



# Lutheran Church of Australia | National Office | New Work Health and Safety Laws General

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## 1.0 Australian Work Health and Safety Regulators

<b>Safe Work Australia</b> <a href="http://www.safeworkaustralia.gov.au">www.safeworkaustralia.gov.au</a> ✓ Safe Work Australia is an Australian Government statutory agency with responsibility for improving work health and safety and workers' compensation arrangements across Australia. ✓ The Agency is not a regulator and does not administer the work health and safety laws for any Australian jurisdiction.	
<b>Australian Work Health and Safety Regulators</b> The WHS laws will be administered by the following jurisdictional regulators	
Comcare (Commonwealth Jurisdictions) <a href="http://www.comcare.gov.au">www.comcare.gov.au</a>	Safework SA <a href="http://www.safework.sa.gov.au">www.safework.sa.gov.au</a>
WorkCover NSW <a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a>	Workplace Health and Safety Queensland <a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a>
WorkSafe ACT <a href="http://www.worksafe.act.gov.au">www.worksafe.act.gov.au</a>	WorkSafe Victoria <a href="http://www.worksafe.vic.gov.au">www.worksafe.vic.gov.au</a>
NT WorkSafe <a href="http://www.worksafe.nt.gov.au">www.worksafe.nt.gov.au</a>	WorkSafe Western Australia <a href="http://www.worksafe.wa.gov.au">www.worksafe.wa.gov.au</a>
Workplace Standards Tasmania <a href="http://www.wst.tas.gov.au">http://www.wst.tas.gov.au</a>	

## 2.0 Transitional Arrangements

<b>Transitional Arrangements</b> Appropriate transitional arrangements will be put in place in each jurisdiction.		
1.	Current/old OHSW legislation	Once the WHS legislation passes Parliament and is proclaimed operate, the current Act and associated regulations will be repealed on that day cease to operate.
2.	Existing appointments	Inspectors, safety representatives, health and safety committees and members of committees (such as advisory committees) will continue to be recognised.
3.	Health and Safety Representatives	Will need to receive approved training under the WHS Act within 1 year of the commencement of the Act
4.	Licences and Authorities	<ul style="list-style-type: none"> <li>✓ Previously approved design is recognised unless there is a change</li> <li>✓ Any plant registration is recognised until the licence has expired or for further 12 months, whichever occurs first.</li> <li>✓ An asbestos removal licence is recognised for a further 12 months</li> <li>✓ A high risk work licence is recognised until the licence has reached its expiry date</li> <li>✓ An assessor of a high risk work licence – recognised until licence expires or for further 12 months, whichever occurs first</li> </ul>
5.	Codes of Practice	Existing jurisdictional codes will remain in place until replacement

	model Codes of Practice are approved.
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### 3.0 Harmonisation of Work Health and Safety Laws across Australia

<b>Harmonisation of Work Health and Safety Laws</b>			
<b>Jurisdiction</b>	<b>Legislation</b>	<b>Passed</b>	<b>Implementation</b>
Commonwealth	Work Health and Safety Act 2011	24 November 2011	1 January 2012
Commonwealth	Work Health and Safety Regulations 2011	14 December 2011	1 January 2012
ACT	Work Health and Safety Act 2011	20 September 2011	1 January 2012
ACT	Work Health and Safety Regulations 2011	-	-
NSW	Work Health and Safety Act 2011	27 May 2011	1 January 2012
NSW	Work Health and Safety Regulations 2011	16 December 2011	1 January 2012
NT	Work Health and Safety Bill 2011 (National Uniform Legislation)	1 December 2011	1 January 2012
NT	Work Health and Safety Regulations 2011	-	-
QLD	Work Health and Safety Act 2011	26 May 2011	1 January 2012
QLD	Work Health and Safety Regulations 2011	29 November 2011	1 January 2012
<b>SA</b>	<b>Work Health and Safety Bill 2011</b>		<b>Parliament voted to adjourn debate until 14 February 2012.</b>
<b>TAS</b>	<b>Work Health and Safety Bill 2011</b>		<b>Tasmania's Legislative Council amended the Bill by changing the commencement date to 1 January 2013. The Bill will be resubmitted to the House of Assembly for agreement.</b>
<b>VIC</b>	<b>Work Health and Safety Bill</b>		<b>Victorian Government announced it would delay harmonisation.</b>
<b>WA</b>	<b>Work Health and Safety Bill</b>		<b>WA Government has announced that it is unable to meet the 1 January 2012 implementation timeframes.</b>

