



# Model work health and safety regulations

Summary and key changes for NSW

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## Summary and key changes

Overall, the implementation of the model Work Health and Safety Regulations (WHS Regulations)<sup>1</sup> should not have a significant impact in how NSW businesses operate and manage work health and safety matters. Essentially, many requirements are unchanged, or substantially the same as is currently prescribed in the existing *Occupational Health and Safety Regulation 2001* (OHS Regulation).

However, some NSW businesses or industries may need to change how they comply with work health and safety legislation in the following respects:

- Introduction of health and safety representatives.
- WHS entry permit holders required to give notice before entering a workplace under certain circumstances.
- The establishment of generic risk management provisions, including a hierarchy of controls, which will apply to all duties under the regulations.
- Residual current devices will only be required for hostile environments or hostile operations. These requirements will apply from 1 January 2013.
- There are new requirements for licensing of asbestos assessors (normally occupational hygienists) and obligations on persons conducting a business or undertaking to use licensed asbestos assessors for air monitoring and clearance certificates when removing friable asbestos.
- Class A (friable) asbestos removal licence holders will be required to have a certified safety management system.
- There is no provision for pest management technicians or fumigation certificates of competency and no high risk work licensing classes for load shifting activities such as excavator and backhoe operation. However there will be a new licence class for reach stackers.
- Certain demolition work must be notified to the regulator. NSW will retain its current licensing arrangements until demolition licensing under the national occupational licensing scheme commences (at least 2013).
- Major overhaul and shutdown works of fixed plant, such as at power generation plants, will be subject to requirements in the construction chapter in relation to coordination of works by five or more persons conducting a business or undertaking (PCBUs) at any one time.
- Provisions relating to chemicals will be based on the globally harmonised system for classification of chemicals, subject to a five-year transitional period. This will now extend to chemicals that are dangerous goods.
- A new provision for PCBUs to provide for audiometric testing of workers who are frequently required to wear hearing protection to protect the worker against noise above the exposure standard.
- Notification of schedule 11 hazardous chemicals (dangerous goods) only when they exceed the manifest quantity, and thereafter only where there is a significant change in risk.
- Registration of items of plant every five years, rather than annually.

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<sup>1</sup> This summary document is based on the Model Work Health and Safety Regulations PCC Draft [359] 9.9.2011

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## Guide to the model work health and safety regulations

### Chapter 1 – Preliminary

Chapter 1 contains the definitions of the majority of terms used in the regulations. It also contains some preliminary matters relating to scope and application. In NSW, the provisions of the *Work Health and Safety Act 2011* (WHS Act) and WHS Regulations will apply to dangerous goods and high risk plant affecting public safety even if used in places other than workplaces (see Schedule 1 of WHS Act). This inclusion allows for dangerous goods over certain quantities at residential premises, and plant such as amusement rides, to be covered by the same requirements as apply to such matters in workplaces. However, Regulation 10 provides that parts of the Act dealing with representation and participation, discrimination and union right of entry will not apply where dangerous goods or plant are not in workplaces.

### Chapter 2 – Representation and participation

Essentially, chapter 2 provides additional details on the representation and participation arrangements under parts 5 and 7 of the WHS Act, including the establishment of workgroups, election and training entitlements of health and safety representatives, and matters relating to entry permit holders.

### Chapter 3 – General risk and workplace management

#### Part 3.1 – Managing risks to health and safety

The WHS Regulations have generic risk management provisions including hazard identification and risk control measures. This approach to risk management is intended to focus on allowing the duty holder to identify the risk and if the risk cannot be eliminated, go straight to controls, where the control measures are well known or obvious.

Where it is not reasonably practicable for the risk to be eliminated, the PCBU must minimise risks so far as is reasonably practicable by using the 'hierarchy of control'. The hierarchy provides for a series of general control measures to be implemented in a step-wise way. However, the WHS Regulations group substitution, isolation or engineering controls as the first step, followed by administrative controls, then finally the use of suitable personal protective equipment. A combination of these control measures may be used if a single

control is insufficient in minimising the risk.

In addition to this general hierarchy, the WHS Regulations set out specific control measures in relation to the management of certain hazards. For example, part 4.4 Falls prescribes that a PCBU must use specific control measures, such as providing a fall prevention device.

