



# INFORMATION SHEET

## Work, Health and Safety Series – NSW

### New Work Health and Safety Laws Apply from 1 January 2012

A new package of work health and safety laws (WHS Package) will come into effect from 1 January 2012, subject to some transitional arrangements. The WHS Package consists of the *Work Health and Safety Act 2011* (WHS Act 2011), *Work Health and Safety Regulations 2011* (WHS Regulation 2011) and new national codes of practice.

#### Why are the laws changing?

The laws are changing because the state and territory governments reached an agreement to harmonise work health and safety laws across the country by 1 January 2012.

#### What are some of the key changes arising from the WHS Act 2011?

Key differences for NSW arising from the Act will include (without limitation):

<p>'Reasonably practicable'</p>	<p>The concept of reasonably practical was introduced into the current <i>Occupational Health and Safety Act 2001</i> in June 2011 and will continue to apply under the WHS Act. The concept requires business operators to do what is "reasonably practicable" to eliminate or minimise risk to health and safety. Some key points to consider in relation to this requirement include:</p> <ul style="list-style-type: none"> <li>○ the greater the likelihood and/or the greater the potential harm from a particular risk, the more likely it is that it would be reasonably practicable for you to make a greater effort to eliminate or minimise the risk;</li> <li>○ when considering the cost to eliminate or minimise a risk, you must consider whether that cost is grossly disproportionate to the risk.</li> </ul>
<p>Officer duties</p>	<p>New officer duties which require officers to exercise 'due diligence'. This includes taking reasonable steps to:</p> <ol style="list-style-type: none"> <li>a. acquire and keep up to date knowledge of work health and safety matters, and</li> <li>b. gain an understanding of the nature of the operations of the business and generally of the hazards and risks associated with those operations, and</li> <li>c. ensure the person conducting the business has available for use and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out, and</li> <li>d. ensure that the person conducting the business has appropriate process for receiving and considering information regarding incidents, hazards and risks responding in a timely way to that information, and</li> <li>e. ensure that the person conducting the business has, and implements processes for complying with any duty or obligation of the person under the Act, and</li> <li>f. verify the provision and use if the resources referred to in paragraphs (c) to (e) above.</li> </ol> <p>An officer now includes:</p> <ul style="list-style-type: none"> <li>• a secretary or director of a corporation</li> <li>• someone who makes, or participates in making, decisions that affect the whole, or a substantial part, of a corporation</li> <li>• someone who has the capacity to significantly affect a corporation's financial standing</li> <li>• someone who is accustomed to having their instructions actioned by the board – this does not include those who provide advice to the board as part of their role.</li> </ul>

DISCLAIMER - The above is intended to provide general information in summary form. The contents do not constitute specific advice and should not be relied upon as such. Formal specific advice should be sought by members with respect to particular matters before taking action.

Onus of proof	Employers now have a general duty to ensure health, safety and welfare 'so far as is reasonably practicable'. Previously whenever a workplace injury occurred there was an automatic assumption of a deficiency in safety management at that workplace.  This also applies to an officer which means that the regulator will need to establish that an officer has failed to exercise 'due diligence'.
Broadened duties	A broadened focus of duties which goes beyond 'employers' and 'employees'. Instead, the new laws will impose obligations on all 'persons conducting a business or undertaking' to ensure the safety of all 'workers' (which will include employees, contractors and 'others').
Designer duties	An expansion of designer duties. People who design plant, substances and structures will be required to ensure, so far as is reasonably practicable, that they are without risks to health and safety. These obligations extend not only to requiring the design to be safe during the construction of the structure but also to ensure it is safe to use at a workplace and when being demolished/destroyed. In addition the WHS regulations require designers of structures to provide a written safety report (see below).
Monitoring	A new primary duty to 'monitor' workers' health and conditions at the workplace.
Incident notification	Changes to incident notification procedures, particularly what incidents need to be reported.
Consultation	Broader consultation requirements and the introduction of health and safety representatives (HSRs) who will provide a mechanism for workers to voice their health and safety concerns. HSRs will be able to issue provisional improvement notices (PINs) and can direct workers to cease work after consultation and an attempt to resolve an issue (or without consultation if there is an immediate and imminent threat to health and safety).
Penalties	Significantly increased penalties for a contravention of the new laws.

