

# AUSTRALIAN MODEL WORK HEALTH & SAFETY LAWS



## What are Model WHS Laws?

Before the Model WHS Laws, each Australian State and Territory had its own work health and safety legislation. This created difficulties and confusion for businesses operating across States, as standards differed.

In 2008, a commitment was made to harmonise work health and safety laws nationally, with the intention to achieve compliance and enforcement by the end of 2011. The harmonised Laws would also provide equal protection and standards to workers across Australia.

## Australian Model WHS Laws

As of January 2013, all Australian States, with the exception of WA and Victoria enacted new Model Work Health Safety Laws.

Victoria, although supporting the principle of harmonisation, decided not to adopt the revised laws.

WA introduced a new Bill to Parliament in October, with a three-month public comment period opened until January 2015. The Bill is mostly based on Model Laws with some specific exclusions.

## What's Different?

The new work health and safety laws bring with them key changes and new terminology. A key change is the primary duty holder being a "person conducting a business or undertaking" (PCBU). PCBU replaces the previous term 'employer'. The PCBU has a primary duty of care and the elements of this duty are similar to those of an employer under previous OHS laws.

## DUTY OF CARE

The Model WHS Laws identify various duty holders. The duty holder must undertake their duty as far as is 'reasonably practicable'. More than one person may have the same duty and a duty cannot be transferred to another person.

If more than one person has a duty, each person retains responsibility and must undertake their duty to their full capacity to which they can influence and control the matter – they cannot 'contract out' of their responsibility. Legislation sets out the following duties:

<b>PCBU's</b>	<ul style="list-style-type: none"> <li>• Person Conducting a Business or Undertaking (alone or with others, whether or not for profit or gain)</li> <li>• Must ensure, so far as reasonably practicable, the health and safety of workers and other persons who could be at risk by PCBU's work.</li> </ul>
<b>Upstream Duty Holders</b>	<ul style="list-style-type: none"> <li>• May include designers, manufacturers, installers, constructors, importers and suppliers - people who can influence the way work is carried out and integrity of products.</li> <li>• Must ensure, as far as reasonably practicable, that products are made without risk to the health and safety of people who use them.</li> </ul>
<b>Officers</b>	<ul style="list-style-type: none"> <li>• Officers are persons who are Officers under Section 9 of the Corporations Act 2001 (Cth) – including a Director or Secretary of the Corporation.</li> <li>• Must exercise "due diligence" (now defined by the WHS Act) to ensure that a PCBU complies with its duties.</li> </ul>
<b>Workers</b>	<ul style="list-style-type: none"> <li>• Includes employees, contractors, subcontractors, on-hire workers, apprentices, trainees, work experience students and volunteers.</li> <li>• Must take reasonable care to ensure acts/omissions do not adversely affect the health and safety of other persons, comply with reasonable instruction and co-operation with reasonable policy or procedure.</li> </ul>
<b>Others</b>	<ul style="list-style-type: none"> <li>• Any person at a workplace, e.g. visitors, customers, etc</li> <li>• Must take reasonable care for their own safety, ensure that their acts/omissions do not adversely affect the health and safety of others and comply with reasonable instruction.</li> </ul>

## CONSULT, COOPERATE AND COORDINATE

Model WHS Laws recognise that there are situations where more than one PCBU operates at a workplace and where people share responsibility for work health and safety to varying degrees, for example shopping centres, on-hire arrangements and multi-tenanted office buildings.

If there is more than one person that has a duty, the WHS Act requires that those involved consult, cooperate and coordinate activities (as far as reasonably practicable). To achieve safety obligations each person also retains responsibility for their duty and must undertake the duty to the extent to which the person can influence and control the matter.

The revised laws do not apply to Volunteers Associations. Here a group of people are working together for one or more community purposes and do not employ any person to carry out work for the Association.

A Volunteer Association does however owe duties to its Volunteers under the Act, where it:

1. conducts a 'business or undertaking' (whether for profit or not), and
2. is not a 'volunteer association' as defined by the Model WHS laws.

## WHAT ABOUT VOLUNTEER ASSOCIATIONS?

## CATEGORY OF OFFENCES

There are penalties if a duty holder breaches their duty under the WHS Act. The penalties are categorised depending on the type of breach.

	Type of breach	Corporation (PCBU)	Individual as a PCBU or Officer	Individual as a worker or other
Category 1	Duty holder recklessly endangers a person to the risk of death, serious injury or illness.	\$3 million	\$600,000, five years in jail or both	\$300,000, five years jail or both
Category 2	Duty holder fails to comply with a health and safety duty that exposes a person to risk of death, serious injury or illness.	\$1.5 million	\$300,000	\$150,000
Category 3	Duty holder fails to comply with health and safety duty.	\$500,000	\$100,000	\$50,000

The Act also introduces alternatives to imposing a penalty. These remedies include:

- Adverse publicity orders
- Injunctions
- Court-ordered WHS undertakings
- WHS project orders
- Restoration orders
- Training orders

**WE HOPE YOU FOUND THIS FACT SHEET USEFUL. FOR FURTHER INFORMATION ABOUT HOW WORKPRO CAN HELP YOU MEET YOUR OBLIGATIONS PLEASE VISIT [WORKPRO.COM.AU](http://WORKPRO.COM.AU) OR CALL 1300 975 776.**

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