

**LLB363**

**Employment Relations Law**

**2018**

TABLE OF CONTENTS

<b>TOPIC</b>	<b>PAGE NUMBER</b>
THE FEDERAL SYSTEM	2
IDENTIFYING EMPLOYMENT AND THE CONTRACT	5
EMPLOYMENT CONDITIONS	12
ENTERPRISE AGREEMENTS	16
EMPLOYEE & EMPLOYER DUTIES	19
WHS	24
ANTI-DISCRIMINATION	28
TERMINATING EMPLOYMENT	32
UNIONS	37
INDUSTRIAL ACTION	40

## WORK HEALTH AND SAFETY

WHS legislation plays a preventative role, as opposed to rehabilitate and compensation after harm has been done.

The WHS regulatory framework includes Act, Regulations, Codes of Practice and Guidelines. Safe Work Australia is the federal regulator.

The States have mirror legislation, apart from Vic and WA. Work is currently underway in these States to harmonise the various statutes to create a uniform framework across Australia.

### WHS DUTIES

Persons conducting a business or undertaking (PCBU):

- Have a broad primary duty;
- To ensure a standard of care 'so far as reasonable';
- This duty is owed to workers (i.e. not just direct employees);
- Persons engaged (including indirect contractual relationships);
- And to other persons (i.e. visitors/clients/government regulators).

PCBU is broad, includes any person conducting a business or undertaking – so does not need to be an 'employer'. (Cf with WA legislation that specifies 'employer' = narrower).

General rules on WHS duties:

- A person can have more than one duty
- WHS duties are non-delegable
- If >1 duty holders, a duty cant be transferred to another
- Duty to consult, cooperate, and coordinate activities in relation to a matter

### A. WHS STANARD OF CARE

PCBU's must ensure a 'reasonable' standard of care:

- All 'reasonably practicable' steps must be taken to minimise risk
- All risks must be assessed to determine severity and likelihood. Controls should be identified and reasonableness of implementation (including cost, impact on risk score, difficulty of implementation) to determine reasonableness. All reasonable controls should be implemented to minimise risk of harm.
- Minimising risk includes ensuring a safe system of work (including work environment, processes, equipment, staff competency (inc. training, supervision and fitness for work)).

Breaches of failing to provide a 'reasonable' standard of care can result in criminal charges (Cf with breches in negligence which are civil offences).

## **B. OFFICERS/DUE DILIGENCE DUTY**

Those with the capacity to control or make financial decisions have a duty to undertake their actions with due diligence. This duty usually applies to roles such as directors, CEO's, CFO's etc. This duty is a positive duty.

Those that attract a duty of diligence must ensure they:

- Have an understanding of the nature of their businesses operations and risks;
- Facilitate the availability of resources to mitigate those risks;
- Ensure adequate systems are in place for the identification, rectification and reporting of hazards.

## **C. WORKERS DUTY**

Workers must take reasonable care that their acts or omissions while at work do not adversely affect:

- Their own health and safety; and
- The health and safety of others.

Workers have a duty to comply with any reasonable instruction and cooperate with any reasonable policy or procedure relating to workplace health and safety that they have been notified of.

## **D. OTHER PERSONS DUTY**

A person at a workplace (whether or not the person has another duty) must take reasonable care for his or her own health and safety and take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons and comply, so far as the person is reasonably able, with any reasonable instruction that is given by the person conducting.

This duty applies to people such as Visitors/clients/customers.

## **E. OFFENCES – BREACH OF DUTY**