|  |  |
| --- | --- |
| **Key Obligations WHS Legislation**  QLD,NSW,ACT,TAS,NT,WA | **Key Obligations OHS Legislation**  VIC |
| In 2011 Safe Work Australia developed the model WHS Laws to be implemented across Australia.  The Commonwealth, Australian Capital Territory, New South Wales, Northern Territory and Queensland implemented the *model WHS laws* in their jurisdiction on **1 January 2012.**  South Australia and Tasmania implemented the *model WHS laws* on **1 January 2013**.  On 10 November 2020, Western Australia passed a version of the model laws, which became operational on **31 March 2022**. | Victoria has not adopted the WHS legislation to date and has continued with its Occupational Health and Safety Act 2004 and Regulation 2017 legislation |
| The WHS Act places the primary duty of care and various other duties and obligations on a ‘person conducting a business or undertaking’ (**PCBU**). The meaning of a PCBU is set out in section 5 of the WHS Act.  The duties of a PCBU are all associated with the carrying out of work.  The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces. | Persons who control or manage matters that give rise or may give rise to risks to health or safety are responsible for eliminating or reducing those risks so far as is reasonably practicable.  Employers and self-employed persons should be proactive, and take all reasonably practicable measures, to ensure health and safety at workplaces and in the conduct of undertakings.  The objects of this Act are to secure the health, safety and welfare of employees and other persons at work |
| The regulators consider that the intent of the legislation is that the following kinds of persons should **not** to be taken to be PCBUs:   * + Individuals who carry out domestic work in and around their own home (e.g. domestic chores etc).   + Individuals such as home-based foster carers who care for foster children.   + Individual householders who organise one-off events such as dinner parties, garage sales, lemonade stalls etc.   + Individual householders who engage persons to carry out ad hoc home maintenance and repairs or other domestic work, e.g. casual babysitters; tradespeople to undertake repairs. It is important to note that a tradesperson will either be a worker for a business or undertaking, or a business or undertaking in their own right if the tradesperson is self-employed.   **Regulations - Meaning of person conducting a business or undertaking — persons excluded**   1. For the purposes of section 5(6) of the Act, a strata title body corporate that is responsible for any common areas used only for residential purposes may be taken not to be a person conducting a business or undertaking in relation to those premises. 2. Subregulation (1) does not apply if the strata title body corporate engages any worker as an employee. | Define Duties as applying to:   * Employers * Employees * Self Employed persons * Persons who manage and control workplaces * designers of plant * Duties of designers of buildings or structures * Duties of manufacturers of plant or substances * Duties of suppliers of plant or substances * Duties of persons installing, erecting or commissioning plant   No such specific provision in the OHS Act or Regulations |
| The definition of a ‘workplace’ is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.  The definition of a ‘worker’ is a person who carries out work in any capacity for a person conducting a business or undertaking. | ***workplace*** means a place, whether or not in a building or structure, where employees or self‑employed persons work.  ***worker*** has the same meaning as it has in the **Labour Hire Licensing Act 2018** |
| **Duty to identify hazards - Regulations**  A duty holder, in managing risks to health and safety, must identify reasonably foreseeable hazards that could give rise to risks to health and safety. | **The concept of ensuring health and safety**   1. To avoid doubt, a duty imposed on a person by this Part or the regulations to ensure, so far as is reasonably practicable, health and safety requires the person—    1. to eliminate risks to health and safety so far as is reasonably practicable; and    2. if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable. |
| **Managing risks to health and safety - Regulations**  A duty holder, in managing risks to health and safety, must:   1. eliminate risks to health and safety so far as is reasonably practicable; and 2. if it is not reasonably practicable to eliminate risks to health and safety—minimise those risks so far as is reasonably practicable. | 1. To avoid doubt, for the purposes of this Part and the regulations, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety—    1. the likelihood of the hazard or risk concerned eventuating;    2. the degree of harm that would result if the hazard or risk eventuated;    3. what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;    4. the availability and suitability of ways to eliminate or reduce the hazard or risk;    5. the cost of eliminating or reducing the hazard or risk. |
| **Hierarchy of control measures - Regulations**   1. This regulation applies if it is not reasonably practicable for a duty holder to eliminate risks to health and safety. 2. A duty holder, in minimising risks to health and safety, must implement risk control measures in accordance with this regulation. 3. The duty holder must minimise risks, so far as is reasonably practicable, by doing 1 or more of the following: 4. substituting (wholly or partly) the hazard giving rise to the risk with something that gives rise to a lesser risk; 5. isolating the hazard from any person exposed to it; 6. implementing engineering controls. 7. If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by implementing administrative controls. 8. If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by ensuring the provision and use of suitable personal protective equipment. | **Hierarchy of control measures - Regulations**  Provided in the regulations in relation to each duty holder  An employer must   1. so far as is reasonably practicable, eliminate the source of noise to which an employee is exposed. 2. If it is not reasonably practicable to eliminate the hazard, the employer must reduce the exposure of the employee to the hazard so far as is reasonably practicable by—    1. substituting the hazard; or    2. using engineering controls; or    3. combining any of the risk control measures referred to in paragraphs (a) and (b). 3. If the employer has complied with subregulations (2) and (3) so far as is reasonably practicable and an employee is still exposed to the hazard the employer must reduce the exposure of the employee to hazard, so far as is reasonably practicable, by using administrative controls. 4. If the employer has complied with subregulations (2), (3) and (4) so far as is reasonably practicable and an employee is still exposed to the hazard, the employer must provide personal protective exquipment to reduce the exposure of the employee, 5. The employer providing ppe under subregulation (5) must, consider—   (a) the nature of hazard at the workplace; and  (b) levels of the hazard at the workplace; and  (c) the duration of exposure to the hazard; and  (d) systems of work at the workplace. |