### What are the key changes arising from the WHS Regulation 2011?

Much of the detail from the WHS Package can be found in the WHS Regulation 2011. Key changes for the housing industry relate to (without limitation):

Construction work	The definition of construction work now has important exclusions for the manufacture of plant and for minor testing, maintenance and repair work of a minor nature.
Principal Contractors	Principal contractor duties are now solely restricted to construction projects costing \$250,000 or more. The principal contractor must still prepare a work health and safety management plan.
Safe Work Method Statements SWMS	SWMS will still be required for high risk construction work but the content required will be less complex. However, the types of work for which SWMS are required now include more classes such as work where there is a risk of falling more than 2 metres, demolition work involving load-bearing elements, work involving confined spaces and work that involves (or is likely to involve) the disturbance of asbestos.
Risk management	A range of specific control measures are prescribed for particular hazards (e.g. falls, excavations, demolition, confined spaces, asbestos).
Remote or isolated workers	New requirements to provide a system of work that includes effective communication with remote or isolated workers.
Asbestos	More extensive provisions for the management and safe removal of asbestos with many matters that were previously covered in codes of practice such as asbestos management plans and clearance inspections will be regulated requirements.  New requirements for licensing of asbestos assessors (also referred to as occupational hygienists) and obligations on persons conducting a business or undertaking to use licensed asbestos assessors for air monitoring and clearance certificates when removing friable asbestos.  Class A (friable) asbestos removal licence holders will be required to have a certified safety management system.
Demolition	Certain demolition work must be notified to the regulator. Specifically, the notification requirements will apply to the demolition of a structure or part of a structure, that is load bearing or is otherwise related to its physical integrity that is over 6m high. Notification requirements also apply to demolition work involving the use of load shifting machinery on

	a suspended floor, or using explosives. Demolition work is considered high risk work and safe work method statements will be required. NSW will retain its current licensing arrangements until demolition licensing under the national occupational licensing scheme commences (at least 2013).
Electrical work	A requirement for a person conducting a business or undertaking to comply with AS/NZS 3012: 2010 <i>Electrical Installations – Construction and demolition Sites</i> . There are specific requirements for electrical work on energised electrical equipment.
Chemicals and dangerous goods	Provisions relating to chemicals will be based on a globally harmonised system for classification of chemicals, subject to a five year transitional period.  Notification of dangerous goods only when they exceed the manifest quantity and thereafter only where there is a significant change in risk.
Audiometric testing	A new provision for persons conducting a business or undertaking to provide for audiometric testing of workers who are frequently required to wear PPE.
Underground services	Provisions requiring the person with management or control of the workplace to obtain and consider information in relation to essential underground services (this information is to be shared with and considered by a person engaged to carry out excavation work).
Plant registration	Registration of plant every five years, rather than annually.
Design related duties	Designers of structures will need to provide a written report to the person who commissioned the design setting out the hazards associated with the design that create risks to those who are to carry out construction work.  The person who commissions construction work will be required to consult with the designer of the structure about eliminating or minimising risks to health and safety arising from the design during the construction work.  The person who commissions a construction project must give the principal contractor any information the person has about hazards and risks at or in the vicinity of the workplace where the construction work is to be carried out. This would include providing the designers safety report to the principal contractor.

### What are the transitional arrangements?

Transitional arrangements have been put in place to help people transition from the old laws to the new ones. It is important to be aware of the following matters in transitioning to the new WHS Act 2011:

Prosecutions	<ul style="list-style-type: none"> <li>• Offences alleged to have been committed prior to 1 January 2012 are to be dealt with in accordance with the current OHS Act rather than the new legislation.</li> <li>• All proceedings commenced after 1 January 2012, are to be dealt with summarily.</li> <li>• Proceedings for an OHS offence committed on or after 7 June 2011, that were commenced in the Industrial Court before 1 January 2012, but not finalised are to be discontinued and dealt with summarily before the District Court except in cases of offences under section 32A (reckless conduct causing death at workplace by person with OHS duties) of the OHS Act that are to be taken on indictment.</li> </ul>
Codes of practice	<p>The following group of model codes of practice will come into operation on 1 January 2012:</p> <ul style="list-style-type: none"> <li>• How to Manage Work Health and Safety Risks</li> <li>• Consulting Workers and Consulting, Cooperating and Coordinating with Others on Work Health and Safety matter</li> <li>• Managing the Work Environment and Facilities</li> <li>• Managing Noise and Preventing Hearing Loss at Work</li> <li>• Hazardous Manual Tasks</li> <li>• Confined Spaces</li> <li>• How to Manage and Control Asbestos in the Workplace</li> <li>• How to Safely Remove Asbestos</li> <li>• How to Prevent Falls at Workplace</li> <li>• Labelling of Workplace Hazardous Chemicals</li> <li>• Preparation of Safety Data Sheets for Hazardous Chemicals</li> </ul> <p>These are available from the <a href="http://www.safeworkaustralia.gov.au">Safe Work Australia</a> website.</p>

