

A worker wearing a black long-sleeved shirt, dark blue jeans, and brown work boots is climbing a green industrial staircase. The worker is wearing a bright orange safety harness with a white rope attached. The worker is holding onto yellow handrails. The background shows a blurred industrial structure with green and yellow elements.

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Current state of Health
and Safety Laws in Australia

2022

Workplace Health and Safety Laws

COMMONWEALTH

REGULATORS: Comcare, NOPSEMA, National Heavy Vehicle Regulator, ONRSR

APPLICABLE LAW:

Work Health and Safety Act 2011 and Regulations

UPDATED Model WHS Act and Regulations – updated 6 June 2022

- Implements recommendations from the 2018 Review of the *model WHS Act* and Regulations. Amendments do not automatically apply in a jurisdiction.
- Victoria, NSW and WA have already implemented provisions to prohibit insurance arrangements for WHS fines.

Key amendments include:

- Category 1 offences now include gross negligence as an alternative fault element.
- Inspectors can, within 30 days of any inspector's entry to the workplace, require the production of documents or answers to questions related to the purpose of entry within a specified period (section 171(2A)).
- Inspector can require a person to attend before the inspector at a specified time and place to answer any questions (section 171(2A)).
- Clarifies the circumstances in which a WHS regulator or authorised person may disclose information to any other person (section 271A), including in circumstances where it is to enforce compliance with the *WHS Act* or prevent serious risk to public health and safety.
- Prohibits insurance and other similar indemnity contract arrangements covering all or part of the liability for WHS penalties (section 272A).

- Defines psychosocial hazard and psychosocial risk (regulations 55A and 55B) and provides an express obligation for a person conducting a business or undertaking (PCBU) to manage psychosocial risk and take control measures to eliminate or minimise psychosocial risk (regulations 55C and 55D).

WESTERN AUSTRALIA

REGULATOR: WorkSafe WA, Department of Mines, Industry Regulation and Safety (DMIRS)

APPLICABLE LAW:

Work Health and Safety Act 2020 and Regulations

NEW Work Health and Safety Act 2020 – effective from 31 March 2022

- Implements a harmonised WHS regime for Western Australian workplaces, including those in the mining and petroleum sectors.
- Replaces the *Occupational Safety and Health Act 1984*, and those elements of the *Mines Safety and Inspection Act 1994* and *Petroleum and Geothermal Energy Safety Levies Act 2011* that relate to WHS matters.
- The Act is similar to the national WHS model however contains several differences including:
 - introduction of an industrial manslaughter offence (see our section on Industrial Manslaughter for more details);
 - increased powers of inspectors to make a decision resolving an issue;
 - the current right of entry provisions under *the Industrial Relations Act 1979 (WA)* will remain in force and unaltered by the new laws; and
 - introduction of duty of care for WHS service providers. Providers must ensure, so far as is reasonably practicable, that their services do not pose a health and safety risk to persons at the relevant workplace.

NEW SOUTH WALES

REGULATOR: SafeWork NSW, Resources Regulator – Department of Regional NSW

APPLICABLE LAW:

Work Health and Safety Act 2011 and Regulation

Work Health and Safety (Mines and Petroleum Sites) Act 2013 and Regulations

Radiation Control Regulation 2013

Dams Safety Regulation 2019

NEW Work Health and Safety (Mines and Petroleum Sites) Amendment (Carbon Dioxide Exposure Standards) Regulation 2021 – effective from 12 November 2021

- Prescribes carbon dioxide exposure standards for underground coal mines to ensure the standards are not exceeded and makes minor amendments in the nature of statute law revision.

NEW Radiation Control Amendment Regulation 2021 – effective from 26 November 2021

- Amends the definition of employment to include engagement under a contract for services, self-employment and carrying on business in partnership.
- Employers are required to ensure that occupationally exposed persons employed by them are not exposed to ionising radiation that exceeds the prescribed dose limits.
- Employed persons over 16 years old (but under 18 years old) can only be exposed to ionising radiation if the person is subject to immediate supervision during exposure and it is for the purposes of training or a course.
- Employees under 16 years of age must not be exposed to ionising radiation in the course of employment.
- A failure to comply with the dose limits is a penalty notice offence.

Workplace Health and Safety Laws

NEW SOUTH WALES – CONTINUED

NEW Work Health and Safety Regulation 2017 – effective from 1 January 2022

- The audiometric testing requirements in clause 58(2) of the State WHS Regulation to 31 SafeWork NSW has extended the exemption from complying with December 2023.

NEW Work Health and Safety Amendment (Licences in Digital Form) Regulation 2022 – effective from 17 June 2022

- Provides that a licence or other authorisation issued under the Work Health and Safety Regulation 2017 in digital form is not required to contain a signature.

NEW Work Health and Safety Amendment (Food Delivery Riders) Regulation 2022 – some provisions effective from 1 July 2022

- From 1 July 2022 requires food delivery booking providers to supply riders with certain high-vis personal protective equipment (PPE). This offence carries a fine of \$720 for individuals and \$3,600 for corporations. An exception will apply

where the rider is able to use high-vis PPE made available to the rider by another food delivery booking provider.

- From 1 January 2023, food delivery booking providers will have to provide riders with induction training and a training verification record. Record-keeping requirements with respect to PPE and training will also apply from this date. Food delivery riders will also have a duty to use or wear the PPE provided, and to make the training verification record available for inspection when requested by the regulator.

NEW Dams Safety Amendment (Miscellaneous) Regulation 2022 – effective from 1 July 2022

- Introduces a requirement for certain safety functions for high or extreme consequence dams to be carried out by a competent person, or panel of at least 2 competent persons.
- Requires a dam safety management system document for a dam to identify an individual responsible for compliance with the dam safety management system.

- Requires a contact person be nominated, and the contact details given to Dams Safety NSW.

NEW Work Health and Safety (Mines and Petroleum Sites) Amendment Regulation 2022 – effective from 1 August 2022

- Replaces existing monetary penalty amounts with the equivalent penalty expressed in penalty units (to adopt an approach to expressing penalty amounts that is consistent with the Work Health and Safety Act 2011).

NEW Penalty increases under the Work Health and Safety Act 2011 – effective from 1 July 2022

There have been increases to the maximum penalty for Category 1, 2 and 3 offences under the Work Health and Safety Act 2011, which were introduced for the 2022/2023 financial year. See the table below for examples of maximum penalties for certain offences under the Act.

Example of certain penalty amount increases

OFFENCES	PERSON COMMITTING OFFENCE	PREVIOUS PENALTY (FY 2020/21)	NEW PENALTY (FY 2022/23) (ROUNDED TO NEAREST \$)
Category 1 – Failure to comply with health and safety duty (with gross negligence or reckless conduct) – s 31	Body corporate PCBU	\$3,565,158	\$3,721,686 (34,630 penalty units)
	Officer of PCBU	\$712,928 or 5 years' imprisonment or both	\$744,230 (6,925 penalty units) or 5 years' imprisonment or both
Category 2 – Failure to comply with health and safety duty (with risk of death or serious injury or illness) – s 32	Body corporate PCBU	\$1,782,579	\$1,860,843 (17,315 penalty units)
	Officer of PCBU	\$356,721	\$372,384 (3,465 penalty units)
Category 3 – Failure to comply with health and safety duty – s 33	Body corporate PCBU	\$594,021	\$620,102 (5,770 penalty units)
	Officer of PCBU	\$118,907	\$124,128 (1,155 penalty units)

Workplace Health and Safety Laws

NORTHERN TERRITORY

REGULATOR: NT WorkSafe

APPLICABLE LAW:

Work Health and Safety (National Uniform Legislation) Act 2011 and Regulations

NEW Justice Legislation Amendment Regulations 2021 – effective from 3 November 2021

- Amends the *Work Health and Safety (National Uniform Legislation) Regulations 2011* to update the price of relevant application fees, including, for example, health and safety representative training, high risk work licences and accreditation of assessor and asbestos removal licences.

