

NSW Work Health & Safety Act



Module: Public Safety

What is different in WHS Act about Public Safety?

New Act has very similar coverage on public safety matters as the current NSW legislation



New Act creates duties for any person affected by work activities of a PCBU effectively codifying existing common law duty



Overview of WHS Act

The overall public safety aspect is covered by the duty of PCBUs to others:

*“ A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of **other persons** is not put at risk from work carried out as part of the conduct of the business or undertaking”*





Overview of WHS Act

Specific reference to means of entering and exiting workplaces:

“The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person”





Overview of WHS Act

In addition to the duty to others the WHS Act can also extend coverage in two areas:

1. This Act applies to the storage and handling of dangerous goods even if the dangerous goods are not at a workplace or for use in carrying out work



CLASS 1 EXPLOSIVES
EG. GELIGNITE, FIREWORKS,
AMMUNITION,
MARINE FLARES



CLASS 2.1 FLAMMABLE GAS
EG. LPG, ACETYLENE



CLASS 2.2
EG. CARBON DIOXIDE,
REFRIGERANT GAS



CLASS 9
EG. ASBESTOS, DRY ICE



Overview of WHS Act

2. *This Act applies to the operation or use of **high risk plant**, affecting public safety, even if the plant is not situated, operated or used at a workplace or for use in carrying out work*





Overview of WHS Act

In addition to PCBU public safety duties the Act also requires workers to:

- a. take reasonable care for his or her own health and safety; and*
- b. take reasonable care that his or her acts or omissions do not adversely affect the health and safety of **other persons***

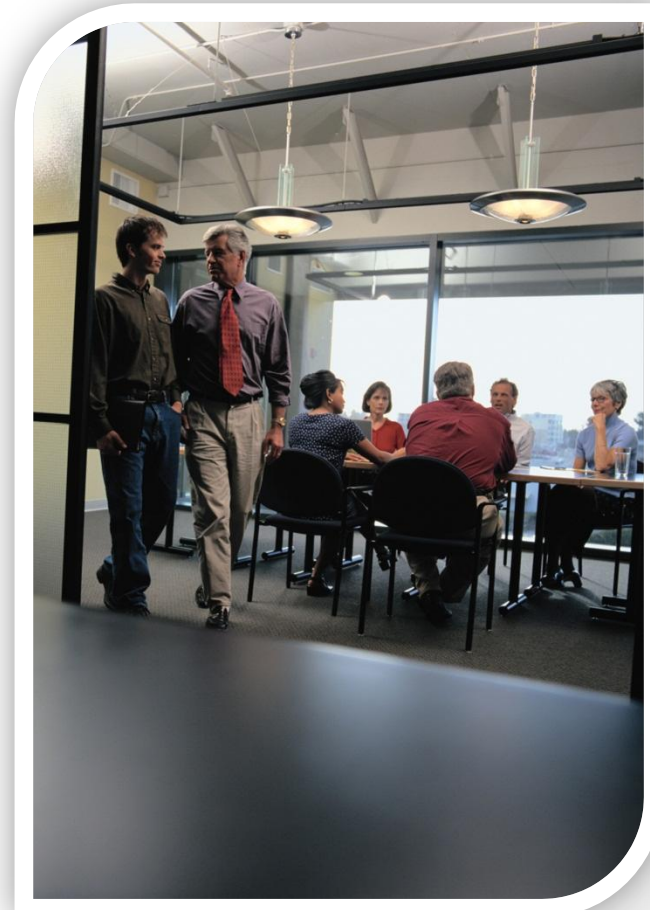


Overview of WHS Act

Finally the WHS Act states that **any person** at a workplace owes a duty to others:

A person at a workplace must:(whether or not the person has another duty

- a. take reasonable care for his or her own health and safety; and*
- b. take reasonable care that his or her acts or omissions do not adversely affect the health and safety of **other persons***
- c. comply, so far as the person is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with this Act*





WHS Act duplicates duties for other PCBUs

Type of Duty holder	Duty to persons
Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces	The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person .

Type of Duty holder	Duty to persons
Duties of persons conducting businesses or undertakings that design plant, substances or structures	who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).



WHS Act duplicates duties for other PCBUs

Type of Duty holder	Duty to persons
Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures	(f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

Type of Duty holder	Duty to persons
Duties of persons conducting businesses or undertakings that import plant, substances or structures	(f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).



WHS Act duplicates duties for other PCBUs

Type of Duty holder	Duty to persons
Duties of persons conducting businesses or undertakings that supply plant, substances or structures	(f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).

Type of Duty holder	Duty to persons
Duty of persons conducting businesses or undertakings that install, construct or commission plant or structures	(f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace or whose health or safety may be affected by a use or activity referred to in paragraph (a), (b), (c), (d) or (e).



What is the likely impact of these changes?



The WHS Act mirrors the public safety coverage in existing legislation in most respects



The duty of any person to others is a new duty but really just clarifies in WHS law what has already existed in the **common law**