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10 July 2008

National OHS Review Secretariat
Department of Education, Employment and Workplace Relations
64N1 GPO Box 9880
CANBERRA
ACT 2601 by email to publicsubmissions@nationalohsreview.gov.au

Dear Sir/Madam

**NATIONAL REVIEW INTO MODEL OCCUPATIONAL HEALTH AND
SAFETY LAWS**

Thank you for the opportunity to make a submission to the National Review into Model Occupational Health and Safety Laws. Our comments are set out in the attached document.

This submission is provided on behalf of the Australian Finance Conference (AFC) and the Australian Equipment Lessors Association (AELA) which together represent more than 100 financial service organisations. The AFC is the national finance industry association. AELA is the national association for the equipment leasing and financing industry. Current member lists are attached. Our Members include finance companies, banks, building societies and leasing companies providing various types of finance, including term loans, commercial hire purchase facilities, finance leases, operating leases and chattel mortgages.

Our submission addresses issues which are of concern to our Members in their capacities as financiers of assets such as plant, equipment, structures, materials, substances and vehicles. It therefore focuses on matters related to the legislative approach, duties of care and defences; and does not address issues such as employer duties, consultation or regulator functions.

If you have any questions, please contact me or Catherine Shand, Corporate Lawyer, on (02) 9231 5877.

Kind regards,

Yours truly,

Ron Hardaker
Executive Director



WHAT SHOULD THE OPTIMAL STRUCTURE AND CONTENT OF A MODEL OHS ACT BE?

NATIONAL REVIEW INTO MODEL OCCUPATIONAL HEALTH AND SAFETY LAWS - RESPONSE TO MAY 2008 ISSUES PAPER

10 July 2008

1. EXECUTIVE SUMMARY OF SUBMISSION

Our response to the Issues Paper can be summarised as follows:

- The harmonisation of Occupational Health and Safety (OHS) laws across Australia and the development of a model OHS Act (supported by regulations and codes of practice) are supported.
- Due to its inconsistencies and unnecessary complexity, the continuation of the status quo in each jurisdiction regarding industry specific safety legislation is not supported.
- It is submitted that the model OHS Act, together with regulations and codes of practice should incorporate all industry specific safety requirements.
- It is submitted that the terms “control”, “own”, “owner”, “plant”, “supplier” and “supply” should be defined in the model OHS Act as these terms will be critical to framing many of the duties under the Act.
- For consistency across all jurisdictions and in order to provide certainty for duty holders, the inclusion of a “control” test or definition is supported, incorporating the concept of an ability to manage the relevant circumstances and to influence occupational health and safety outcomes.
- It is submitted that “control” should be a crucial element in determining who holds duties, the nature and extent of these duties and any defences under OHS laws.

- It is submitted that the activity of supply should be defined by reference to supply by a person or corporation who, immediately before the supply, is the manufacturer or importer of an asset, or the person with day-to-day use and control of the asset.
- It is submitted that “passive financier” provisions should be included in the model OHS Act in order to ensure that duties of care are allocated to the persons best able to influence the achievement of appropriate health, safety and welfare outcomes.
- The approach taken in the OHS Acts in Victoria and Western Australia, which set out the factors to be taken into account in determining what is “reasonably practicable”, is supported, with the addition of a reference to the degree of control which the person has over the relevant circumstances.
- It is submitted that a “lack of control” defence should be included in the model OHS Act.

2. INTRODUCTION

The Australian Finance Conference (AFC) is Australia’s national finance industry association. The Australian Equipment Lessors Association (AELA) is the national association for the equipment leasing and financing industry. The AFC and AELA represent more than 100 financial services organisations. Membership lists are attached. Our Members include finance companies, banks, building societies, leasing companies and vehicle fleet lessors providing various types of finance, including commercial hire purchase facilities, finance leases, operating leases, chattel mortgages, term loans and vehicle fleet lease facilities.

This response to the National Review into Model Occupational Health and Safety (OHS) Laws is provided on behalf of AFC and AELA Members in their capacities as financiers of assets such as plant, equipment, structures, materials, substances and vehicles. As financiers, our Members have a particular concern about duties that may be imposed on them as suppliers or owners (because of the type of financial accommodation provided) of financed assets. This response therefore focuses on issues related to the overall legislative approach, duties of care and defences; and does not address issues such as employer duties, consultation or regulator functions.

3. THE ROLE OF FINANCIERS

Our Members offer various types of finance facilities to enable their customers to acquire assets which may fall within the definitions of “plant”, “structure”, “materials” and “substances” under OHS Laws. Under a lease or hire purchase facility, the financier is the “owner” of the financed asset, which it then “supplies” by way of lease or hire to its customer. For the same reasons, a financier may be the owner of plant or vehicles in which dangerous goods or hazardous substances are stored or transported.

The result is that the financier may have obligations under OHS laws as an owner or supplier of a financed asset, even though it is unlikely to have any control over the selection, use or maintenance of the asset. The finance or lease agreement will generally require the customer to take responsibility for the use and maintenance of the asset in accordance with all applicable laws and regulations. Given that the financier does not have possession or control of the asset, realistically it is not in a position to discharge any owner or supplier duties under OHS laws.

The laws of most Australian jurisdictions recognise these circumstances and include provisions to ensure that health, safety and welfare duties are imposed on the true supplier of the asset (such as the manufacturer or importer) or on the person with day-to-day control over use and maintenance of the asset (in most cases the financier's customer). Such provisions are sometimes referred to as "passive financier" provisions and assist in ensuring an appropriate allocation of duties to the persons best able to assess, manage, eliminate and reduce the relevant risks. These provisions also have the benefit of ensuring that financiers are not deterred from providing appropriate finance to their customers due to the risk of being made liable for adverse incidents over which they have no control.

4. GENERAL COMMENTS

The AFC and AELA support the harmonisation of OHS laws across Australia and the development of a model OHS Act (supported by regulations and codes of practice) that promotes safe workplaces, increases certainty for duty holders and reduces compliance costs for business, while protecting the health and safety of workers and those affected by work.

Our Members welcome the commitment of the Council of Australian Governments to end the currently fragmented and inconsistent approach to OHS matters; and the signing of the Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety on 3 July 2008.

Current OHS laws in each Australian jurisdiction address issues of occupational health and safety in a broadly similar way by a combination of statutes, regulations, codes of practice and guidelines. These laws differ to varying degrees in their structure, overall scope and operational requirements. Particular types of plant, such as amusement structures and lifts are subject to detailed requirements which may differ slightly across the jurisdictions. For all businesses which operate nationally these differences result in uncertainty about the scope of their obligations, complexity in developing and implementing different risk management policies and procedures; and the incurring of unnecessary costs of complying with different standards across the country.

In particular, for equipment financiers, the various duties of owners and suppliers under OHS laws, regulations and codes of practice are difficult to interpret and

apply. By way of example, in 2006, the AFC prepared a Summary of Obligations of Financiers of Plant under the *National Standard for Plant [NOHSC:1010]* and under the OHS laws in each State, Territory and the Commonwealth. The Summary (amounting to over 30 pages) is attached. This draws together the various provisions under Australian OHS laws relating to the duties of financiers as suppliers, owners, hirers and lessors of plant; and the extent of any exemptions or defences. The Summary illustrates the complexity and lack of consistency in this area of the law. The result for our Members and their clients is uncertainty in regard to their OHS duties and obligations in respect of financed assets. This uncertainty can lead to a reluctance by financiers to provide certain types of funding and/or increased funding costs for customers.

5. SPECIFIC COMMENTS

Legislative Approach

Q 7. Should the model OHS Act maintain the status quo in each jurisdiction regarding industry specific safety legislation? If so, what provisions should be made for establishing the relationship between the model OHS Act and industry specific legislation?

The status quo across the various jurisdictions amounts to a complex maze of statutes, regulations, codes of practice and guidance material for various industry and plant specific risks. In some cases, these may have developed in response to particular incidents or newly identified risks and hazards; however it is difficult to see how this can be supported by any geographical differences between the States and Territories.

As noted in the Issues Paper, some OHS laws address some aspects of controlling risks relating to what may be defined as “hazardous” or “dangerous” substances and “dangerous” goods. Other jurisdictions have separate laws covering matters such as the safe management of dangerous goods and the transport of dangerous goods and substances by road or rail.

Due to its inconsistencies and unnecessary complexity, the continuation of the status quo is not supported.

Q 8. Alternatively, should a model OHS Act incorporate all industry specific safety legislation? If so, how and to what extent (e.g., could industry specific issues be dealt with in regulations, codes of practice or guidance material under the model OHS Act)?

It is submitted that the model OHS Act, together with regulations and codes of practice should incorporate all industry specific safety requirements.

Scope, Application & Definitions

Q 14. Which terms are critical for achieving national consistency? How should they be defined in the model OHS Act?

The objectives of Australian OHS laws include providing protection to persons in the workplace and members of the public against risks to health or safety arising out of the use or operation of various types of plant, equipment, structures, materials and substances. To this end, the OHS Laws in each jurisdiction impose duties on the “owners” and “suppliers” of plant, equipment, structures, materials and substances.

In addition to the items referred to in the Issues Paper, it is submitted that the terms “own”, “owner”, “plant” and “supplier” should be defined in the model OHS Act. The definitions used in the *National Standard for Plant [NOHSC:1010]* would be appropriate.

