



Workplace Health and Safety Queensland

# Harmonisation of Work Health and Safety laws

## Model Work Health and Safety Regulations



# Background

- Intergovernmental agreement to harmonise WHS legislation in July 2008
- National model WHS Act endorsed December 2009
- Each jurisdiction laws to mirror model laws as far as possible
- National model laws to commence 1 January 2012.



# Model WHS regulations

- Developed and based on:
  - matters broadly common to all jurisdictions regulations
  - existing national standards and codes of practice
  - policy decisions made by SIG-OHS in accordance with guidelines in the Intergovernmental agreement
- Safe Work Australia received over 1300 submissions when public comment closed on 4 April
- Submissions were reviewed through a tripartite process managed by Safe Work Australia
- Sign-off by Workplace Relations Ministers – August 2011



# Model WHS regulations

- A mix of outcomes focused with prescription in areas of high risk e.g. diving, confined spaces
- This means some details on risks and control measures in the Queensland regulations will be covered in the model codes of practice instead
- Model codes of practice have evidentiary status under the WHS Act – they provide evidence of what is reasonably practicable and allow flexibility in adopting other methods

# Structure of Model WHS Regulations

## Ch 1 Preliminary

## Ch 2 – Representation and participation

## Ch 3 – General risk and workplace management

- Managing risks
- General workplace management

## Ch 4 – Hazardous work

- Noise
- Hazardous manual tasks
- Confined spaces
- Falls
- High risk work
- Electrical safety
- Diving work

## Ch 5 – Plant and structures

## Ch 6 – Construction work

## Ch 7 – Hazardous chemicals

- Hazardous chemicals
- Lead

## Ch 8 – Asbestos

## Ch 9 – Major hazard facilities

## Ch 10 – Mines (not included in WHS reg)

## Ch 11 – General

- Review of decisions
- Exemptions and miscellaneous

## Ch 2 - Representation and participation

- Negotiation for the formation and determination of work groups
- HSR training – 5 days initial, 1 day refresher
- Issue resolution – default procedure

## Ch 3 – Part 3.1 Managing risks

Part 3.1 of the regulation specifies how a duty holder must undertake risk management to fulfil duties arising from the regulations.

The regulation requires a duty holder to:

- Identify hazards;
- Manage the risks by elimination, then minimisation;
- Follow the hierarchy of control measures when minimising risk;
- Maintain implemented control measures; and
- Review implemented control measures.

# Ch 3 – Part 3.2 General Workplace Management

The General Workplace Management regulations are divided into 10 divisions covering the following matter:

- Training, information and instruction
- General working environment
- First aid
- Emergency plans
- Personal protective equipment
- Remote or isolated work
- Managing risks from contaminants
- Hazardous atmospheres
- Storage of ignition sources
- Falling objects

## Part 3.2 Training, information and instruction

To ensure compliance with Primary Duty of Care from the WHS Act the duty holder must ensure workers receive training, information and instruction that is suitable, adequate and understandable to the needs of the worker and relevant to the nature of the work and risks.

Equivalent to section 29 of the Queensland Workplace Health and Safety Act 1995.

## Part 3.2 General Working Environment

Duty holder to ensure that the following is provided and maintained, as far as reasonably practicable, without risk to a persons health and safety:

- a means of entry, exit and movement within workplace;
- a work space;
- floors & surfaces designed, installed and maintained;
- adequate lighting to enable each person to carry out work, move within workplace and evacuate in an emergency;
- ventilation;
- control of risks associated with extremes in temperatures;
- control of risks associated with essential services; and
- adequate facilities for workers (inc include toilets, drinking water, washing and eating facilities)

## Part 3.2 First Aid

A duty holder must ensure provision and access to first aid equipment, facilities, and an adequate number of trained workers to administer first aid

- adequate number of trained workers is determined by the nature of the work, the hazards, the size, location and nature of workplace, and the number and composition of workers;
- The duties regarding first aid are not qualified;
- the model Code of Practice for First Aid will provide detail on possible control measures;
- The regulation is consistent with QLD regulation.

