

# Workplace safety: laws impose harsh penalties for breaches



**Rachel Clarke**

Hogan Geikie Poole Lawyers

As a result of the sad loss of life and property at Draytons in the Hunter Valley and damage to infrastructure at Wirra Wirra in McLaren Vale, it is timely to review workplace safety within the Australian wine industry.

Workplace Safety will always be an ongoing challenge for the industry. Often OHS procedures are overlooked due to the pressures associated with costs and overheads in running the business, the need for quality, and in getting the product out into the market.

Unfortunately there is a lack of uniform laws in Australia dealing with OHS. Each State has its own laws, however, the purpose of each State law is to:

- protect, secure and promote the health and safety of workers
- provide for consultation and co-operation between employers and employees in achieving the objects of health and safety
- ensure risks to health and safety are identified, assessed and eliminated or controlled.

The laws are there to protect employees, employers, contractors, customers and the public in general.

In NSW, the Occupational Health and Safety Act 2000 (NSW) ("the Act") and Regulations impose criminal liability and heavy fines on businesses that fail to ensure the safety of workers. Non-compliance can result in significant financial loss as OHS inspectors have the power to issue stop-work notices, and shut down the vineyard and winery during the investigation of a possible offence.

Employers have a duty of care and are required to undertake ongoing assessment of risks and potential hazards and the implementation of procedures for the elimination or control of hazards. An employer must also enable employees to contribute to making decisions affecting their health and safety at work.

All employers in the industry, should be conversant with their OHS obligations and should have a sound OHS plan. All employers must ensure that:

- employees receive adequate instruction in OHS practices, including written information and training on hazards in the vineyard or winery
- identify and document each hazard and measure implemented to eliminate or reduce the risk of injury to employees. Hazards such as handling of chemicals, tractor operations, guarding on machinery and manual handling of equipment
- each employer must have an accident and emergency procedure documented, visible and accessible to employees. Such as, what to do in the event of a fire, explosion or other emergency, a diagram of the workplace including location

of fire extinguishers, first aid equipment, a diagram showing location of exits and a system of reporting injuries

- each employer should ensure safe work procedures for hazardous tasks. Eg. tractor operations, the employer should implement a maintenance program of pre-start checks, rules of operation, speed limits, PTOs and guards generally.

Breaches of OHS laws can be very costly to your business. In NSW these are the more serious penalty provisions under the Act.

Section 12 imposes fines of up to \$27,500 for an individual employer and \$550,000 for a company (for first time offenders).

Section 26 provides that where a corporation employer breaches any provision of the Act, each director of the corporation, and each person concerned in management of the corporation, can be penalised, unless that person proves they were not in a position to influence the conduct of the corporation in relation to the contravention, or that they used due diligence to prevent the contravention.

Section 32A provides that where there is reckless conduct of an individual employer or corporation employer which causes the death of a worker, a corporation can be liable for up to \$1,650,000, or in the case of an individual, five years imprisonment or \$165,000 or both. Again directors or managers of corporations can be prosecuted and be subject to these harsh penalties.

NSW Workcover in consultation with The Wine Industry Association of NSW have developed The Wine Industry Code of Practice for Workplace Health and Safety. The purpose of the Code is to provide practical guidance to employers with respect to OHS. The Code is the first of its kind for the wine industry. Many other States have Codes of practice which are hazard-specific as opposed to industry-specific.

The Code is used in the prosecution of an employer who breaches the Act and can be used to prove an offence or failure to comply with the Code. Anyone not familiar with the Code can obtain a copy through; [www.workcover.nsw.gov.au/publications/industry/rural/wine](http://www.workcover.nsw.gov.au/publications/industry/rural/wine).

Safety in the workplace is critical to successfully running a business. We hope into the future there will be a harmonisation of all OHS laws which will reduce the costs of compliance and eliminate the confusion across the States.

*Rachel Clarke is qualified both in law and viticulture. She is a partner in Sydney firm, Hogan Geikie Poole Lawyers, and the emphasis of her work is commercial transactions, dealings and negotiations. Rachel is developing a specialty practice in providing legal services to the wine industry. For further information contact Rachel on (02) 9261 8777 or [rclarke@hgplawyers.com.au](mailto:rclarke@hgplawyers.com.au)*