Duties of Care - Who owes them and to whom?

Q 16. Should the model OHS Act include a ‘control’ test or definition? If so, why and what should it be?

For consistency across all jurisdictions and in order to provide certainty for duty holders as to the extent of their duties, the inclusion of a “control” test or definition is supported. It is submitted that this should incorporate the concept of an ability to manage the relevant circumstances and to influence occupational health and safety outcomes. In the case of duties related to plant, substances and structures, the test or definition should be framed by reference to the person who has actual day-to-day management or control of the plant, substance or structure.

Q 17. What should the role of control be in relation to determining who is a duty holder, the nature of the duty, the extent of the duty and the defences?

The imposition of duties, penalties and other remedies will only ensure effective occupational health and safety outcomes if they are imposed on the organisations or individuals who are in a position to have real control over the relevant circumstances and behaviours. It is submitted that “control” should be a crucial element in determining who holds duties, the nature and extent of these duties and any defences under OHS Laws.

Q 31. Do current provisions for persons in control of a workplace (and plant and substances) clearly express who owes a duty, to whom, and under what circumstances the duty is owed? If not, how could this be clarified?

The current OHS laws in each jurisdiction differ in how they impose duties on suppliers of plant, substances and structures; and incorporate the concept of

“control” to varying degrees. There is no overall consistency in the definition or use of terms such as “control”, “owner” or “supply” or “plant”.

In some cases, ownership is defined by reference to control. For example:

- Section 4 of the *National Standard for Plant [NOHSC:1010]* defines an “owner” to be a person who has right of title to, and management of, or control over plant for use in a workplace or plant intended to be used in a workplace, and to include a person exercising such management or control as agent of the owner;
- The Queensland *Workplace Health and Safety Act* imposes duties on persons in control of workplaces, owners of plant and suppliers of plant; and provides that the “person in control” of fixtures, fittings or plant in a workplace area is the person who is the owner of the workplace area; and
- The Queensland *Workplace Health and Safety Act* provides that if there is a contract or arrangement that provides, or has the effect of providing, for another person to have effective and sustained control of the fixtures, fittings or plant, the other person, and not the owner of the workplace area, is the “person in control” of the fixtures, fittings or plant.

Some jurisdictions allow for defences based on a lack of control over circumstances. For example, Regulation 1.04 of the Commonwealth *Occupational Health and Safety (Safety Standards) Regulations 1994* provides a general defence if an alleged offence arises out of circumstances over which the person did not have control; and over which the person could not reasonably be expected to have control. However this is not consistent across all jurisdictions.

In summary, the current provisions for persons in control of a workplace (and plant and substances) do not clearly express who owes a duty, to whom, and under what circumstances the duty is owed. It is submitted that this should be clarified by the inclusion in the model OHS Act of appropriate definitions of terms such as “control”, “owner” or “supply” which are critical to framing many of the duties under OHS laws.

Q 35. How should the activity of supply be defined? Should it occur only once or every time an item changes hands, whether permanently (wholesale, retail, second hand, and gratis) or temporarily (loan or hire)?

It is submitted that the activity of supply should be defined by reference to supply by a person or corporation who, immediately before the supply, is the manufacturer or importer of an asset or the person with day-to-day use and control of the asset.

Q 36. Are there any other issues in relation to the duties of care that should be addressed in the model OHS Act?

Section 3.8 of the Issues Paper refers to the exclusion, in some jurisdictions, of financiers from the duties of suppliers and notes that such provisions appear to

allocate duties to those persons with knowledge and control of items when supplying them. Consistent with this, and for the reasons outlined in Section 3 above, it is submitted that “passive financier” provisions should be included in the model OHS Act in order to ensure that duties of care are allocated to the persons best able to influence the achievement of appropriate health, safety and welfare outcomes.

By way of example, Section 30(2) of the Victorian *Occupational Health and Safety Act* includes provisions that apply where a financier that supplies plant or a substance:

- (a) carries on the business of financing the acquisition of plant or a substance by customers; and
- (b) has, in the course of that business, acquired an interest in the plant or substance solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and
- (c) has not taken possession of the plant or substance or has taken possession of it solely for the purpose of passing possession to that customer.

Our Members support the inclusion of equivalent passive financier provisions in the model OHS Act.

‘Reasonably Practicable’ & Risk Management

Q 37. Should a test of “reasonably practicable” be included in the model OHS Act?

Some duties under OHS laws are limited to taking such steps as are “reasonably practicable”. This expression can cause difficulties in interpretation. We agree with the approach taken in the OHS Acts in Victoria and Western Australia which set out factors to be taken into account in determining what is reasonably practicable.

For example, section 20(2) of the Victorian *Occupational Health and Safety Act* provides that regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety:

- (a) the likelihood of the hazard or risk concerned eventuating;
- (b) the degree of harm that would result if the hazard or risk eventuated;
- (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
- (d) the availability and suitability of ways to eliminate or reduce the hazard or risk; and
- (e) the cost of eliminating or reducing the hazard or risk.

The AFC supports the inclusion of equivalent provisions in the model OHS Act, with the addition of a reference to the degree of control which the person has over the relevant circumstances.

Q 39. How should the standard be defined? What level of detail should be provided?

Refer to the response to Question 37.

Q 40. Should control be an element of the standard?

Yes. Refer to the response to Question 37.

Prosecutions

Q 117. Is 'reasonably practicable' an appropriate standard for the model OHS Act?

Refer to the response to Question 37.

Q 120. What, if any, defences should the model OHS Act provide?

It is submitted that a "lack of control" defence should be included. This could be modelled on the provision in Regulation 1.04 of the *Commonwealth Occupational Health and Safety (Safety Standards) Regulations 1994* which provides a defence if an alleged offence arises out of circumstances over which the person did not have control; and over which the person could not reasonably be expected to have control.

It is further submitted that the model OHS Act should also include a defence that it was not reasonably practicable to take action to prevent the circumstances that gave rise to an alleged offence.



AFC MEMBER COMPANIES

Adelaide Bank
AllCommercial Finance
Alleasing
American Express
Australian Finance Direct
Australian Motor Finance
Bank of Queensland
BankWest
Bidgee Finance
BMW Australia Finance
Capital Finance Australia
Caterpillar Finance Australia
CBFC
Centrepoint Alliance
CIT Group
Citigroup
CNH Capital
Collection House
Credit Corp Group
De Lage Landen
Dun & Bradstreet
Enterprise Finance Solutions
Esanda Finance Corporation
Flexirent Capital
Ford Credit
FundCorp
GE Commercial
GE Money
Genworth Financial
GMAC
Hanover Group
HP Financial Services
HSBC Bank
Indigenous Business Australia
Integrated Asset Management
International Acceptance
John Deere Credit
Key Equipment Finance
Komatsu Corporate Finance
Leasewise Australia
Liberty Financial
Lombard Finance

Mackay Permanent Building Society
Macquarie Equipment Rentals
Macquarie Leasing
Max Recovery Australia
Members Equity Bank
Mercedes-Benz Financial Services
MotorOne Group
PACCAR Financial
Profinance
RABO Equipment Finance
RAC Finance
RACV Finance
Retail Ease
Ricoh Finance
Service Finance Corporation
Sharp Finance
SME Commercial Finance
St. George Bank
Suncorp
Suttons Motors Finance
The Rock Building Society
Toyota Financial Services
UFS Group
Veda Advantage
Volkswagen Financial Services
Volvo Finance
Westlawn Finance
Westpac
Wide Bay Australia
Yamaha Finance

Professional Associate Members:

Allens Arthur Robinson
Australian Business Research
Bartier Perry
CHP Consulting
Clayton Utz
Corrs Chambers Westgarth
FCS Online
Finzsoft Solutions
Henry Davis York



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AELA MEMBER COMPANIES

ABN AMRO Australia	Kemp Strang
Adelaide Bank	Key Equipment Finance
Allens Arthur Robinson	Komatsu Corporate Finance
Alleasing Group	KPMG
Alliance e-finance	Lanier (Australia)
ANZ Investment Bank	Lease Underwriting
Australasian Asset Residual Management	Macquarie Leasing
Australian Structured Finance	Malleons Stephen Jaques
Babcock & Brown	Medfin Australia
BMW Australia Finance	Members Equity Bank
Baker & McKenzie	Mercer (Australia)
Bendigo Bank Leasing Division	Meridian International Capital
Blake Dawson	Minter Ellison
BOQ Equipment Finance	Musgrave Peach
Bynx Australia	National Australia Bank
Canon Finance Australia	NLC
Capital Finance Australia	PACCAR Financial
Caterpillar Financial Australia	Pitney Bowes Credit Australia
CBFC	Protecsure
CHP Consulting	Queensland Treasury Corporation
CIT Financial	Realtime Computing
Clayton Utz	RentSmart
Colin Biggers & Paisley	Rhodium Asset Solutions
CNH Australia	Ricoh Finance
Commercial Asset Finance Brokers Assoc.	Service Finance Corporation
Corrs Chambers Westgarth	SG Equipment Finance
Commonwealth Bank of Australia	Sharp Finance
De Lage Landen	Sofico Services Australia
Deacons	Solutions Asset Management
DaimlerChrysler Financial Services	Southern Finance Group
Dibbs Abbott Stillman	Spectra Financial Services
Experien	St. George Bank
equigroup	Suncorp Metway
Esanda Finance	SunGard Asia Pacific
Flexirent Capital	Technology Leasing
Freehills	The Leasing Centre (Australia)
GE Commercial Finance	Toyota Finance Australia
Fuji Xerox (Finance) Australia	Trace Personnel
Henry Davis York	Traction Group
HP Financial Services	United Financial Services Capital
IBM Global Financing	Upstream Print Solutions
Insyston	Volvo Finance
Innovation Group (Sureplan)	Westlawn Finance
Integrated Asset Management	Westpac Institutional Banking
International Decision Systems	White Clarke Asia Pacific
ISIS Capital	Yamaha Motor Finance
John Deere Credit	



