New Work Health and Safety Laws from 1 January 2013

The new package of work health and safety laws (WHS Package) will come into effect from 1 January 2013, subject to some transitional arrangements. The WHS Package consists of the Work Health and Safety Act 2012 (WHS Act 2012), Work Health and Safety Regulations (WHS Regulations) and codes of practice. This document outlines some key differences between the current Workplace Health and Safety Act 1995 (the current Act) and the new WHS package.

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.

What are some of the key changes arising from the WHS Act 2012?

Key differences for Tasmania arising from the new WHS Act 2012 will include (without limitation):

| Broadened duties | The range of persons who bear duties is expanded beyond those covered in the current Act. Duties will be owed by persons conducting a business or undertaking (PCBU) to workers engaged or caused to be engaged by the PCBU; workers whose activities in carrying out work are influenced or directed by the PCBU; and to other persons. This will broaden the duties to include employees, contractors and ‘others’.

Some the key definitions will be new. For example, the WHS Act 2012 uses the term “person conducting a business or undertaking” instead of the terms employer and self-employed person.

The concept of “reasonably practicable” will be defined in terms of what is, or was reasonably able to be done to ensure health and safety, taking into account and weighing up all relevant matters.

For more information please refer to HIA info sheet: Reasonably Practicable. |
| Consultation duties | The WHS Act 2012 introduces a new duty for PCBUs to consult, cooperate and coordinate activities with all other persons who have a work health or safety duty in relation to the same matter. PCBUs such as builders, contractors, subcontractors, labour hirer hosts/on-hirers, suppliers, and others will share this duty.

Principal contractors will be required to include in their WHS management plan the arrangements in place between all PCBUs for consultation, cooperation and the coordination of activities.

There are also new provisions for consultation with workers on matters that affect their health and safety. This will require broad consultation with anyone engaged by or working ‘for’ the business of the PCBU, not just direct employees.

For more information please refer to HIA info sheet: Consultation Duties. |
| **Officer duties** | One of the key changes requires officers (such as directors and company secretaries) to exercise ‘due diligence’ to ensure the corporation meets its WHS duties. The new duties will apply to all officers of the business or undertaking and require them to be proactive and continuously ensure that the PCBU complies with the relevant duties and obligations of the WHS Package.  
For more information please refer to HIA info sheet: *Due Diligence.* |
| **Right of entry** | The new provisions are similar to existing provisions. However, there are some changes, the most significant ones being:  
- The WHS Act 2012 refers to entry to inquire into suspected contraventions and requires the entry permit holder to give notice as soon as is reasonably practicable. The current Act provides for entry to enquire into or facilitating the resolution of a WHS matter and requires ‘reasonable’ notice; and  
- The WHS Act 2012 provides for entry into workplaces to inspect records or information, and entry to consult and advise workers. The current Act allows entry for discussing WHS issues with workers and restricts this to during a meal break or other break in work. |
| **Designer duties** | The WHS Act 2012 introduces new requirements for designers to ensure that structures are not only safe to construct but also safe to maintain and demolish, and to provide a range of information to users and to other persons.  
In addition the WHS regulations will require designers of structures to provide a written safety report to the PCBU who commissioned the design.  
For more information please refer to HIA info sheet: *Duties of designers.* |
| **Manufacturer and supplier duties** | The new duties are broader than current duties, which are limited to manufacture and supply “for use at a workplace” and for the purpose of “using the plant or structure properly”.  
The manufacturer and supplier will also be required to provide any necessary information on the safe use etc. of the structure. |
| **Incident notification to the regulator** | Under the WHS Act 2012 there will be a broader range of injuries and dangerous incidents that must be notified to Workplace Standards.  
For more information please refer to HIA info sheet: *Incident Notification.* |
| **Health and safety representatives (HSRs) and health and safety committees (HSCs)** | Provisions are broader than current provisions. New provisions include:  
- Any worker will be able to request an election of HSRs (currently HSRs are not possible if there are less than 10 employees);  
- HSRs will gain a wide range of powers, including the power to require a PCBU to review safety control measures, to direct work to stop in cases of unsafe work, and to issue Provisional Improvement Notices (PINs);  
- HSRs will have a right to be trained. Training is to be paid for by the PCBU or shared between PCBUs with this responsibility;  
- PCBUs will have to provide adequate facilities for HSRs and allow access to persons assisting HSRs; and  
- 5 or more workers, or an HSR, will be able to request a HSC (currently workers can request it only if there are more than 20 workers). |
| Discrimination against workers or prospective workers | The current Act has relatively simple provisions around discrimination against employees. In contrast, the WHS Act 2012 has considerably more detailed and wider provisions for protection against discrimination and coercion. Changes include:
  - provisions will apply with respect to all workers (not just employees);
  - a reverse onus of proof will apply; and
  - there will be an additional right for workers to undertake civil actions. |
|---|---|
| Powers of the regulator | The regulator and its inspectors will have much broader powers, including powers to:
  - apply to the courts specifically for injunctions;
  - use search warrants;
  - take affidavits;
  - require people to answer questions with no rights of individuals to refuse to answer; and
  - undertake remedial action to make a workplace safe and to recover costs of doing so. There will be a new review and appeal mechanism with the ability to seek an initial review by the regulator of an inspector’s decision, and to seek a stay of the decision pending this review. There will also be an opportunity to seek a second review by a court. |
| Penalties | There will be significantly increased penalties for contravention of the new laws - up to $3 million for a corporation and $600,000/5 years jail for individuals. The current maximum penalties in Tasmania are $195,000 for corporations or $65,000 for individuals. Other changes include:
  - the time period for commencing proceedings for an offence will be increased to 2 years; and
  - a range of new sentencing options, including orders to undertake training, or to be exposed to adverse publicity orders (which could include media coverage). |

