

CLEAN START

FAIR DEAL FOR CLEANERS



17 October 2009

OCCUPATIONAL HEALTH AND SAFETY IN COMMERCIAL PROPERTIES

KEY POINTS

- OHS legislation places a duty of care for property owners and managers to take all reasonable steps to ensure their buildings are safe for tenants, the public, customers and cleaning companies.
- Civil and criminal penalties have increased in most jurisdictions for injuries including industrial manslaughter where commercial property owners have acted negligently.
- The structure and nature of work in the contract cleaning industry presents a number of challenges for property owners trying to provide a safe work environment.
- Clean Start companies are committed to working with responsible property owners and the LHMU to change the structures preventing property owners and cleaning companies from meeting OHS laws and regulations and to ensure that cleaners are consulted and able to work in a safe work environment.

OHS laws and regulations are increasingly focused on holistic management systems encouraging property owners and managers to take an active approach in their facilities management and tendering systems to meet their legal obligations.

OHS legislation requires property owners and managers to take “all reasonable steps” to ensure that any cleaning companies retained to provide services at the workplace understand their obligations under the relevant Act¹ and that premises, plants and substances are safe and without risks to health.²

WorkCover NSW urges property owners and managers to treat all cleaning companies and their employees “as if they were the same as your own employees”³, and cite a judgement following the injury of an employee that formal risk and hazard investigations on all operations should “be carried out with all cleaning companies involved, both prior to the grant of the contracts and during its term”.⁴

The Victorian *Occupational Health and Safety Act 2004* introduced increased accountability for commercial property owners, including substantially increased penalties at both corporate (maximum penalty \$920,250) and personal (maximum penalty \$184,050 and/or 5 years jail) levels.

¹ WorkCover NSW, *A Guide for Property owners and Managers: Health and Safety for Cleaning contractors in NSW Guide 1*, WorkCover NSW, Publication No. 1221, Sydney, 2003, p. 4.

² New South Wales Government, *Occupational Health and Safety Act 2000*, s. 10.

³ WorkCover NSW, *A Guide for Property owners and Managers: Health and Safety for Cleaning contractors in NSW Guide 1*, WorkCover NSW, Publication No. 1221, Sydney, 2003, p. 6.

⁴ *ibid*

The ACT Crimes (Industrial Manslaughter) Act 2003, applies the principles of criminal responsibility to new industrial manslaughter offences, making it simpler to prosecute large corporations and “putting all ACT employers on an even footing regarding their potential liability where a worker is killed at work”.⁵

The Act aims to “catch” contracting relationships and “capture the chain of responsibility” in the workplace⁶ so that new offences apply to people who engage workers under contracting and subcontracting arrangements.⁷

“Economic and reward systems... encourage cost cutting and lack of attention to perceived ‘frills’ such as OHS; [and] more complicated and less obvious chains of responsibility and decision making, leading to no clear allocation of OHS responsibilities”.⁸

The Act provides penalties for Senior Officers (who may be executives of a company) of 20 years imprisonment, and maximum fines for corporations of \$5 million.⁹

In response, real estate services firm, Jones Lang LaSalle encouraged property owners to embrace a ‘total business’ approach to managing risk in order to comply with requirements that any person managing or controlling a building ensure all foreseeable risks are identified, eliminated or controlled¹⁰.

OHS laws and regulations are non-delegable. Property owners cannot assume that the appointment of facility managers or cleaning companies exempts them from OHS liability. Engaging cleaning companies does not remove a duty of care it only makes it more complex.¹¹ Furthermore, “passing responsibility for OH&S obligations will certainly be ineffective where the principal is aware that the contractor, manager or tenant is operating in a manner contrary to the OH&S obligations”.¹²

“Cleaning companies and sub-cleaning companies should be contractually bound to ensure legislative compliance in both work practices and materials used. These contractual requirements should be linked with the monitoring and reporting aspects of contractor management.”¹³

It is vital that property owners are aware of their legal responsibilities to cleaning companies as the structure and nature of work in the contract cleaning industry presents a number of challenges for providing a safe work environment as required under the law. For further information on the nature of cleaners’ injuries, industry characteristics, other legal liabilities and why property owners need to take these issues into account when awarding tenders.

The Clean Start campaign has been actively working with responsible property owners, managers and cleaning companies to bring more accountability and transparency to the industry and it has also begun to address the unacceptably high injury rates and poor risk management systems in the industry.

⁵ *Industrial Manslaughter Factsheet*, Department of Justice and Community Safety, Office of Regulatory Services, viewed 30 September 2009 <www.workcover.act.gov.au/docs/manslaughter.htm>

⁶ *Crimes (Industrial Manslaughter) Amendment Bill 2002*, Report No.6, Standing Committee on Legal Affairs (ACT), 2003, s1.18

⁷ *Ibid.*

⁸ *Ibid.*, s1.9

⁹ *Crimes (Industrial Manslaughter) Amendment Act 2003*, 49D and 49E, Section 4

¹⁰ Jones Lang LaSalle, *Occupational Health and Safety: Risk or Opportunity?*, Jones Lang LaSalle, Sydney, November 2005.

¹¹ WorkCover NSW, *A Guide for Property owners and Managers: Health and Safety for Cleaning companies in NSW Guide 1*, WorkCover NSW, Publication No. 1221, Sydney, 2003, p. 1.

¹² K Owen, D Cross & L O'Brien, *Core OH&S Obligations in NSW*, Allens Arthur Robinson, Melbourne, March 2004.

¹³ Jones Lang LaSalle, *Occupational Health and Safety: Risk or Opportunity?*, Jones Lang LaSalle, Sydney, November 2005.