



Workplace Health and Safety Act 2011

Introduction

In 2008 the Commonwealth, states and territories agreed to implement nationally harmonised WHS legislation to commence on 1 January 2012.

To date only Queensland and NSW have met the 1 January 2012 deadline and implemented legislation.

The harmonisation model makes the Commonwealth and all states and territories responsible for making and enforcing the model laws in their own jurisdictions.

While the Act is largely similar to the current Queensland *Workplace Health and Safety Act 1995*, there are a number of important elements to be aware of; which are outlined below:

General principles (sections 13-17)

The WHS Act outlines the general health and safety duties of **PCBUs, officers of companies**, (see *definitions of each below*) unincorporated associations, government departments and public authorities (including local governments), workers and other people at a workplace.

These general duties require the duty holder to ensure health and safety, so far as is reasonably practicable, by eliminating risks to health and safety. If this is not possible, risks must be minimised so far as is **reasonably practicable**.

Definition of Reasonably practicable (section 18)

The guiding principle of the WHS Act is that all people are given the highest level of health and safety protection from hazards arising from work, so far as is reasonably practicable. The term 'reasonably practicable' means what could reasonably be done at a particular time to ensure health and safety measures were in place. In determining what is reasonably practicable, there is a requirement to weigh up all relevant matters including:

- *the likelihood of a hazard or risk occurring (i.e. the probability of a person being exposed to harm)*
- *the degree of harm that would result if the hazard or risk occurred (i.e. the potential seriousness of injury or harm)*

- *what the person concerned knows, or ought to reasonably know, about the hazard or risk and ways of eliminating or minimising it*
- *the availability of suitable ways to eliminate or minimise the hazard or risk*
- *the cost of eliminating or minimising the hazard or risk.*

Ordinarily, cost will **not be** the key factor in determining what it is reasonable for a duty holder to do unless it can be shown to be 'grossly disproportionate' to the risk. If the risk is particularly severe, a PCBU will need to demonstrate that costly safety measures are not reasonably practicable due to their expense and that other less costly measures could also effectively minimise the risk.

Shared duties (section 16)

A person may have more than one duty. For example, the working director of a company has duties as an officer of the company and also as a worker. More than one person may have the same duty. For example, each director on the Board of Directors of a company will owe a duty. In such cases, all directors are each fully responsible for that duty.

Duties of a PCBU (Person Conducting a Business or Undertaking)

Definition of Person conducting a business or undertaking (PCBU) – a person conducting a business or undertaking alone or with others, whether or not for profit or gain. A PCBU can be a sole trader (for example a self-employed person), a partnership, company, unincorporated association or government department of public authority (including a municipal council). An elected member of a municipal council acting in that capacity is not a PCBU.

Primary duty of care (section 19)

The WHS Act requires all PCBUs to ensure the health and safety of workers, so far as is **reasonably practicable**. Workers include volunteers, contractors and contractors' workers. PCBUs also have the same duty of care to any other people who may be at risk from work carried out by the business. A self-employed person must ensure his or her own health and safety while at work, so far as is **reasonably practicable**.

General duties (sections 19-26)

The WHS Act sets out specific duties which a PCBU must comply with as part of their general duty so far as is **reasonably practicable**. These include:

- providing and maintaining a working environment that is safe and without risks to health, including the entering and exiting of the workplace
- providing and maintaining plant, structure and systems of work that are safe and do not pose health risks (e.g. providing effective guards on machines and regulating the pace and frequency of work)
- ensuring the safe use, handling, storage and transport of plant, structure and substances (e.g. toxic chemicals, dusts and fibres)

- providing adequate facilities for the welfare of workers at workplaces under their management and control (e.g. washrooms, lockers and dining areas)
- providing workers with information, instruction, training or supervision needed for them to work safely and without risks to their health
- monitoring the health of their workers and the conditions of the workplace under their management and control to prevent injury or illness
- maintaining any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises.

In addition, a PCBU 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 do not affect the health and safety of any person. Similarly, a PCBU with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant do not affect the health and safety of any person. PCBU who installs, erects or commissions plant or structures must also ensure all workplace activity relating to the plant or structure including its decommissioning or dismantling is without risks to health or safety.

Duty to consult (sections 46 - 49)

A PCBU has a duty to consult with workers and HSRs about matters that directly affect them. This extends to consulting with contractors and their workers, employees of labour hire companies, students on work experience, apprentices and trainees, as well as with the PCBU's own employees and volunteer workers. There may be a number of different duty holders involved in work (e.g. suppliers, contractors and building owners). If more than one person in the workplace has a health and safety duty they must consult all other people with the same duty. Each duty holder must share information in a timely manner and cooperate to meet health and safety obligations.

Duty of officers (section 27)

It is the duty of an **officer** of a PCBU to exercise **due diligence** to ensure the PCBU complies with its health and safety duties and obligations. *An officer may be charged with an offence under the WHS Act independently of any breach of duty by the PCBU.*

Definition of Officer – *an officer within the meaning of section 9 of the Corporations Act 2001 (Cth) other than a partner in a partnership. Broadly, an officer is a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the organisation's activities. An elected member of a municipal council acting in that capacity is not an officer of the municipal council. Similarly, a minister of a state, territory or the Commonwealth is not an officer of a responsible agency of the state, territory or Commonwealth. An officer can also be an officer of the Crown or a public authority if they are a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the Crown or public authority.*

Definition of Due diligence includes personally taking reasonable steps to:

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- *acquire and keep current information on work health and safety matters*
- *understand the nature and operations of the work and associated hazards and risks*
- *ensure the PCBU has, and uses, appropriate resources and processes to eliminate or reduce risks to health and safety*
- *ensure the PCBU has appropriate processes to receive and consider information about incidents, hazards and risks, and to respond in a timely manner*
- *ensure the PCBU has, and implements, processes for complying with their duties and obligations (e.g. reports notifiable incidents, consults with workers, complies with notices, provides training and instruction and ensures HSRs receive training entitlements).*

Duty of workers (section 28)

While at work, workers are required to take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions. They must also cooperate with any reasonable instruction given by the PCBU and any reasonable policy or procedure of the PCBU to comply with the WHS Act and WHS Regulation.

Definition of Worker – employees, contractors, subcontractors, outworkers, apprentices and trainees, work experience students, volunteers **and PCBUs** who are individuals if they perform work for the business.

Duties of other persons at the workplace (section 29)

Any person at a workplace, including customers and visitors, must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also cooperate with any actions taken by the PCBU to comply with the WHS Act and WHS Regulation.

Penalties for breach of health and safety duty offences are outlined in the following table:

Category	Corporation	Individual as PCBU or Officer	Individual as worker or other
Category 1	\$3 million	\$600,000, five years jail or both	\$300,000, five years jail or both
Category 2	\$1.5 million	\$300,000	\$150,000
Category 3	\$500,000	\$100,000	\$50,000

[For further information go to www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au)