

Federal Work Health & Safety Act, Regulations and Codes Of Practice

On 1st January 2012 new health and safety laws commenced operation in Queensland, New South Wales, the Australian Capital Territory and the Northern Territory. The other States have either delayed or indicated that they will not be applying the national structure in its current form.

Prior to the implementation of the legislation, AMIC submitted a submission to Safe Work Australia during the public comment period for the Act (in 2008) and for the Regulations and preliminary Codes of Practice (in 2011).

A detailed summary of the changes and the situation in each State and Territory was contained in an insert to the AMIC national newsletter sent out to all members last month.

The new provisions must be read in combination of the Act, Regulations and Codes of Practice.

1. Work Health and Safety Act 2011

The new Act provides general statements of intent in relation to the duties and responsibilities of all parties to health and safety in the work environment, the regulatory provisions regarding incident notification and licences certification and the legal proceedings in relation to prosecutions.

One of the prominent issues contained in the Act relates to the due diligence of 'officers' as defined:

The model WHS laws have adopted the definition of 'officer' from under section 9 of the *Corporations Act 2001*, which includes, among other things:

'(a) a director or secretary of the corporation; or

(b) a person:

(i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or

(ii) who has the capacity to affect significantly the corporation's financial standing; or

(iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation)'

The intent of the officer provisions under the model WHS laws is to exclude middle management, and to impose a duty that is appropriate to and reflective of senior management's position of influence.

Current guidance material in Victoria (where the section 9 definition has applied for some time) states that 'Branch office managers, middle level managers and supervisors in small businesses are not officers, given that they ... implement the decisions of others or report to the higher levels within their organisation.'

While Workplace Health and Safety Queensland has released guidance material on the due diligence obligations under the model WHS laws, these materials do no more than repeat the section 9 definition, in particular subsection 9(b).

Assessing whether a person is an officer will therefore depend on the particular circumstances and the extent of the individual's capacity to influence or participate in decision-making. Identifying who is captured by these provisions is critical.

2. Work Health and Safety Regulations 2011

The Regulations are made under section 276 of the Work Health and Safety Act and are about a wide range of matters relating to work health and safety, including:

- a. representation and participation
- b. managing risks to health and safety and general workplace management
- c. hazardous work involving noise, hazardous manual tasks, confined spaces, falls, demolition work, electrical safety and energised electrical work, diving work and licensing of high risk work and accreditation of assessors of competency
- d. plant and structures
- e. construction work
- f. hazardous chemicals including lead
- g. asbestos
- h. major hazard facilities
- i. mines, and
- j. review of decisions, exemptions, and prescribed serious illnesses.

3. Codes of Practice

a) Outline

Model Codes of Practice are practical guides to achieving the standards of health, safety and welfare required under the Work Health and Safety (WHS) Act and the Work Health and Safety (WHS) Regulations.

A code of practice applies to anyone who has a duty of care in the circumstances described in the code. In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the WHS Act, in relation to the subject matter of the code. Like regulations, codes of practice deal with particular issues and do not cover all hazards or risks which may arise. The health and safety duties require duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist.

Codes of practice are admissible in court proceedings under the WHS Act and Regulations. Courts may regard a code of practice as evidence of what is known about a hazard, risk or control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

b) Transitional approach to the model Codes of Practice

Transitional arrangements under the model Work Health and Safety Act and model Work Health and Safety Regulations in each jurisdiction will allow duty holders a period of time to make necessary adjustments in order to comply with any new requirements.

Model Codes of Practice are based on existing codes and guidance that are currently available in jurisdictions. Existing jurisdictional codes will remain in place until replacement model Codes of Practice are approved.

c) Model Codes of Practice

The following model Codes of Practice commenced on 1st January 2012:

- How to Manage Work Health and Safety Risks
- Hazardous Manual Tasks
- Managing the Risk of Falls at Workplaces
- Labelling of Workplace Hazardous Chemicals
- Preparation of Safety Data Sheets for Hazardous Chemicals
- Confined Spaces
- Managing Noise and Preventing Hearing Loss at Work
- Managing the Work Environment and Facilities
- Work Health and Safety Consultation Cooperation and Coordination
- How to Safely Remove Asbestos
- How to Manage and Control Asbestos in the Workplace

The following model Codes of Practice (we have only included those relevant to our industry) are currently being revised following public comment.

- First Aid in the Workplace
- Managing Electrical Risks at the Workplace
- Managing Risks of Hazardous Chemicals
- Managing Risks of Plant in the Workplace
- Safe Design of Building and Structures
- Abrasive Blasting
- Welding and Allied Processes
- Preventing and Managing Fatigue in the Workplace
- Preventing and Responding to Workplace Bullying

NEW Health and Safety Consultation Guide

Safe Work Australia has published the [Worker Representation and Participation Guide](#).

The guide has detailed information relating to the representation and participation of workers in health and safety matters in the workplace including:

- establishing work groups;
- electing health and safety representatives;
- functions and powers of health and safety representatives; and
- detailed information on provisional improvement notices.

Further details can be accessed on the [Safe Work Australia website](#).