

Update on OHS harmonisation

Mid-way through 2012 it's timely to re-visit OHS harmonisation and in this editorial Jo Kitney provides an update on OHS laws in Australia, looks back at the history of OHS harmonisation and implications for businesses working across states who did and didn't implement the new Work Health and Safety Legislation.

Current position on OHS harmonisation

On 1 January 2012 the Commonwealth and ACT, NSW, Queensland and NT adopted the new Work Health and Safety Act legislation in line with the intergovernmental agreement laid down through COAG (Council of Australian Governments) back in 2008. Victoria, WA, SA and Tasmania did not implement the new legislation, advising in 2011 that they would delay adopting the new legislation and continue to use their health and safety legislation.

Whilst there are many positive reasons for harmonising OHS legislation, this undertaking is not without difficulty. To move forward with harmonisation, it's helpful to look back on its history and to consider its current position and implications for businesses.

A brief history of OHS harmonisation

Developing greater consistency in WHS regulations across Australia began in the mid 1980's with the development of National Standards and National Codes of Practice for a number of key subject areas by the National Occupational Health and Safety Commission (NOHSC). NOHSC was a tripartite body with representatives from Commonwealth, state and territory OHS regulators, industry and unions.

With no legal status and no binding agreement on how and when National Standards should be adopted, consistency across the states and territories varied and became the subject of two major national reviews in 1995 and 2004. COAG recognised the importance of harmonised OHS laws and in 2008 set out the principles and processes for cooperation between the Commonwealth, states and territories to implement model OHS legislation on 1 January 2012.

Safe Work Australia was formed as an independent body and considered areas within existing legislation, undertook public consultation and provided information for the Workplace Relations Ministers Council (WRMC). In 2011 Safe Work Australia released the model Work Health and Safety Act, Regulations and priority Codes of Practice along with transitional principles and impact statements.

OHS harmonisation in NSW, Qld, NT and ACT

For NSW, Queensland, NT and the ACT, the model WHS Act, WHS Regulation and priority Codes of Practice were implemented on 1 January 2012. WHS regulators within these states and territories are progressively updating the WHS information on their websites to reflect this new legislation, with their education, policy setting, inspectorate and prosecutory sections referencing this new legislation in their programs and work.

As expected, the new legislation is driving due diligence for officers, with the broadened duties of the person conducting the business

or undertaking (PCBU) laying down the basis for health and safety management. Regulators continue to focus on 'high risk' industries, employers and activities, as well as on key aspects such as consultation and health and safety representation.

Current position for Victoria, WA, SA and Tasmania

Various reasons are given by Victoria, WA, SA and Tasmania for the decision to not implement the new WHS legislation. For Tasmania, it has been confirmed that the new WHS laws will commence on 1 January 2013 and for SA, their WHS Bill 2011 is before Parliament and if passed the new laws and Codes of Practice will also be in effect from 1 January 2013.

For Victoria, the State Government states their support to the principle of national harmonisation and working towards best practice legislation, however are concerned with the financial burden on businesses without resulting in significant safety benefits. No date has been given for implementation of the new laws.

Similar to Victoria, the WA Government states its commitment to harmonisation and will likely adopt most, but not the whole, of the model WHS legislation. Concerns include lack of time for businesses to become compliant, the need for more transitional laws and timing around the release of new mining laws (included in the model WHS legislation). WA indicates their WHS Bill will go before Parliament during 2012, which may result in implementation of new WHS laws in 2013.

Implications for business

In its simplest terms, businesses operating within each state and territory continue to be required to meet the legislative requirements for that state or territory, be they the new or existing WHS legislation. For businesses operating or trading in another state or territory, the duties under WHS laws in the other jurisdiction will apply.

There are some complexities for understanding and meeting obligations, such as where a business provides services to, or works with, a Commonwealth-regulated business or a Commonwealth Government Agency at workplaces in states or territories where the new legislation is yet to be implemented and, similarly, for companies with Head Offices in one jurisdiction, but operating or providing services where different WHS laws apply.

Looking forward to 2013, it is hoped the gap in jurisdictional differences in the landscape for WHS laws will be narrowed, which would be a great outcome from the many years of debate and negotiation.

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