A risk assessment is not specifically required under the WHS Regulations except for some matters relating to confined spaces, electrical work and diving work. In these cases a risk assessment must be undertaken and recorded. Although not otherwise mandatory, the code of practice for how to manage work health and safety risks includes risk assessment as a step in the risk management process. This code provides practical guidance to duty holders and explains how and when a risk assessment should be conducted, with varying degrees of detail depending on the types of hazards and the information or resources available.

#### Part 3.2 – General workplace management

A PCBU has an obligation under section 19 of the WHS Act to provide adequate facilities, information, training, instruction or supervision to workers. Under this provision, a PCBU must ensure access to facilities for the welfare of workers in carrying out their work. The WHS Regulations contain more detailed requirements in relation to the duties under section 19, including the general working environment, first aid, emergency plans and personal protective equipment.

A new requirement under the WHS Regulations is the duty for a PCBU to provide a system of work that includes effective communication with remote or isolated workers.

There are specific provisions within the WHS Regulations in relation to the supervision of workers; however, there is no general requirement for a PCBU to provide induction training to new employees.

A PCBU has a duty to ensure that workers have access to trained first aiders and first aid facilities and equipment, but unlike clause 20 of the OHS Regulation, the WHS Regulation does not contain prescriptive requirements for the number of first aid personnel or contents of first aid kits. The first aid code of practice may be used for practical guidance in determining the type of first aid measures in specific workplaces, including suitable first aid training. A draft of this code has been released for public comment from 26 September to 18 November 2011.

This chapter also supplements section 81(2) of the WHS Act in relation to resolving workplace issues. Regulation 47 prescribes a default procedure for issue resolution. It is not a detailed procedure but now includes some steps, rather than just the matters to be taken into account.

## Chapter 4 – Hazardous work

Chapter 4 contains specific requirements for the elimination or control of risks arising from several different hazards:

- Noise
- Hazardous manual tasks
- Confined spaces
- Falls
- High risk work
- Demolition work
- Electrical work
- Diving work

### Part 4.1 – Noise

The requirements for the duty holder to manage the risk of hearing loss are substantially the same as currently prescribed under the OHS Regulation. However, a new requirement under this part is the provision for a PCBU to provide audiometric testing for a worker who is frequently required to wear hearing protection to protect against noise above the exposure standard.

This part also outlines the duties of designers and manufacturers of plant to ensure that noise emission is as low as reasonably practicable, and of importers and suppliers of plant to take reasonable steps to obtain information about noise emission of plant and provide that information to others as required.

### Part 4.2 – Hazardous manual tasks

This part requires PCBUs to manage risks associated with hazardous manual tasks. The PCBU must determine control measures to manage the risk of injury by taking into account matters such as the design of the work area, systems of work, and layout of the workplace. The code of practice provides guidance on managing the risks of manual tasks, including guidance on identifying, assessing and controlling risks associated with manual tasks.

### Part 4.3 – Confined spaces

Provisions for the management of risk in relation to confined spaces are substantially the same as currently required under the OHS Regulation, including the definition of a confined space. A PCBU must provide a documented risk assessment conducted by a competent person, and must issue an entry permit for work in a confined space. Records of the assessment and permit must be kept until completion of the work unless a notifiable incident occurs, in which case copies must be kept for at least two years. A PCBU must ensure specific control measures are implemented including continuous communication with the worker, a standby person in the vicinity of the space, and atmospheric controls. A PCBU must ensure workers are provided suitable training and instruction, with a record of all training provided kept for two years.

The WHS Regulations impose specific duties for designers, manufacturers, importers, suppliers, installers or constructors of plant or structures to eliminate so far as is reasonably practicable the need to enter a confined space, and if this cannot be done, then minimise the risk and the need to enter and design a safe means of entry and exit.

### Part 4.4 – Falls

Like the OHS Regulation, this part outlines specific requirements for the management of risks of falls. However, the provisions under the WHS Regulations apply to a fall by a person from one level to another rather than specifically a fall from heights. In managing a risk, a PCBU must ensure, so far as is reasonably practicable, that work involving the risk of a fall is carried out on the ground or a solid construction. In the event that the risk cannot be eliminated a PCBU is required to provide adequate protection to minimise the risk of a fall, considering the specific hierarchy of control measures:

- a fall protection device
- a work positioning system
- fall arrest system.

