

16 July 2018

NAT 018/18

SUMMARY:

This Compliance Advice provides important information about:

- Amendments to the QLD *Work Health and Safety Act 2011* which came into effect on 1 July 2018: change to status of Codes of Practice; obligations to ensure a HSR receives training; and reestablishment of Work Health and Safety Officers (WHSOs) as a non-mandatory option.
- Changes to the regulation of lead in Victorian workplaces.
- Progress of the Model WHS laws in Western Australia; public comment now open.
- The release of *Operation of the Queensland Workers' Compensation Scheme – Report of the second five-yearly review of the scheme*.

QLD WHS CHANGES

Members have previously been advised of changes that were made to the Queensland *Work Health and Safety Act 2011* (the Act) late in 2017. See [Compliance Advice NAT 022/17](#). Some of these amendments became effective on 1 July 2018, so now is a good time to revisit those changes.

Codes of Practice

The obligation of employers in relation to Codes of Practice has been amended with the insertion of a new section, which states:

“A person conducting a business or undertaking must, if the Minister approves a code of practice for the purposes of this Act—

- (a) comply with the code; or*
- (b) manage hazards and risks arising from the work carried out as part of the conduct of the business or undertaking in a way that is different to the code but provides a standard of health and safety that is equivalent to or higher than the standard required under the code.”*

The status of the Codes highlights the importance of employers referencing them to understand what controls the regulator would expect to see in a particular situation.

[QLD Codes of Practice](#) will now expire 5 years after they have been approved and will have to be reviewed and remade if they are to continue.

It is still not clear how this will apply to Codes that have already passed the 5-year expiry date.

Training of HSRs

An employer must now ensure, so far as is reasonably practicable, that an HSR receives their initial 5-day training within 6 months of their election. This compares to the previous obligation to provide training within 3 months of a request by the HSR.

Obligations for a 1-day refresher training will be reduced from annually to once every three years.

Work Health and Safety Officers (WHSOs)

The role of a WHSO has been reestablished, but will not be a mandatory requirement.

The role

If appointed, a WHSO will have a range of functions specified in the Act and will be required to undertake an assessment of risks at least every 12 months and provide an assessment report to the PCBU and any safety committee that is in place.

The amendments establish that, if you ever face a Workplace Health and Safety (WHS) prosecution, having a properly functioning WHSO can be used in evidence to support a case that you have complied with your WHS duties.

It is not clear how this provision will be considered by the courts. Whilst having a properly functioning WHSO may be helpful it is highly unlikely to protect an organisation from prosecution if there is a significant breach of WHS duties.

The legislation also clearly states that “the appointment of a work health and safety officer at a business or undertaking... does not affect any duty or obligation owed by the person under the Act”.

This means, whilst the appointment of a WHSO may assist the organisation to meet its obligations, it will not replace the obligation of officers to exercise due diligence to ensure that the organisation complies with WHS obligations.

This could be a significant risk for organisations and officers, unless the WHSO role is well understood, and supported. The appointment of a WHSO does not mean everyone else should feel they can step back from their responsibilities.

WHSOs have not been referred to in Queensland WHS laws since January 2012. This new provision **does not require** a company to make any changes to arrangements that are currently in place within their workplaces. However, if they choose to appoint someone formally as a WHSO, the Act sets out the requirements of the role; organisation and WHSOs need to make sure these functions are undertaken.

WHSO Training

A person can be appointed as a WHSO if they hold a *certificate of authority for appointment* from the Regulator. The amendments established that a person could get a certificate of authority if they had completed the Certificate IV in WHS – BSB41412 within the previous 3 months.

However, we have been advised that Workplace Health and Safety Queensland is also developing a specific training course for WHSO certification. Ai Group has not been advised when this course will be available.

VIC: CHANGE TO LEAD REGULATIONS

Members have previously been advised of proposed changes to Model WHS laws and Victorian OHS laws in relation to lead in the workplace. [See Compliance Advice NAT 010/18](#).

Victoria is the first jurisdiction to introduce changes to the Regulations.

The Regulations establish a two-year transition period, giving affected employers until June 2020 to comply with new requirements for airborne exposure standards and allowable levels of lead in the blood of workers.

Impacted employers should take action now, as achieving compliance may require significant time and resources for some organisations.

