

Dow Jones ▲ +47.23
12810.54 at 13:40

Oil ▲ +0.87
113.73 at 13:40

ASX 200 ▼ -49.8
4823.2 at 16:36

AUD/USD ▼ -0.0
1.0932 at 13:40

Stock Quotes

Search ASX code or Name

Coalition rejects calls to overhaul work safety system

Chris Merritt, Legal affairs editor | [The Australian](#) | March 11, 2011 12:00AM A+ A-

THE NSW Coalition parties have rejected calls by the legal profession for a major reform program to address structural problems in the state's occupational health and safety system.

Leading workplace lawyers say the Coalition, which is expected to win this month's state election, should go beyond its commitment to move to a planned national system of harmonised workplace safety laws.

They say the next NSW government needs to recognise that the entire workplace safety system -- including the state WorkCover Authority and Industrial Court -- needs extensive reform to remove inefficiencies and conflicts of interest.

But the Coalition yesterday rejected calls for broader change because there was widespread "reform exhaustion" in the industrial relations sector.

Industrial relations spokesman Greg Pearce, a former partner at Freehills, said he was aware that concerns about the workplace safety system had emerged in the legal profession.

But the Coalition's main goal was to minimise uncertainty to encourage job creation.

"We don't want to engage in some massive dislocation reform movement that is going to cause business, and unions and the workers, to not know what the rules are and to have to go through another restructuring reform process," Mr Pearce said.

The business community's main concerns about the workplace safety system in NSW were the reverse onus of proof that required managers and companies to prove their innocence, and the sharing of fine revenue with unions, he said.

Both these problems would be addressed "as quickly as we can" when the Coalition adopted the harmonised national system of workplace safety law, which has been rejected by the Labor government.

The rejection of broader reform is a setback for the Australian Lawyers Alliance, the Rule of Law Institute and leading workplace lawyers, who have all called for more extensive changes.

The focus of their concern is the state's WorkCover Authority and the Industrial Court, which were both criticised last year by the High Court over a prosecution that was described as absurd, unjust and oppressive.

"The Industrial Court should run the same processes as a normal court," Rule of Law Institute chief executive Richard Gilbert said.

Barrister Greg Barns, a director of the lawyers' alliance, called for the NSW government to strip the Industrial Court of its summary jurisdiction and introduce a committal process before criminal prosecutions for workplace safety breaches went to trial.

This process, used in Victoria, weeds out unjustified prosecutions and could save NSW companies several hundred thousand dollars in legal costs preparing for full trials on charges that are found to be misconceived.

Speaking on condition of anonymity, lawyers who practice before the Industrial Court outlined an ad-hoc reform agenda that goes well beyond adopting the harmonised national law.

They argued that the next state government needed to:

Abolish what many see as a structural conflict of interest inside WorkCover. They want the Coalition to end the practice of having the authority run prosecutions and then receive

Macquarie finds a silver lining

NICHOLAS Moore did his very best to show his eternal optimism by paying a large dividend.

Advertisement

SPONSORED LINKS

US slows as price rises bite consumers



6:34AM *Luca Di Leo and Jeff Bater*
THE world's biggest economy hit the brakes in the first quarter as higher prices squeezed consumer spending and government purchases dropped.

Telstra punts on AFL tie-up



James Chessell TELSTRA has made a big bet that AFL will drive pay-TV and broadband customer growth.

Tapping the online global market



Peter Switzer ADELAIDE-BORN Matt Barrie is a man in the fast lane of the online world.

Dollar casts pall on confession season



Tracy Lee and Michael Bennet THE Australian dollar's seemingly endless record-breaking run is sharpening the market's focus on the company confession

season.

Insurance sticking point on advice



Geoffrey Newman, Wealth editor A BATTLE over reforms to financial advice services erupted yesterday between industry super funds and the for-profit superannuation sector.

Shareholders rain on Kinghorn parade



Andrew Main RAMS Home Loans founder John Kinghorn's 88c-a-share buyback offer for the RHG rump of his company was crushingly defeated.

a proportion of any financial penalties imposed on employers.

Hand responsibility for workplace safety prosecutions to an independent authority such as the Director of Public Prosecutions.

Bring the Industrial Court closer to the mainstream of the NSW justice system, possibly by making it a division of the Supreme Court. This would overcome the problem of limits on appeal rights from the Industrial Court to the NSW Court of Appeal.

Sydney silk Jeffrey Phillips SC said WorkCover's ability to receive a financial benefit from successful prosecutions gave it the appearance of "bounty hunting".

"Manifest independence" was needed between WorkCover's twin roles as inspector of workplace safety and prosecutor of workplace safety breaches, he said.

The best way of achieving that was to hand responsibility for prosecutions to an independent authority such as the DPP or even a specialist workplace safety prosecutor, he said.