NEW Work Health and Safety (National Uniform Legislation) Amendment Regulations 2022 – effective from 25 May 2022

- Amends the *Work Health and Safety (National Uniform Legislation) Regulations 2011* to change the requirements about what the general construction induction training card (white card) must state.

QUEENSLAND

REGULATORS: Workplace Health and Safety Qld, Petroleum and Gas Inspectorate, Explosives Inspectorate, Mines Inspectorate, Electrical Safety Office, Queensland Health (for radioactive materials), Resources Safety and Health Queensland

APPLICABLE LAW:

Work Health and Safety Act 2011 and Regulation
Coal Mining Safety and Health Act 1999 and Regulation
Explosive Regulation 2017
Mining and Quarrying Safety and Health Act 1999 and Regulation

Petroleum and Gas (Production and Safety) Act 2004 and Regulation

Radiation Safety Act 1999 and Regulation
Electrical Safety Act 2022 and Regulation

NEW Education and Other Legislation (Fee Unit Conversion) Amendment Regulation 2022 – effective from 17 June 2022

- Amends the *Work Health and Safety Regulation 2011* and the *Electrical Safety Regulation 2013* to update the price of relevant application fees.

NEW Resources Legislation (Safety and Health Fees) Amendment Regulation 2021 – effective from 1 January 2022

- Amends the *Coal Mining Safety and Health Regulation 2017*, the *Explosives Regulation 2017*, the *Mining and Quarrying Safety and Health Regulation 2017* and the *Petroleum and Gas (Safety) Regulation 2018* to update the price of relevant safety and health fees.

NEW Resources Safety and Health Legislation (Fee Unit Conversion) Amendment Regulation 2022 – effective from 10 June 2022

- Amends the *Coal Mining Safety and Health Regulation 2017*, the *Explosives Regulation 2017*, the *Mining and Quarrying Safety and Health Regulation 2017* and the *Petroleum and Gas (Safety) Regulation 2018* to convert all fees prescribed under these Regulations into the fee unit model.

NEW Mining Legislation (Continuing Professional Development) Amendment Regulation 2022 – effective from 10 June 2022

- Inserts into the *Coal Mining Safety and Health Regulation 2017* and the *Mining and Quarrying Safety and Health Regulation 2017* an obligation on the holder of a) a certificate of competency; or b) site senior executive notice, to complete continuing professional development.

NEW Health and Other Legislation Amendment Act 2022 – effective from 1 July 2022

- Updates the procedural requirements when applying for:
a) a licence; b) an accreditation certificate; c) an approval; or d) a radiation safety officer certificate, under the *Radiation Safety Act 1999*.

NEW Health Legislation (Fee Unit Conversion) Amendment Regulation 2022 – effective from 1 July 2022

- Amends the *Radiation Safety Regulation 2021* to update the relevant fees.

NEW Health Legislation Amendment Regulation 2022 – effective from 1 July 2022

- Amends the *Radiation Safety Regulation 2021* to specify the documents required for applications requiring proof of identity.

SOUTH AUSTRALIA

REGULATOR: SafeWork SA

APPLICABLE LAW:

Dangerous Substances Act 1979 and Regulations

NEW Dangerous Substances (LPG Cylinder Labelling) Amendment Act 2021 – effective from 17 September 2021

- New provisions for LPG Cylinder Labelling requiring all LPG bottles that have a capacity between 500mL and 25L to have a label warning that includes the words: “Intentional misuse by deliberate concentrated inhalation may cause injury or death.”

Workplace Health and Safety Laws

TASMANIA

REGULATOR: WorkSafe Tasmania

APPLICABLE LAW:

Work Health and Safety Act 2012 and Regulations
Explosives Regulations 2012

NEW Work Health and Safety Amendment Regulations 2021 – effective from 22 December 2021

Amends the *WHS Regulations* by:

- inserting a new regulation which deals with safe use of quad bikes;
- updating reference to the Workplace Exposure Standard for Airborne Contaminants to give effect to reduced limits for lead (inorganic dusts and fumes) and silica (crystalline) dust;
- updating references to the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) to the Seventh revised edition; and
- updating references to a small number of Australian Standards that have been superseded.

With the exception of regulation 216A on quad bikes (which is Tasmania specific), the amendments reflect changes necessary to implement the decisions of Commonwealth, State and Territory Ministers to implement more stringent exposure standards for lead and silica dust, and to amend the model work health and safety laws to refer to GHS 7, and to update references to superseded Australian Standards.

CONSULTATION Review of Tasmania's Explosives Regulations – closed 30 May 2022

- The Government has sought a review of Tasmania's *Explosives Regulations 2012*. Consultation closed on 30 May 2022 and submissions are being considered.

AUSTRALIAN CAPITAL TERRITORY

REGULATOR: WorkSafe ACT

APPLICABLE LAW:

Work Health and Safety Act 2011 and Regulations
Workers Compensation Regulation 2002

Dangerous Substances Act 2004

NEW Loose-Fill Asbestos Legislation Amendment Act 2021 – effective from 18 August 2021

- Amends the *Dangerous Substances Act* definition of buyback scheme and the definition of loose-fill asbestos insulation eradication buyback program so that these definitions no longer refer to the *Appropriation (Loose-fill Asbestos Insulation Eradication) Act 2014-2015*. The *Appropriation Act* provided funding for the Loose-fill Asbestos Eradication Scheme Buyback Program (the Scheme) until 17 August 2021.
- From 18 August 2021, all financial and budget implications for any newly-identified properties that participate in the Scheme will be funded through existing budgetary mechanisms.

NEW Work Health and Safety Amendment Act 2021 – commenced 11 November 2021

- See update on the introduction of broadened Industrial Manslaughter laws to the *Work Health and Safety Act 2011* in the Industrial Manslaughter section of this update.

NEW Workers Compensation Amendment Regulation 2022 (No 1) – effective from 1 April 2022 and 1 June 2022

- Amends the *Workers Compensation Regulation* to align with the licensing framework and ensure workers can have same service delivery expectation for workers' compensation matters regardless of their employer's insurance status.

- These amendments support the required licensing framework to align with the new requirements under the *Workers Compensation Act* and provide for the licensing application process, criteria for issuing a licence, conditions that may be imposed on a licence, and record-keeping requirements.

NEW Work Health and Safety Amendment Regulation 2022 (No 1) – some sections effective from 1 July 2022

- From 1 July 2022 a person who holds an equivalent asbestos removal/assessor licence (being a licence granted outside of the ACT) must notify WorkSafe before undertaking asbestos removal/assessing in the ACT. Further amendments relating to crystalline silica can be found in the Crystalline Silica section of this update.