**What are the key changes arising from the WHS Regulations 2012?**

Much of the detail from the WHS Package will be found in the WHS Regulations. At the time of writing, the final detail of the regulations was not available. The following commentary is based on the model WHS Regulations. Key changes for the housing industry (without limitation) are detailed below.

| General Workplace Management | First Aid – requirements to ensure the provision of first aid equipment and the training of an adequate number of workers in first aid and to ensure that each worker has access to first aid equipment, first aid facilities and trained first aiders.  
Emergency Plans – a requirement to ensure an emergency plan is prepared and implemented that provides for prescribed emergency procedures and the testing of these procedures.  
Personal protective equipment – requirements to ensure PPE used by any persons other than a worker is suitable, and to provide workers with information, training and instruction in the proper use, wearing, storage and maintenance of the PPE.  
Remote or isolated work – requirements to manage all the risks to the health and safety of a worker associated with remote or isolated work, and to ensure that the system of work includes an effective communication system with the |
worker(s). For more information please refer to HIA info sheet: *Remote or isolated work.*

**Managing risks from airborne contaminants** - requirements to carry out air monitoring if uncertain whether or not the concentrations of airborne contaminants exceed the relevant exposure standard, and to keep records of monitoring of airborne contaminants for 30 years.

**Storage of Flammable or combustible substances** — requirements to keep to the lowest practicable amounts at the workplace.

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<tr>
<th>Confined spaces</th>
<th>The criteria to determine if a space is a confined space will not require confined spaces to have a restricted means of entry or exit. This means that some spaces not currently considered to be confined spaces in Tasmania will be captured.</th>
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<th>Managing risks of Falls</th>
<th>The new provisions specify a hierarchy that must be applied for controlling risks of a person falling from one level to another (so far as is reasonably practicable). This, along with the recommendations of the Code of Practice: <em>Preventing Falls in Housing Construction</em> (if adopted by Tasmania), will essentially require:</th>
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<td></td>
<td>• Physical fall protection for all work above 2 m except for trestle scaffolds and as allowed below;</td>
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<td>• Physical perimeter fall protection for roof work in single storey;</td>
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<td>• Physical perimeter fall protection for sheet floor installation and wall frame erection in double storey;</td>
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<td>• Internal fall protection for prefabricated truss installation if spacings exceed:</td>
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<td>o 900 mm spacing for ≤600 truss spacing;</td>
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<td>o 450 mm spacing for &gt;600 truss spacing; and</td>
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<td>• planks or other work platform to erect trusses spaced at no more than 600 mm.</td>
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<td>For more information please refer to HIA info sheet: <em>Managing the risks of falls.</em></td>
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<th>Falling Objects</th>
<th>The new provisions specify the following hierarchy to be applied for controlling risks of objects falling, if that is likely to injure a person:</th>
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<td>• prevent an object from falling freely if that is reasonably practicable; or</td>
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<td>• if this is not reasonably practicable provide a system to arrest the fall of a falling object (e.g. a catch platform).</td>
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<th>Demolition Work</th>
<th>There will be new notification requirements that 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 and 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.</th>
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<th>Electrical Safety and Energised Electrical Work</th>
<th>There will be new provisions for:</th>
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<td>• mandatory compliance with AS/NZS 3012: 2010 <em>Electrical Installations – Construction and Demolition Sites</em>; and</td>
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<td>• live work, including a safety observer.</td>
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<td>There are also new provisions for workplaces other than construction for:</td>
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<td>• RCD protection on all socket outlets; and</td>
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<td>• testing and tagging in hostile operating environments.</td>
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**Plant and Structures**

The provisions in relation to plant are broader than current requirements. Some of the new provisions that could affect construction work include:

- **Maintain, inspect and test plant** – in accordance with manufacturer’s recommendations, or if those aren’t available, in accordance with recommendations of a competent person, and to keep records for some plant.

