

WORK HEALTH AND SAFETY LAW

LEARNING OUTCOME

Understand the legislative framework that applies to ensure the health and safety of workers and others in Queensland.

ASSESSMENT CRITERIA

- Identify the statutory framework governing work health and safety in Queensland, including the status of codes of practice
- Understand the statutory duties of PCBU's, workers and others at the workplace
- Understand how WHS obligations can be met.

REFERENCES

- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011
- [Guide to the Work Health and Safety Act 2011](#)
- [How to Manage Work Health and Safety Risks Code of Practice 2011](#)

ATTACHMENT

[Work Health and Safety Officer \(WHSO\) information guide](#)

WORK HEALTH AND SAFETY LAW - OVERVIEW

Work-related deaths, injury and illness have a significant impact on workers, the community and businesses. The economic burden from workplaces is also significant, with the total economic cost of work-related injuries and disease to the Australian economy estimated to be \$61.8 billion in 2012-13.

The purpose of work health and safety (WHS) laws is to reduce the serious economic and social impact on individuals, businesses and the Australian community of work-related incidents. It does this by imposing requirements on employers and all other workplace parties to manage risks in the workplace and protect the health, safety and welfare of workers and others who might be at risk from the work.

QUEENSLAND'S WORK HEALTH AND SAFETY LAWS

WHS laws in Queensland consist of the [Work Health and Safety Act 2011](#) (WHS Act), supported by the [Work Health and Safety Regulation 2011](#) (WHS Regulation). This legislation, which took effect on 1 January 2012, is based on the national [model WHS legislation](#) developed by Safe Work Australia in consultation with the states and territories. The nationally uniform laws provide greater certainty for employers (particularly those operating across state borders) and ensure workers in Australia have the same standard of health and safety protection, regardless of where they work. All Australian jurisdictions, except Victoria and Western Australia, have adopted the model laws.

The WHS Act applies in all Queensland workplaces, except mines, prescribed railway operations and aviation safety, and where the *Electrical Safety Act 2002* applies.

Most workers are protected by the WHS Act, including:

- employees
- contractors
- subcontractors
- outworkers
- apprentices and trainees
- work experience students
- volunteers
- employers who perform work.

The WHS Act also provides protection for the general public so that their health and safety is not placed at risk by work activities.

The WHS Act aims to:

- protect the health and safety of workers and other people by eliminating or reducing workplace risks
- ensure effective representation, consultation and cooperation to address health and safety issues in the workplace
- encourage unions and employers to take a constructive role in improving health and safety practices
- promote information, education and training on health and safety
- provide effective compliance and enforcement measures
- deliver continuous improvement and progressively higher standards of health and safety.

Throughout the WHS Act, the meaning of health includes psychological health as well as physical health.

DUTIES UNDER THE WHS ACT

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

The WHS Act places the primary health and safety duty on a person conducting a business or undertaking (PCBU). The PCBU must ensure, so far as is reasonably practicable, the health and safety of workers at the workplace. This is referred to as the general duty.

If more than one person has a duty in relation to the same matter (eg labour hire companies and host employers; or PCBUs sharing a common workplace) each person with the duty must consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter.

A PCBU must also comply with a number of specific duties. 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.

Duties of officers

An 'officer' of a company – 'a person who makes or participates in making decisions that affect the whole or a substantial part of the business or undertaking' – has a positive duty to exercise due diligence in ensuring the organisation complies with the law. The duty requires officers to be proactive in ensuring that the corporation, club or association they work for complies with its duty. In demonstrating due diligence, officers will need to show that they have taken reasonable steps to:

- acquire knowledge of health and safety issues
- understand the operations of the business or undertaking and the associated hazards and risks
- ensure appropriate resources and processes are used to eliminate or minimise risks to health and safety
- implement processes for receiving and responding to information about incidents, hazards and risks
- establish and maintain compliance processes
- verify the provision and use of the resources mentioned above.