OCCUPATIONAL HEALTH AND SAFETY LEGISLATION - SUMMARY OF OBLIGATIONS OF FINANCIERS OF PLANT UNDER AUSTRALIAN LAW

October 2006

POSITION IN EACH JURISDICTION

JURISDICTION	SUMMARY OF OBLIGATIONS OF FINANCIERS OF PLANT	PASSIVE FINANCIER PROVISIONS?
National Standard for Plant	Where the National Standard for Plant has been adopted, duties apply to suppliers of plant (including supply by way of hire or lease) for use in a workplace. There are no general defences or passive financier provisions.	No
Commonwealth	Duties apply to owners and suppliers (including supply by way of lease or hire) when plant is used at Commonwealth premises (being premises owned or occupied by the Commonwealth or by a Commonwealth authority). The main duties relevant to financiers do not apply if the workplace is not Commonwealth premises. State or Territory laws are likely to apply in these cases. When duties do apply, the passive financier provisions and the general "no control over circumstances" defence may be of some assistance to a financier who does not have day-to-day control over the operation or maintenance of financed plant.	Yes
Australian Capital Territory	Duties apply to suppliers of plant (including supply by way of hire or lease) for use by employees. There are no general defences. Passive financier provisions may be of some assistance to a financier who does not have day-to-day control over the operation or maintenance of plant.	Yes
New South Wales	Duties apply to suppliers of plant (including supply by way of lease or hire) for use at a workplace. A defence of "no control over circumstances" is available. Passive financier provisions may be of assistance where a person merely supplies plant in the course of a business of financing its acquisition by a customer from another person.	Yes
Northern Territory	Duties apply to owners of plant for use at a workplace (being persons who have right or title to, and management of, or control over, the plant) and to suppliers of	No



	plant for use at a workplace. There are no general defences or clear passive financier provisions.	
Queensland	Duties apply to owners and suppliers of plant for use at a workplace and to suppliers of high risk plant whether or not it is used a workplace. The defence of “no control over the cause” may be of assistance. There are no passive financier provisions.	Very limited
South Australia	Duties apply to owners and suppliers of plant (including in some cases supply by way of lease or hire) to be used at a workplace and to high risk plant whether or not situated, operated or used at a workplace. There are no general defences. There are limited passive financier provisions that may be of assistance if a supplier does not have control over the condition of plant.	Very limited
Tasmania	Duties apply to suppliers of plant (including supply by way of lease or hire) for use at a workplace. There are no general defences or passive financier provisions.	No
Victoria	Duties apply to suppliers of plant (including supply by way of lease or hire-purchase) for use at a workplace. There are no general defences. Passive financier provisions may be of assistance where the financier is not in possession of the plant.	Yes
Western Australia	Duties apply to suppliers of plant (including supply by way of lease or hire-purchase) for use at a workplace. There are no passive financier provisions. Some relief may be provided by the requirement to take action so far as is “practicable”.	No



NOTES

- This is a general summary of the obligations of financiers of plant under Australian Occupational Health and Safety legislation. It is intended for general reference by AFC and AELA members and for use by the AFC and AELA as a lobbying tool.
- “Plant” refers to items such as machinery and equipment used at workplaces. It generally does not include motor vehicles such as those used to transport people or goods on public roads. Obligations regarding motor vehicles are covered under the motor traffic and road transport legislation in each State and Territory.
- The focus of the Summary is on the duties and obligations of financiers of plant by way of finance lease, operating lease and commercial hire-purchase under which the financier is the “owner” or “supplier” of the plant under the applicable legislation. The duties of employers, controllers of workplaces, importers, designers and manufacturers of plant and duties relating to substances are not covered.
- “Passive financier provisions” are provisions that grant some relief from OHS obligations to financiers who acquire an interest in, take short term possession of, or who are the owner or supplier of plant as a result of financing its acquisition by a client under a finance arrangement such as a lease or commercial hire-purchase.
- Special requirements apply in most jurisdictions to high risk plant such as amusement structures, boilers, pressure vessels, cranes, building maintenance units, truck-mounted concrete placing units with booms, scaffolding, lifts and things with confined spaces. These can include requirements to register the plant or its design and to have it periodically inspected. In jurisdictions where these are included with more general obligations, reference is made to them in the Summary; however specific advice should be obtained when financing plant of this nature.
- Special requirements apply to suppliers of hazardous substances, generally being substances listed in *List of Designated Hazardous Substances* [NOHSC:10005 (1999)] and substances that fit the criteria set out in *Approved Criteria for Classifying Hazardous Substances* [NOHSC: 1008 (1994)]. These are not covered in this Summary.
- The Commonwealth OHS legislation until recently generally only applied to Commonwealth employers, employees and premises. However in September 2006 the Commonwealth legislated to provide a national OHS framework under which nationally operating employers can apply for federal licences. New South Wales and Victoria have also agreed to harmonise many aspects of their OHS schemes.
- Extracts from legislation have been abbreviated for ease of comparison.



OCCUPATIONAL HEALTH AND SAFETY LEGISLATION - OBLIGATIONS OF FINANCIERS OF PLANT UNDER AUSTRALIAN LAW

National Standard for Plant [NOHSC:1010] (NSP)	
NSP applies?	N/A
Regulator	Australian Safety and Compensation Council
Definition of “plant”	Section 4 - “Plant” includes any machinery, equipment (including scaffolding), appliance, implement or tool and any component, fitting or accessory.
Who is covered?	Coverage includes owners and suppliers of plant.
Definition of “owner” or “own”	Section 4 - “Owner” means a person who has right of title to, and management of, or control over plant for use in a workplace or plant intended to be used in a workplace, and includes a person exercising such management or control as agent of the owner. Section 19(3) - A person who becomes a supplier as a result of hiring or leasing plant to a workplace must assume the duties of an owner as specified in Clauses 47 to 56.
Definition of “supplier” or “supply”	Section 4 - “Supplier” includes a person who supplies plant for use in a workplace or plant intended to be used in a workplace, by way of sale, lease, exchange or hire, whether as a principal or agent for another.
Definition of “hirer” or “hire”	Not defined but included in definition of “supplier”. Clauses 48 - 56 apply to an owner of plant that is hired or leased.
Definition of “lessor” or “lease”	Not defined but included in definition of “supplier”. Clauses 48 - 56 apply to an owner of plant that is hired or leased.
Summary of relevant duties (subject to any passive financier exemption)	Sections 19 - 20 - Suppliers of plant for use in a workplace must: (a) eliminate or control risks; (b) where plant is not under their management and control, as far as practicable, identify any faults and advise the purchaser or owner in writing, prior to the plant being supplied, of the faults and, where appropriate, that the plant is not to be used until the faults are rectified; and (c) provide health and safety information about plant. Section 19(3) - A person who becomes a supplier of plant for use in a workplace as a result of hiring or leasing plant to a workplace must:



	<p>(b) ensure that the plant is inspected between hirings or leasings so as to minimise the risks to health and safety;</p> <p>(c) ensure that an assessment is carried out to determine the need for testing plant to check whether new or increased risks to health and safety have developed, and the frequency for such testing; and</p> <p>(d) ensure that the testing identified in Clause 19(3)(c) is carried out and recorded, and that the records are maintained for the operating life of the plant.</p> <p>Sections 48 - 56 - Owners of plant (including owners of plant that is hired or leased) must identify hazards; assess and control risks; provide health and safety information; maintain, inspect, repair and clean plant; use competent persons to dismantle, store and dispose of plant; and keep records.</p>
General exemptions	If Authority satisfied that equivalent level of health and safety can be achieved by other means.
Passive financier exemption?	No
Notes	Standard is under review in 2006.
Conclusion	Where the National Standard for Plant has been adopted, duties apply to suppliers of plant (including supply by way of hire or lease) for use in a workplace. There are no general defences or passive financier provisions.