- **Scaffolds** – are not to be used unless the scaffold and its supporting structure has been inspected by a competent person and that person provides written confirmation that construction has been completed. There is a similar prohibition for a scaffold or its supporting structure that is found to be unsafe. There is a requirement to make sure unauthorised access to the scaffold is prevented while the scaffold is incomplete or unattended. These requirements apply to suspended, cantilevered, spur or hung scaffolds, as well as any scaffold from which a person or thing could fall more than 4 metres.

- **Lasers** – The use of Class 3B and Class 4 lasers is prohibited in the building and construction industry.

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**Plant registration**

There will be new requirements to:
- register the design of prefabricated formwork and concrete placement units with delivery booms; and
- renew the registration of plant items every five years.

**Construction work**

The new definition of construction work is similar to the current definition however, the much broader definition of duty holder, worker and workplace may capture activities not previously captured such as routine maintenance.

There will be new requirements applicable to construction work in relation to:
- Principal contractor duties
- Safe Work Method Statements (SWMS)
- Designers of structures
- Excavation work
- Site security

These are detailed further below.

**Principal Contractor duties**

New specific duties will apply to the principal contractor (PC) when the cost of the construction work is $250,000 or more. The PC must:
- prepare a WHS Management Plan and related obligations, e.g. make each worker aware of the content of the plan before each worker commences work. For more information please refer to HIA info sheet: *WHS Management Plans*;
- display signage showing PC details and the location of the site office.
- obtain SWMS from all contractors and sub-contractors;
- put in place arrangements for ensuring compliance with other parts of the regulations, including provision of PPE, first aid and emergency plans; and
- ensure control of risks in relation to:
  - storage, movement and disposal of materials;
  - storage of plant that is not in use;
  - traffic in the vicinity of the workplace;
  - essential services at the workplace; and
  - site security.
| Safe Work Method Statements (SWMS) | New provisions will require the preparation of written SWMS for high risk construction work.  
There will also be an obligation on the PC to collect the SWMS and on subcontractors to provide their SWMS to the PC.  
For more information please refer to HIA info sheet: *Safe Work Method statements.* |
| Design of structures | New provisions will require:  
• designers of structures 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. For more information on this obligation please refer to HIA info sheet: *Duties of designers*;  
• the person who commissions construction work 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; and  
• the person who commissions a construction project to give the PC 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 (if any) to the PC. |
| Excavation work | **Location of underground essential services** – New provisions require the person with management or control of the workplace to:  
• take all reasonable steps to obtain current underground essential services information at the excavation and adjacent areas, regardless of the presence of a hazard or risk;  
• give this information to any person engaged to carry out the excavation work; and  
• keep the information available for inspection and for up to 2 years if a notifiable incident occurs.  
**Control measures for trenches** – Additional control measures a PCBU who proposes to excavate a trench at least 1.5m deep must put in place include:  
• ensuring the work area is secured to prevent unauthorised access; and  
• ensuring all sides of the trench are adequately supported by shoring, benching or battering to minimise the risk to any person from the collapse of the trench, unless a geotechnical engineer has provided written advice that all sides of the trench are safe from collapse. |
| Site security | A new requirement for the workplace to be secured so far as is reasonably practicable against unauthorised access. |
Hazardous Chemicals

The new provisions are broader than the current requirements. Provisions relating to chemicals will be based on the globally harmonised system for classification of chemicals. While the basic requirements remain the same, some of the new provisions that could affect construction work include:

**Container use** – there will be a new requirement ensure that a container labelled for a hazardous chemical is used only for the use, handling or storage of the hazardous chemical unless it is thoroughly cleaned.

**Safe use, handling and storage** – there will be a new requirement to ensure that sufficient information about the safe use, handling and storage of the hazardous chemical is readily accessible to:
- a worker at the workplace; and
- an emergency service worker, or anyone else, who is likely to be exposed to the hazardous chemical at the workplace.

**Safety data sheets (SDS)** – there will be a new requirement to make SDSs readily accessible to workers and to any person at the workplace who is likely to be affected by the hazardous chemical and who asks for the SDS.

**Hazardous Chemicals Register** – there will be a new requirement to ensure that the register:
- includes the current SDS for each hazardous chemical listed; and
- is readily accessible to workers and anyone else who is likely to be affected by the hazardous chemical at the workplace.

Asbestos

The new provisions are broader than the current provisions and impose a number of specific requirements. Some of the new provisions that could affect construction work include obligations to:
- complete an asbestos management plan where there is asbestos identified;
- warn persons about possible exposure to asbestos if the asbestos has been disturbed;
- obtain the asbestos register prior to demolition or refurbishment;
- remove asbestos prior to demolition or refurbishment;
- inform a range of persons about asbestos removal work;
- comply with additional restrictions on asbestos removal work;
- carry out a clearance inspection and obtain a clearance certificate; and
- ensure clearance inspections and air monitoring are carried out by an independent licensed assessor.

In addition, new and additional national units of competency will apply for asbestos removal licence training.

Most other States have put in place transitional arrangements, including that existing licences for some activities will continue to be recognised. At the time of writing, it is not clear what transitional arrangements will apply in Tasmania.