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LAWYERS

WORK HEALTH & SAFETY / CONSTRUCTION INSIGHT

21 DECEMBER 2011

Rumours put to rest: NSW set to “harmonise” with the release of its Model WHS Regulations

This week’s release of the NSW Work Health and Safety Regulation 2011 signifies that NSW is set to “harmonise” its safety laws on 1 January 2012.

On 1 January 2012, NSW will join Queensland, the ACT, the Northern Territory and the Commonwealth in introducing new work health and safety laws.

From this date, the work health and safety legislation in each of these jurisdictions will be consistent. While this may somewhat ease the burden associated with compliance for national businesses, the delays proposed by Victoria, South Australia and Western Australia mean that it will be some time before Australia’s work health and safety laws are truly consistent in each State and Territory.

However, with only 11 days to go until the new laws commence in NSW, businesses cannot afford to wait for absolute harmony before taking steps to comply.

In NSW, 1 January 2012 will see the commencement of the new:

- Work Health and Safety Act 2011 (WHS Act)
- Work Health and Safety Regulation 2011, and
- Codes of Practice in relation to risk management, consultation, work environment and facility management, noise, manual tasks, confined spaces, falls, hazardous materials and chemicals, and asbestos.

While many provisions will apply from 1 January 2012, it is important that businesses be aware of the transitional provisions that may apply to their operations. Some key transitional provisions include:

- Certain provisions of the new WHS Act **will not apply** to designers and persons who construct or commission **structures** in circumstances where

Who does this affect?

All persons conducting a business or undertaking.

Highlights

- With 11 days to go, NSW is on track for WHS Harmonisation.
- Businesses need to be aware of the new Regulations and various transitional provisions.

the activity concerned commenced before the commencement of the WHS Act. In practice, this may mean that different parties to a construction project are subject to different safety laws in circumstances where some activities (eg design) commence before 1 January 2012 and other activities (eg construction) commence after 1 January 2012.

- Licences, permits and registrations under OHS laws remain valid from the date, and for the period, they were originally issued.
- OHS representatives elected less than two years before 1 January 2012 are deemed health and safety representatives under the WHS Act, for up to three years after the date they were elected. Similar provisions apply in relation to OHS committees.
- Written Safe Work Method Statements (SWMS) for high risk construction work provided to principal contractors under the WHS laws are valid as SWMS under the WHS laws.
- OHS management plans prepared in compliance with the OHS laws are deemed to be valid WHS management plans, but only for 12 months.
- Exemptions granted under the OHS laws continue to apply for 12 months.
- Finally, the WHS Act itself provides that anything done under the OHS Act is taken to have been done under the corresponding provision of WHS Act, unless stated expressly or implied otherwise in the new laws.

All business have an additional 12 months to fit residual current devices to certain types of electrical socket outlets.

Please contact us to receive further information about the new laws and any transitional provisions that may apply to your business.

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