This part also requires a PCBU to establish and test emergency and rescue procedures in relation to the implementation of a fall arrest system. Information, training and instruction in relation to these procedures must also be provided to relevant workers.

There are exceptions from the provisions within part 4.4 in relation to stunt work, acrobatics and theatrical performance, sporting or athletic activity, and horse riding.

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Provisions specifically relating to the management of risk from falling objects are covered in Part 3.2 of the WHS Regulations.

#### Part 4.5 – High risk work

This part provides for the licensing of specific high risk work classes – eg for the operation of cranes, forklifts or boilers or erecting scaffolding. A person must not carry out high risk work unless they:

- hold a high risk work licence for that licence class; or
- are enrolled in the recognised course of training with a registered training organisation (RTO) towards a certification for the class or classes of high risk work, and are under the supervision of a person who is licensed to carry out the high risk work.

A new licence class has been included for the operation of reach stackers (used to lift shipping containers).

With the commencement of the WHS Regulations in NSW, there will no longer be the requirement for a licence for the operation of a dragline or load shifting equipment such as front-end loaders, backhoes, or skid steer excavators. Information about ensuring that people using load shifting equipment are competent is available on [workcover.nsw.gov.au](http://workcover.nsw.gov.au)

Part 4.5 also provides for the accreditation of assessors who can assess an applicant's competency for a high risk work licence. The processes are substantially the same as current provisions under the OHS Regulation and assessors must only conduct a high risk work licence assessment for, or on behalf of, an RTO.

#### Part 4.6 – Demolition work

Consistent with the current requirements under the OHS Regulation, this part requires the notification of demolition work to the regulator. However, under the WHS Regulations there will no longer be a requirement for a person to obtain a permit to undertake certain demolition work. The notification requirements will apply to the demolition of a structure, or a part of the structure, that is load bearing, or otherwise related to its physical integrity that is over six metres 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 construction work and the requirements of chapter 6 apply, including the requirements for safe work method statements.

Unlike current arrangements in NSW there are no specific requirements for how demolition work is to be undertaken. A code of practice dealing with demolition work has been released for public comment from 26 September until 16 December 2011.

There are no provisions under the WHS Regulations for licensing of demolition work. Demolition will be licensed as an occupational licence under the National Occupational Licensing System (NOLS). WorkCover will continue to licence demolition work under existing arrangements until demolition licensing under NOLS commences, probably in 2013.

#### Part 4.7 – Electrical safety and energised electrical work

This part requires a PCBU to manage risks associated with electrical work, and includes requirements for the inspection and testing of electrical equipment and the use of residual current devices.

A significant change, commencing 1 January 2013, is the use of residual current devices, which will apply in the following circumstances (or in 'hostile operating environments'):

- In an environment where the normal use of electrical equipment exposes the equipment to operating conditions that are likely to result in damage to the equipment or a reduction in its expected life span, including conditions that involve exposure to moisture, heat, vibration, mechanical damage, corrosive chemicals or dust.
- If electrical equipment is moved between different locations, where damage to the equipment or a flexible electricity supply cord is reasonably likely.
- If electrical equipment is frequently moved during its normal use.
- If electrical equipment forms part of, or is used in connection with, an amusement device.

This provision is not as extensive as originally proposed in the draft WHS Regulations that were released for public comment. Guidance on when residual current devices are required is being developed.

The WHS Regulations contain specific provisions regarding electrical work on energised electrical equipment (or 'live' work). A written risk assessment and safe work method statement must be prepared before work is carried out, and there is a requirement for a competent person to test the equipment to ensure it is not energised before work is carried out.

Part 4.7 also includes a requirement for a PCBU undertaking construction work to comply with AS/NZS 3012: 2010 *Electrical Installations – Construction and Demolition Sites*. Currently, there are no specific electrical requirements for construction work, however guidance is provided in the *Code of practice for electrical practices for construction work*.

#### Part 4.8 – Diving work

A key change under the WHS Regulations is that the provisions in relation to diving work now capture all work carried out in or under water or other liquids. However, minor diving work that involves cleaning, inspecting, maintaining or searching for a vessel or mooring is excluded.