VICTORIA

REGULATOR: WorkSafe Victoria

APPLICABLE LAW:

No current intention to harmonise
Occupational Health and Safety Act 2004 and Regulations
Electricity Safety Act 1998

Workplace Safety Legislation and Other Matters Amendment Act 2022

NEW Occupational Health and Safety and Other Legislation Amendment Act 2021 – largely effective from 22 September 2021 and 22 March 2022

- Introduces a ban on insurance against fines under the *OHS Act*, *Dangerous Goods Act 1985* and *Equipment (Public Safety) Act 1994*. While such contractual terms have been banned since 22 September 2021, the offence provisions relating to claiming a benefit commenced from 22 September 2022.

Workplace Health and Safety Laws

VICTORIA – CONTINUED

- Streamlines electronic delivery of certain notices and reports, and allows infringement notices to be served electronically.
- Simplifies the procedures for disposing of or destroying property which has been seized by WorkSafe Victoria (where the owner doesn't want the property returned).
- Introduces increased powers for Health and Safety Representatives and authorised representatives to take photographs, measurements or make sketches or recordings at the workplace.
- From 22 March 2022, captures labour hire arrangements, meaning employers owe the same duties to labour hire workers as they do towards employees (and labour hire workers are afforded the same health and safety protections).
- Also from 22 March 2022, inserts a new duty into the *OHS Act* requiring labour hire agencies and host employers to consult, coordinate and cooperate with each other where they share OHS duties to labour hire workers.

NEW Public Health and Wellbeing Amendment (Pandemic Management) Act 2021 – effective from 8 December 2021

- A failure to comply with an order or direction relating to the COVID-19 pandemic is taken to be an activity that involves an “immediate risk to the health or safety of a person.”
- The temporary COVID-19 measures added to the *OHS Act* are to be repealed on 26 October 2022.

NEW Workplace Safety Legislation and Other Matters Amendment Act 2022 – largely effective from 16 March 2022

Introduces amendments to a number of Acts, including several compensation provisions of Acts to improve

outcomes for injured workers and their families (these changes were effective from 1 July 2022). Most relevantly, the Act makes a number of amendments to the *OHS Act*, some of which more closely align the Act with the *model WHS Act*. Significant amendments include:

- Expanding the scope of incidents that must be reported to WorkSafe (to include certain illnesses prescribed by the Regulations and incidents involving a “serious” risk to health and safety from an imminent or immediate exposure to a hazard).
- Expanding the power for an inspector to issue prohibition notices and give directions to include non-immediate yet serious health and safety risks. Inspectors have the power to prohibit an activity until satisfied the risks have been remedied and the workplace made safe.
- Enabling WorkSafe to request further information from an applicant regarding an internal review application made under section 128.

NEW Occupational Health and Safety Amendment (COVID-19 Vaccination Information) Regulations 2022 – effective from 12 July 2022

- Provides for the circumstances where an employer may collect, record, hold and use COVID-19 vaccination information from specified persons for the purpose of performing a duty relating to health and safety at a workplace (imposed by Part 3 of the *OHS Act* and Regulations).
- This part is to be revoked on 12 July 2023.

PROPOSED Occupational Health and Safety Amendment (Psychological Health) Regulations

- Submissions are currently being considered by the Government and WorkSafe in relation to the proposed

Regulations. As they currently stand, the proposed Regulations would require employers to identify, eliminate, review and control risks associated with ‘psychosocial hazards’ in the workplace. It would also require employers to report psychological complaints to WorkSafe Victoria.

PROPOSED Reforms to protect workers from sexual harassment following Taskforce recommendations

- On 8 March 2021, the Victorian Government announced the establishment of the Ministerial Taskforce on Workplace Sexual Harassment to develop reforms to the state’s legislative framework on sexual harassment.
- The Taskforce released 26 recommendations, to which the Government has responded. Examples of recommendations which the Government has accepted include treating sexual harassment as an OHS issue (and increasing WorkSafe’s capacity in this space), implementing relevant recommendations from the Respect@Work report and expanding WorkSafe’s WorkWell program to include a stream for work-related gendered violence and sexual harassment.



Heavy Vehicle National Law

Overview

- Duty to ensure so far as is reasonably practicable the safety of the party's transport activities relating to the vehicle.
- Extensive powers for authorised officers to obtain documents and information.
- Consistent penalties for heavy vehicle offences in all participating jurisdictions (the extent to which penalties have gone up or down depends on each state or territory).
- Administered by the National Heavy Vehicle Regulator (NHVR) for heavy vehicles over 4.5 tonnes gross vehicle mass.
- Applies in all states and territories except Western Australia and Northern Territory (may apply in Western Australia and Northern Territory where there is interstate vehicle movement).

NEW SOUTH WALES

NEW Heavy Vehicle Legislation Amendment (National Regulator) Act 2021 (NSW) – effective from 4 March 2022 and 1 July 2022

- Gives effect to the transfer of certain functions under the *Heavy Vehicle National Law (NSW)* from Transport for NSW to the National Heavy Vehicle Regulator.

NEW Heavy Vehicle (Adoption of National Law) Amendment Regulation 2022 (NSW) – effective from 11 June 2022

- Allows for an exemption relating to the width of particular bus seats from compliance with an Australian Design Rule, applied under the National Regulation.

AUSTRALIAN CAPITAL TERRITORY

NEW Road Transport Legislation Amendment Act 2022 (No 2) (ACT) – effective from 27 April 2022

- Removes modification 1.2 and 1.11 from Schedule 1 which dealt with sections 567A and 567B that were inserted into the *Heavy Vehicle National Law (ACT)* by modification 1.2. These sections are now omitted as they replicate other provisions in that law.