Commonwealth	Occupational Health and Safety (Commonwealth Employment) Act 1991
NSP or consistent regulation applies?	Yes, but may exclude by omission plant that is integral to buildings such as air conditioning and lifts.
Regulator	Department of Employment and Workplace Relations; Australian Safety and Compensation Council
Definition of “plant”	Yes - plant includes any machinery, equipment or tool, and any component thereof.
Who is covered?	<p>Coverage includes suppliers of plant. Duties of owners are included with those of suppliers and employers.</p> <p>“Employees” under this Act are employees of the Commonwealth.</p> <p>Section 15 - where an employee ordinarily performs work at a place that is not Commonwealth premises, the Act, other than Parts 1 and 2 (including definitions and general duties of suppliers) applies in relation to that employee or place of work only as provided by the regulations.</p>
Definition of “owner” or “own”	Section 5 - “Own” in relation to a workplace, plant, a substance or a thing, includes own jointly, or own in part, the workplace, plant, substance or thing.
Definition of “supplier” or “supply”	Not defined in Act or Regulations.
Definition of “hirer” or “hire”	Not defined in Act or Regulations.
Definition of “lessor” or “lease”	Not defined in Act or Regulations.
Summary of relevant duties (subject to any passive financier exemption)	<p>Section 19 - A supplier of any plant or substance that the supplier ought reasonably to expect will be used by employees at work must take all reasonably practicable steps:</p> <ul style="list-style-type: none"> (a) to ensure that, at the time of supply, the plant or substance is in such condition as to be, when properly used, safe for employees and without risk to their health; and (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk, to the health or safety of employees, that may arise from the condition of the plant or substance; and (c) to make available to an employer, adequate information concerning: <ul style="list-style-type: none"> (i) the condition of the plant or substance at the time of supply; and (ii) any risk to the health and safety of employees to which the condition of the plant or substance may give rise unless it is properly used; and (iii) the steps that need to be taken in order to eliminate such risk; and



Commonwealth	Occupational Health and Safety (Commonwealth Employment) Act 1991
	<p>(iv) in the case of a substance - the first aid and medical procedures to be followed in the event of injury to an employee.</p> <p>Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994</p> <p>Regulation 4.07 - Elimination or control of risk If a supplier of plant that the supplier knows, or ought reasonably to expect, will be used by employees at work, identifies a risk to health and safety arising from the use of the plant, the supplier must take all reasonably practicable steps to ensure that, at the time of supply:</p> <p>(a) the risk to health and safety arising from the use of the plant is eliminated; or (b) if it is not reasonably practicable to eliminate the risk - the risk to health and safety is minimised.</p> <p>Regulation 4.07A - Hire or lease of plant (including plant that requires a licence to operate) A supplier who hires or leases plant that the supplier knows, or ought reasonably to expect, will be used by employees at work must take all reasonably practicable steps to ensure that:</p> <p>(a) the plant is inspected and maintained in accordance with State and Territory laws; and (b) the plant is inspected and maintained between each hire or leasing to identify and, if necessary, minimise any risk to health and safety of employees from the use of the plant at work; and (c) records of inspection, maintenance and testing are kept for at least 12 months after the end of a hire or leasing period; and (d) records of registration of the plant are kept for at least 12 months after registration; and (e) regular assessments are carried out to determine the need for testing to establish whether new or increased risks to health and safety have developed; and the times at which testing is to be carried out; and (f) the employer is given evidence about any registration of the item and its design, compliance with legal requirements.</p> <p>Regulation 4.08 - Used plant A supplier of used plant to an employer, that the supplier knows, or ought reasonably to expect, will be used by employees at work, must take all reasonably practicable steps to ensure that, when the plant is supplied, any record relating to the plant kept by the previous owner is made available to the employer.</p> <p>Part 8 of Regulations - Storage and Handling of Dangerous Goods Dangerous goods include explosives, gases, flammable liquids and solids, toxic and infectious substances, radioactive material and corrosive substances</p> <p>Regulation 8.14 - Supply or installation of plant or structures</p> <p>(1) A person who supplies or installs plant or a structure commits an offence if the person:</p> <p>(a) is reckless with respect to whether it will be used by employees at a workplace for the storage or handling of dangerous goods; and (b) does not ensure that:</p>



Commonwealth	Occupational Health and Safety (Commonwealth Employment) Act 1991
	<ul style="list-style-type: none"> (i) the plant or structure is suitable for use, and able to be used safely, with the dangerous goods; and (ii) the plant or structure conforms with the design for that plant or structure; and (iii) if the plant or a structure is designed to be operated in a fixed position - unintentional movement of the plant or structure is prevented; and (iv) the employer is given information about installation, testing, commissioning, use, inspection, maintenance, repair, decommissioning and disposal of the plant or structure (to the extent necessary for it to be used for its intended purposes); and information explaining how the plant or structure should be operated and maintained; and stating any conditions or specifications that must be complied with to ensure the safety and health of employees when the plant or structure is in operation. <p>(2) A person who has supplied or installed plant or a structure commits an offence if the person:</p> <ul style="list-style-type: none"> (a) is reckless with respect to whether the plant or structure will be used by employees at a workplace for the storage or handling of dangerous goods; and (b) does not ensure that, as far as practicable, the employer is given any information that becomes available about the plant or structure that is relevant to its use for that purpose.
General exemptions and defences	Regulation 1.04 - general defence if an alleged offence arises out of circumstances over which the person did not have control; and over which the person could not reasonably be expected to have control.
Passive financier exemption?	<p>Yes, in relation to the duties in Section 19(1): Section 19(2) For the purposes of subsection (1), where a person (the ostensible supplier) supplies to an employer any plant or substance that is to be used by employees at work, and the ostensible supplier:</p> <ul style="list-style-type: none"> (a) carries on the business of financing the acquisition or the use of goods by other persons; and (b) has, in the course of that business, acquired an interest in the plant or substance solely for the purpose of financing its acquisition by the employer from a third person, or its provision to the employer by a third person; and (c) has not taken possession of the plant or substance or has taken possession of the plant or substance solely for the purpose of passing possession of the plant or substance to that employer; <p>the reference in subsection (1) to a supplier is to be read as a reference to the third person and not as a reference to the ostensible supplier.</p>
Notes	
Conclusion	Duties apply to owners and suppliers (including supply by way of lease or hire) when plant is used at Commonwealth premises (being premises owned or occupied by the Commonwealth or by a Commonwealth authority). The main duties relevant to financiers do not apply if the workplace is not Commonwealth premises. State or Territory laws are likely to apply in these cases. When duties do apply, the passive financier provisions and the general “no control over



Commonwealth	Occupational Health and Safety (Commonwealth Employment) Act 1991
	circumstances” defence may be of some assistance to a financier who does not have day-to-day control over the operation or maintenance of financed plant.



ACT	Occupational Health and Safety Act 1989
NSP or consistent regulation applies?	The ACT has adopted the National Standard for Plant as a code of practice.
Regulator	ACT Workcover; ACT Occupational Health & Safety Council
Definition of “plant”	“Plant” includes any machinery, equipment or tool and any component thereof or accessory thereto.
Who is covered?	Coverage includes suppliers of plant. No reference to duties of owners.
Definition of “owner” or “own”	Not defined in Act or Regulations.
Definition of “supplier” or “supply”	Not defined in Act or Regulations.
Definition of “hirer” or “hire”	Not defined in Act or Regulations.
Definition of “lessor” or “lease”	Not defined in Act or Regulations.
Summary of relevant duties	<p>General duties</p> <p>Section 43(1) Duties of suppliers in relation to plant and substances</p> <p>A supplier of any plant or substance that the supplier ought reasonably to expect will be used by employees at work must take all reasonably practicable steps:</p> <ul style="list-style-type: none"> (a) to ensure that, at the time of supply, the plant or substance is in such condition as to be, when properly used, safe for employees and without risk to their health; and (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk, to the health or safety of employees, that may arise from the condition of the plant or substance; and (c) to make available to an employer, in connection with the use of the plant or substance by employees at work, adequate information concerning: <ul style="list-style-type: none"> (i) the condition of the plant or substance at the time of supply; and (ii) any risk to the health and safety of employees to which the condition of the plant or substance may give rise unless it is properly used; and (iii) the steps that need to be taken in order to eliminate such risk; and



ACT	Occupational Health and Safety Act 1989
	(iv) for plant - the proper maintenance of the plant; and (v) in the case of a substance - the first aid and medical procedures that should be followed in the event of the condition of the substance causing injury to an employee.
General exemptions and defences	Some exemptions for employers, employers and workplaces. No general defences.
Passive financier exemption?	Yes, almost identical to the Commonwealth Act: Section 43(2) - If a person (the ostensible supplier) supplies to an employer any plant or substance to be used by employees at work and the ostensible supplier - (a) carries on the business of financing the acquisition or the use of goods by other persons; and (b) has, in the course of that business, acquired an interest in the plant or substance solely for the purpose of financing its acquisition by the employer from a third person or its provision to the employer by a third person; and (c) has not taken possession of the plant or substance or has taken possession of the plant or substance solely for the purpose of passing possession of the plant or substance to that employer; the reference in subsection (1) to a supplier is a reference to the third person and not to the other ostensible supplier.
Notes	<ul style="list-style-type: none"> • The Crimes (Industrial Manslaughter) Amendment Act 2003 imposes penalties where an employer's reckless or negligent conduct results in the death of a worker. • There is no separate plant standard.
Conclusion	Duties apply to suppliers of plant (including supply by way of hire or lease) for use by employees. There are no general defences. Passive financier provisions may be of some assistance to a financier who does not have day-to-day control over the operation or maintenance of plant.



