

Employment & Safety Alert

Victorian U-turn on OHS laws takes reform off the rails

October 2011

The Victorian government last week caused great surprise when it called on the Commonwealth to delay the implementation of the Model Work Health and Safety Act (**Model Act**), initially scheduled to commence on 1 January 2012. The announcement was a shock to OHS practitioners because the new laws largely reflect the current Victorian OHS legislation, and the implementation of the Model Act in Victoria has not been an issue of any great controversy.

In 2009, the Federal Government, in consultation with the States and Territories, agreed to establish a new set of national work health and safety (**WHS**) laws, to commence operation on or before 1 January 2012.

With only three governments (Australian Capital Territory, New South Wales and Queensland) having passed legislation to date, and parliaments closed from mid-December through to the beginning of February, the proposed national commencement date of 1 January 2012 is now unlikely to be achieved.

Safe Work Australia published the Model Act in June 2011, following consultation with the Workplace Relations Ministers' Council (**WRMC**). The Model Regulations were then approved by the WRMC on 10 August 2011 and publicly released on 26 September 2011.

The following table summarises the current position of each State and Territory and the actions to date:

State / Territory	Current Status of Legislation
Australian Capital Territory	Act passed on 6 June 2011, commencement date yet to be proclaimed
New South Wales	Act passed on 7 June 2011, to commence 1 January 2012; some changes made to existing OHS legislation from June 2011 in line with new laws
Northern Territory	No legislation
Queensland	Act passed on 29 September 2011, commencement date yet to be proclaimed
South Australia	Second reading speech in the Lower House (HA) on 19 May 2011 Debate on the WHS Bill was adjourned at the last sitting on 28 September 2011 The HA is expected to pass the WHS Bill mid October. The Upper House will then have six sitting days in November to debate and pass the Bill
Tasmania	No legislation
Victoria	No legislation – will not commence on 1 January 2012
Western Australia	No legislation – will not commence on 1 January 2012

At present, none of the States or Territories have released WHS Regulations.

Victoria's primary objection is in relation to the limited timeframe available to analyse the impact of the WHS laws on business and to develop appropriate transitional provisions prior to 1 January 2012. The reduced timeframe was caused by delays in release of the Model Regulations by Safe Work Australia.

Although South Australia (**SA**) was the first to introduce a WHS bill (on 7 April 2011), the passing of the Model Act has stalled, initially by the resignation of the relevant minister and more recently by debate over OHS union right of entry and the removal of the right to silence, which have not previously featured in SA's OHS laws. SA is also divided over increased penalties and use of the concept "persons controlling a business or undertaking" or "PCBU", which it argues is unclear in comparison to the current SA concept.

Western Australia (**WA**) has made it clear that it will not be in a position to pass legislation by 1 January 2012. While the vast majority of the proposed model laws are likely to be adopted, the government has indicated that it will not accept an increase in penalties, union entry rights and the reverse onus of proof in discrimination matters. The WA government also has concerns over the power of health and safety representatives' to direct the cessation of work.

The Tasmanian and Northern Territory governments have confirmed that they will introduce bills in late October 2011. These two proposals may however be delayed following Victoria's recent request for postponement.

While the initial commencement date of 1 January 2012 may not be achieved, the national WHS Act and Regulations are likely to get the 'green light' sometime next year. Accordingly, businesses need to monitor ongoing developments and prepare for the new legislation. We can assist by providing an update or more detailed advice regarding your obligations under the new legislation.

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