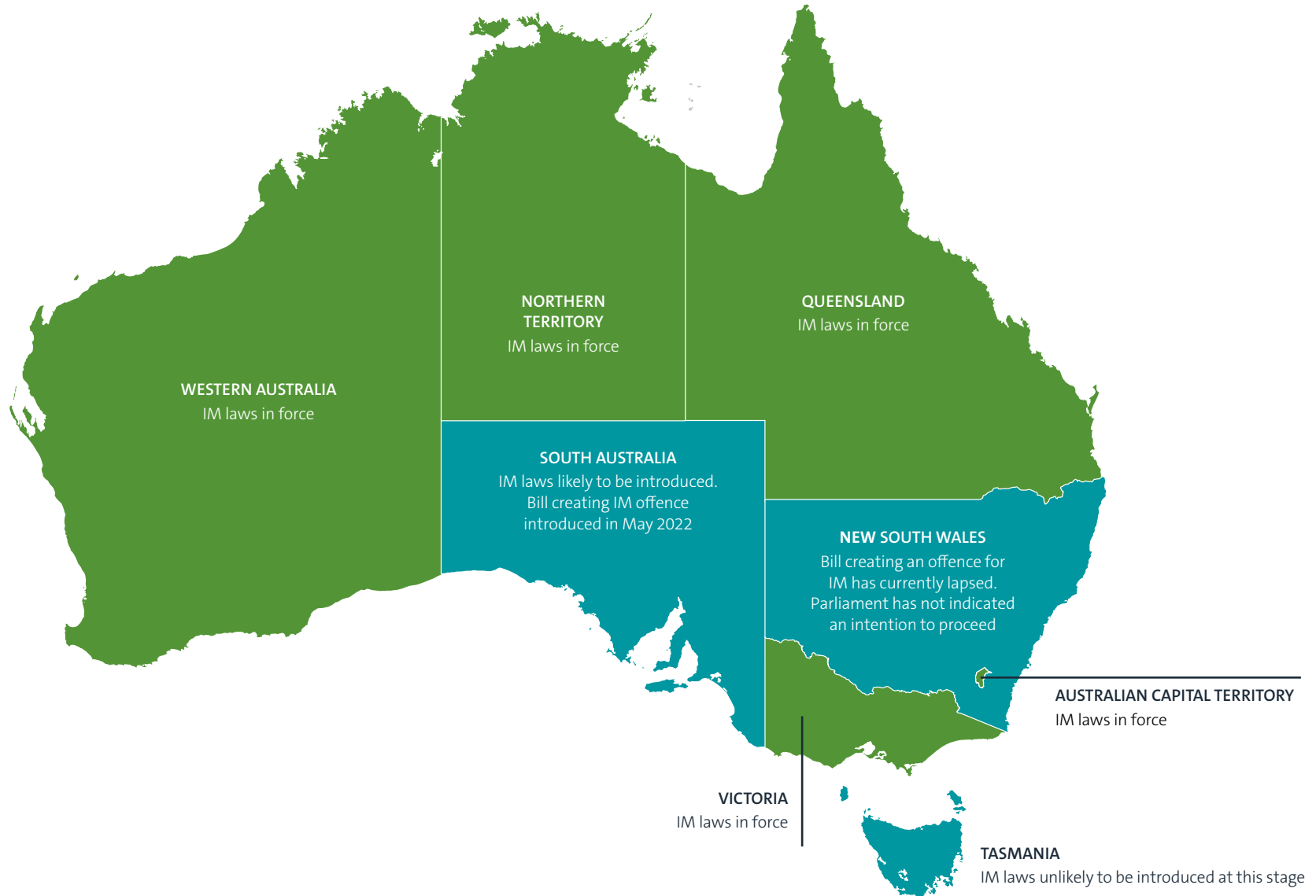
Legislation

Each state and territory covered by the *Heavy Vehicle National Law* (HVNL) has passed legislation that modifies some aspects of the HVNL for that state or territory.

JURISDICTION	ACT	REGULATIONS
Australian Capital Territory	Heavy Vehicle National Law (ACT) Act 2013	Heavy Vehicle National Law (ACT) (Transitional Provisions) Regulation 2014
New South Wales	Heavy Vehicle (Adoption of National Law) Act 2013	Heavy Vehicle (Adoption of National Law) Regulation 2013
Queensland	Heavy Vehicle National Law Act 2012	Heavy Vehicle National Law Regulation 2014
South Australia	Heavy Vehicle National Law (South Australia) Act 2013	Heavy Vehicle National Law (South Australia) (Expiation Fees) Regulations 2013
Tasmania	Heavy Vehicle National Law (Tasmania) Act 2013	Heavy Vehicle National Law (Tasmania) Regulations 2014
Victoria	Heavy Vehicle National Law Application Act 2013	Heavy Vehicle National Law Application (Infringements) Regulations 2013

Industrial Manslaughter Laws

National Harmonisation



Industrial Manslaughter Laws

NORTHERN TERRITORY

Work Health and Safety (National Uniform Legislation) Amendment Act 2019 – effective from 1 February 2020

- The Amendment incorporated an industrial manslaughter offence. Previously workers could be prosecuted under the manslaughter offence provision in the *Criminal Code Act 1983 (NT)* for breaching a health and safety duty that caused the death of a person. Bodies corporate could also be prosecuted; however, they could not be punished as there was no applicable conversion to financial penalty.
 - A person commits the offence of industrial manslaughter if:
 - a) the person has a health and safety duty;
 - b) the person is a person conducting a business or undertaking or an officer of a person conducting a business or undertaking;
 - c) the person intentionally engages in conduct;
 - d) the conduct breaches the health and safety duty and causes the death of an individual to whom the health and safety duty is owed; and
 - e) the person is reckless or negligent about the conduct breaching the health and safety duty and causing the death of that individual.
 - The maximum penalty currently stands at life imprisonment for an individual and \$10,530,000 for a body corporate.
- NEW NT WorkSafe commenced its first prosecution for Industrial Manslaughter – 14 March 2022**
- NT WorkSafe brought one charge of industrial manslaughter against a company, as well as two alternative charges (a Category 1 offence for reckless conduct and a Category 2 offence for failing to comply with a health and safety duty).

- The Regulator also commenced a prosecution against the company's sole director (a Category 1 offence for reckless conduct and an alternative Category 2 offence for failing to company with a health and safety duty).

AUSTRALIAN CAPITAL TERRITORY

NEW Work Health and Safety Amendment Act 2021 – commenced 11 November 2021

- The Act repealed the existing industrial manslaughter offence, which applied to employers and senior officers, from the *Crimes Act 1900* and replaced it with a new industrial manslaughter offence in the *WHS Act* which applies to PCBUs and officers of PCBUs.
- Under the new section 34A, a PCBU or an officer of a PCBU may be liable if they engage in conduct in breach of a health and safety duty which causes the death of a worker or another person (or an injury which later causes the death of a worker) and the PCBU or officer is reckless or negligent about causing the death.
- The maximum penalty for an offence by an individual is the same (20 years' imprisonment), but the maximum penalty for a body corporate increases from 2000 penalty units (approx. \$1.62 million) to \$16.5 million.

SOUTH AUSTRALIA

PROPOSED Work Health and Safety (Industrial Manslaughter) Amendment Bill 2022 – introduced and read a first time on 4 May 2022

- The Bill as it currently stands will penalise workplaces for negligence resulting in the death of employees. The offence would carry a maximum penalty of 20 years' imprisonment for an individual or \$13 million for a corporation.

NEW SOUTH WALES

PROPOSED (LAPSED) Work Health and Safety Amendment (Industrial Manslaughter) Bill 2021 – introduced on 5 May 2021, lapsed on 27 May 2022

- This Bill was sent to the Legislative Assembly for concurrence on 24 November 2021. However, it is currently lapsed. Parliament has not indicated an intention to proceed.
- Under the proposed Bill, the prosecution would have to prove that a death was caused by the PCBU's and/or senior officer's conduct, which was engaged in without reasonable excuse, and that the PCBU/senior officer was grossly negligent or reckless about causing the death.
- The maximum penalty under the proposed Bill would be 25 years' imprisonment for an individual and 100,000 penalty units for a body corporate (currently equalling \$10,747,000).

VICTORIA

Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019 – effective from 1 July 2020.

- Under section 39G, a person who is not a volunteer or a person who is an officer of an applicable entity commits an offence if they engage in conduct that:
 - a) is negligent;
 - b) constitutes a breach of an applicable duty that the entity owes to another person; and
 - c) causes the death of that other person.
- The maximum penalty is currently equal to \$18.492 million (100,000 penalty units) for a body corporate and 25 years' imprisonment for an individual.

Industrial Manslaughter Laws

QUEENSLAND

Mineral and Energy Resources and Other Legislation Amendment Act 2020 – effective from 25 May 2020

Introduced industrial manslaughter offences into the *Coal Mining Safety and Health Act 1999*; *Mining and Quarrying Safety and Health Act 1999*; *Explosives Act 1999*; and *Petroleum and Gas (Production and Safety) Act 2004*.

- The Act aligned resources safety laws with the State *WHS Act* for general industry.
- Under the offences, an employer or a senior officer commits an offence if:
 - a) a worker dies in the course of carrying out work at the place of business or is injured in the course of carrying out work in the place of business and later dies;
 - b) the employer's or officer's conduct causes the death of the worker; and
 - c) the employer or officer is negligent.
- The maximum penalty is presently at \$14.375 million (100,000 penalty units) for a body corporate and 20 years' imprisonment for an individual.

