

eALERT

Property and Construction - August 2008

Part 5.1 of the Occupational Health and Safety Regulations 2007 ("the Regulations") came into force on 1 July 2008.

The Regulations create a new regime of health and safety duties for property owners, employers and contractors in workplaces and on construction sites where construction work is being performed.

New Regulations for Construction Work

The most important aspect of the Regulations is the introduction of a new legal personality called the *principal contractor*. The Regulations deem the owner to be the *principal contractor* of the workplace where a construction project is to be carried out unless the owner appoints:

- a *principal contractor* for the construction work to be performed on behalf of the owner; and
- authorises the *principal contractor* to manage or control the workplace to the extent necessary to discharge the duties imposed on a principal contractor under the Regulations.

The Regulations define construction work very widely to include the construction, renovation, demolition, refurbishment and fitting out of any building or structure. Construction work also includes the installation, testing and maintenance of gas, water, sewerage, electricity or telecommunications services in or of any building or structure.

The new duties require the *principal contractor* to:

- ensure the placement of signage outside the workplace showing the name and contact details of the *principal contractor*;
- prepare a health and safety co-ordination plan ("the plan") in accordance with the Regulations before work commences;
- ensure that the plan includes arrangements for managing occupational health and safety incidents;

- include in the plan any site safety rules and arrangements for making personnel aware of the rules;
- maintain, monitor and keep the plan up to date;
- make the plan available for inspection by those performing construction work at the workplace;
- ensure that any person commencing construction work is made aware of the plan.

It should be noted that the builder or the contractor engaged for the works will not be the *principal contractor* unless expressly appointed as such by the owner pursuant to the Regulations. Penalties for failure to comply with the Regulations range from up to \$11,019 for an individual and \$55,060 for a corporation.

Impact

The new Regulations affect all participants in the property and construction industries. With the primary aim of the Regulations to make workplaces safer, building owners and developers will need to carefully consider their contractual arrangements when undertaking construction work to ensure that the risk for occupational health and safety matters is properly allocated and understood. If an owner wishes the contractor to be the *principal contractor* for the purposes of the new Regulations then such appointment will need to be made expressly in accordance with the Regulations.

This publication provides a general summary only of topical issues and is not intended to be comprehensive. It does not constitute legal advice and should not be relied upon as such. Legal advice specific to your circumstances should be obtained by you before relying on any aspect of this publication.

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