



AUSTRALIAN CHAMBER OF
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HIGH COURT PAVES WAY FOR FAIRER OHS LAWS

Statement by Mr Peter Anderson, Chief Executive

Today's decisions by the High Court in the case of Kirk v IRC of NSW and WorkCover are welcomed by industry and hopefully pave the way for fairer and more workable health and safety laws in New South Wales workplaces and across the country.

In this landmark decision, the Court has invalidated key parts of the NSW OHS system which have for a number of years made employers guilty of OHS breaches unless they prove their innocence, and then set legal tests that make the proof of innocence almost impossible.

The High Court has sensibly ruled that any legislated OHS offence must not only identify the risk the employer must address, but also what measure the employer could have taken to address that risk, so that the employer can then seek to argue whether it was reasonably practicable to take such measure.

“Oppressive OHS laws like this have sapped the confidence of employers in the legal system, and removed incentives for OHS compliance. Today's decision should go a long way to restoring that confidence so long as it is respected by the NSW Government, its parliament and the trade union movement.”

“The decision also removes one obstacle to the implementation of a national OHS framework, as NSW unions and the ACTU had argued that this type of NSW law should be reflected in a national scheme. The High Court decision kills that idea stone dead and reflects the wisdom of the Federal Government, Safe Work Australia and the panel recommending national laws in having rejected such a proposal during 2009.”

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