



Update

Occupational Health & Safety

08 December 2011

OHS harmony? – No, not quite yet



 PDF FORMAT

Harmonisation stalled

Harmonisation will not commence across Australia in unison on 1 January 2012 as had been agreed by the Workplace Ministers Council. Much to the chagrin of the Commonwealth Government and the agency responsible for OHS harmonisation – Safe Work Australia - some jurisdictions, in particular Victoria and Western Australia, are deferring the implementation of the new laws.

For businesses that operate across multi-jurisdictions, this has the opposite effect of what was the underlying purpose of OHS harmonisation – having the same safety laws operating across Australia.

Who's in and who's out

The current situation regarding the progress of the Work Health & Safety legislation in each of the 9 jurisdictions is as follows:

Jurisdiction	In Harmony?	State of Play
Commonwealth	Yes	Model Act and Regulations passed and will commence 1 January 2012
New South Wales	Yes	Model Act passed and will commence 1 January 2012 Regulations to still be enacted
Victoria	No	No law before the parliament Victorian Government has confirmed that it will defer to 1 January 2013
Tasmania	No	Upper House has voted to delay implementation for 12 months
South Australia	No	Legislation before parliament but debate deferred until February 2012
Northern Territory	Yes	Model Act passed through Parliament Regulations to still be enacted
Australian Capital Territory	Yes	Model Act passed and awaiting commencement
Queensland	Yes	Model Act and Regulations passed and will commence 1 January 2012
Western Australia	No	No law before the parliament WA Government is pressing the Commonwealth for harmonisation to be deferred to 1 January 2013

Transitional arrangements for those who have harmonised

The Commonwealth has attempted to make it easier for States and Territories to deal with the change to harmonisation by giving industry in those jurisdictions in which model laws will commence on 1 January 2012, a year's 'free pass' in which they will not face prosecution for failing to comply. Businesses will also be able to delay implementing the model Work Health and Safety Regulations for 12 months or more ("transitional period") if implementing the new Regulations results in a new or significantly different set of duties.

What does this mean for your business?

If your business operates across a number of jurisdictions which include a "harmonised" jurisdiction, then you will be in the position of having to still comply with the new laws as well as the old ones. By aiming to have your business compliant with the new laws, you are likely to be compliant with the old ones and there is merit in still moving towards the new laws in jurisdictions where the harmonised laws are pending.

If your business operates only within a jurisdiction that has deferred the new laws, you should assume that the new laws will be operating within 12 months and your business would be best served spending the additional "grace" period to understand how the new laws operate and what changes are required.

One interesting aspect of the laws not having been introduced uniformly is that it is likely to mean that the Courts in the "harmonised" jurisdictions are going to be the ones that take the lead in interpreting the new laws. This means, despite the fact that a substantial part of the laws are based on current Victorian legislation, it will be judges in NSW and Queensland who will have the first opportunity to interpret the laws, including some of the more significant ones to do with duties of "officers" and the meaning of a business' obligation to "consult, co-operate and co-ordinate" with other duty holders.

We outlined the issues regarding the key changes in more detail in the publication "[OH&S Harmonisation](#)".

Practical Guide

You may like to use our *Practical Guide to the Workplace Health & Safety Act* in your business. This document can be accessed [here](#). This document outlines the practical aspects of the *Workplace Health & Safety Act*, as they apply in all jurisdictions where the new laws have been commenced. Both WorkCover NSW and Comcare Australia have requested the use of this Guide.

For further information about the new safety laws, please contact our office.

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