	Current NSW codes of practice will continue after 1 January 2012 where there is no comparable national model code of practice available.
Duty to provide current relevant information	A duty arising under the health and safety duties of the WHS Act to give current relevant information about a matter on request extends to the design, manufacture, import, supply, installation, construction or commission of plant, substance or structures that took place or commenced before 1 January 2012.
Incident Notifications	The old OHS Regulations will apply to any incident that occurred before 1 January 2012.
Induction training cards	Those cards issued, or cards applied for prior to 1 January 2012 will be deemed to have been issued or applied for under the WHS Act.
Safe Work Method Statements (SWMS)	<ul style="list-style-type: none"> <li>• A current and compliant SWMS that was provided to a Principle Contractor prior to 1 January 2012 will be deemed to have been prepared in accordance with the WHS Act until 1 January 2013.</li> <li>• All new work commencing after 1 January 2012 for which a SWMS is required will need to comply with the WHS Act and Regulations.</li> </ul>
OHS Management Plans	<ul style="list-style-type: none"> <li>• A current and compliant OHS Management plan that was prepared prior to 1 January 2012 will be deemed to have been prepared in accordance with the WHS Act until 1 January 2013.</li> <li>• All new work commencing after 1 January 2012 for which a WHS management plan is required will need to comply with the WHS Act and Regulations.</li> </ul>
Health and safety representatives (HSRs)	<ul style="list-style-type: none"> <li>• HSRs elected under the repealed OHS Act who were elected no earlier than 2 years before the repeal of the OHS Act will continue to hold their appointment.</li> <li>• Their existing appointment will continue for the term of their appointment under the WHS Act (that is, three years from the date they were appointed under the repealed OHS Act).</li> <li>• Any incomplete elections for HSRs must be finalised within three months after the WHS Act commences, otherwise they must be restarted under the new provisions of the WHS Act.</li> <li>• A deemed HSR will only be able to issue Provisional Improvement Notices or give direction to cease unsafe work once they have completed the approved gap training. Once they have completed this training they are deemed to have completed the training specified in the WHS Act.</li> </ul>

Key transitional arrangements, at first glance, are summarised at Attachment A.

