- take reasonable action to remedy a dangerous situation identified in a written notice served on the corporation.

SENIOR OFFICERS

In addition, it is being proposed that each senior officer of the corporation will be guilty of an offence in the event of a death caused by the corporation's negligent conduct, and be liable to imprisonment and/or a penalty of \$150,000 if:

- the senior officer participated in the negligent conduct of the corporation;
- the senior officer knew or ought to have known that the negligent conduct of the corporation involved a high risk of death or serious injury.

For the purposes of the Bill, the definition of senior officer has the same meaning as officer in section 9 of the Corporations Act 2001 and includes a director, secretary, a person who participates in business decisions and can affect the Company's financial standing, as well as receivers, administrators, liquidators and trustees.

WHAT THIS WILL MEAN FOR YOUR COMPANY

If the Bill becomes law there will be no room for a casual approach to Occupational Health & Safety issues.

A heavy burden could be placed on corporations and senior officers which means that persons engaged in the management of corporations including insolvency practitioners of collapsed companies will need to make sure that proper systems, policies and training are in place to ensure that every necessary precaution has been taken by the corporation to prevent death or serious injury.

A death may result in substantial penalties for the corporations and imprisonment for members of the management team.

Further updates will be provided as the Bill progresses through Parliament.

If you require any further information in relation to this topic, please contact David Glinatsis, Partner on 9375 2257 or email david.glinatsis@kreissonlegal.com.au