

New model Work Health and Safety Act - Australia

March 2012

Tu Mushenko, Senior Fatigue Risk Consultant, InterDynamics Pty Ltd

In Australia, one key challenge for 2012, is ensuring compliance with the new model Work Health & Safety Act (the WHS Act) as it is ratified around the country. The new Act has lifted the mode of addressing work health and safety, including fatigue management, to a more proactive and practical approach underpinned by effective risk management.

On our website you will find our suggested [Risk-Based Approach](#) to managing fatigue. A suggested FRMS Implementation Timeline, and organisational FRMS implementation Team Structure supports this approach. These can be invaluable tools for any organisation undertaking an initiative to proactively manage fatigue. The aim of the Risk-Based Approach is to provide our clients with the best possible tools and resources to manage fatigue risks. Being founded on consultation, staff engagement, shared responsibility, and effective risk management, Our Approach targets improved safety and performance, whilst being aligned with and facilitating compliance to the WHS Act.

Provided below is our understanding of some of the key changes provided by the WHS Act that may be of interest, giving consideration to fatigue management specifically:

- Positive duty of care (due diligence) for duty holders (officers) to continually understand the hazards and risks presented by fatigue within their business operations, and ensure that these are appropriately controlled, if not eliminated.
- Officers can have overlapping duties under the WHS Act, hence all officers can be responsible for eliminating or minimising the risks associated with fatigue, as reasonably practicable.
- Penalties have increased significantly, up to \$3,000,000 for a body corporate, and \$600,000 / 5 years imprisonment for duty breaches by officers, where a person is recklessly exposed to a risk of death / serious injury / illness. Duty breaches are focused on exposure, thus requiring duty holders to understand and protect against the fatigue-related exposures provided by the conduct of work, and not only as a result of an incident / accident / injury.
- When taking reasonable steps to ensure health and safety, and protection from fatigue-related risks, cost is the last consideration in deciding risk improvement actions, after a full assessment of hazards and risks have been made.
- Consultation by all duty holders has been made a specific obligation, with breaches of the consultation provisions carrying significant penalties. This requires that workers and their health and safety representatives are consulted throughout an FRMS implementation and as things change, including for example: each step of the risk management approach, after an incident / near miss, when changes are proposed to working hours, work schedules and working procedures.

Overall the WHS Act promotes a culture of safety within organisations, where all contribute and are proactive with regards to managing their own and others health and safety. In the context of fatigue, this requires that all are aware of the issues around fatigue, its impacts with regards to hazards and risks for them and others they work with, and be active in managing it as reasonably practicable. Directors and other leaders within an organisation are in a position of influence, and through proactive management decisions that positively support and promote a company culture of concern for safety and fatigue management, can ensure effective compliance to the WHS Act for their organisation.

Model Work Health and Safety Act

Jurisdictional progress on the model Work Health and Safety laws

Draft model Work Health and Safety Codes of Practice for Managing Fatigue