The WHS Regulations set out the required competencies, medical fitness, skills, experience and supervision of the diver in relation to the type of diving work to be undertaken. Fitness and competency requirements for high risk diving work, such as construction work or salvage work, are set out in AS/NZS 2299: 2007 – *Occupational Diving Operations*.

Part 4.8 requires PCBUs to plan and document the diving work, including undertaking written risk assessments, preparing and complying with dive plans, and maintaining dive safety logs.

#### Chapter 5 – Plant and structures

This chapter sets out the duties of PCBUs in relation to the design, manufacture, import, supply, management or control, and installation or commissioning, of plant and structures. These provisions are broadly consistent with current requirements under the OHS Regulation. The WHS Regulations provide for exemptions from certain requirements in relation to plant used in connection with tree-felling, sporting activities, stunt work, acrobatics or theatrical performances.

Like the current OHS Regulation, the WHS Regulations include requirements to register certain plant designs, such as LPG gas cylinders and to register particular items of plant, such as boilers, tower cranes, lifts, escalators, moving walkways and amusement devices. However, the registration of an item of plant will now be valid for five years rather than one year (which is currently the case). There are also some changes to items requiring registration. Water slides will no longer require registration but inflatable amusement devices will if they are not sealed or do not use a non-return valve.

The WHS Regulations also prescribe specific control

measures for powered mobile plant, tractors, industrial lift trucks, registered mobile and tower cranes, lifts and amusement devices.

#### Chapter 6 – Construction work

This chapter deals with construction work and requirements under this chapter are broadly in line with current NSW requirements for construction work, however 'minor' repair work is now excluded. The definition of construction work no longer specifically includes work at power generation stations but the provisions of chapter 6 will apply to outage or overhaul work on fixed plant that involves work being carried out by five or more PCBUs at any point in time.

The WHS Regulations maintain requirements for appointing a principal contractor for projects costing over \$250,000. The **principal contractor** must prepare a WHS management plan and is pivotal in ensuring safe coordination of activities at the site.

Likewise, a PCBU is still required to prepare a safe work method statement for high risk construction work. High risk construction work now includes:

- work where there is a risk of a fall from two metres (instead of the current three metres)
- all demolition work
- work that involves, or is likely to involve, the disturbance of asbestos.

Following consideration of public comment on the draft WHS Regulations, the requirement to notify the regulator of certain proposed excavation works has been removed.

The WHS Regulations include provisions for a person with management or control of the workplace to obtain and consider information in relation to essential underground services. Such information must be shared with, and considered by, a person engaged to carry out excavation work.

This chapter also provides for general construction induction training. However, there is no specific requirement for task-specific or site-specific induction training.

The WHS Regulations expand on the duties of designers under the WHS Act. Section 22 of the WHS Act requires people who design plant, substances and structures to ensure, so far as is reasonably practicable, that they are without risks to health and safety.

It is important to note that the obligations under section 22 extend not only to requiring the design to be safe during the construction of the structure but also to ensure it is safe to use at a workplace, and when being demolished or destroyed. Part 6.2 expands on these obligations by requiring designers of structures to consult with the person who commissions the work and provide a safety report, setting out the hazards that are associated with the design. Because construction work includes maintenance, refurbishment, demolition and dismantling of a structure, the designer's report will need to specify hazards specific to that design that may create risks not only during initial building but to workers who may undertake maintenance or demolition work in the future.

## Chapter 7 – Hazardous chemicals

Chapter 7 of the WHS Regulations includes provisions for hazardous chemicals including lead and dangerous goods. Provisions relating to asbestos are in chapter 8.

Classification of chemicals under chapter 7 is generally based on the *Globally Harmonised System of Classification and Labelling of Chemicals* (GHS) published by the United Nations. However, some tables in the GHS are replaced with tables in schedule 6 of the WHS Regulations. A key change in the WHS Regulations since public comment is that the introduction of classification according to GHS will apply to dangerous goods as well as hazardous chemicals. A five year transitional period will apply to this change. Each jurisdiction will draft its own transitional legislation to provide for the transition to GHS. During the transitional period, until 2017, duty holders may classify and label chemicals in accordance with either GHS or existing arrangements.

A *Code of practice for managing risks of hazardous chemicals* has been released for public comment from 26 September until 18 November 2011. This code is in addition to the codes of practice for labelling and the preparation of safety data sheets.