"Otherwise, one can see that the prosecutorial arm of WorkCover is also part of the bounty hunting process, because WorkCover is given a moiety of the fines imposed after a successful prosecution," Mr Phillips said.

Workplace partner Malcolm Davis of law firm Herbert Geer said approaches to the law in NSW would "infect" workplace safety law nationally even if NSW does join the harmonised national scheme of industrial law.

"Because you have the force of numbers in NSW there will be more prosecutions and decisions under the harmonised model in NSW than in any other jurisdiction," he said.

"You will get this flood of decisions that will dominate, and potentially cross-contaminate the jurisprudence developed under the new harmonised model across the country.

"In NSW there are certain appointments in the court from union backgrounds and there is a perception that this has had a negative influence upon the development of occupational health and safety case law in this state.

"Under the so-called harmonised model, these influences have the potential of spreading beyond the boundaries of NSW.

"If you have those people setting the trend, just by force of numbers, you will have this impact across the country.

"It won't be a positive influence if the experience in NSW is any measure."

His firm was providing advice to construction company John Holland, which was preparing an application for special leave to appeal to the High Court over the way the Industrial Court had applied the law, he said.

The company plans to argue that the Industrial Court has not properly applied procedures mandated by the High Court last year in the landmark case of Kirk v Industrial Relations Commission.

Mr Gilbert of the Rule of Law Institute said specialist courts "always run the risk of diverting themselves from what constitutes a fair trial".

"And so, in relation to NSW at least, our view is that the system has not worked and it has not worked fairly," he said.

Mr Barns of the lawyers' alliance said committal proceedings should be introduced before matters went to trial in the Industrial Court.

"It is a very good idea to extend the committal principle to those proceedings so that cases don't simply end up in a full trial mode without there being an opportunity for those who have been charged with an offence of testing the evidence, and in some cases settling cases with the prosecution, or alternatively having cases dismissed," Mr Barns said.

"The problem with the current system is that it is enormously expensive for people to have to prepare for a full-blown trial proceedings when at the end of the day they may be completely vindicated."

Justice Roger Boland, who is also president of the NSW Industrial Commission, was away from the court this week and unable to accept an invitation to discuss the court's work.



Mobile Services

Access stock quotes, Financial Market interactive charts and the latest business news from your mobile or iPhone.



RSS Feeds

News feeds are an easy way to keep up with The Australian online. Get notified when our Business pages are updated.



Business Briefing Newsletters

Get unparalleled business news, analysis and data delivered to your inbox.

ALSO IN THE AUSTRALIAN TODAY

Governments probe Sony network hack

THE US, Britain, Australia and Hong Kong are investigating the hacking and theft of personal data from Sony's PlayStation Network.

- » [Net law to be tested by Skype claims](#)
- » [NBN scout silent on inquiry](#)

[More Australian IT »](#)

Last ditch plea for teaching council's survival

SHADOW universities minister Brett Mason has made a last-minute appeal for the Australian Learning and Teaching Council to given a reprieve

- » [A money making masterpiece](#)
- » [Flew to chair classification review](#)

[More Higher Education »](#)

Swan forecasts further drop in jobs

TREASURER Wayne Swan has unveiled economic forecasts ahead of next week's budget, predicting an additional 500,000 jobs will be created during the next two years.

- » [Coalition talks tough on detainee protests](#)
- » [Abbott makes play with curfew call](#)

[More National Affairs »](#)

Sections

[News](#) | [Lifestyle](#) | [Sport](#) | [Business](#) | [Columnists](#) | [Travel](#) | [Opinion](#) | [Video](#) | [Sitemap](#)

Careers

[Job Opportunities](#)

Newspaper Services

[Get your Newspaper Delivered](#) | [Place a Classified Ad](#)

Company Information

[About Us](#) | [Contact Us](#) | [Advertise with Us](#) | [Sponsorship](#)

[Terms & Conditions](#) | [Privacy Policy](#) | [Accessibility](#) | [Sitemap](#)
Copyright 2011 News Limited. All times AEST (GMT +10).

All times are EST. © MarketWatch, Inc. 2008. All rights reserved. Subject to the [Terms of Use](#). Designed and powered by [Dow Jones Client Solutions](#). MarketWatch, the MarketWatch logo, BigCharts and the BigCharts logo are registered trademarks of MarketWatch, Inc. Dow Jones is the registered trademark of Dow Jones & Company, Inc. Intraday data delayed at least 15 minutes. "Intraday data is provided by [Interactive Data Real Time Services](#) and subject to the [Term of Use](#)." FXQuoteTM provided by GTIS, an Interactive Data Company "Historical and current end-of-day data provided by [Interactive Data Pricing and Reference Data](#)". FTSE (Footsie) is a trade mark of the London Stock Exchange and the Financial Times and is used by FTSE International under license.