New South Wales	Occupational Health and Safety Act 2000
NSP or consistent regulation applies?	Majority of key elements have been adopted.
Regulator	WorkCover NSW
Definition of “plant”	<p>Section 4 and Regulation 82 - “plant” includes any machinery, equipment or appliance.</p> <p>Regulation 83 - “plant affecting public safety” means specified boilers, pressure vessels, lifts, escalators, moving walkways, amusement devices (other than coin operated amusement devices) and gas cylinders.</p> <p>Regulations 120(1) and (2) - some duties of suppliers of plant apply to “plant affecting public safety” (whether or not the plant is at a place of work or for use at work) and to plant under pressure and plant designed to lift or move people, equipment or materials.</p>
Who is covered?	<p>Coverage includes controllers of work premises, plant or substances; and suppliers of plant and substances for use at work.</p> <p>Section 10(4) - a person who has control of premises, plant or substances includes: (a) a person who has only limited control of the premises, plant or substances (in which case any duty applies only to the matters over which the person has control), and (b) a person who has, under any contract or lease, an obligation to maintain or repair the premises, plant or substances (in which case any duty applies only to the matters covered by the contract or lease).</p> <p>Section 11(2)(d) - (e) Duties of suppliers of plant for use at work apply to supply of plant by way of sale, transfer, lease or hire whether as principal or agent, and extend to the supply of the plant to a person for the purpose of supply to others.</p>
Definition of “owner” or “owner”	Not defined in Act or Regulations.
Definition of “supplier” or “supply”	Not defined in Act or Regulations.
Definition of “hirer” or “hire”	Not defined in Act or Regulations.
Definition of “lessor” or “lease”	Not defined in Act or Regulations.
Summary of relevant duties	Section 11(1) - A person who supplies any plant or substance for use by people at work must:



New South Wales	Occupational Health and Safety Act 2000
(subject to any passive financier exemption)	<p>(a) ensure that the plant or substance is safe and without risks to health when properly used, and</p> <p>(b) provide, or arrange for the provision of, adequate information about the plant or substance to the persons to whom it is supplied to ensure its safe use.</p> <p>Section 11(2)(f) and Regulation 7 - Passive financier exemption - see detail below.</p> <p>Regulations Regulations 120 - 133 - apply to the sale, transfer, lease and hire of plant for use at work and plant affecting public safety. Regulations 124 - 133 also apply to the hire or lease of plant under pressure and to lift or move people, equipment or materials (including escalators, moving walks and lifts) in a place of work that is not under the management or control of an employer.</p> <p>Regulations 121 - 123 - A person who sells or transfers plant must control risks and obtain and provide health and safety information (including information that a manufacturer is required to provide).</p> <p>Regulations 124 -133 - A person who hires or leases plant to another must identify foreseeable hazards, inspect between hirings, assess and control risks, ensure maintenance and cleaning are carried out, keep records, obtain and provide information.</p>
General exemptions and defences	<p>Part 12 of the Regulations - WorkCover can grant exemptions if satisfied that at least an equivalent level of safety can be achieved or application of the provision to the person is inappropriate or unnecessary in the circumstances.</p> <p>Section 28 - It is a defence if a person proves that:</p> <p>(a) it was not reasonably practicable for the person to comply with the provision, or</p> <p>(b) commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.</p>
Passive financier exemption?	<p>Yes.</p> <p>Section 11(2)(f) - duties under Section 11 of suppliers of plant for use at work do not apply to a person merely because the person supplies the plant or substance in the course of a business of financing the acquisition of the plant by a customer from another person.</p> <p>Regulation 7 - applies Section 11(2) to the duties under the Regulations of suppliers of plant and substances for use by people at work (other than plant affecting public safety).</p>
Notes	<ul style="list-style-type: none"> • The NSW OHS Act includes workplace deaths provisions that impose gaol penalties and fines for specified persons whose reckless conduct causes a death in a workplace. • Despite passive financier exemption, duties may still apply if financier sells plant or has responsibility for maintenance of



New South Wales	Occupational Health and Safety Act 2000
	plant. <ul style="list-style-type: none">• Workcover issued a Plant Guide in 2001. It does not refer to duties of lessors and hirers but is a useful reference tool.
Conclusion	Duties apply to suppliers of plant (including supply by way of lease or hire) for use at a workplace. A defence of “no control over circumstances” is available. Passive financier provisions may be of assistance where a person merely supplies plant in the course of a business of financing its acquisition by a customer from another person.



Northern Territory	Work Health Act
NSP or consistent regulation applies?	Most key elements have been fully or mostly adopted.
Regulator	NT WorkSafe
Definition of “plant”	Section 3 - “Plant” includes machinery, pressure vessels, equipment, appliances, implements, scaffolding and tools, any component thereof and anything fitted, connected or appurtenant thereto.
Who is covered?	Owners and suppliers of plant used at a workplace.
Definition of “owner” or “own”	Section 28 - In Part 4 "owner" in relation to a building, structure or plant, means a person who has right or title to, and management of, or control over, the building, structure or plant, and includes a person who is exercising such management or control as an agent of the owner.
Definition of “supplier” or “supply”	No definition of supplier of plant in the Act or the Regulations. Regulation 2 - "Supplier" in relation to a substance used at a workplace, means a person who imports, manufactures, wholesales or distributes the substance, but does not include a retailer.
Definition of “hirer” or “hire”	Not defined in Act or Regulations.
Definition of “lessor” or “lease”	Not defined in Act or Regulations.
Summary of relevant duties (subject to any passive financier exemption)	Section 30C - The owner of a building or structure at or used as a workplace (including fixtures and fittings under his or her control) or plant used at a workplace shall ensure, so far as is practicable, that the health and safety of any person is not adversely affected as a result of its condition or use. Regulation 11 - Importers and suppliers (1) A person who imports or supplies plant, substances or materials for use at a workplace, or material to be used for the purpose of a structure to be erected at a workplace, shall, insofar as is relevant to the plant, substance or material, ensure compliance with a regulation that relates to - (a) the requirements to be complied with in relation to the importing or supply of the plant, substance or material; (b) the testing requirements for the plant, substance or material; and (c) the provision of information with the plant, substance or material.



Northern Territory	Work Health Act
	<p>(2) Where a person imports or supplies plant, substances or materials for use at a workplace that is designed or manufactured by a person outside the Territory, the responsibilities placed on the designer or manufacturer of such plant, substances or material by these Regulations shall be deemed to be the responsibilities of the person who imports or supplies the plant, substances or materials.</p> <p>(3) Where a person supplies plant for use at a workplace under a hiring or leasing arrangement, the responsibilities placed on the owner of such plant by these Regulations shall be deemed to be placed on the person who supplies the plant.</p> <p>13 - Owners of plant The owner of plant at a workplace shall, insofar as relevant to the plant, ensure compliance with a regulation that relates to:</p> <ul style="list-style-type: none"> (a) the condition, inspection or testing of the plant; (b) the layout and location of the plant; and (c) the provision of information relating to the installation, commissioning, use, maintenance, repair, testing, de-commissioning, dismantling or disposal of the plant. <p>Regulation 46 -Notices of Accidents and Occurrences Owners of plant must give notice to the authorities of occurrences such as collapse, overturning or failure of a load bearing part of a lift, crane, hoist, lifting gear or scaffolding or an accident or occurrence involving failure of pressure equipment;</p> <p>Regulation 86 - Importation and supply of plant</p> <p>(1) A supplier of plant shall ensure that -</p> <ul style="list-style-type: none"> (a) where the plant is under the management and control of the supplier, risks to health and safety from the plant are minimised; and (b) where plant is not under the management and control of the supplier, all faults, as far as practicable, are identified and the purchaser or owner is advised in writing before the plant is supplied of those faults and, as appropriate, that the plant is not to be used until the faults are rectified. <p>(2) A supplier of plant shall ensure that, in respect of new plant, the purchaser or owner is provided with -</p> <ul style="list-style-type: none"> (a) health and safety information provided to the supplier by the manufacturer; and (b) where applicable, any available information, data or certificate specified by the relevant standards in Schedule 10. <p>(3) An importer or supplier of plant shall ensure that, in respect of used plant, the purchaser or owner is provided with relevant health and safety information provided by the designer and manufacturer that is available and any additional available information required to enable the plant to be used safely.</p> <p>(4) Notwithstanding subregulation (3), where applicable, a supplier shall, in respect of used plant, provide the purchaser or owner with any available record kept by the previous owner of the plant and any available information, data or certificate specified by the relevant standards in Schedule 10.</p>