NEW QLD's first individual convicted under Industrial Manslaughter laws – 25 March 2022

Jeffrey Owen, a business operator, was sentenced to five years' imprisonment suspended after 18 months for a workplace incident involving the negligent operation of a forklift to move a generator. The conduct was found to be negligent because:

- Mr Owen was not licensed to operate a forklift;
- the business he ran had no documented health and safety procedures (in particular for using the forklift to unload heavy equipment); and
- safe alternative methods were available at a low cost.

WESTERN AUSTRALIA

NEW Work Health and Safety Act 2020 – largely commenced on 31 March 2022

- The Act introduced industrial manslaughter laws in WA.
- Under the new section 30A, a person conducting a business or undertaking may be liable when they:
 - a) engage in conduct that causes the death of an individual knowing that the conduct was likely to result in death or serious harm, and in disregard of that likelihood; and
 - b) fail to comply with their health and safety duty as a PCBU.

- Officers can also be charged for crimes committed by a PCBU where the PCBU's conduct was attributable to the officer's neglect, or engaged in with the officer's consent, and the officer knew that the PCBU's conduct was likely to cause death or serious harm and acted in disregard of that likelihood.
- The maximum penalty for an individual or an officer is 20 years' imprisonment and a fine of \$5 million.
- The maximum penalty for a body corporate is a fine of \$10 million.



Petroleum and Gas Laws

COMMONWEALTH

NEW Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Act 2021 – in force from 2 March 2022

Introduces significant amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, including:

- Requiring approval from the National Offshore Petroleum Titles Administrator (NOPTA) for a proposed change in control of any titleholder. There are also tracing and anti-avoidance provisions to capture any change in control in the chain of entities that control the titleholder.
- NOPSEMA and the Minister have new powers to call on former titleholders to undertake decommissioning activities. In certain circumstances, the Minister may issue remedial directions to other entities that significantly benefit financially from operations, are in a position of influence or acted jointly with the titleholder.
- Increases regulatory scrutiny of the suitability of companies operating, or looking to operate, within Australia's offshore petroleum regulatory regime.
- NOPTA and NOPSEMA also have broader information gathering powers.

NEW Offshore Electricity Infrastructure Act 2021 – effective from 2 June 2022

- Establishes a regulatory framework to enable the construction, installation, commissioning, operation, maintenance, and decommissioning of offshore electricity infrastructure in the Commonwealth offshore area.
- The Act facilitates new offshore infrastructure and technologies such as offshore wind farms. It complements the Australian Energy Market Operator's (AEMO) recent decision to incorporate candidate Offshore Wind Zones in its report on 30 July 2021.

- Under the Act, licences are available for feasibility (on a competitive auction basis), commercial activities, research & demonstration and transmission & infrastructure.
- The Act is modelled off the existing *Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)* and has the same regulators, being NOPSEMA and NOPTA.

NEW Offshore Electricity Infrastructure (Consequential Amendments) Act 2021 – effective from 2 June 2022

Introduces amendments to the *Coral Sea Islands Act 1969*, *Environment Protection and Biodiversity Conservation Act 1999*, *Sea Installations Act 1987*, the *Telecommunications Act 1997* and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* including which:

- Extends the operation of the Act to provide that a person commits an offence if a regulated entity interferes with people undertaking offshore infrastructure activities;
- Clarifies the dual role of NOPSEMA in regulating the Act and the Offshore Electricity Infrastructure framework; and
- Clarifies that the National Offshore Petroleum Titles Administrator may also be appointed as the Offshore Infrastructure Registrar.

NEW Offshore Electricity Infrastructure (Regulatory Levies) Act 2021 – effective from 2 June 2022

- Prescribes an offshore electricity infrastructure levy that certain offshore electricity infrastructure participants must pay. The amount of the levy or method to calculate the levy will be set out in Regulations.

QUEENSLAND

NEW Petroleum and Gas (Safety) (Gas Devices) Amendment Regulation 2021 – effective from 1 January 2022

Amends the *Petroleum and Gas (Safety) Regulation 2018* including by:

- Prescribing gas flares located at biogas facilities as gas devices (Type B).
- Requiring that small gas engine driven appliances approved by a gas device approval authority holder (type A) are regulated as Type A devices.
- Adding a definition of small gas engine driven appliances under Schedule 7, Dictionary.

TASMANIA

NEW Gas Safety Regulations 2021 – effective from 3 February 2021

- Prescribe technical and safety requirements for the safe operation of regulated activities.
- Provide for the reporting of incidents.
- Provide for safety cases and safety management systems.
- Provide for standards to be followed relating to gas infrastructure installation and gas-fitting work.
- Rescind the *Gas (Safety) Regulations 2014* and the *Gas Pipelines Regulations 2014*.

Petroleum and Gas Laws

VICTORIA

NEW Petroleum Legislation Amendment Act 2020 – effective from 24 June 2020, 6 October 2020 and 1 July 2021

Amends the *Petroleum Act 1998 (Vic)*, including by:

- Lifting the moratorium period on any petroleum exploration and production from 1 July 2021 to allow for an orderly restart of conventional gas exploration and production.
- Requiring that prescribed social, environmental and economic factors and submissions from the community are considered in making certain decisions under that Act.
- A new or varied risk-based operation plan will need to be submitted before carrying out a petroleum operation under a relevant authority after 1 July 2021.
- Additional consultation obligations have been introduced in order to discharge a rehabilitation bond at closure of a petroleum operation on private land.

Also amends the *Offshore Petroleum and Greenhouse Gas Storage Act 2010* to require the holder of an offshore petroleum production licence in Victorian waters to provide domestic consumers with the first opportunity to purchase its petroleum.

NEW Petroleum Regulations 2021 – effective from 22 November 2021

- Revokes the *Petroleum Interim Regulations 2021*.
- Developed to reflect the amendments introduced by the *Petroleum Legislation Amendment Act 2020*.

NEW Petroleum and Gas (Safety) Amendment Regulation (No. 1) 2020 – effective from 30 March 2020

- Consolidates previously separate safety provisions (regarding cylinder storage, bulk fuel gas storage facilities, LPG delivery networks, automotive LPG product suppliers and automotive LPG sites) into fuel gas delivery network safety provisions.
- Removes safety and health fee for automotive LPG tanker delivery.

NEW SOUTH WALES

NEW Work Health and Safety (Mines and Petroleum Sites) Amendment (Carbon Dioxide Exposure Standards) Regulation 2021 – effective from 12 November 2021

- Prescribes carbon dioxide exposure standards for underground coal mines to ensure the standards are not exceeded.
- Requires that an operator of an underground coal mine ensures no person is exposed to an 8-hour time-weighted average atmospheric concentration of carbon dioxide that exceeds –
 - a) for short term exposure limits – 30,000 parts per million; or
 - b) otherwise – 12,500 parts per million.
- Requires that air monitoring in terms of clause 50 of the *WHS Regulation* applies to the operator of an underground coal mine in relation to carbon dioxide.
- Introduces minimum standards for ventilated air, including that the general body of air in the areas in which persons work or travel has carbon dioxide levels that are as low as reasonably practicable and do not exceed the specified exposure standard for carbon dioxide.