## Part 3.2 Emergency Plans

A PCBU must ensure that an emergency plan is prepared for the workplace

- An emergency plan includes evacuation procedures, notification of emergency services, medical treatment, communication, testing of procedures, and provision of information, training and instruction to workers;
- There is no current QLD WHS regulation equivalent to the proposed regulation, however Part 4 (Evacuation planning, instruction and practice) of the current QLD Building Fire Safety Regulation 2008 requires a duty holder to prepare and keep an emergency and evacuation plan.
- A duty holder is not required to have two separate plans, one plan incorporating each of the two regulations will ensure compliance.

## Part 3.2 Personal Protective Equipment

Where PPE has been identified as an applicable control measure, the duty holder who directs the work to be undertaken must ensure the worker is provided with the PPE by either the duty holder or another PCBU.

The PPE provided must be:

- Suitable to the risk, work and worker;
- maintained, repaired or replaced to ensure it is in good working order, clean, and hygienic;

The worker must be provided with, and must use the PPE in accordance with, information, training and instruction in relation to the safe use of the PPE.

## Part 3.2 Remote and Isolated Work

A duty holder must implement control measures that include **effective communication** with remote and isolated workers.

- ***remote or isolated work***, in relation to a worker, means work that is isolated from the assistance of other persons because of location, time or the nature of the work;
- ***assistance*** includes rescue, medical assistance and the attendance of emergency service workers;
- there is no equivalent duty in the QLD regulation;
- the model Code of Practice for Workplace Management will provide detail on possible control measures.

## Part 3.2 Managing risks from contaminants

A duty holder must ensure that atmospheric concentrations of substances or mixtures do not exceed the exposure standard.

A duty holder must ensure that atmospheric monitoring is carried if;

- They are not certain if the exposure standard is being exceeded; or
- monitoring is necessary to determine.

This duty is equivalent to the current duty in section 348 of the Workplace Health and Safety Regulation 2008.

## Part 3.2 Hazardous atmospheres

A duty holder must manage risks associated with a hazardous atmosphere.

An atmosphere is a ***hazardous atmosphere*** if:

- the atmosphere does not have a safe oxygen level; or
- the concentration of oxygen in the atmosphere increases the fire risk; or
- the concentration of a flammable gas, vapour, mist, or fumes exceeds 5 percent of the lower explosive limit for the gas, vapour, mist or fumes; or
- a hazardous chemical in the form of a combustible dust is present in a quantity and form that would result in a hazardous area.

A duty holder must manage risks associated with an ignition source in a hazardous atmosphere.

## Part 3.2 Storage of ignition sources

A duty holder must ensure that, if flammable or combustible substances are kept at the workplace, the substances are kept at the lowest practicable quantity for the workplace.

***Flammable or combustible substances*** include:

- flammable and combustible liquids, including waste liquids, in containers, whether empty or full; and
- gas cylinders, whether empty or full.

## Part 3.2 Falling objects

A duty holder must manage the risk of an object falling on a person if the falling object is reasonably likely to injure the person.

Where elimination is not reasonably practicable the duty holder must minimise the risk by providing adequate protection against the risk.

Adequate protection means providing and maintaining a safe system of work, including doing the following:

- preventing an object from falling freely, so far as is reasonably practicable;
- if it is not reasonably practicable to prevent an object from falling freely, providing, so far as is reasonably practicable, a system to arrest the fall of a falling object.

## Ch 4 - Part 4.1 Noise

### **Duty of person conducting a business or undertaking**

- PCBU must manage the risk of hearing loss associated with noise
- PCBU must ensure that workers are not exposed to noise that exceeds the exposure standard for noise
- The noise exposure standard remains the same
- A worker who is frequently required to wear PPE to protect against noise that exceeds the exposure standard must be provided with audiometric testing:
  - within 3 months of commencing work, and
  - at least every 2 years

## Ch 4 - Part 4.2 Hazardous manual tasks

### **Duty of person conducting a business or undertaking**

- PCBU must manage the risk of a musculoskeletal disorder associated with a hazardous manual task
- Mandatory factors to consider when determining controls (e.g. postures, movements, forces, vibration and duration and frequency)

### **Designer, importer, supplier and manufacturer**

- Standard duty to eliminate or minimise hazardous manual tasks, so far as is reasonably practicable, in relation to the plant or structure



## Ch 4 - Part 4.3 Confined spaces

- No reliance on Australian Standard reference AS2865

### **Duty of person conducting a business or undertaking**

- PCBU must manage the risks associated with a confined space at a workplace
- Other specific duties e.g. confined space entry permit, signage, communication, emergency procedures, written risk assessment