## ATTACHMENT A

Subject area	Chapter/Part in the WHS Act/Regulation 2011	Commencement
Duties concerning structures, plant and substances.	<b>Sections 22-26 WHS Act:</b> Outlines the health and safety duties of those who design, manufacture and import, supply, install, construct or commission structures.	If the activity commenced prior to 1 January 2012, then the OHS Act 2001 will continue to apply (Sch 18B s7).  In cases of an activity commencing after 1 January 2012, the duties under the WHS Act 2011 will apply.
	<b>Sections 22-26 WHS Act:</b> Outlines the health and safety duties of those who design, manufacture and supply plant and substances.	In cases where the <b>design</b> or <b>manufacture</b> of any <b>plant</b> or <b>substance</b> commenced before 1 January 2012, duties under sections 22-26 will not apply until <b>1 January 2014</b> .
		In cases where the <b>supply</b> of <b>plant</b> or <b>substance</b> commenced before 1 January 2012, duties under sections 22-26 will not apply until <b>1 January 2013</b> .
		In cases of an activity commencing after 1 January 2012, the duties under the WHS Act 2011 will apply (Sch 18B s8).
<b>WHS Regulations</b>		
Emergency plans	<b>Part 3.2 Clause 43:</b> requires business operators to develop procedures to deal with workplace emergencies including: <ul style="list-style-type: none"> <li>• evacuation procedures</li> <li>• notifying emergency service organisations at the earliest opportunity</li> <li>• medical treatment and assistance</li> <li>• effective communication</li> <li>• testing of the emergency procedures, including the frequency of testing</li> <li>• information, training and instruction to relevant workers in relation to implementing the emergency procedures</li> </ul>	1 January 2013 (Schedule 18B s17).  Clause 17 (Employer to provide for emergencies) of the OHS Regulations will continue to apply during this period.
Remote or Isolated Work <i>(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).</i>	<b>Part 3.2 Clause 48:</b> requires business operators to have a communication system for remote and isolated work. The person conducting a business or undertaking (PCBU) must: <ul style="list-style-type: none"> <li>• manage risks to the health and safety of a worker associated with remote or isolated work;</li> <li>• provide a system of work that includes effective communication with the worker.</li> </ul>	1 January 2013 (Sch 18B s18).
Noise	<b>Chapter 4, Part 4.1 Clause 58:</b> Audiometric testing now required for workers 'frequently' required to wear personal protective equipment (PPE) to protect against exposure to noise <i>above</i> the exposure standard.	For workers who commenced work before or within 21 months of 1 January 2012 the requirement that audiometric testing be provided within 3 months of a worker commencing work instead will be required to provide the testing within 24 months after 1 January 2012 (Sch 18B s19).
Falls	<b>Chapter 4, Part 4.4 Clause 80 (3):</b> This is a new provision requiring rescue and emergency procedures to be in place if a fall arrest system is used as a control.	1 January 2013 (Sch 18B s21)
High Risk Work (HRW)	<b>Chapter 4, Part 4.5:</b> The following HRW licences have transitional arrangements: <ul style="list-style-type: none"> <li>• Reach stacker – new licence category.</li> <li>• Boiler classes will be reduced from three to two levels (standard and advanced) with new units of competency.</li> </ul>	All HRW licences will be recognised as WHS licences. New cards will be issued on renewal 5 years after it was issued under the OHS Regulations (transitional licence).  All accredited assessors will be deemed to have been accredited under the WHS regulations for 3 years after it was issued under the OHS regulations (transitional accreditation)  In the case of the new licence classes of reach stacker WorkCover NSW may on application by the holder of a non-slewing mobile crane convert their license or accreditation for reach stacker operation.  In the case of standard boiler operation, operators with basic or intermediate boiler operations will be converted to a license or accreditation for standard boiler maker (Sch 18B s22).  Additional transitional arrangements will be applied administratively by WorkCover. Intermediate boiler operators may continue to perform work currently authorised. Workers may undertake existing or new units of competency for 18 months for boiler, reach stacker (non slewing mobile crane) reciprocating steam engine and turbine operation.
Carrying our work on energised electrical	<b>Chapter 4, Part 4.7 Clause 161(4):</b> A safety observer is required to have competency to	1 January 2013 (Sch 18B s23).