NEW Work Health and Safety (Mines and Petroleum Sites) Amendment Act 2022 – effective from 1 August 2022

Amends the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* to, amongst other things:

- Provide that, when determining whether a person is suitable to be appointed as an industry safety and health representative, the Minister may make enquiries about the person's suitability, including a nationwide criminal record check and other relevant probity checks.
- Enable the electronic service of documents.
- Express penalties for offences as penalty units, rather than monetary values, for consistency with the *Work Health and Safety Act 2011*.



Rail Safety National Law

Enforced by the Office of the National Rail Safety Regulator (ONRSR).

Each State and Territory has passed a law explaining that the National Law is the applicable rail safety law, as contained in the schedule to the South Australian Act, or as a Schedule to their domestic Act.

The relevant legislation in each jurisdiction is:

NORTHERN TERRITORY

Rail Safety (National Uniform Legislation) Act 2012

WESTERN AUSTRALIA

Rail Safety National Law (WA) Act 2015

SOUTH AUSTRALIA

Rail Safety National Law (South Australia) Act 2012

QUEENSLAND

Rail Safety National Law (Queensland) Act 2017

NEW SOUTH WALES

Rail Safety National Law (NSW) 2012

Rail Safety (Adoption of National Law) Act 2012

AUSTRALIAN CAPITAL TERRITORY

Rail Safety National Law (ACT) Act 2014

VICTORIA

Rail Safety National Law Application Act 2013

TASMANIA

Rail Safety National Law (Tasmania) Act 2012

Safety duties:

Rail transport operators

includes general duty to ensure, as far as is reasonably practicable, the safety of the operator's railway operations.

Rail safety workers

includes reasonable care of themselves, complying with instructions given by rail transport operators.

Designers, manufacturers, suppliers etc

must ensure so far as is reasonably practicable that the thing designed, manufactured or supplied is safe.

Loaders and unloaders of freight

must carry out loading or unloading safely.

ONRSR

duty to facilitate the safe operations of rail transport.

SOUTH AUSTRALIA

NEW Rail Safety National Law (South Australia) (Alcohol and Drug Offence) Amendment Act 2021 (SA) – effective from 1 November 2021

- Amends the *Rail Safety National Law (South Australia) Act 2012*.
- Clarifies when a worker is deemed to be carrying out rail safety work for the purposes of drug and alcohol offences, being when a worker has arrived at their place of work and signed in to undertake rail safety work, or is otherwise on duty (section 128(1a)).

NEW SOUTH WALES

NEW Rail Safety National Law (South Australia) (Alcohol and Drug Offence) Amendment Act 2021 (SA) – effective from 1 November 2021

- Amendments have also been adopted into the *Rail Safety National Law (NSW) 2012*.
- Clarifies when a worker is deemed to be carrying out rail safety work for the purposes of drug and alcohol offences, being when a worker has arrived at their place of work and signed to undertake rail safety work, or is otherwise on duty (section 128(1a)).

NORTHERN TERRITORY

NEW Transport Legislation Amendment Act 2022 (NT) – effective from 4 May 2022

Establishes the use of oral fluid analysis on rail safety workers for prohibited drugs. Key amendments include:

- New definitions for analyst and oral fluid analysis;
- Requirement for the use of a device approved by the Commissioner of Police;
- Requirement for any prohibited drug detected in an analysis of a rail safety worker's oral fluid to have been present in their body at the relevant time;
- Giving rail safety workers who undergo oral fluid analysis a right to request that a sample of their oral fluid be sent to a medical practitioner or laboratory of their choice for analysis, at their cost;
- Provides certificate evidence as to:
 - the conduct of oral fluid analysis;
 - the provision of a sample of a rail safety worker's oral fluid for analysis using an oral analysis method; and
 - the detection of a prohibited drug;
- Provides for the authorisation of persons or organisations as analysts by the Commissioner of Police or the regulator.

Crystalline Silica

ALL JURISDICTIONS

UPDATED Workplace exposure limit for respirable crystalline silica has been reduced from 0.1mg/m³ to 0.05mg/m³ – effective in each jurisdiction from the following dates:

- Victoria: 17 December 2019
- Commonwealth: 1 July 2020
- Australian Capital Territory: 1 July 2020
- New South Wales: 1 July 2020
- Northern Territory: 1 July 2020
- Queensland: 1 July 2020 (general workplaces) or 1 September 2020 (coal mining, mining and quarrying)
- South Australia: 1 July 2020
- Western Australia: 27 October 2020
- Tasmania: Not yet adopted (exposure standard remains 0.1mg/m³)

TASMANIA

NEW Code of Practice – Managing the risks of respirable crystalline silica from engineered stone in the workplace – effective from 19 January 2022

- Tasmania has adopted the national model code of practice developed by SafeWork Australia.
- Provides practical guidance on how to manage the health risks associated with respirable crystalline silica from engineered stone and how to achieve the standards required under the work health and safety laws.
- Among other things, covers the risk management process and safe work method statements for engineered stone, workplace exposure standards, air/health monitoring.

WESTERN AUSTRALIA

NEW Code of Practice – Managing the risks of respirable crystalline silica from engineered stone in the workplace – effective from 14 July 2022

- Western Australia has adopted the national model code of practice developed by SafeWork Australia.
- Provides guidance through the lifecycle of an engineered stone product including fabrication, installation, maintenance, removal and disposal.

VICTORIA

NEW *Occupational Health and Safety Amendment (Crystalline Silica) Regulations 2021* – effective from 15 November 2021

These Regulations replace the *Occupational Health and Safety Amendment (Crystalline Silica) Interim Regulations 2019* and amend the *Occupational Health and Safety Regulation 2017* to provide for the management of crystalline silica in the workplace.

Key amendments include:

- Prescribing specific risk control measures that must be used when working with engineered stone (Part 4.5, Division 3, Subdivision 3, commenced 15 November 2021).
- Providing for the licensing of employers and self-employed persons who work with engineered stone (with a 12-month transition period).
- Introducing duties for manufacturers and suppliers of crystalline silica substances (Part 4.5, Division 2, commenced 15 May 2022).
- Providing for the management of high-risk crystalline silica work in workplaces. (Part 4.5, Division 3, Subdivision 1; Part 4.5, Division 3, Subdivision 2, commenced 15 May 2022).

NEW SOUTH WALES

Work Health and Safety Amendment (Silica) Regulation 2020 – effective from 1 July 2020

- Imposes a specific duty on PCBUs in relation to workers who cut manufactured stone containing crystalline silica.

Such duties include:

- A requirement for workers who may inhale dust to wear compliant respiratory protective equipment; and
- At least one of the following control measures must be installed:
 - a continuous feed of water over areas being cut to suppress dust generation;
 - a prescribed extraction system attached to cutting tools to capture dust; or
 - a local exhaust ventilation system capturing dust and transporting to a safe emission point, filter or scrubber.

Work Health and Safety Amendment (Information Exchange) Act 2020 – effective from 27 October 2020

- Required SafeWork NSW to investigate and report on crystalline silica exposure in the manufactured stone industry by 1 July 2021.
- The report prepared is publicly available on the NSW Silica Dashboard.

NEW Code of Practice – managing the risks of respirable crystalline silica from engineered stone in the workplace – effective from February 2022

- Approves a code of practice, based on the national model code of practice developed by SafeWork Australia.

Crystalline Silica

AUSTRALIAN CAPITAL TERRITORY

NEW Work Health and Safety Amendment Regulation 2022 (No 1) – largely effective from 14 July 2022, regulates the dry-cutting of silica-based products.