Northern Territory	Work Health Act
	<p>(5) An importer or supplier of plant that is to be used for the purpose of scrap or spare parts shall advise the purchaser or owner either in writing or by marking the plant, before the plant is supplied, that the plant in its current form is not to be placed in service but is to be used only as scrap or for spare parts.</p> <p>Regulation 87B - Inspection, maintenance and cleaning of plant</p> <p>(3) Where plant is hired or leased, the owner shall ensure that -</p> <ul style="list-style-type: none"> (a) the plant is inspected between hirings or leasings so as to minimise the risks to health and safety; (b) an assessment is carried out to determine the need for testing plant to check whether new or increased risks to health and safety have developed and the frequency for such testing; and (c) the testing identified in paragraph (b) is carried out and recorded and those records are maintained for the operating life of the plant.
General exemptions and defences	<p>Regulation 187 - The Administrator may make regulations for the exemption of persons, places or activities from the Regulations.</p>
Passive financier exemption?	<p>Regulation 11(3) may provide some relief, but its meaning is not clear in relation to supplies under financial leasing or hire-purchase arrangements, particularly as the Northern Territory has adopted the supplier duties and provisions of the National Standard for Plant which state that a “supplier” includes a person who supplies plant by way of lease or hire.</p> <p>Regulation 11(3) - Where a person supplies plant for use at a workplace under a hiring or leasing arrangement, the responsibilities placed on the owner of such plant by these Regulations shall be deemed to be placed on the person who supplies the plant.</p>
Notes	<ul style="list-style-type: none"> • No separate Plant Standard. • Some high risk “designated plant” must be periodically inspected, including specified boilers, pressure vessels, cranes, vehicle hoists, lifts, escalators, moving walks, amusement structures and truck-mounted concrete placing units with booms.
Conclusion	<p>Duties apply to owners of plant for use at a workplace (being persons who have right or title to, and management of, or control over, the plant) and to suppliers of plant for use at a workplace. There are no general defences or clear passive financier provisions.</p>



Queensland	Workplace Health and Safety Act 1995
NSP or consistent regulation applies?	Most key elements have been adopted.
Regulator	Department of Industrial Relations - Workplace Health and Safety
Definition of “plant”	<p>Schedule 3 - "Plant" includes any machinery, equipment, appliance, pressure vessel, implement, tool, personal protective equipment and a component of plant and a fitting, connection, accessory or adjunct to plant.</p> <p>“Structure” includes fixed plant.</p>
Who is covered?	<p>Coverage includes persons in control of workplaces, owners of plant and suppliers of plant.</p> <p>Section 15C - The "person in control" of fixtures, fittings or plant in a workplace area is the person who is the owner of the workplace area. However, if there is a contract or arrangement that provides, or has the effect of providing, for another person to have effective and sustained control of the fixtures, fittings or plant, the other person, and not the owner of the workplace area, is the "person in control" of the fixtures, fittings or plant.</p>
Definition of “owner” or “own”	<p>Schedule 3 - “Owner” means a person who holds legal title to a thing, structure or place, or part of a structure or place, and includes a person who has control of or manages a thing, structure or place, a lessee and a licensee.</p>
Definition of “supplier” or “supply”	Not defined in Act or Regulations.
Definition of “hirer” or “hire”	Not defined in Act or Regulations.
Definition of “lessor” or “lease”	Not defined in Act or Regulations.
Summary of relevant duties (subject to any passive financier exemption)	<p>Section 23 - Workplace health and safety obligations apply to owners of plant and to suppliers of plant for use at a workplace and for specified high risk plant where it is supplied for use at any place, whether or not a workplace.</p> <p>Section 32B(1) - A supplier of new plant must</p> <ul style="list-style-type: none"> (a) either examine and test the plant to ensure it is safe and without risk to health when used properly; or ensure the manufacturer has given an assurance that it has been examined and tested to ensure it is safe and without risk to health when used properly; and (b) ensure the plant is accompanied by information about the way the plant must be used to ensure health and safety. <p>Section 32B(2) A supplier of used plant must:</p>



Queensland	Workplace Health and Safety Act 1995
	<p>(a) take all reasonable steps to ensure the plant is safe and without risk to health when used properly; and</p> <p>(b) ensure the plant is accompanied by information about the way it must be used to ensure health and safety, if the information is available.</p> <p>Section 35 - An owner of plant has an obligation to ensure the plant is maintained in a condition that ensures the plant is safe, and without risk to health, when used properly.</p> <p>Section 34D - The person in control of fixtures, fittings or plant included in a relevant workplace area has an obligation to ensure the fixtures, fittings or plant are safe and without risk to health.</p> <p>Regulation 166</p> <p>(1) An employer who hires electrical equipment to someone else for use at a workplace must ensure the electrical equipment is not hired unless a competent person inspects and tests the equipment before each hiring; and inspects, tests and tags the equipment at least every 6 months.</p> <p>(2) If because of the way in which the equipment is designed the equipment can not be tested without dismantling it, the equipment must be tested to the extent that it can be without dismantling it.</p> <p>(3) If, after inspecting and testing the equipment, the competent person decides the equipment is safe to use, the employer must ensure the competent person immediately attaches a durable tag to the equipment that shows the day by which the equipment must be reinspected and retested.</p> <p>(4) If the competent person decides the equipment is not safe to use, the employer must ensure-</p> <p>(a) the competent person immediately attaches a durable tag to the equipment that warns people not to use the equipment; and</p> <p>(b) the equipment is immediately withdrawn from use.</p>
General exemptions and defences	<p>Section 37 Defences</p> <p>(1) It is a defence to prove-</p> <p>(a) if a regulation or ministerial notice has been made about the way to prevent or minimise exposure to a risk - that the person followed the way prescribed in the regulation or notice to prevent the contravention; or</p> <p>(b) if a code of practice has been made stating a way or ways to manage exposure to a risk-</p> <p>(i) that the person adopted and followed a stated way to prevent the contravention; or</p> <p>(ii) that the person adopted and followed another way that managed exposure to the risk and took reasonable precautions and exercised proper diligence to prevent the contravention; or</p> <p>(c) if no regulation, ministerial notice, or code of practice has been made about exposure to a risk - that the person chose any appropriate way and took reasonable precautions and exercised proper diligence to prevent the contravention.</p> <p>(2) It is a defence to prove that the commission of the offence was due to causes over which the person had no control.</p>
Passive financier exemption?	Not directly in Act or Regulations or in Plant Code of Practice 2005.



Queensland	Workplace Health and Safety Act 1995
Notes	Plant Code of Practice 2005 further explains obligations of suppliers of plant.
Conclusion	Duties apply to owners and suppliers of plant for use at a workplace and to suppliers of high risk plant whether or not it is used a workplace. The defence of “no control over the cause” may be of assistance. There are no passive financier provisions.



South Australia	Occupational Health, Safety and Welfare Act 1986
NSP or consistent regulation applies?	Yes, with additional provisions for amusement structures.
Regulator	SafeWork SA [http://www.safework.sa.gov.au/]
Definition of “plant”	<p>Section 4 - “Plant” includes any machinery, equipment, appliance, implement or tool and any component, fitting, connection, mounting or accessory used in or in conjunction with any of these.</p> <p>Schedule 2 - extends the Act to amusement structures, cranes, hoists, lifts and pressure equipment, whether or not situated, operated or used at a workplace.</p>
Who is covered?	Coverage includes owners and suppliers of plant.
Definition of “owner” or “own”	No general definition, but see below in relation to duties of owners, lessees and occupiers of buildings or structures where amusement structures; cranes; hoists; lifts and pressure equipment are installed or used on a permanent basis.
Definition of “supplier” or “supply”	<p>Not defined in Act.</p> <p>Regulation 1.1.5 - a supplier in relation to plant, structures or materials for structures means a person who supplies plant or materials by way of sale, lease, exchange or hire, whether as a principal or agent, and includes an importer, wholesaler, distributor and retailer.</p>
Definition of “hirer” or “hire”	Not defined in Act or Regulations.
Definition of “lessor” or “lease”	Not defined in Act or Regulations.
Summary of relevant duties (subject to any passive financier exemption)	<p>Section 24 - Duties of suppliers of plant</p> <p>(1) A person who imports or supplies plant that is to be used, or reasonably expected to be used, at a workplace; or amusement structures, cranes, hoists, lifts and pressure equipment, whether or not situated, operated or used at a workplace, must-</p> <p>(a) ensure so far as is reasonably practicable that the plant is designed and constructed so as to be safe-</p> <p>(i) when properly used and maintained; and</p> <p>(ii) when subjected to reasonably foreseeable forms of misuse; and</p> <p>(b) ensure so far as is reasonably practicable that the plant is designed and constructed so that people who</p>



South Australia	Occupational Health, Safety and Welfare Act 1986
	<p>might use, clean or maintain the plant are, in doing so, safe from injury and risks to health; and</p> <ul style="list-style-type: none"> (c) take such steps to test or examine, or arrange for the testing or examination of, the plant as are reasonably necessary to ensure compliance with paragraphs (a) and (b); and (d) ensure that the plant complies in all respects with prescribed requirements (if any) applicable to it; and (e) ensure so far as is reasonably practicable that adequate information about any conditions necessary to ensure the safe installation, use and maintenance of the plant is supplied with the plant. <p>Section 24A - Duties of owners of plant</p> <p>(1) The owner of plant that is to be used, or reasonably expected to be used, at a workplace; or amusement structures, cranes, hoists, lifts and pressure equipment, whether or not situated, operated or used at a workplace, must:</p> <ul style="list-style-type: none"> (a) ensure so far as is reasonably practicable that the plant is maintained in a safe condition; and (b) ensure that the plant complies in all respects with prescribed requirements (if any) applicable to it; and (c) ensure so far as is reasonably practicable that adequate information necessary to ensure the safe use of the plant is supplied to any user of the plant. <p>Regulation 3.2.11 - Control of risk</p> <p>(1) A supplier of plant must ensure-</p> <ul style="list-style-type: none"> (a) insofar as the supplier has control over the condition of the plant - that risks to health or safety from the use of plant are eliminated or, where that is not reasonably practicable, minimised; (b) insofar as paragraph (a) does not apply - that any faults are, so far as is reasonably practicable, identified, and that the person to whom the plant is supplied is advised in writing, before the plant is supplied, of those faults and, where appropriate, that the plant should not be used until those faults are rectified. <p>(2) A supplier of plant to be used for scrap or spare parts must, before the plant is supplied, advise the person to whom the plant is supplied, either in writing or by marking the plant, of the purposes for which the plant may be safely used and that the plant in its current form must not be placed in service.</p> <p>(3) A person who is a supplier of plant by virtue of hiring or leasing the plant to others must-</p> <ul style="list-style-type: none"> (a) assume the duties of an owner specified in regulations 3.2.36 to 3.2.44 (inclusive); and (b) ensure that the plant is inspected between each hiring or leasing so as to identify and, if necessary, minimise any risk to health or safety; and (c) ensure that an assessment is carried out on a regular basis to determine the need for testing the plant to check whether new or increased risks to health or safety have developed, and to determine the frequency for such testing; and (d) ensure that the testing identified under paragraph (c) is carried out and recorded, and that the records are maintained for so long as the person hires or leases the plant to other persons. <p>Regulation 3.2.12 - Provision of information</p> <p>A supplier of plant must ensure:</p> <ul style="list-style-type: none"> (a) in respect of new plant, that the person to whom the plant is supplied is provided with health and safety information provided to the supplier under these regulations;