| **Requirement to Maintain and Review Control Measures – Regulations**  A duty holder who implements a control measure to eliminate or minimise risks to health and safety must ensure that the control measure is, and is maintained so that it remains, effective  A duty holder must review and as necessary revise control measures implemented under these Regulations so as to maintain, so far as is reasonably practicable, a work environment that is without risks to health or safety | Employers and self-employed persons should be proactive, and take all reasonably practicable measures, to ensure health and safety at workplaces and in the conduct of undertakings. |
| **Section 20 Act – management or control of a workplace**  The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.  **Ensuring exposure standards for substances and mixtures not exceeded**  A person conducting a business or undertaking at a workplace must ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture.  **Part 7.1 Regulations - Hazardous Chemicals**  [Labelling hazardous chemicals—general requirement](file:///C:\Users\Marcus\Downloads\model-whs-regulations-1_august_2023.docx#_Toc141880974)  [Labelling hazardous chemicals—containers](file:///C:\Users\Marcus\Downloads\model-whs-regulations-1_august_2023.docx#_Toc141880975)  [Labelling hazardous chemicals—pipe work](file:///C:\Users\Marcus\Downloads\model-whs-regulations-1_august_2023.docx#_Toc141880976)  [Person conducting business or undertaking to obtain and give access to safety data sheets](file:///C:\Users\Marcus\Downloads\model-whs-regulations-1_august_2023.docx#_Toc141880977)  **Part 8.3 Regulations - Management of Asbestos and Associated Risks**  **Exposure to airborne asbestos at workplace**   1. A person conducting a business or undertaking at a workplace must ensure that: 2. exposure of a person at the workplace to airborne asbestos is eliminated so far as is reasonably practicable; and 3. if it not reasonably practicable to eliminate exposure to airborne asbestos—exposure is minimised so far as is reasonably practicable.   **Asbestos to be identified or assumed at workplace**  **Presence and location of asbestos to be indicated**  **Asbestos register**  **Asbestos management plan**  **Review of asbestos register and Management Plan** | **26 Duties of persons who manage or control workplaces - Act**   1. A person who (whether as an owner or otherwise) has, **to any extent**, the management or control of a workplace must ensure so far as is reasonably practicable that the workplace and the means of entering and leaving it are safe and without risks to health.   **153 Prohibited hazardous substances**   1. A person who is an employer or self-employed person must ensure that any hazardous substance listed in Schedule 6 to these Regulations is not used at the person's workplace for any purpose specified in that Schedule.   **Part 4.1 Hazardous Substances - Regulations**  **163 Control of risk**   1. An employer must, so far as is reasonably practicable, eliminate any risk associated with hazardous substances at the employer's workplace.   Containers must be labelled  [Employer to obtain and give access to safety data sheets](file:///C:\Users\Marcus\Downloads\model-whs-regulations-1_august_2023.docx#_Toc141880977)  **Part 4.4 Regulations—Asbestos**  **Control risk of exposure—person who manages or controls workplace**   1. A person who manages or controls a workplace —    1. must, so far as is reasonably practicable, eliminate the exposure of persons at the workplace to airborne asbestos fibres; or    2. if it is not reasonably practicable to eliminate that exposure, must reduce that exposure so far as is reasonably practicable.   **Subdivision 2—Duties of persons who manage or control workplaces**  **226 Identification of asbestos**  **227Asbestos register**  **228 Asbestos register to be kept current**  **231 Control of risk – duty to remove, encapsulate or seal**  **232 Review of risk control measures** |
| **Section 21 Act – management or control of fixtures, fittings or plant at a workplace**  The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.  **Maintenance and inspection of plant - Regulations**   1. The person with management or control of plant at a workplace must ensure that the maintenance, inspection and, if necessary, testing of the plant is carried out by a competent person. 2. The maintenance, inspection and testing must be carried out:    1. in accordance with the manufacturer's recommendations, if any; or    2. if there are no manufacturer's recommendations, in accordance with the recommendations of a competent person; or 3. in relation to inspection, if it is not reasonably practicable to comply with paragraph (a) or (b), annually. | No correlating provision |
| **Section 29 Act - Duties of other persons at the workplace**  A person at a workplace (whether or not the person has another duty under this Part) must:  (a) take reasonable care for his or her own health and safety; and  (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and  (c) comply, so far as the person is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person conducting the business or undertaking to comply with this Act. | **Section 32 Act - Duty not to recklessly endanger persons at workplaces**  A person who, without lawful excuse, recklessly engages in conduct that places or may place another person who is at a workplace in danger of serious injury is guilty of an indictable offence |