- Makes several amendments to the *Work Health and Safety Regulation 2011* including by providing a dedicated chapter for silica and the introduction of general obligations applying to silica containing materials and specific obligations applying to silica dust work.
 - Introduces a legislated uncontrolled dry-cutting ban in the ACT. PCBUs must not allow or direct a worker to cut material containing crystalline silica with a power tool or use another mechanical process unless a water delivery system supplying a continuous feed of water over areas being cut is used with at least one of the following measures:
 - a) isolating the place of cutting from the rest of the workplace;
 - b) attaching a class H vacuum to the tool used for cutting (or whether the material contains less than 25% crystalline silica - a class M vacuum); or
 - c) using a local exhaust ventilation system.
 - Introduces a duty on PCBUs to ensure that the risk of cutting material containing crystalline silica with a power tool or using another mechanical process is eliminated so far as is reasonably practicable, or if it is not reasonably practicable to eliminate the risk, minimised so far as is reasonably practicable. The risk is required to be minimised through the implementation of a combination of controls including ensuring that workers who may be exposed to airborne crystalline silica produced by cutting wear respiratory protective equipment.
- The WHS Commissioner has issued a statement that the Regulations currently only fully apply to engineered stone products. In particular, PCBUs cutting other products and materials containing silica have been exempted from compliance with 418B (a) and 418C (b)(i) until 17 October 2022 (relating to the requirement to use wet cutting methods in combination with other controls).
 - From 1 July 2023, the Regulation will introduce a duty on PCBUs to train workers carrying out silica work about silica awareness, including workers who:
 - a) are engaged by the PCBU and the PCBU reasonably believes will perform or be exposed to high-risk silica dust work, or the mechanical process of silica containing materials; or
 - b) are engaged by the PCBU in a declared occupation.



Psychosocial Risks

COMMONWEALTH

UPDATED *Model WHS Act and Regulations* – updated 6 June 2022

SafeWork Australia announced several amendments to the model WHS laws, including amendments to the *model WHS regulations*. The *model WHS regulations* have been amended to deal with psychosocial risks by including:

- New provisions which define psychosocial hazards and risks:
 - Psychosocial hazards are defined as hazards that may cause psychological harm and that arise from the design or management of work, the work environment, plant, or interactions or behaviours at the workplace.
 - Psychosocial risk is defined as any risk to the health or safety of a worker or other person arising from a psychosocial hazard.
- Regulations 55A-55D, which clarify duties in relation to psychosocial hazards, including requiring PCBUs to have regard to all relevant matters when determining the control measures to manage psychosocial hazards, such as:
 - the duration, frequency and severity of the exposure;
 - how the psychosocial hazards may interact or combine;
 - work designs and systems, including job demands and tasks and how work is managed, organised and supported;
 - design and layout, and environmental conditions, of the workplace and any accommodation provided by the PCBU;
 - plant, substances and structures at the workplace;
 - workplace interactions or behaviours; and
 - information, training, instruction and supervision provided to workers.

NEW *Model Code of Practice on Managing psychosocial hazards* – July 2022

- SafeWork Australia’s model Code of Practice explains the laws and how to comply with them, including practical steps to manage workplace risks to psychological health.

WESTERN AUSTRALIA

NEW *Code of Practice: Psychosocial Hazards in the Workplace* – February 2022

- DMIRS has developed a Code of Practice under the *WHS Act (WA)*. The code focuses on general principles to prevent and manage psychosocial hazards and is intended to be used for workplaces where people may be exposed to psychosocial hazards such as stress, fatigue and burnout.

NEW SOUTH WALES

NEW *Code of Practice: Managing Psychosocial Hazards at Work* – May 2021

- SafeWork NSW has developed a Code of Practice under the *WHS Act (NSW)*. It is intended to be used by PCBUs and provides practical guidance for PCBUs to identify and manage psychosocial hazards at work.

NEW *Work Health and Safety Amendment Regulation 2022* – October and December 2022

- The Amendment Regulation inserts new provisions on the management of psychosocial risks in the workplace.
- It defines ‘psychosocial hazard’ and ‘psychosocial risk’ and clarifies the appropriate control measures that persons conducting a business or undertaking are required to implement to manage those risks.

VICTORIA

PROPOSED *Occupational Health and Safety Amendment (Psychological Health) Regulations*

- The Victorian Government has prepared proposed draft Regulations which are intended to amend the *Occupational Health and Safety Regulations 2017*.
- As it currently stands, the amendment would require employers to identify and control risks associated with ‘psychosocial hazards’ in the workplace.
- A new chapter is proposed be inserted to strengthen the occupational health and safety framework and provide clearer guidance to employers on their obligations to protect workers from psychological injury.
- The proposed Regulations seek to:
 - Clarify an employer’s duties relating to identification and control of risks to a person’s psychological and physical health and safety arising from workplace psychosocial hazards.
 - Set out requirements for employers to review and revise risk control measures in certain circumstances.
 - Introduce requirements to maintain written prevention plans for certain psychosocial hazards.
 - Introduce a reporting scheme for applicable employers for certain psychosocial hazards.
 - Introduce penalties for failure to comply with certain duties.

ISO 45003:2021 – Occupational Health and Safety Management

Psychological health and safety at work – Guidelines for managing psychosocial risks

NEW ISO 45003:2021 – published June 2021

The first global standard giving practical guidance on managing psychological health in the workplace. Sonder has released a free overview of the standard which can be accessed [here](#). The overview was updated in August 2022 to reflect recent workplace health and safety reforms, including the introduction of clauses on controlling psychosocial risks in the national *model WHS regulations* (see the Psychosocial Risk section of this update for more details).

ISO 45003 provides guidance on the management of psychosocial risk, as part of an occupational health and safety management system.

The standard includes:

- a) information on how to recognise the psychosocial hazards that can affect workers, such as those that arise from home working; and
- b) offers examples of effective, often simple, actions that can be taken to manage these and improve employee wellbeing.

The standard defines workplace wellbeing as “fulfillment of the physical, mental and cognitive needs and expectations of a worker related to their work”. Fulfillment can be defined as “the achievement of something desired, promised, or predicted”.

The standard addresses areas that can contribute to work-related stress and adversely impact employees’ mental health including:

- a) how work is organised;
- b) social factors at work; and
- c) work environment, equipment and hazardous tasks.



ISO 45001:2018 – Occupational Health and Safety Management

Occupational health and safety management systems – Requirements with Guidance for Use

ISO 45001:2018 – published March 2018

The world's first International Standard dealing with health and safety at work.

The standard specifies requirements for an occupational health and safety (OHS) management system, and gives guidance for its use, to enable organisations to provide safe and healthy workplaces by preventing work-related injury and ill health, as well as by proactively improving its OHS performance.

It is applicable to any organisation that wishes to establish, implement and maintain an OHS management system to improve occupational health and safety, eliminate hazards and minimize OHS risks (including system deficiencies), take advantage of OHS opportunities, and address OHS management system nonconformities associated with its activities.

The standard helps an organisation to achieve the intended outcomes of its OHS management system. Consistent with the organisation's OHS policy, the intended outcomes of an OHS management system include:

- a) continual improvement of OHS performance;
- b) fulfilment of legal requirements and other requirements; and
- c) achievement of OHS objectives.