### **Designer, importer, supplier and manufacturer**

- Standard duty to eliminate or minimise entry into a confined space, so far as is reasonably practicable, in relation to the plant or structure

## Ch 4 - Part 4.4 Falls

### **Duty of person conducting a business or undertaking**

- PCBU must manage the risk of a fall by manage the risk of a fall by a person from one level to another that is reasonably likely to cause injury to the person or any other person

### **Specific requirements**

- PCBU must ensure, so far as is reasonably practicable, that any work that involves the risk of a fall is carried out on the ground or on a solid construction
- If it is not reasonably practicable to eliminate the risk of a fall then the duty holder must minimise the risk of a fall by providing adequate protection against the risk

## Ch 4 - Part 4.4 Falls

Adequate protection means providing and maintaining a safe system of work (administrative controls), and:

- providing a fall prevention device if it is reasonably practicable to do so; or
- providing a work positioning system, if it is not reasonably practicable to provide a fall prevention device; or
- providing a fall arrest system, so far as is reasonably practicable, if it is not reasonably practicable to comply with either of the above.

If a duty holder implements a fall arrest system as a measure to control risk they must establish emergency and rescue procedures in relation to the use of the system.

## Ch 4 - Part 4.5 High risk work

- Requirement to be licensed to carry out high risk work
- 5 year photographic licensing through Australia Post
- Regulator can direct licence holder to obtain reassessment of competency – on reasonable belief they are not competent
- Schedule of high risk work – same
  - new class for reach stacker
  - Boiler operation – standard and advanced
- No earthmoving and particular crane certificates

## Ch 4 - Part 4.6 Demolition work

- Duty holder must notify of demolition work to regulator at least 5 days before work commences
- Must notify:
  - Demolition of a structure or part of a structure that is loadbearing or otherwise related to the physical integrity of the structure that is at least 6 metres in height
  - Demolition work involving loadshifting equipment on a suspended floor
  - Demolition work involving explosives
- Existing demolition licensing arrangements to continue until the National Occupational Licensing System in 2013

## Ch 4 - Part 4.7 Electrical Safety and Energised Electrical Work

- PCBU must manage electrical risks at the workplace
- Test and tag requirements cover all types of work, but changes to “operating conditions that are likely to result in damage to the equipment or a reduction in its expected life span”
- e.g. exposure to moisture, heat, vibration, mechanical damage, corrosive chemicals, dust
- Testing intervals are “regularly” – no link to AS/NZS3760 (Inspection and testing)

## Ch 4 - Part 4.7 Electrical Safety and Energised Electrical Work

- Prohibition on live work - almost identical to s.11 ESR 2002.
- Prior testing, security of de-energised electrical equipment and inadvertent re-energising
- Use of appropriate RCD required for “hostile operating environment” - may remove current requirements for RCD’s or “test and tag” in service or office work.
- RCD may be portable or installed. Different to current ES regulation which requires installed RCD’s, with only limited exceptions in manufacturing work and rural work.
- Testing of RCD’s – “tested regularly by a competent person” – no reference to AS/NZS3760

## Ch 4 - Part 4.8 Diving work

- The regulation is applicable for all diving work, including work conducted in the recreational dive sector
- There is no specific regulation for recreational diving or snorkelling – covered by *Safety in Recreational Water Activities Act 2011* and associated regulation
- The model regulation is divided into 3 divisions:
  - General diving work—Fitness and competence of worker
  - Managing risks—
  - High risk diving work (e.g. construction diving work – Competency, fitness of workers and work carried out must meet AS/NZS 2299.1:2007 (Occupational Diving Operations))

## Ch 5 - Plant and structures

- Current WHS Regulation is limited to registrable plant and registrable plant design
- Applies to all plant *excluding* plant that relies on manual power for its operation and is designed to be supported by the hand (e.g. handsaw, spanner, screwdriver)
- Outline:
  - general duties for plant and structures (designers, manufacturers, importers, PCBU's)
  - Additional duties relating to registered plant and plant design
  - Registration of plant and plant design

## Ch 5 - Plant and structures

- Specific requirements on persons who design, manufacturer, import, supply, install, construct or commission plant or structures
- PCBU with management or control of plant must *manage the risks* associated with plant
- PCBU - Maintenance, repair, inspection and testing must be carried out by a competent person - if not reasonably practicable inspection must be at least annually
- Additional control measures for certain plant (e.g. tractors – ROPS)
- Additional control measures for registered plant (e.g. 10 year major crane inspection, recording keeping requirements – tests, inspections etc)

## Ch 5 - Registrable plant and plant design

- Consistent with current requirements
- Cooling towers and air conditioning units – not item registrable
- Large inflatable devices – now registrable
- Registrable plant – duration is 5 years rather than annual
- Registrable plant design – duration is unlimited

# Ch 6 – Construction work

## What is construction work

- any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure.