## 4.0 Duty Holders

Duties		
1.	How do I know what I am responsible for?	<ul style="list-style-type: none"> <li>✓ The obligation to comply with duty is not limited to the legal capacity to control, but extends to the person's practical and actual ability to influence the relevant matter.</li> <li>✓ If a duty holder does not have control over an activity or a matter relevant to health and safety, then it cannot be reasonably practicable for the duty holder to do anything in relation to it. If the control able to be exercised by the duty holder is limited, then that limitation will be relevant to determining what is reasonably practicable for that duty holder in the circumstances.</li> </ul>
2.	General WHS Act s14-16	<ul style="list-style-type: none"> <li>✓ A duty cannot be transferred to another person</li> <li>✓ Person may have more than 1 duty</li> <li>✓ More than 1 person can concurrently have the same duty</li> </ul>
3.	Duty to consult where law of more than one jurisdiction applies to the same matter WHS Act s12B	<ul style="list-style-type: none"> <li>✓ If a person has a duty in relation to a matter under this Act and another person has a duty under a corresponding WHS law in relation to the same matter, the person who has the duty under this Act <b>must</b> consult, co-operate and co-ordinate activities with the other person</li> </ul>
4.	Primary Duty of Care WHS Act s19	<ul style="list-style-type: none"> <li>✓ A PCBU <b>must</b> ensure the health and safety of workers, customers and visitors by eliminating or minimising risks at the workplace, so far as reasonably practicable</li> </ul>
5.	Duty of Officers WHS Act s27	<ul style="list-style-type: none"> <li>✓ An officer of the PCBU <b>must</b> exercise due diligence to ensure that the PCBU complies with its duty</li> </ul>
6.	Duties of Workers WHS Act s28	<ul style="list-style-type: none"> <li>✓ Must take reasonable care of his/her own health and safety</li> <li>✓ Take reasonable care that his/her acts or omissions do not adversely affect the health and safety of other persons</li> <li>✓ Comply, so far as the worker is reasonably able, with any reasonable instruction</li> <li>✓ Co-operate with any reasonable policy or procedure relating to health and safety at the workplace that has been notified to workers</li> </ul>
7.	Duties of other persons WHS Act s29	<ul style="list-style-type: none"> <li>✓ Must take reasonable care of his/her own health and safety</li> <li>✓ Take reasonable care that his/her acts or omissions do not adversely affect the health and safety of other persons</li> <li>✓ Comply, so far as the worker is reasonably able, with any reasonable instruction</li> </ul>

## 5.0 Definitions

<b>Definitions</b>		
1.	Reasonably Practicable (WHS Act S18)	<p>Means that which is, or was at a particular time, reasonably able to be done to ensue health and safety, taking into account and weighing up all relevant matters including:</p> <ul style="list-style-type: none"> <li>✓ The likelihood of the hazard or the risk occurring</li> <li>✓ The degree of harm that might result from the hazard/risk</li> <li>✓ What the person concerned knows, or ought reasonably to know (the state of knowledge)</li> <li>✓ The availability and suitability of ways to eliminate or minimise the risk</li> <li>✓ After assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk</li> </ul>
		<ul style="list-style-type: none"> <li>✓ Reasonably practicable is determined objectively</li> <li>✓ There are two elements to what is reasonably practicable: <ul style="list-style-type: none"> <li>○ What can be done</li> <li>○ Whether it is reasonable, in the circumstances</li> </ul> </li> </ul>
2.	Due diligence - Officer (WHS Act S27)	<p>Take reasonable steps:</p> <ul style="list-style-type: none"> <li>✓ To acquire and keep up-to-date knowledge or work health and safety matters</li> <li>✓ To gain understanding of the nature of the operations of the business or undertaking and generally of the hazards and risks associated with those operations</li> <li>✓ To ensure that the PCBU has available for use the uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking</li> <li>✓ To ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information</li> <li>✓ To ensure that the PCBU has and implements processes for complying with any duty or obligation of the PCBU under this Act</li> <li>✓ To verify the provisions and use of the resources and processes</li> </ul>
3.	Reasonable Steps - Officer	<ul style="list-style-type: none"> <li>✓ What is reasonable will depend on the particular circumstances, including the role and influence able to be exercised by the individual officer</li> <li>✓ To the extent to which an officer will seek to rely on others, the officer must be able to demonstrate the reasonableness of that reliance, which may be demonstrated through the receipt of credible information and advice from appropriate people</li> </ul>