South Australia	Occupational Health, Safety and Welfare Act 1986
	<p>(b) in respect of used plant, that the person to whom the plant is supplied is provided with the following information insofar as it is readily available:</p> <ul style="list-style-type: none"> (i) relevant health or safety information prepared by the designer or manufacturer of the plant; and (ii) any record kept by the previous owner of the plant under these regulations. <p>Regulation 3.4.2 - Registration of plant design</p> <p>(1)(a) a person must not manufacture or supply specified plant (being pressure equipment, gas cylinders, cranes, lifts, building maintenance units, hoists, work boxes suspended from cranes, prefabricated scaffolding, work platforms and vehicle hoists) unless the plant has a current design registration number issued by the Director.</p>
General exemptions and defences	<p>No general defences. It is a defence to a charge under section 25(1) to prove that the act or omission was neither intentional nor reckless; or that there is a reasonable excuse for that act or omission.</p> <p>Section 67 - Any person can apply to the Minister for an exemption from any or all of the Act for that person, specified operations of that person or a specified place under management or control of that person.</p>
Passive financier exemption?	<p>Not in Act.</p> <p>Under the Regulations, some supplier duties apply insofar as the supplier has control over the condition of the plant or only require that faults are, so far as is reasonably practicable, identified, and that the person to whom the plant is supplied is advised in writing, before the plant is supplied, of those faults and, where appropriate, that the plant should not be used until those faults are rectified.</p>
Notes	No separate Plant Standard.
Conclusion	<p>Duties apply to owners and suppliers of plant (including in some cases supply by way of lease or hire) to be used at a workplace and to high risk plant whether or not situated, operated or used at a workplace. There are no general defences. There are limited passive financier provisions that may be of assistance if a supplier does not have control over the condition of plant.</p>



Tasmania	Workplace Health and Safety Act 1995
NSP or consistent regulation applies?	Generally yes. Note use of definition of “accountable person” in the Regulations.
Regulator	Workplace Standards Tasmania (a division of the Department of Justice)
Definition of “plant”	<p>Section 3 - "Plant" includes any machinery, equipment, scaffolding, amusement structure, appliance, implement or tool and any component or fitting of any of those things.</p> <p>Regulation 6(5) - An item of plant referred to in Schedule 7, 8 or 9 and is not defined in these regulations has the same meaning as in the National Standard for Plant or, if not defined in that standard, the relevant Australian Standard.</p> <p>Regulations Schedule 1 - "registered plant" means plant specified in Schedule 7 (being specified boilers, pressure vessels, tower cranes, lifts, building maintenance units, amusement structures, truck-mounted concrete-placing units, mobile cranes, mine winders, elevating work platforms and hoists).</p>
Who is covered?	<p>Duties apply to suppliers of plant.</p> <p>Duties also apply to “accountable persons”. Under Regulation 5 an accountable person includes any other person on whom the Act imposes a duty or an obligation relevant to the regulation containing the reference.</p>
Definition of “owner” or “own”	<p>Not defined in Act.</p> <p>Regulations Schedule 1 - "owner" when used in relation to plant, includes a person who has management of, or control over, the plant; and an agent of the owner.</p>
Definition of “supplier” or “supply”	<p>Section 3 - "Supply" in relation to any plant or substance, means supply by way of sale, lease or hire, whether as principal or agent.</p> <p>Regulation 3 - "supplier", in relation to plant, structures or materials for structures, means a person who supplies plant or materials, by way of sale, lease, exchange or hire, whether as a principal or agent and an importer, wholesaler, distributor or retailer of plant, structures or materials.</p>
Definition of “hirer” or “hire”	Not defined in Act or Regulations.
Definition of “lessor” or “lease”	Not defined in Act or Regulations.



Tasmania	Workplace Health and Safety Act 1995
<p>Summary of relevant duties (subject to any passive financier exemption)</p>	<p>Section 14 - A person who designs, manufactures, imports or supplies any plant or structure for use at a workplace must so far as is reasonably practicable -</p> <ul style="list-style-type: none"> (a) ensure that the design and construction of the plant or structure is such that persons who use the plant or structure properly are not, in doing so, exposed to risks to their health and safety; and (b) when the plant or structure is supplied, ensure that adequate information is supplied in respect of - <ul style="list-style-type: none"> (i) any dangers associated with the plant or structure; and (ii) the conditions necessary to ensure that persons using the plant or structure properly are not, in doing so, exposed to risks to their health and safety. <p>Section 49 - A person must not let on hire or offer to let on hire or advertise for letting on hire any plant for use at a workplace unless it complies with the prescribed requirements.</p> <p>Regulation 17 - Hazards and risks in workplace</p> <ul style="list-style-type: none"> (1) An accountable person, as far as is reasonably practicable, must - <ul style="list-style-type: none"> (a) identify all hazards arising, or which may arise, in a workplace; and (b) assess the risk associated with those hazards; and (c) implement appropriate measures to control that risk. (2) In identifying a hazard and assessing and controlling a risk, the accountable person must consider - <ul style="list-style-type: none"> (a) any relevant code of practice approved under section 22 of the Act; and (b) any standard, rule, code or specification relating to the hazard of which the person ought to have been aware. <p>Regulation 93 - Hiring of plant</p> <p>A person who hires out, or offers to hire out, any item of plant must ensure that -</p> <ul style="list-style-type: none"> (a) the plant is fit for the purpose for which it was designed; and (b) any risks to health or safety from the use of the plant are, so far as is reasonably practicable, eliminated or minimised before the plant is let on, or offered for, hire; and (c) the plant satisfies the requirements of these regulations. <p>Regulation 96 - Registration of plant design</p> <p>Unless otherwise approved by the Director, a person must not manufacture, supply, hire or lease plant specified in Schedule 9 unless the plant has a current design registration number issued by the Director or issued in another State or Territory.</p> <p>Schedule 9 - Plant requiring registration of design - specified pressure equipment, gas cylinders, tower cranes, lifts, building maintenance units, hoists, work boxes, amusement structures, prefabricated scaffolding, elevating work platforms, cranes, hoists and mine winders.</p>



Tasmania	Workplace Health and Safety Act 1995
General exemptions and defences	Not in Act or Regulations.
Passive financier exemption?	Not in Act or Regulations.
Notes	<ul style="list-style-type: none">• Duties also apply to persons in control of workplaces.• No separate Plant Standard.
Conclusion	Duties apply to suppliers of plant (including supply by way of lease or hire) for use at a workplace. There are no general defences or passive financier provisions.



Victoria	Occupational Health and Safety Act 2004 and Plant Regulations 1995
NSP or consistent regulation applies?	Applies under OHS Act but excludes hand held and manually operated plant.
Regulator	Victorian Workcover Authority/Worksafe Victoria
Definition of “plant”	Section 5 and Regulation 105 - "plant" includes any machinery, equipment, appliance, implement and tool; and any component of any of those things; and anything fitted, connected or related or appurtenant to any of those things.
Who is covered?	Coverage includes suppliers of plant who know, or ought reasonably to know, that the plant or substance is to be used at a workplace (whether by the person to whom it is supplied or anyone else).
Definition of “owner” or “own”	Not defined in Act or Regulations.
Definition of “supplier” or “supply”	Section 5 - "supply" includes supply and resupply by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent. Regulation 105(2) - In the Regulations to a "supplier" is a person who supplies plant for use in a workplace.
Definition of “hirer” or “hire”	Not defined in Act or Regulations. Regulation 602 - for the purpose of duties which apply specifically to suppliers, "hire" does not include hire under a hire-purchase agreement or hire-purchase contract. See below for details. This indicates that for other purposes “hire” includes hire-purchase agreements and contracts.
Definition of “lessor” or “lease”	Not in Act or Regulations.
Summary of relevant duties (subject to any passive financier exemption)	Section 30 - Duties of suppliers of plant or substances (1) A person who supplies plant or a substance who knows, or ought reasonably to know, that the plant or substance is to be used at a workplace (whether by the person to whom it is supplied or anyone else) must- (a) ensure, so far as is reasonably practicable, that it is safe and without risks to health if it is used for a purpose for which it was designed, manufactured or supplied; and (b) give adequate information to each person to whom the supplier supplies the plant or substance concerning- (i) the purpose or purposes for which the plant or substance was designed, manufactured or supplied; and (ii) any conditions necessary to ensure that the plant or substance is safe and without risks to health if it is used for a purpose for which it was designed, manufactured or supplied; and (c) on request, give such information to a person who uses or is to use the plant or substance.