## What is not construction work

- the manufacture of plant;
- the prefabrication of elements, other than at a place specifically established for the construction work, for use in construction work;
- the construction or assembly of a structure that once constructed or assembled is intended to be transported to another place;
- testing, maintenance or repair work of a minor nature carried out in connection with a structure;
- mining or the exploration for or extraction of minerals.

## Ch 6 – Construction work

- Construction regulation does not apply to plant unless:
  - the plant is
    - a ship or submarine; a pipe or pipeline; an underground tank;
    - designed or used to provide support, access or containment during work in connection with construction; or
  - work on the plant relates to work that is carried out in connection with construction; or
  - the plant is fixed plant on which outage work or overhaul work that involves or may involve work being carried out by 5 or more persons conducting businesses or undertakings at any point in time.

## Ch 6 – Construction work

- A PCBU is a Principal Contractor for a construction project if they:
  - Commission the work (i.e. they are the client); or
  - Have been engaged by the client as Principal Contractor and been authorised to have management or control of the workplace;
- A construction project is a project that involves construction work, if the costed construction work is \$250,000 or more;
- A construction project has only 1 principal contractor at any specific time
- No requirement to notify the regulator of PC appointment.

## Ch 6 – Construction work

- PCBU who commissions construction work (**client**) must consult with the designer of the structure about how to ensure that risks arising from the design during the construction work are eliminated or minimised
- The designer of a structure must give the client a written report that specifies the hazards associated with the design of the structure
- Client must give the principal contractor any information the client has in relation to hazards and risks at or in the vicinity of the workplace including a copy of the report given to the client by the designer.

## Ch 6 – Construction work

### **Duty of person conducting a business or undertaking**

- PCBU must manage the risks associated with carrying out construction work

### **Duty of person conducting a business or undertaking with management or control of a workplace**

- Where construction work is carried out must ensure, so far as is reasonably practicable, that the workplace is secured from unauthorised access

## Ch 6 – Construction work

- PCBU must prepare a **Safe Work Method Statement (SWMS)** prior to commencing any **high risk construction work**
- All duty holders involved in a high risk work activity must ensure:
  - the work is carried out in accordance with the SWMS
  - if the work is not carried out in accordance with the SWMS, the work:
    - is stopped immediately or as soon as it is safe to do so; and
    - resumed in accordance with the statement;
  - all SWMS's are given to the principal contractor prior to work commencing;
  - SWMS's are kept so as to be readily available for inspection

## Ch 6 – Construction work

- PCBU with management or control of a workplace where **excavation work** is to be carried out must:
  - obtain current underground essential services information relating to the workplace and areas adjacent to the workplace, before commencing the work;
  - have regard to the information; and
  - provide the information to other duty holder involved in the work
- PCBU must manage risks to health and safety associated with excavation work, and comply with specified controls for trenches at least 1.5m deep

## Ch 6 – Construction work

- **Principal contractor** duties:
  - signage identifying principal contractor
  - preparation of the WHS management plan (includes site rules)
    - duty to inform all persons of plan before they commence
    - duty to review – must remain up-to-date
  - must obtain SWMS before high risk construction work commence
  - put in place arrangements for ensuring compliance with specified requirements such as facilities and amenities;
  - manage risks associated with construction materials and waste, plant, traffic and essential services

## Ch 6 – Construction work

- PCBU duty to ensure general induction training is provided to a worker who is to carry out construction work, if the worker:
  - has not successfully completed general induction training; or
  - successfully completed general induction training more than 2 years previously and has not carried out construction work in the preceding 2 years
- PCBU duty ensure worker has been trained
- No separate requirement for site specific training – but captured in WHS management plan