The OHS Regulation currently exempts pesticides, drugs and poisons from hazardous substances labelling when supplied for use in workplaces. Under the WHS Regulations therapeutic goods for human use at the point of administration will be exempt when labelled in accordance with *Therapeutic Goods Act 1989* requirements. However, some chemicals that are regulated under the Therapeutic Goods Act will need to be labelled in accordance with the WHS Regulations if used in a workplace. Agricultural and veterinary chemicals used in workplaces will be subject to specific requirements. Implementation and transitional

arrangements will be developed.

Part 7.2 deals with inorganic lead and includes requirements for:

- specific control measures
- notifying workers and potential workers with information about the risks of working with lead
- health and biological monitoring
- triggers for removing a person from lead risk work.

Key changes in NSW in relation to lead risk work include:

- a more comprehensive list of lead processes
- the definition of lead risk work, which makes a distinction between the blood lead levels for females of reproductive capacity (more than 10ug/dL) and others (more than 30ug/dL).
- the assessment of the lead process to identify whether it is lead risk work must be undertaken without regard to personal protective equipment, and a lead process is deemed to be lead risk work until proven otherwise.
- no requirement for females to inform the PCBU if they are pregnant or breastfeeding.

## Chapter 8 – Asbestos

Chapter 8 contains provisions relating to asbestos. This chapter includes requirements for the control of exposure to asbestos as well as requirements for PCBUs who have management or control of a workplace to manage asbestos. This duty includes requirements relating to the identification of asbestos, recording the location of asbestos in a register, and planning for the management of asbestos.

This chapter also includes provisions for the licensing of asbestos removalists and asbestos assessors. Asbestos assessors will typically be occupational hygienists and only asbestos assessors will be able to conduct air monitoring and issue clearance certificates where friable asbestos is being removed. Another key change in NSW is that applicants for a Class A (friable) asbestos removal licence will need to have a certified safety management system. Transitional arrangements for existing licence holders will be developed.



## Chapter 9 – Major hazard facilities

Major hazard facilities (MHFs) are facilities such as oil refineries, chemical processing plants, large chemical and gas storage depots, and large chemical warehouses that have hazardous chemicals in amounts that exceed specified threshold quantities. Chapter 9 of the WHS Regulations provides for the licensing of MHFs and for the duties of operators and workers.

Following changes to the draft WHS Regulations in response to public comment, the definition of 'major incident', a concept central to obligations relating to major hazard facilities, is now broadly similar to the existing definition in NSW. There are changes to how major hazard facilities are authorised but the concept of a provisional authorisation phase to allow a facility to develop and implement safety management systems before licensing has been continued. Under the WHS Regulations, the provisional registration and registration phase have been combined and are initiated by a notification to the regulator when facilities have more than 10 per cent of the prescribed threshold quantity of certain hazardous chemicals. Facilities with more than 100 per cent of the threshold amounts will all be determined as MHFs, but other facilities having over 10 per cent of the threshold amounts may be determined to be MHFs by the regulator if there is potential for a major incident to occur at the facility.

## Chapter 10 – Mines

Draft mining regulations and some codes of practice for mining have been released for public comment and are available on the Safe Work Australia website. Public comment on the draft regulations for mining has been extended to 14 October 2011.

In NSW, as per current arrangements, safety requirements for mining will be covered by WHS legislation and additional mine-specific legislation. The provisions to be included in chapter 10 of the WHS Regulations are considered to be common or 'core' provisions and will apply in each state or territory. The additional mine-specific legislation will not apply in all states. NSW is working with Queensland and Western Australia to ensure as much consistency as possible in the provisions governing the same types of mining activity.

Chapter 10 is expected to provide for:

- appointment of mine operators who will be the key duty holders under the chapter
- risk control measures in mines
- safety management systems
- emergency response plans
- mine survey plans and mine records.

## Chapter 11 – General

Chapter 11 provides for a range of general matters including:

- review of decisions (Part 11.1)
- processes and requirements for the regulator to grant exemptions from the requirements of the regulation (Part 11.2).

In NSW, arrangements for review of administrative decisions may vary somewhat from the requirements set out in the WHS Regulations to ensure they remain consistent with the approach and procedures for review of administrative provisions generally in NSW by the Administrative Decisions Tribunal. Jurisdictional notes provide for these variations.

