

**Media Release  
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**High Court ruling offers ray of hope for OHS laws**

The National Electrical and Communications Association (NECA) has welcomed yesterday's decisions by the High Court in the case of Kirk v IRC of NSW and WorkCover.

NECA National chief executive officer, James Tinslay said, "The High 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 a measure.

"Oppressive OHS laws like this have sapped the confidence of employers in the legal system, not only in New South Wales but also in other states.

"Yesterday's decision offers a ray of hope towards a more balanced arrangement where employees and employers share joint responsibility in the workplace and employers are innocent until proven guilty.

"It is a well established principle of Australian criminal law that a defendant has a right to silence and therefore the Court erred in allowing WorkCover to force the defendant to give evidence.

"Also importantly the High Court has ruled that a decision of the Industrial Relations Commission can be appealed and hence the previous restriction on this is now invalid. This reopens an avenue for an employer who has previously been convicted under the Act to appeal against their conviction.

"Unfortunately however the majority decision of the High Court did not pass comment on the notorious absolute duty of care which exists in the New South Wales Act and in some other states. As a concept it is still alive.

"The High Court's decision is welcomed by NECA and comes at a critical time when the country is moving into harmonisation of the occupational health and safety laws."

*NECA is the peak body representing the interests of electrical and communications contractors Australia-wide. With offices in every state, NECA employs specialists in occupational health and safety, management, education and training, industrial relations, human resources and technology to provide its 5,000 members with representation and support and advice on a range of topics. For further information go to [www.neca.asn.au](http://www.neca.asn.au).*

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