equipment	implement control measures in an emergency and to rescue the worker who is carrying out the work if necessary and is required to be assessed in the previous 12 months as competent to rescue and resuscitate a person.	
Demolition notification	<b>Clause 142:</b> There are changes to the requirements for notification of demolition work.	1 January 2012.
Demolition work licensing	Demolition work will be licensed as an occupational licence under a nationally harmonised licencing scheme. WorkCover will continue to licence demolition work under existing arrangements under the new national licensing system commences (probably 2013).	1 July 2013 (Sch 18B s23).
Scaffold inspection	<b>Chapter 5, Part 5.1 Clause 225(2):</b> Written confirmation of scaffold inspections.	1 July 2012 (Sch 18B s27).
Major inspection of registered mobile crane and tower cranes	<b>Chapter 5, Part 5.2 Clause 235:</b> A competent person must carry out maintenance, inspection and testing of the crane.	From 1 January 2012 to 1 January 2013 a competent person includes: <ul style="list-style-type: none"> <li>• A person who is or is qualified to be a member of Engineers Australia with the status of Chartered Professional Engineer or entered on the National Professional Engineers register administered by the Institution of Engineers Australia, and</li> <li>• Has experience in inspecting or designing cranes (Sch 18B s 28).</li> </ul>
Plant and structures	<b>Chapter 5, Part 5.3 Clause 243:</b> Certain items of plant design to be registered.	Deemed registration of existing plant registered under old OHS Regulations.  Clause 243 does not apply to any item of plant that was manufactured or constructed before 1 January 2003.  The design of concrete placement units with delivery booms or prefabricated formwork will not need to be registered if the design was completed prior to 1 January 2012.  If the design of concrete placement units with delivery booms or prefabricated formwork was completed after 1 January 2012 the provision will not apply until 1 January 2013 (Sch 18B s30).
	<b>Division 2 of Part 5.3 Clauses 246 – 247:</b> Certain items of plant required to be registered.	Subdivision 2 of Division 3 of the old OHS Regulation will apply until 1 January 2013 (Sch 18B s31).
Construction	<b>Chapter 6</b> Construction regulations will come into effect on 1 January 2012.	<b>No transitional provisions.</b>
	<b>Chapter 6, Part 6.2 Clauses 294-296:</b> Construction work – duties of designers of structures and person who commission work	1 January 2013 (Sch 18B s32).
Hazardous chemicals	A Globally Harmonised System of Classification and Labelling of Chemicals (GHS) will be phased-in over 5 years.	Current chemical classification and labelling provisions and GHS system will operate concurrently through a transitional arrangement until 31 December 2016, after which classification and labelling will be required only in accordance with GHS (Sch 18B s 36).
	<b>Clause 348:</b> the regulator must be notified if manifest quantities are to be exceeded.	1 January 2013 (Sch 18B s37) Section 174ZS of the OHS Regulations will continue to apply.
	<b>Clause 380, 381, 384:</b> requires the use, handling or storing of a prohibited or restricted carcinogen to be authorised by the regulator.	Sections to do not apply until 1 January 2017 if notice of the proposed works was given in compliance with the OHS Regulations (Sch 18B s38).
	<b>Clause 390:</b> existing pipelines builder's duties.	1 January 2013 (Sch 18B s 39).
Asbestos	<b>Chapter 8 Clause 425:</b> Asbestos registers	Registers will be deemed to be kept for purposes of WHS Act until 1 January 2013 (Sch 18B s41(1)).
	<b>Clauses 429 and 432:</b> Asbestos management plan	Plans will be deemed to have been prepared for purposes of WHS Act until 1 January 2013 (Sch 18B s 41(2)).
	<b>Clause 464:</b> Asbestos removal plan	Plans will be deemed to have been prepared for the purposes of WHS Act until 1 January 2013 (Sch 18B s 41(3)).
	<b>Clause 435 (2):</b> PCBUs to provide health monitoring for certain workers involved in removal or other asbestos-related work.	1 January 2013 (Sch 18B s42).
	<b>Clauses 434 and 445:</b> Requirements to train in relation to naturally occurring asbestos and a duty to train workers about asbestos	1 January 2013 (Sch 18B s43).
	<b>Clause 472(3):</b> Asbestos removalist must ensure that a sealed container is decontaminated and labelled in accordance with the GHS to indicate the presence of asbestos before being removed from the asbestos removal area.	1 July 2012 (Sch 18B s 44).

	<p><b>Clause 473:</b> Requirement for independent competent person to do clearance inspections and clearance certificates for removal of more than 10m<sup>2</sup> of non-friable asbestos.</p>	<p>1 July 2012</p> <p>From 1 July 2012 – 31 December 2012 individuals who possess the knowledge, skills and qualifications to carry out clearance certificate will be deemed to be a licensed asbestos assessor (Sch 18B s 45).</p>
	<p><b>Clause 475:</b> New licence category air monitoring for Class A asbestos removal work.</p>	<p>Air monitoring will be required to be carried out by a licensed assessor from 1 January 2013.</p> <p>From 1 January 2012 to 31 December 2012 air monitoring may be carried out by a person deemed competent under the OHS Regulations instead of a licensed asbestos assessor (Sch 18B s46).</p>
	<p><b>Asbestos Licensing</b></p>	<p>Class A and B asbestos removal licenses deemed to have been issued under WHS Act (Sch 18B s 40).</p> <p>Applications from Class A and B asbestos removal licenses are deemed to have been made under the WHS Act.</p> <p>A person completed training in asbestos removal under OHS Regulations is deemed to have completed the specified VET course for supervision of that asbestos removal work in WHS Regulations.</p> <p>New units of competency have been developed. New trainees may undertake existing or new training during 2012.</p>

**For more information contact your Workplace Adviser on 1300 650 620.**