# Ch 7 - Part 7.1 Hazardous Chemicals

- Hazardous substances and dangerous goods = hazardous chemicals
- PCBU must *manage the risk* associated with using, handling, generating or storing a hazardous chemical at the workplace - Risks from contaminants, hazardous atmospheres, exposure standards
- Consistent in terms of Safety Data Sheet (SDS), registers, labelling, training, restricted chemicals, health monitoring
- No requirement for a risk assessment or documentation of a risk assessment
- Spray painting – covered by a code of practice

## Ch 7 - Part 7.1 Hazardous Chemicals

- A PCBU at a workplace which stores, handles or processes hazardous chemicals above the manifest quantity in Schedule 11 must:
  - notify the regulator;
  - prepare a manifest of hazardous chemicals;
  - make it available to an inspector and the emergency services authority
- Similar to large dangerous goods locations but doesn't require a safety management system
- Licensing for storage of flammable and combustibles by local government will cease from 1 January 2012

## Ch 7 - Part 7.1 Hazardous Chemicals

- Adopts GHS requirements – consistent with current WHS Regulation amendments in 2010 – but will have a 5 year transitional period
- Prohibits a person below the age of 16 from supplying a hazardous chemical that is a flammable gas or flammable liquid i.e. refuelling a car
- No longer exempts rural workplaces which use, handle or store hazardous chemicals above threshold quantities from notification to the regulator

## Ch 7 - Part 7.2 Lead

- Consistent with current lead regulations except for:
  - no requirement for a risk assessment
  - adopts a lower blood lead monitoring level than in Queensland which will deliver higher protection for workers in lead processing (e.g. for females of reproductive capacity— $20\mu\text{g}/\text{dL}$  ( $0.97\mu\text{mol}/\text{L}$ ) down to  $10\mu\text{g}/\text{dL}$  ( $0.48\mu\text{mol}/\text{L}$ ))
  - doesn't require a worker that is pregnant or breastfeeding to tell the employer – privacy issues
  - duty to give information about risk of lead process – before person is engaged and before the person commences the lead process

## Ch 8 - Asbestos

- PCBU with management or control of a workplace must ensure, so far as is reasonable practicable, that all asbestos or ACM is identified by a competent person
- Presence and location of asbestos to be indicated and if reasonably practicable by a label
- Registers required for workplace buildings built up to 31 December 2003 – compared to current cut off date of 1 January 1990
- Asbestos management plans and training required for naturally occurring asbestos
- PCBUs to provide health monitoring for certain workers involved in removal work or other asbestos-related work

## Ch 8 - Asbestos

- Requirement to notify the regulator of –
  - licensed asbestos removal work
  - demolition of a pre-31 December 2003 structure or plant in an emergency
  - asbestos fibre levels exceeding 0.02 fibres/ml during Class A asbestos removal work
- New licence category for individual ‘asbestos assessors’ required for Class A asbestos removal work - air monitoring, clearance inspections, clearance certificates
- Independent competent person for clearance inspections and clearance certificates for Class B removal work

## Ch 8 - Asbestos

- Both Class A and Class B licence holders must be a PCBU
- Demolition or refurbishment of a structure or plant built or installed before 31 December 2003:
  - PCBU with mgmt/control must, so far as reasonably practicable, ensure ACM is removed before demolition.
  - Before refurbishment of structure or plant, asbestos likely to be disturbed must be identified and, so far as is reasonably practicable, removed before refurbishment
  - Requirements for when an emergency means something must be demolished (eg structure is structurally unsound) – procedure to reduce risk of exposure to asbestos and notify the regulator before

## Ch 9 - Major Hazard Facilities

- Covered by *Dangerous Goods Safety Management Act 2001* but now within WHS Regulations
- Equivalent regulations:
  - preparation of safety case (including security arrangements)
  - hazard identification and risk control
  - emergency plans
  - safety management systems
  - consultation with workers and determination of a safety role for workers
  - major hazard facilities to be licensed
  - additional duties to provide information to visitors and the local community

## Ch 11 - General

- **Reviewable decisions** - 65 reviewable decisions under the regulations, internal review, external review – QCAT
- **Exemptions** – subject to national decision making
- **Incident notification – prescribed serious illness**
  - any infection to which the carrying out of work was the significant contributing factor
  - occupational zoonoses – Qfever, anthrax, leptospirosis, brucellosis, hendra virus, avian influenza, psittacosis