Regulation 699 supplements the requirements under section 36 of the WHS Act for incident notification. This regulation provides for notification of serious infections or illnesses such as Q fever or Hendra virus when contracted or potentially contracted through work.

This chapter will also include the transitional provisions. These provisions may differ between jurisdictions but they will be based on the same principles to help ensure a consistent approach.

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## Related matters

### Penalty amounts and infringement notices

The penalty regime proposed under the model WHS Regulations will essentially consider the following types of offences:

1. offences that are 'linked' to the WHS Act, specifically to either the health and safety duties of Part 2 or the authorisations provisions of Part 4. These offences provide detail on the duties contained in the WHS Act and would be subject to the relevant penalty set out in the Act, and
2. stand-alone offences that are subject to a monetary penalty that will be specified in the WHS Regulations.

Penalty amounts will be set out in the final version of the model WHS Regulations published by Safe Work Australia.

As per current arrangements in NSW, some offences may be subject to sanction by prosecution or by the issue of a penalty notice. Offences of a relatively minor nature where it is objectively discernable that an offence has been committed will be subject to the penalty notice scheme. A penalty notice will be available for failure to comply with an improvement notice.

### National compliance and enforcement policy

The National Compliance and Enforcement Policy (NCEP) aims to ensure a nationally consistent approach to compliance and enforcement. The NCEP sets out the principles that underpin the approach to monitoring and enforcing compliance with the WHS Act and Regulations. Broadly, the approach is a mix of assistance to build capability and willingness to comply, and enforcement sanctions for serious non-compliance. The NCEP is available on the Safe Work Australia website.

The NCEP is considered to be a high level document and is supplemented by other policies and procedures developed by the Heads of Workplace Safety Authorities' regulators harmonisation project.

### Codes of practice

Codes of practice play a key role under the WHS legislation in providing guidance to assist duty holders to eliminate or control risks. While a duty holder is not required to comply with codes of practice, they may be used in court proceedings as evidence of what is known about particular risks and what is considered reasonably practicable to control them. Eleven first

stage priority model codes of practice were released for public comment from 7 December 2010 until 4 April 2011. The final version of these codes will be available for downloading from the Safe Work Australia website. The priority codes are:

- *How to manage work health and safety risks*
- *Work health and safety consultation, coordination and cooperation*
- *Managing the work environment and facilities*
- *Managing noise and preventing hearing loss at work*
- *Hazardous manual tasks*
- *Confined spaces*
- *How to prevent falls at workplaces*
- *Labelling of workplace hazardous*
- *Preparation of safety data sheets for hazardous chemicals*
- *How to manage and control asbestos in the workplace*
- *How to safely remove asbestos.*

The draft *Code of practice for facilities for construction sites* was released for public comment as a separate code but the content has now been incorporated in the second stage priority *Code of practice for managing risks in construction work*.

Further model codes of practice have been developed with 15 codes released for public comment on 26 September 2011. Public comment on six of the codes closes on 18 November 2011, with a view to their endorsement and release for 1 January 2012.

These codes are:

- *First aid in the workplace*
- *Managing risks in construction work*
- *How to prevent falls in housing construction*
- *Managing electrical risks at the workplace*
- *How to managing risks of hazardous chemicals*
- *How to manage the risks of plant in the workplace.*

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Public comment on a further nine codes will close on 16 December 2011, with a view to their release in the first part of 2012. These codes are:

- *Safe design of buildings and structures*
- *Excavation work*
- *Demolition work*
- *Spray painting and powder coating*
- *Abrasive blasting*
- *Welding and allied processes*
- *Safe access in tree trimming and arboriculture*
- *Preventing and managing fatigue in the workplace*
- *Preventing and responding to workplace bullying.*

Development of the third stage codes of practice has commenced. This stage will include codes relating to specific plant items, specific construction work, traffic management, diving and policing. It is intended that these codes will be completed for implementation in 2012, with a likely release date for public comment in early 2012.

Fourth stage codes of practice are planned to include vibration and biological hazards. Safe Work Australia will be conducting public consultation workshops throughout September 2011 to obtain preliminary input on the scope and content for these two codes. Further codes may be included in the fourth stage and are proposed to be released for public comment in mid 2012. It is intended that the fourth stage codes will be completed for implementation in December 2012.

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