Achieving Respect@Work

COMMONWEALTH

NEW Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021 – effective from 11 September 2021

- The Act adopts six of the 55 recommendations from the 2020 Respect@Work Report. The Act amends the *Sex Discrimination Act 1984* (Cth) (**SD Act**), the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), and the *Fair Work Act 2009* (Cth) (**FW Act**).
- Examples of relevant amendments include: creating an express form of unlawful conduct for sex-based harassment (including, for example, asking intrusive personal questions based on sex); protecting all paid and unpaid workers from sex based and sexual harassment; creating a civil claim for victimisation under the *SD Act*; enabling the Fair Work Commission to issue sexual harassment ‘stop orders’; clarifying that sexual harassment can be a valid reason for dismissal; and creating paid miscarriage leave.
- The Government sought further views on implementing the remaining recommendations earlier this year, including introducing a positive duty on employers to prevent sexual harassment, sex discrimination and victimisation as far as possible. The Attorney-General recently confirmed the Labor Government will work to implement the balance of the recommendations made by the AHRC, including the positive duty on employers.

NEW Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces

- In 2021, the Sex Discrimination Commissioner released the Set the Standard Report.
- 28 recommendations, including to develop new standards, policies and processes while new structures are being established.

NEW National Guidance Material: Preventing Workplace Sexual Harassment – created January 2021

- Safe Work Australia published a guide which provides information for PCBUs on preventing and responding to sexual harassment in the workplace. The guidance outlines when, how and why sexual harassment may occur in the workplace and outlines practical measures to prevent and respond to sexual harassment if it does occur.

WESTERN AUSTRALIA

NEW ‘Enough is Enough’ – Sexual harassment against women in the FIFO mining industry – released in June 2022

- The Parliament of Western Australia has released the ‘Enough is Enough’ Report. The Report made 79 Findings and 24 recommendations. Recommendations include, for example, exploring creating an industry wide register or accreditation to prevent perpetrators moving to another site.
- Although the Report was focused on the mining industry in WA, the Report also noted that much of what was learned about sexual harassment in the mining industry might offer more general opportunities in the broader oversight of workplace safety.
- The WA government’s response to the Report was released on 21 September 2022.

NEW Final Report on the Review of the Equal Opportunity Act 1984 (WA) – released in May 2022

- The Final Report of the WA Law Reform Commission’s review of the *Equal Opportunity Act 1984* has been released.
- 163 recommendations were made, including that there be a positive duty to eliminate discrimination, harassment, victimisation and vilification across all areas protected under the Act (limited to taking reasonable and proportionate measures).

NEW Code of Practice: Violence and Aggression at Work – created February 2022

- WorkSafe WA has released the Code of Practice to focus on general principles that can prevent and manage violence and aggression in the workplace. The intent of this code is to provide practical guidance on various forms of violence and aggression at work, including physical assault, sexual assault, verbal abuse, threats, intimidation and harassment, including sexual harassment.

NEW Code of Practice: Workplace Behavior – created February 2022

- WorkSafe WA has released the Code of Practice to focus on general principles that can prevent and manage inappropriate or unreasonable workplace behaviour. The intent of this code is to provide practical guidance on various forms of inappropriate or unreasonable workplace behaviour including bullying, harassment, violence and aggression, discrimination and misconduct.

NEW Information sheet – Gendered violence: Sexual harassment – created June 2022

- WorkSafe WA has released an information sheet intended to assist PCBUs with understanding sexual harassment and ways to prevent and respond to incidents of workplace gendered violence.

NEW Information sheet – Gendered violence: Notification of Sexual Harassment and/or Assault to WorkSafe Mines Safety – created June 2022

- In addition to the above guidance, for sites to which the *WHS Mines Regulations* apply, there is a requirement that the regulator is notified of reportable incidents. This information sheet is intended to assist PCBUs with responding to incidents of mine site gendered violence and provides guidance on reporting gendered violence incidents to WorkSafe Mines Safety.

Achieving Respect@Work

MINERALS COUNCIL

NEW Industry Code on Eliminating Sexual Harassment – published March 2021

- In response to the Respect@Work Report, MCA has developed an Industry Code that establishes clear expectations on companies in developing a culture of respect that empowers individuals to raise concerns in a supportive and protective way.
- In addition, an Industry Toolkit has been produced to support industry to implement the **Minerals industry's commitment to eliminating sexual harassment and the Industry Code**.

NEW SOUTH WALES

The Broderick Report – leading for change – August 2022

- In August 2022, former Sex Discrimination Commissioner Elizabeth Broderick AO released the Broderick Report following an independent review into bullying, harassment, and sexual misconduct in NSW Parliament workplaces. It found high levels of sexual harassment, bullying and poor staff wellbeing within NSW Parliament.
- The Framework for Action sets out six recommendations, including reviewing the MP's code of conduct, introducing transparent monitoring and encouraging people to speak up.

NORTHERN TERRITORY

NEW Anti-Discrimination Amendment Bill 2022 – July 2022

- The proposed Bill imposes a positive duty on employers to eliminate discrimination, sexual harassment and victimisation, while it also intends to remove an exemption that permits religious schools to discriminate against LGBTIQ+ teachers.

VICTORIA

Equal Opportunity (Religious Exceptions) Amendment Act 2021 – effective from 14 June 2022

- Amends the *Equal Opportunity Act* to:
 - prohibit religious bodies and schools from discriminating (except in limited circumstances where the discrimination is reasonable and proportionate).
 - limit the circumstances where religious bodies and schools can discriminate against employees or potential employees.
 - provide that schools can only discriminate based on a student, or prospective student's, religious beliefs or activities (provided it is reasonable and proportionate).
 - remove the exemption for individuals in order to comply with their religious belief.
- From 14 December 2022, religious bodies that provide goods or services funded by the Victorian Government will only be able to discriminate based on a person's religious belief. They will not be able to discriminate based on other personal characteristics.

Ministerial Taskforce on Workplace Sexual Harassment – recommendations released 11 July 2022

- The Ministerial Taskforce's recommendations and the Victorian Government Response have been released by the Minister for Workplace Safety.
- 26 recommendations were made across four reform pillars, including preventing sexual harassment from occurring.

A Guide for Employers: Work-related Gendered Violence Including Sexual Harassment – created March 2020

WorkSafe Victoria has released a guide for employers on preventing and responding to work-related gendered violence and work-related sexual harassment. This contains

information on what work-related gendered violence and work-related sexual harassment are, who are at risk and how it affects people, approaches to preventing work-related gendered violence, and systems to respond, prevent and address work-related gendered violence.

QUEENSLAND

Industrial Relations and Other Legislation Amendment Bill 2022 – June 2022

- The Bill is in response to the recommendations of the five-year review of Queensland's *Industrial Relations Act 2016*. Several of the proposed amendments are like those that were made to the *Fair Work Act 2009* (Cth) following the Respect@Work report. The objectives of the Bill include strengthening protections against workplace 'sexual harassment and sex or gender-based harassment'. If passed, the Bill will also amend the definition of an 'industrial matter' to specifically include sexual harassment and sex-based harassment.
- The **Final Report** on the review of culture and accountability in the Queensland public sector was handed down on 28 June 2022. The Government has announced that it will implement all the report's recommendations, including developing and continuing to reinforce a framework to determine appropriate relationships among ministers, their staff and senior public service officers.
- The Queensland Human Rights Commission has provided its report following its review into the *Anti-Discrimination Act 1991 (Qld)* to the Attorney-General on 29 July 2022. We expect the report to be publicly available following the tabling of the report in the Queensland Parliament. We expect that it will recommend that a positive duty be introduced like the Respect@Work Report recommendation.

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