## 6.0 Offences and Penalties under the WHS Act

<b>Offences and Penalties</b>			
Category 1 WHS Act s31	Reckless Conduct	The person has a health and safety duty: <ul style="list-style-type: none"> <li>✓ without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness and</li> <li>✓ The person is reckless as to the risk to an individual of death or serious injury or illness</li> </ul>	Committed by an individual (other than the PCBU or an Officer): <ul style="list-style-type: none"> <li>✓ \$300,000 or 5 years imprisonment or both</li> </ul> Committed by an individual as a PCBU or as an Officer: <ul style="list-style-type: none"> <li>✓ \$600,000 or 5 years imprisonment or both</li> </ul> Committed by a body corporate: <ul style="list-style-type: none"> <li>✓ \$3,000,000</li> </ul> Prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.
Category 2 WHS Act s32	Failure to comply with health and safety duty	The person has a health and safety duty: <ul style="list-style-type: none"> <li>✓ Fails to comply that duty and</li> <li>✓ The failure exposes an individual to a risk of death or serious injury or illness</li> </ul>	Committed by an individual (other than the PCBU or an Officer): <ul style="list-style-type: none"> <li>✓ \$150,000</li> </ul> Committed by an individual as a PCBU or as an Officer: <ul style="list-style-type: none"> <li>✓ \$300,000</li> </ul> Committed by a body corporate: <ul style="list-style-type: none"> <li>✓ \$1,500,000</li> </ul>
Category 3 WHS Act s33	Failure to comply with health and safety duty	The persons has a health and safety duty: <ul style="list-style-type: none"> <li>✓ Fails to comply with that duty</li> </ul>	Committed by an individual (other than the PCBU or an Officer): <ul style="list-style-type: none"> <li>✓ \$50,000</li> </ul> Committed by an individual as a PCBU or as an Officer: <ul style="list-style-type: none"> <li>✓ \$100,000</li> </ul> Committed by a body corporate: \$500,000
Exceptions WHS Act s34		<ul style="list-style-type: none"> <li>✓ A volunteer does not commit an offence for failing to comply with a health and safety duty, except duty under s28 or s29 (as a worker and/or as duties of other persons at the workplace)</li> <li>✓ An unincorporated association does not commit an offence under this Act and is not liable for a civil penalty for failure to comply with a duty or obligation imposed on the unincorporated association under this Act</li> </ul>	However: <ul style="list-style-type: none"> <li>✓ An officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with a duty under s27 (as duties of an officer)</li> <li>✓ A member of an unincorporated association may be liable for failure to comply with a duty under s28 or s29</li> </ul>

## 7.0 Compliance and Enforcement Tools

<b>Compliance and Enforcement Tools used by the Regulators</b>		
1.	Encourage and Assisting Compliance	✓ Information, guidance, education & advice
2.	Directing Compliance	✓ Improvement Notices ✓ Prohibition Notices
3.	Sanctions	Court Sanctions ✓ Criminal Penalties ✓ Court Orders including Injunctions Regulator Sanctions ✓ Suspensions, cancellations, revocation of authorisations, infringement notices, enforceable undertakings

## 8.0 Model Codes of Practice

<b>Model Codes of Practice made under Section 274 of the WHS Act</b>	
✓	Currently there are 11 approved codes and number in draft under public comments
✓	Existing jurisdictional codes will remain in place until replacement model Codes of Practice are approved
1.	Applies to anyone who has a duty of care
2.	Following an approved code of practice would achieve compliance
3.	Health and safety duties required duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist
4.	Codes of Practice are admissible in court proceedings under the WHS Act and Regulations.
5.	✓ Compliance with approved Code of Practice is not mandatory and a duty holder may choose to use some other way to achieve compliance that must provide equivalent or higher standard of work health and safety (eg technical and/or industry standard). ✓ A person cannot be prosecuted for failing to comply with a code of practice
Transitional Arrangements	
1.	In each jurisdiction will allow duty holders a period of time to make necessary adjustments in order to comply with the new requirements.
2.	Existing jurisdictional codes will remain in place until replacement model Codes of Practice are approved.

<b>Approved Codes under Section 274 of the WHS Act</b>	
1.	How to manage work health and safety risks
2.	Hazardous manual tasks
3.	Managing the risk of falls at workplaces
4.	Labelling of workplace hazardous chemicals
5.	Preparations of safety data sheets for hazardous chemicals
6.	Confined spaces
7.	Managing noise and preventing hearing loss at work
8.	Managing the work environment and facilities
9.	Work health and safety consultation, co-operation and co-ordination
10.	How to safely remove asbestos
11.	How to manage and control asbestos in the workplace

*Refer to [www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au)*