

Seacare HSR Forum 2009 presentation

Harmonisation of Occupational Health and Safety (OHS) laws

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How will harmonisation be achieved?

Currently, the Commonwealth, States and Territories are responsible for making and enforcing their own OHS laws.

Despite national efforts to make OHS regulations consistent, there has only been limited success. There was no binding obligation to conform.

New approach to harmonisation consists of three elements:

1. Intergovernmental Agreement (IGA)
 - Formalises the commitment of the Commonwealth, States and Territories to work together to implement model OHS legislation
 - Signed by COAG on 3 July 2008 and includes:
 - role of WRMC, including procedural arrangements such as voting at meetings
 - the administrative arrangements, responsibilities and functions, including funding arrangements, of Safe Work Australia
 - the processes and timeframes for development and implementation of model OHS legislation
 - Defines OHS harmonisation to mean "...national uniformity of the OHS legislative framework (comprised of a model OHS Act, supported by model OHS regulations and model codes of practice) complemented by nationally consistent approach to compliance policy and enforcement policy."
 - Commits to OHS harmonisation by the end of 2011. New laws to come into effect on 1 January 2012.
2. National OHS Review
 - Commenced April 2008
 - Advisory panel to reported to WRMC on optimal structure and content of model OHS Act.
 - The National OHS Review was undertaken in two stages. A total of 232 recommendations were made by the Review panel.
 - Report One – Completed October 2008
 - Report Two – completed January 2009
 - WRMC formally responded to all the Review Panel's recommendations and released a communiqué on 18 May.
3. Establishment of Safe Work Australia
 - Replaced ASCC. Responsible for developing and maintaining a model OHS Act, regulations and codes.
 - Retains workers' compensation policy role

Harmonisation process

- 18 May 2009, Workplace Relations Ministers' Council (WRMC) made decisions on the optimal structure and content of model OHS Act.
- Safe Work Australia has developed the model OHS Act in accordance with WRMC decisions.
- 25 September 2009, WRMC endorsed the exposure draft of model OHS Act and key administrative regulations for public comment.

What does this mean for the Seacare scheme?

If you are wondering how the WRMC decision affects the Seacare jurisdiction, WRMC agreed to the Review's recommendation that separate and specific OHS laws for high-risk industries should only continue where they have been objectively justified.

Even where separate laws can be justified the Review recommended that the separate laws be consistent with the harmonised OHS laws.

Once the model OHS Act framework and content is endorsed (end of 2009), the Seacare Authority, with input from its stakeholders will need to need to turn its attention to the question of the need for separate OHS legislation for the maritime industry.

This will be conducted once the model OHS legislative framework is settled and in place.

In the meantime, a comparison of the OHS (Maritime Industry) Act with the draft model OHS Act provisions has been prepared. Copies of this comparison are available on the Seacare website.

Model OHS legislation

The model legislation will consist of:

- A principal OHS Act
- Model regulations, and
- Model Codes of Practice

How will this affect businesses?

National OHS laws will ensure that businesses can comply with one set of consistent laws regardless of which state or territory they are operating in.

This critical regulatory reform will reduce the costs borne by business in complying with inconsistent OHS laws. Instead of spending time developing systems to comply with each jurisdiction's requirements, multi-state businesses will be able to focus on developing and implementing effective company-wide prevention strategies.

Workplace consultation, participation and representation

Given today's forum is about the role of HSR's, it is appropriate to at least draw out the proposed workplace consultation, participation and representation provisions as set out in the Model OHS Act.

The proposed model OHS legislation will ensure that all types of workers are protected from workplace health and safety risks, because the duties of care will extend beyond the employer/employee relationship that currently exists in most OHS laws.

The model Act will also facilitate the effective participation of workers and the representation of their interests in OHS. Persons conducting a business or undertaking will be required to consult with their workers about matters affecting their health and safety.

For the first time, all Australian workers will have the right to stop unsafe work under OHS laws.

Health and Safety Representatives for work groups

Every worker will have the right to elect health and safety representatives (HSRs) to represent them in health and safety matters. A work group must be established on request from a worker.

All trained HSRs will have the power to issue Provisional Improvement Notices (PINs) and direct others to cease unsafe work. Overall, these provisions will enhance health and safety protection for all Australian workers

Health and Safety Committees

Must be established within 2 months where requested by HSR, or 5 or more workers.

Issue resolution procedures

Principle is to resolve OHS issues in the workplace as far as possible. If the issue cannot be resolved after reasonable efforts have been taken to do so, the issue may be referred to the regulator to arrange for an inspector to attend the workplace to assist in resolving the issue.

Provisions to protect workers or prospective workers against discrimination

The model Act confers protections against discrimination of workers or prospective workers who engage in certain OHS-related activities. Provisions are designed to ensure that persons are not deterred from being involved in activities or exercising rights that important to OHS.

Right to cease unsafe work

Where to from here?

September 2009/November 2009

- Public comment closes on 9 November 2009

December 2009

- Model OHS legislation submitted to WRMC for agreement

September 2009 – September 2010

- Development of model OHS Regulations

October 2010 – January 2011

- Model regulations released for public comment

June 2011

- Model regulations submitted to WRMC for agreement

December 2011

- All jurisdictions to have adopted model laws

In committing to the harmonisation process, all levels of government recognise that each jurisdiction will face some changes in their current OHS arrangements.

The fundamental objective is to produce the optimal model for a national approach to OHS regulation and operation which will:

- enable the development of uniform, equitable and effective safety standards and protections for all Australian workers;
- address the compliance and regulatory burdens for employers with operations in more than one jurisdiction;
- create efficiencies for governments in the provision of OHS regulatory and support services; and
- achieve significant and continual reductions in the incidence of death, injury and disease in the workplace.

Further information

Websites:

www.safeworkaustralia.gov.au

www.seacare.gov.au