

[QLD1,005] Queensland — Comparative Tables

[QLD1,005.5] *Health and Safety Duties*

Duty	Workplace Health and Safety Act 1995 (Qld)	Work Health and Safety Act 2011 (Qld)	Summary of Change
Discharging duties	<p><u>Sections 26 and 27</u></p> <ul style="list-style-type: none"> • If a regulation or ministerial notice prescribes the way of preventing or minimising exposure to a risk, a person discharged its workplace health and safety obligation only by following the prescribed way. • If a regulation or ministerial notice prohibits exposure to a risk, a person discharges its workplace health and safety obligation only by ensuring the prohibition is not contravened. 	<p><u>Section 17</u></p> <p>A health and safety duty requires a person to:</p> <ul style="list-style-type: none"> • to eliminate risks to health and safety, so far as is reasonably practicable; and • if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable. 	<ul style="list-style-type: none"> • Health and safety duties are to be discharged through ensuring, so far as it is reasonably practicable, the elimination of a risk or minimising the exposure to risk. • The prosecutor, rather than the duty-holder, bears the onus of establishing that the defences under the Act are not sustained. • If the regulations specify the way in which a health and safety duty is to be complied with in respect of a risk, a dutyholder must comply with the regulations in order to discharge the duty-holder's duty over that risk.

Duty	Workplace Health and Safety Act 1995 (Qld)	Work Health and Safety Act 2011 (Qld)	Summary of Change
	<ul style="list-style-type: none"> • If a code of practice provides for a way of managing exposure to a risk, a person discharges its workplace health and safety obligation for exposure to that risk either only: <ul style="list-style-type: none"> (i) adopting and following the stated way in the code of practice; or (ii) adopting and following another way that gives the same level of protection, taking reasonable precautions and exercising proper diligence. • If no regulation, ministerial notice or code of practice exists with respect to a risk, the person discharges its workplace health and safety obligation by: <ul style="list-style-type: none"> (i) adopting and following any way to discharge the person's obligation for exposure to the risk; and (ii) taking reasonable precautions and exercising proper diligence to ensure the obligation is discharged. 	<p><u>Section 274</u></p> <p>In proceedings brought for an offence, an approved code of practice is admissible in the proceedings as evidence of whether or not a duty or obligation has been complied with. The court may:</p> <ul style="list-style-type: none"> • have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and • rely on the code in determining what is reasonably practicable in the circumstances to which the code relates. <p>This section does not prevent a person from introducing evidence of compliance with this Act in a way that is different from the code but provides an equivalent or higher standard of work health and safety than the standard required in the code.</p>	<ul style="list-style-type: none"> • compliance with a code of practice over a risk does not, in and of itself, discharge a duty-holder from its duty in respect of that risk.

Duty	Workplace Health and Safety Act 1995 (Qld)	Work Health and Safety Act 2011 (Qld)	Summary of Change
Primary Duty to Workers	<p><u>Section 28</u> A person conducting a business or undertaking has an obligation to ensure the workplace health and safety of each of the person's workers.</p>	<p><u>Section 19(1)</u> A person conducting a business or undertaking must ensure, so far as reasonably practicable, the health and safety of:</p> <ul style="list-style-type: none"> (a) workers engaged, or caused to be engaged by the person; and (b) workers whose activities in carrying out work are influenced or directed by the person <p>while the workers are at work in the business or undertaking.</p>	<ul style="list-style-type: none"> • See above for changes to the way in which duties are discharged. • The duty is not confined to workers of the person conducting the business (<i>PCBU</i>) or undertaking but all workers who may be caused to be engaged by the <i>PCBU</i> or whose work activities are influenced by the <i>PCBU</i>.
Primary Duty to Others	<p><u>Section 28</u> A person conducting a business or undertaking has an obligation to ensure the workplace health and safety of any other persons is not affected by the conduct of the business or undertaking.</p>	<p><u>Section 19(2)</u> 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.</p>	<ul style="list-style-type: none"> • See above for changes to the way in which duties are discharged.
Self-Employed	<p><u>Section 28</u> A person conducting a business or undertaking has an obligation to ensure the workplace health and safety of the person is not affected by the conduct of the business or undertaking.</p>	<p><u>Section 19(5)</u> A self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work.</p>	<ul style="list-style-type: none"> • See above for changes to the way in which duties are discharged. <p>(Note a self-employed person also owes a duty to others pursuant to subss (1) and (2)).</p>

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Control — Workplace	<p>Section 30 A person in control of a workplace (aside from the occupier of domestic premises) has an obligation:</p> <ul style="list-style-type: none"> (a) to ensure the risk of injury or illness from a workplace is minimised for persons coming onto the workplace to work; (b) to ensure the risk of injury or illness from any plant or substance provided by the person for the work of someone other than the person's workers is minimised when used properly; and (c) to ensure that there is appropriate, safe access to and from the workplace for persons other than the person's workers. <p>Section 34C The person in control of a relevant workplace area (that is not the occupier of domestic premises) has an obligation to ensure that the area is safe and without risks to health.</p> <p>By operation of s 15B, a person in control is the owner unless an agreement or lease provides for another party to have effective and sustained control. The owner then ceases to be in control.</p>	<p>Section 20 A 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.</p>	<ul style="list-style-type: none"> • Duty not confined to persons in control but extends to persons who have a role in managing a workplace. • Duty applies whether or not workplace is used only by the person's employees. • There may be more than one person in control of a workplace. • By operation of s 16(3)(b), a person still owes a duty under this section despite an agreement limiting that control. In such cases, the focus is on whether it is reasonably practicable to the exercise duty over matters outside the person's control. • Duties arising from plant at the workplace are covered by s 21.