Key Changes

Airborne exposure standards:

The maximum allowable level of lead in an employee's breathing zone, as measured by milligrams per cubic metre of air, will reduce from 0.15 to 0.05 (regulation 186).

Definition of lead-risk work

The definition of lead-risk work (regulation 193) is based on identifying whether the lead process is reasonably likely to cause blood lead levels to exceed:

	Currently	From 5 June 2020
For a woman of reproductive capacity	10µg/dL	5µg/dL
In any other case	30µg/dL	20µg/dL

Blood lead removal levels

Employers are required to remove people from lead-risk work (regulation 199) if their blood-lead levels rise above a certain level:

	Currently	From 5 June 2020
For a woman who is pregnant or breast feeding	15µg/dL	10µg/dL
For a woman of reproductive capacity	20µg/dL	
In any other case	50µg/dL	30µg/dL

If your workers are exposed to lead as part of their work, you should take time to consider whether these changes will have an impact on your business. The current and new requirements can be found in part 4.3 of the [Victorian OHS Regulations](#).

WA: PROGRESS OF MODEL WHS LAWS; PUBLIC COMMENT NOW OPEN

The WA government has recently released the report of the Ministerial Advisory Panel: [Modernising work health and safety laws in Western Australia – Proposals for amendments to the model Work Health and Safety Bill for adoption by Western Australia](#).

This report is Stage 1 of the current government's commitment to adopting the model laws and considers whether there is a need to amend the [Model WHS Bill](#) for adoption in WA. Stage 2 will consider the Regulations.

Submissions are being sought on any aspect of the model WHS laws that might impact the Western Australian workplace and the community.

The report suggests that the following questions may be considered:

- What is the likely cost for you, your business, or the Regulator to implement a specific proposal?
- What is the benefit to workplace participants?
- Is a specific recommendation likely to be effective in achieving safer workplaces?
- Are there any unintended consequences of a proposal?
- If a new requirement is proposed, what are the costs and benefits?

Ai Group is keen to receive feedback from members with operations in WA and will be providing opportunities for members to discuss issues with Tracey Browne who will be managing the submission process for Ai Group.

If you are interested in being involved in discussions, please contact [Kristian Stratton](#), State Manager Western Australia, or [Tracey Browne](#).

QLD: WORKERS' COMPENSATION SCHEME REVIEW; REPORT RELEASED

Members have previously been advised of the second 5-yearly review of the QLD workers' compensation scheme. [See Compliance Advice NAT 005/18](#).

The [report](#) has now been released, making 57 recommendations. Below is a summary of the most significant recommendations for employers;

3.1 The government should consider the appropriate handling of premiums for labour hire agencies, including the role of injuries in shaping the premium for host employers.

3.2 The Act should be amended to enable coverage of unpaid commercial interns.

3.3 The government should work with other governments towards a common definition of worker.

4.2 & 4.3 Consultation should occur in relation to the calculation of normal weekly earnings.

5.1 The current definition of injury for psychiatric or psychological disorders should be revised to remove reference to "the major" from the significant contributing factor qualifier.

5.4 Insurers should be required to cover the cost of treatment for psychological injury on a 'no prejudice' basis, whilst a claim is being determined.

6.8, 6.9 & 6.10: Recommendations related to training and support of Rehabilitation and Return to Work Coordinators.

7.1 WorkCover and Workplace Health and Safety Queensland should work more closely together, in particular to use micro-level claims data to inform WHSQ of potential areas for intervention.

9.1 & 9.2 Relating to self-insurers: encouraging consultation with stakeholders during licence renewal and requiring all claims to be reported to the "relevant insurer".

10.1 In relation to the 'gig economy', coverage of the Act should be redefined to include any person engaged via an agency to perform work under a contract for another person.

11.2 The Regulator should put in place procedures to require it to consult with the relevant employer before conceding an appeal in the QIRC.

12.2 The next five-yearly review should encompass both OHS and workers' compensation in Queensland.

Ai Group will be providing a written response to the government on the recommendations. Members who wish to contribute their views for consideration should contact [Tracey Browne](#) or phone 0438 207 799.

DO YOU REQUIRE FURTHER ASSISTANCE?

For further information or assistance, please contact Ai Group's Workplace Advice Line on 1300 55 66 77.

For information about our safety and workers' compensation consulting and training services, contact:

Consulting Services:

[Trinette Jaeschke](#) – 0400 282 477

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