



## Contractors' obligations with drug and alcohol policies

John Lunny (Partner)  
Jeremy Cousins (Senior Associate)



### Session overview

- *Purpose* – what is the purpose of an AOD policy?
- *Micro position* – What is the legal form of the policy? How does a contractor enforce its own policy? How should a contractor deal with a breach? What are the risks?
- *Macro position* – Requirements of CMSHA and MQSHA Acts and Regs; interrelationship between contractors' and SSE's obligations; what happens when policies conflict?



## Purpose



## Purpose

5 Key dimensions:

- (1) The science.
- (2) The ethics.
- (3) The law.
- (4) The social dimension.
- (5) The business case.



## Micro position



## Micro position - overview

- What is the legal effect of a contractor's AOD policy?
- What are the consequences of a breach?
- What about unfair dismissal?
- Discrimination.



### Micro position – legal effect and consequence of a breach

- How is the policy incorporated?
- What obligations does the policy impose?
- Can the policy be varied?
- What are the consequences of a breach?



### Micro position - unfair dismissal

- Unlawful termination not changed (other than remedy).
- Unfair dismissal has changed – the following employees cannot bring a claim for **unfair dismissal**:
  - Employees engaged for a specified task or period;
  - Employees under a trainee arrangement;
  - 'Genuine' casual employees;
  - Seasonal employees;
  - Employees dismissed during a probationary period;
  - Employees with less than 6 months' continuous service ('two bites at the cherry');
  - Employees employed by an employer with 100 employees or less;
  - Employees terminated for (or for reasons that include) **genuine operational reasons**;
  - Employees not employed under an award or workplace agreement whose remuneration is above \$98,200.



### Micro position - some unfair dismissal cases

- *Shane Rolls v Macmahon Contractors Pty Ltd* [2006] (U2005/246)
- *Edward Hall v Ulan Coal Mines Ltd* (1997) (No. 20803 of 1997)
- *Worden v Diamond Offshore General Company* (1999) (No 80124 of 1999)
- *Robin v Worley ABB* (2001) (C2001/5564)



### Micro position - discrimination

- *Anti Discrimination Act 1991* (Qld)
- Meaning of 'impairment'.



## Macro position



## Macro position - overview

- *Coal Mining Safety and Health Act 1999 (Qld)* (**CMSHA**) and the *Mining and Quarrying Safety and Health Act 1999 (Qld)* (**MQSHA**) require a Safety and Health Management System (**SHMS**) to be in place.
- Subtle differences between two Acts and two sets of Regs.



### Macro position – the Macmahon dispute

- Commission decision.
- A jurisdictional question.
- Contractor's vs. SSE's obligations.
- The Full Bench's view – some guidance?
- The current status of the dispute.
- The requirement of the Regs.
- The future...



### Questions?