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Clients — Construction	<u>Section 30A</u> A client of a construction project has a duty to consult with designers of a structure that is part of the construction work, the project manager of the construction work and the principal contractor of the construction work.	No additional duty under the Act. Duties regarding construction work now covered by the Regulations.	
Designers of Structures — Construction	<u>Section 30B</u> A designer of a structure of a construction project has a duty to ensure the designer of the structure does not affect health and safety persons:	<u>Section 22</u> A designer of a structure used, or could reasonably be expected to be used, at a workplace has a duty to:	<ul style="list-style-type: none"> • See above for changes to the way in which duties are discharged.

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	<p>(a) during the construction of the structure; and</p> <p>(b) when the structure has been constructed and is being used for the proper purpose for which it was designed.</p>	<ul style="list-style-type: none"> • ensure, so far as is reasonably practicable, that the structure is designed to be without risks practicable, that the structure is designed to be without risks to the health and safety of persons who use the structure for a purpose for which it was designed, people who construct the structure at a workplace, people who carry out any reasonably foreseeable activity regarding manufacture, assembly or use of the structure; • carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for it to comply with this duty; 	<ul style="list-style-type: none"> • Unlike the Workplace Health and Safety Act 1995, structure includes class 1a buildings and associated class 10a buildings. • As part of their duty, designers must carry out or organise the carrying out of testing and examination. • Designers are now expressly required to provide particular information regarding their design. • The duty of the designer is not expressly limited to the extent that content of the design of the structure falls under the control of the designer.

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		<ul style="list-style-type: none"> • provide adequate information (and current information when requested) to each person who is provided with the design for the purpose of giving the design effect regarding the purpose of the designed structure, the result of the testing and examination, any conditions necessary to ensure that the structure is without health and safety risks when used for the purpose it was designed. 	
Project Managers — Construction	<u>Section 30C</u> A project manager of a construction project has a duty to ensure that construction work is planned and managed in a way that prevents or minimises risks to the health and safety of: <ul style="list-style-type: none"> (a) all persons undertaking the construction work; and (b) persons at or near the workplace during the construction work. 	No additional duty under the Act. Duties now covered by the Regulations.	

Duty	Workplace Health and Safety Act 1995 (Qld)	Work Health and Safety Act 2011 (Qld)	Summary of Change
Principal Contractors — Construction	<p><u>Section 31</u></p> <p>A principal contractor of a construction project has a duty to ensure the workplace health and safety of persons arising from a hazard at the construction site for which no other person owes a workplace health and safety obligation and anything that has been provided for the general use of persons at the site. This obligations includes:</p> <ul style="list-style-type: none"> (a) coordinating, supervising and overseeing construction work in a way that prevents or minimises risks to the health and safety of persons at or near the workplace during the work; (b) consulting with persons who are involved in the construction work in relation to identifying hazards associated with the construction work and assessing risks that may result because of the hazards; (c) notify another person of any matter of which the principal contractor is aware, or should reasonably be aware, that may affect the capacity of that person to comply with the person's obligations; and 	No additional duty under the Act. Duties now covered by the Regulations.	

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	(d) provide safeguards and take safety measures prescribed under a regulation made for principal contractors.		
Design — Plant, etc	<p><u>Section 32</u> A designer of plant for use at a relevant place of work has an obligation to ensure that:</p> <p>(a) the plant is designed to be safe and without risk to health when used properly; and</p> <p>(b) if the designer gives the design to another entity that is to give effect to the design, the design is accompanied by information about the way the plant must be used to ensure health and safety.</p> <p>A designer of plant also has an obligation to take the action the chief executive of Workplace Health and Safety Queensland reasonably requires to prevent the use of unsafe plant anywhere.</p>	<p><u>Section 22</u> A designer of plant or substance used, or could reasonably be expected to be used, at a workplace has a duty to:</p> <ul style="list-style-type: none"> • ensure, so far as is reasonably practicable, that the plant or substance is designed to be without risks to the health and safety of persons who use and handle the plant or substance for a purpose for which it was designed, people who carry out any reasonably foreseeable activity regarding the manufacture of the plant and people who are exposed to the plant or substance; • carry out, or arrange the carrying out of, any calculations, analysis, testing or examination that may be necessary for it to comply with this duty; 	<ul style="list-style-type: none"> • The duty now particularises, in detail, classes of people to whom a duty is owed. • As part of their duty, designers must carry out or organise the carrying out of testing and examination. • The scope of information provided by designers includes information regarding testing and examination. Designers are also required to give updated information when requested. • There is no express obligation to take action that the chief executive requires to prevent the use of unsafe plant anywhere beyond what is provided for in the duty.

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		<ul style="list-style-type: none"> • provide adequate information (and current information when requested) to each person who is provided with the design for the purpose of giving the design effect regarding the purpose of the designed plant or substance, the result of the testing and examination, any conditions necessary to ensure that the plant or substance is without health and safety risks when used for the purpose it was designed. 	