

### **LEGISLATION UPDATE: CRIMES (WORKPLACE DEATHS AND SERIOUS INJURIES) BILL 2001**

Maddocks

#### **BACKGROUND**

In Spring 2001 the Victorian Government drafted a Bill which proposed to amend the *Crimes Act 1958* (Vic) so as to introduce the new offences of corporate manslaughter and negligently causing serious injury by a body corporate.

The *Crimes (Workplace Death and Serious Injury) Bill 2001* (the Bill), was subsequently introduced into the Victorian Parliament on 21 November 2001 and the second reading took place on 22 November 2001.

#### **CHANGES TO PROPOSED BILL**

The Bill as introduced to Parliament contains a number of departures from the proposed *Crimes (Industrial Manslaughter) Bill* (the Proposed Bill) that had been issued for public comment.

The proposed offences now relate only to the death of an employee or worker and they are confined to a situation where the employee is killed or injured in the course of their employment or where the worker is killed or injured while providing services to the company. The Proposed Bill had contemplated that the offences would occur in relation to deaths and serious injury of any person.

The Bill also imposes personal liability on management in the event that a body corporate has committed an offence. A senior officer of a company will be guilty of an indictable offence if it is proved that the company has committed an offence and the senior officer was organisationally responsible for the conduct, contributed materially to the commission of the offence and therefore knew that there was a substantial risk that the conduct involved a high risk of death or really serious injury. The Bill now requires actual knowledge on the part of the senior officer rather than the objective test of 'should have

known' as was contained in the Proposed Bill.

The second reading speech has also clarified the definition of the term 'agent' under the Bill. The Bill attributes the conduct of an employee, agent or senior officer of a company, acting within the actual scope or authority of their employment, to the company. The rather lengthy definition of 'agent' includes people engaged by a body corporate to provide services to the body corporate in relation to matters over which the body corporate has control (or would have had control but for an agreement between the body corporate and the agent to the contrary), or a person (including an independent contractor) engaged by another agent over which the other agent has control (or would have had control but for an agreement to the contrary).

#### **STATUS**

The Bill was passed without amendment in the Legislative Assembly on 15 May 2002 await further developments to the Bill in Legislative Council.

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