

## **Review of the New Victorian Occupational Health & Safety Act 2004 and what it means to Architects**

On 16 December 2004, the Victorian Parliament passed the Occupational Health and Safety Act 2004 following a major review by Chris Maxwell QC on behalf of the Government.

From 1 July 2005, most sections of the new Act will replace the Occupational Health and Safety 1985 Act. It should be noted that most regulations made under the 1985 Act will, after the commencement of the new Act, continue for two years or until revoked.

It is expected that the new Act will dramatically reform the way occupational health and safety is currently practiced in Victoria. With significantly increased fines and jail terms for failing to provide a safe workplace as a result of employers who breach their OH&S obligations to their employees, the result is that this Act now has some bite.

Although much has been touted about the reforms that the (2004) Act will bring by delivering long term benefits and transforming Worksafe into a more constructive, transparent, accountable and effective regulator, the more likely effect on designers is to impose new and significantly greater penalties on those who breach the new general duties S28 of the Occupational Health and Safety Act (2004) now places new duties on designers of workplaces. The Occupational Health and Safety Act (1985) placed duties on the designers of plant and equipment, but none on the design of workplaces - an omission that has been picked this time around.

The provision in the new Act sets out duties of designers, such as Architects, Engineers etc, of buildings or structures to be used as workplaces. A person who knows, or 'ought to have reasonably known' that the building, or structure, or part is to be used as a workplace is designed to be safe and without risks of injury or to health.

These new general duties of designers are similarly reflected in provisions in Queensland, Western Australia and South Australian legislation. Controlling risks at their source is the most effective way to prevent work-related injury, disease and death. Poor design of buildings and structures has contributed to both deaths and injuries in the past - for example, many buildings are designed and erected without consideration for safe cleaning of windows, requiring window cleaners to use highly risky work methods.

There are many more examples of poor building design. The duty is intended to ensure that hazards and risks in the design of a workplace are eliminated or reduced at the design stage. With maximum individual penalties now \$184,050 (1800 penalty units) and for corporations \$920,250 (9000 penalty points) and jail terms increased from 2 years in the previous Act to 5 years now, the liability for breach of these new duties by designers is now very real.

The new penalties for breach have been broadly brought into line with other jurisdictions. This has enabled them to be more closely tailored to the offence. There is now a limitation period of 2 years on the charging of indictable offences, which may be overridden by the Department of Public Prosecutions. Mandatory minimum penalties have been removed and a range of orders are now available to the courts such as, 'Adverse Publicity Orders', orders to undertake 'Improvement Projects' and 'Bonds' of up to 2 years subject to the offender doing specific things as the court may direct.

The onus has now been created on designers of buildings or structures to design a safe workplace not only for employees as in the past but there is an increased emphasis on now ensuring that third parties, i.e. the public, are now also protected from work related activities by designers.

The changes which are due to come into effect by 1 July 2005 will have significant ramifications to designers of workplaces. The designers need to assess and take into account the end use of their designs and engage in closer consultation with builders, owners and professionals in order to minimize their exposure to unsafe work practices.