

## National Harmonisation of Australian Safety Legislation - Update

The national harmonisation of safety laws in Australia is one of the most talked about issues in worker's compensation at the moment. At this stage it continues to look like implementation across states will occur by end of December 2011.

Recently at the NSW Safety Conference and Safety Show, held from 27 – 29 October 2009, the proposed national harmonisation framework and its application especially to NSW businesses was one of the key topics discussed. Guest speakers at the conference included:

- > Professor Ron McCallum, University of Sydney
- > Tom Phillips, Chair of Safe Work Australia Council
- > John Watson, OHS Division, WorkCover NSW
- > Dr Ian Woods, Senior Research Analyst, Australian Equities

Below is the timeline of events for national harmonisation thus far, and through to implementation of legislation.

Timeline	Action
July 2008	Council of Australian Governments (COAG) formally commits to national harmonisation of OHS legislation through an intergovernmental agreement (IGA) to achieve consistent laws in each jurisdiction that mirror a National Model Act.
2008 - 2009	An independent panel reviewed the laws in each jurisdiction and made recommendations to the Workplace Relations Ministers Council (WRMC) on the optimal structure & content of a Model Act Public submissions received.
September 2009	An exposure draft released for further public comment, which closed on 09/11/2009.
November 2009	Safe Work Australia began operating as an independent statutory agency with primary responsibility to improve occupational health and safety and workers compensation arrangements across Australia.
December 2009	Final version of model act to be released.
2010	Development of model OHS Regulations.
Mid 2011	Agreement on the legislation by WRMC
January 2011	All states to finalise their harmonised laws by Dec 2011 for commencement in Jan 2012.



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Some of the final decisions are yet to be determined, but the key points to emerge from the NSW Safety Conference are:

Action
Full steam ahead in line with the timeframes set for implementation in all jurisdictions by end of Dec 2011.
Primary duty of care will exist for persons conducting a business or undertaking. This includes the broad range of work relationships and business arrangements not just the term "employer". Eg. Body corporate, associations, partnerships etc. The duty of care will be to ensure as far as reasonably practicable the health and safety of workers. The definition will likely be similar to that currently used in Victoria.
An officer of the corporation will be those with significant decision making or authority and will be required to exercise due diligence to ensure the corporation complies. This will likely exclude line managers and supervisors.
Definition of a worker will include employees, visitors, contractors, volunteers etc - to take reasonable care for themselves and others.
Consultation obligations will remain an important focus and will be imposed on the person conducting the business or undertaking and will be expanded to include consultation with other groups (not just employees). For NSW this will also mean a shift toward Health & Safety Representatives (HSRs) who will be provided with 5 days training and have the power to issue Provisional Improvement Notices (PINs) as in other jurisdictions. Safety Committees can still be utilised but only the HSRs will require the training and have the power to issue PINs. A worker will have the right to cease unsafe work.
The onus of proof for OHS offences will rest with the prosecutor and all offences will be criminal matters.
Loss of union right to prosecute but authorised OHS union officers will have right of entry even if no union members onsite.
Removal of Crown immunity from prosecution.
Seven categories of offences & penalties ranging from \$25,000 - \$3million for a corporation and \$5,000 - \$600,000 and/or 5 years jail for individuals depending on the seriousness of the offence.

### Like to know more?

More detailed information is available on the Safe Work Australia website -

[www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au)

QBE will continue to keep you updated once the National Model Act is confirmed and during the ongoing development of the associated Regulations. In the meantime you can contact our Risk Management team for advice on reviewing and upgrading your current OHS Management System.

If you have any questions please contact the OHS Consultant in your state:

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