

MODEL WORK HEALTH AND SAFETY REGULATIONS – TRANSITIONAL PRINCIPLES

Safe Work Australia has agreed to transitional principles for the model Work Health and Safety (WHS) Regulations which are designed to ensure a smooth transition to the harmonised work health and safety laws.

The transitional principles are high level to ensure they are workable and applicable to the different circumstances of each jurisdiction. This recognises that each jurisdiction will implement the WHS Regulations from a different starting point.

The transitional principles deal with how arrangements under current occupational health and safety (OHS) laws are intended to transition to the harmonised WHS framework. For example this means that things done under the old laws will be taken to comply with the new laws and existing permits, licenses and other authorisations will be saved and recognised under the new system.

The transitional principles also ensure adequate provision is allowed for transitioning to any new requirements.

For new or significantly modified duties under the model WHS Regulations an appropriate transitional period is provided to allow duty holders to comply (Principle B). This will generally be 12 months.

However, where a duty under the model WHS Regulations is the same or very similar and has the same critical elements as a duty under pre-harmonised regulations, the WHS Regulation should apply immediately (Principle A). The differences between existing OHS regulations across jurisdictions mean each jurisdiction will need to determine this on a case by case basis.

Jurisdictions are in the best position to assess the need for transitional arrangements and determine appropriate arrangements. To support the consistent implementation of transitional arrangements, both the jurisdictional representatives responsible for implementing the WHS legislation and employer and employee representatives have considered how the principles should be applied.

Consistent with the principles underpinning the National Compliance and Enforcement Policy that was endorsed by the Workplace Relations Ministers' Council, it is also proposed that WHS regulators use information, guidance and education to assist duty holders to achieve compliance in the relevant transitional period.

	Principle
A	All duties under the WHS Regulations that are the same or very similar to previous duties under pre-harmonisation regulations should commence on and from the date of commencement of the WHS Regulations.
B	Specific duties under the WHS Regulations that are new or significantly modified compared with a particular jurisdiction's pre-harmonisation regulations are subject to a

	Principle
	transitional provision with a transitional period of 12 months unless otherwise specified. Where an entire Part or Chapter is new for a jurisdiction the jurisdiction may consider implementing a 12 month transitional period for the entire Part or Chapter for simplicity. Conversely, a transitional period can be applied to a particular aspect of a regulation.
C	The WHS Regulations adopt transitional principle C of the model WHS Act in relation to upstream duty holders (designers, manufacturers, importers, suppliers, and those that install, construct or commission plant, structures or substances).
D.1	Authorisations such as licences, registrations, etc, issued under pre-harmonisation laws will be recognised by the new WHS regime until the term of the authorisation expires. Any relevant mutual recognition principles will also be recognised on the same basis. Pre-existing exceptions to licensing requirements should be saved for a transitional period to allow affected persons reasonable time to obtain the relevant authorisation (e.g. 12 months).
D.2	If changes to authorisation requirements in a jurisdiction are likely to significantly affect either duty holders, authorisation holders, or the viability of the jurisdiction's ability to issue and administer an authorisation, transitional arrangements should be included on a regulation by regulation basis to minimise adverse impact in that jurisdiction.
D.3	Where long lead times to prepare for authorisations are required, for instance preparations and applications for an MHF licence, jurisdictions should put in place transitional provisions that minimise disruption to affected duty holders.
E	Where documentation, information and records provided under pre-harmonised laws complies with the WHS Regulations, savings provisions should be used to avoid unnecessary resubmission of documents or information. ¹ Where requirements for work plans, risk assessments and similar documents are the same or substantially similar provision should be made to deem documents that comply with pre-existing requirements immediately before day 1 as compliant under the new laws. Jurisdictions should consider saving record keeping requirements under the pre-harmonised laws, particularly in relation to duration requirements (e.g. work plans, health surveillance records). Consideration should also be given to inspection entitlements in relation to these documents.
F	Savings provisions be provided to preserve applications submitted to the regulator prior to the implementation of the harmonised WHS Regulations and that a transitional period of 12 months be provided.
G	A five year transitional period should apply in relation to classification of hazardous chemicals under the GHS.

¹ Acts interpretation laws may already provide for this.