Victoria	Occupational Health and Safety Act 2004 and Plant Regulations 1995
	<p>Regulation 602 - Duties which apply specifically to suppliers under Part 6 of the Regulations do not apply to a hire under a hire-purchase agreement or hire-purchase contract.</p> <p>Regulation 603 - Supplier's duties generally</p> <ol style="list-style-type: none"> (1) A supplier of plant must ensure that the hazard identification, risk assessment and control of risk measures set out in Parts 3 - 5 have been carried out in relation to the design and manufacture of the plant before the plant leaves the control of the supplier. (2) If it is not practicable to comply with sub-regulation (1), the supplier must ensure that the risk arising from use of the plant: <ol style="list-style-type: none"> (a) is eliminated; or (b) if it is not practicable to eliminate the risk, is reduced so far as is practicable. (3) Sub-regulation (1) does not apply to plant which the supplier intends for use for scrap material. <p>Regulation 604(1) - Supplier's duty to provide certain information to purchaser - a supplier of plant, other than a supplier who supplies plant for hire or lease, must ensure that information under regulation 405 or 503 is provided to the person to whom the plant is supplied and in the case of used plant, the person to whom the plant is supplied is provided with any information relating to safe use of the plant; and any records kept by the previous owner of the plant required under these Regulations, which is in the possession of the supplier.</p> <p>Regulation 605 - Duties of a supplier who hires or leases plant</p> <ol style="list-style-type: none"> (2) A supplier of plant must ensure that between hirings and leasings, the plant is inspected and maintained to ensure the risk arising from the use of the plant is eliminated, or if it is not practicable to eliminate the risk, reduced so far as is practicable. (3) A supplier of plant must ensure that inspections and maintenance carried out on the plant under sub-regulation (2) are recorded and the records are retained while the supplier has management or control of the plant. (4) A supplier of plant must provide each person to whom the supplier hires or leases plant with any information on the safe use of the plant which is in the possession of the supplier.
General exemptions and defences	<p>No general defences in the Act.</p> <p>Regulation 107 - The Authority may grant exemption from the Regulations for specific plant or a class or type of plant; or any person.</p>
Passive financier exemption?	<p>Section 30(2) - For the purposes of Section 30(1) if the person who supplies the plant or substance-</p> <ol style="list-style-type: none"> (a) carries on the business of financing the acquisition of plant or a substance by customers; and (b) has, in the course of that business, acquired an interest in the plant or substance solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and (c) has not taken possession of the plant or substance or has taken possession of it solely for the purpose of passing possession to that customer-



Victoria	Occupational Health and Safety Act 2004 and Plant Regulations 1995
	the reference in sub-section (1) to the person who supplies that plant or substance is instead taken to be a reference to the third person.
Notes	<ul style="list-style-type: none">• Duties which apply specifically to suppliers under Part 6 of the Regulations do not apply to a hire under a hire-purchase agreement or hire-purchase contract.• The Plant Code of Practice provides further information on how to comply with the requirements for plant.
Conclusion	Duties apply to suppliers of plant (including supply by way of lease or hire-purchase) for use at a workplace. There are no general defences. Passive financier provisions may be of assistance where the financier is not in possession of the plant.



Western Australia	Occupational Health & Safety Act 1984
NSP or consistent regulation applies?	Generally yes.
Regulator	WorkCover Western Australia
Definition of “plant”	<p>Section 3 - “plant” includes any machinery, equipment, appliance, implement, or tool and any component, fitting or accessory.</p> <p>Regulation 4.22 - In Part 4 Division 3 of the Regulations (General Duties Applying to Plant) a reference to “plant” is a reference to plant which is pressure equipment; or which, in order to work, requires the supply of energy other than, or in addition to, energy supplied by the exertion of the body of a human or an animal.</p>
Who is covered?	Coverage includes suppliers of plant for use at a workplace.
Definition of “owner” or “own”	Not defined in Act or Regulations.
Definition of “supplier” or “supply”	Section 3 - “Supply” in relation to any plant or substance includes supply and re-supply by way of sale, exchange, lease, hire, or hire-purchase, whether as principal or agent.
Definition of “hirer” or “hire”	Not defined in Act or Regulations.
Definition of “lessor” or “lease”	Not defined in Act or Regulations.
Summary of relevant duties (subject to any passive financier exemption)	<p>Most duties apply to employers, main contractors, self-employed persons, persons having control of the workplace or persons having control of access to the workplace.</p> <p>Section 23 - Duties of manufacturers, etc.</p> <p>(1) A person who designs, manufactures, imports or supplies any plant for use at a workplace shall, so far as is practicable-</p> <p>(a) ensure that the design and construction of the plant is such that persons who properly install, maintain or use the plant are not in doing so, exposed to hazards;</p> <p>(b) test and examine, or arrange for the testing and examination of, the plant so as to ensure that its design and construction are as mentioned in paragraph (a); and</p> <p>(c) ensure that adequate information in respect of -</p>



Western Australia	Occupational Health & Safety Act 1984
	<p>(i) any dangers associated with the plant;</p> <p>(ii) the specifications of the plant and the data obtained on the testing of the plant as mentioned in paragraph (b);</p> <p>(iii) the conditions necessary to ensure that persons properly using the plant are not, in so doing, exposed to hazards; and</p> <p>(iv) the proper maintenance of the plant, is provided when the plant is supplied and thereafter whenever requested.</p> <p>(2) A person who erects or installs any plant for use at a workplace shall, so far as is practicable, ensure that it is so erected or installed that persons who properly use the plant are not subjected to any hazard that arises from, or is increased by, the way in which the plant is erected or installed.</p> <p>Regulation 4.26 - Duties of persons who supply plant</p> <p>(1) A person who supplies plant for installation or use at a workplace must, before the plant leaves his or her control, ensure that the duties of persons who designed, manufactured or imported the plant have been carried out.</p> <p>(2) To the extent that it is not practicable for a person who supplies plant to comply with subregulation (1), the person must, before the plant leaves his or her control</p> <p>(a) as far as practicable, identify any hazard in the design and manufacture of the plant to which persons who install, erect or use the plant at a workplace may be exposed;</p> <p>(b) assess the risk of injury or harm to a person resulting from each hazard, if any, identified under paragraph (a); and</p> <p>(c) consider whether the risk may be reduced by the means referred to in regulation 4.29 (which lists thirteen possible means of reducing risks).</p> <p>Regulation 4.35 - Duties of suppliers of plant by way of hire or lease</p> <p>(1) A person who supplies plant for use at a workplace by way of hiring or leasing the plant must:</p> <p>(a) ensure that the plant is inspected between periods of hire or lease so as to reduce, as far as is practicable, any risk of injury or harm occurring to persons installing or erecting, commissioning or using the plant at a workplace;</p> <p>(b) ensure that an assessment is done to determine whether the plant requires testing, in order to check so far as practicable whether new or increased risks of injury or harm occurring to persons installing or erecting, commissioning or using the plant at the workplace have developed and to determine the frequency of any required testing; and</p> <p>(c) ensure that any testing determined by the assessment to be necessary is done and recorded and that the records are maintained for the operating life of the plant.</p> <p>(2) A person who supplies plant for use at a workplace by way of hiring or leasing the plant must ensure:</p> <p>(a) when the plant is supplied to a person that the person is provided with all available, relevant safety and</p>



Western Australia	Occupational Health & Safety Act 1984
	<p>health information provided by the persons who designed or manufactured the plant, and any additional available information required to enable the plant to be used safely; and</p> <p>(b) that the information referred to in paragraph (a) is in, or has been translated into, the English language before providing the information.</p>
<p>General exemptions and defences</p>	<p>Duties are generally to take action etc as so far as is “practicable”. “Practicable” means reasonably practicable having regard, where the context permits, to:</p> <p>(a) the severity of any potential injury or harm to health that may be involved, and the degree of risk of it occurring;</p> <p>(b) the state of knowledge about -</p> <p>(i) the injury or harm to health referred to in paragraph (a);</p> <p>(ii) the risk of that injury or harm to health occurring; and</p> <p>(iii) means of removing or mitigating the risk or mitigating the potential injury or harm to health; and</p> <p>(c) the availability, suitability, and cost of the means referred to in paragraph (b)(iii).</p> <p>There are some exemptions for plant intended for use as scrap metal or spare parts.</p>
<p>Passive financier exemption?</p>	<p>Not in Act or Regulations.</p>
<p>Notes</p>	<p>No separate Plant Standard.</p>
<p>Conclusion</p>	<p>Duties apply to suppliers of plant (including supply by way of lease or hire-purchase) for use at a workplace. There are no passive financier provisions. Some relief may be provided by the requirement to take action so far as is “practicable”.</p>