Duties of workers

Workers, including contractors and volunteers, have a duty to:

- take reasonable care for their own health and safety and electrical safety
- take reasonable care that their conduct, acts or omissions does not adversely affect

the health and safety of others or adversely affect the electrical safety of other persons or property

- comply, so far as they are reasonably able with instructions
- co-operate with reasonable health and safety and electrical safety policies or procedures that have been notified to workers.

Other duty holders

The WHS Act outlines duties held by a number of other parties:

- persons with management or control of a workplace or in control of electrical equipment
- persons with management or control of fixtures, fittings or plant at a workplace
- designers of plant, substances, structures, electrical equipment or an electrical installation
- manufacturers of plant, substances, structures or electrical equipment
- importers of plant, substances, structures or electrical equipment
- suppliers of plant, substances, structures or electrical equipment
- persons who install, construct or commission plant or structures, or install electrical equipment or an electrical installation
- repairers of electrical equipment or electrical Installation
- persons conducting a recognised external certification scheme.

MEANING OF 'REASONABLY PRACTICABLE'

All duties under the WHS Act are qualified by the term '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.

ADDITIONAL REQUIREMENTS OF THE WHS ACT

The WHS Act also sets out the requirements for the following:

- Risk management: Health and safety risks arising from the work must be effectively managed by eliminating or minimising risks so far as is reasonably practicable, to protect workers and other persons against harm to their health, safety and welfare. Risk management must follow the established hierarchy of controls. Further guidance on risk management is in the [How to Manage Work Health and Safety Risks Code of](#)

Practice 2011.

- Incident notification: The WHS regulator must be notified of serious injuries and incidents and before certain work activities take place.
- Representation and consultation with workers (see 'Workplace Consultative Arrangements' module): 'Consultation' means sharing relevant information with workers, giving them a reasonable opportunity to express their views, taking those views into account when making decisions, advising them of decisions, and including the health and safety representative or health and safety committee in the process, where they exist at a workplace. PCBU's must consult when identifying hazards, assessing risks and making decisions about how to deal with them. It is also required when making decisions about WHS procedures or facilities for workers' welfare or proposing changes that may affect health or safety.
- Issue resolution (see 'Workplace Consultative Arrangements' module): Workplaces must have an agreed issues resolution procedure. If no procedure has been established, the default procedure in the WHS Regulations will apply.

WORK HEALTH AND SAFETY OFFICER (WHSO)

Part 5A of the WHS Act outline legislation regarding WHSO's. The functions of a WHSO are to:

- notify the person conducting the business or undertaking (PCBU) about work health and safety matters
- identify hazards and risks to health and safety arising from the work
- report in writing to the PCBU any hazards and risks identified arising from the work
- immediately notify the PCBU about —
 - any incident the WHSO is aware has occurred at the business or undertaking; or
 - any immediate or imminent risk to health and safety at the business or undertaking
- investigate, or assist in the investigation of, any incidents that occurred at the business or undertaking
- accompany and assist an inspector during an inspection of the business or undertaking
- establish educational and training programs on matters relating to work health and safety.

A PCBU may appoint themselves as a WHSO. In this circumstance, the general functions of a WHSO are to:

- investigate, or assist in the investigation of, any incidents that occurred
- accompany and assist an inspector during an inspection of the business or undertaking
- establish educational and training programs on matters relating to work health and safety.

A PCBU can appoint a person as a WHSO only if the person has a certificate of authority for appointment as a WHSO.

Assessment Functions of A WHSO

The WHSO must also assess the risks arising from work carried out as part of the business

or undertaking at least every 12 months, and provide an assessment report to the PCBU. The report must include any identified risks to health and safety, and recommendations about managing these risks.

If there is a health and safety committee at the workplace, the committee:

- must also be given the assessment report, and
- may negotiate with the WHSO about when to conduct this assessment, and
- may also approve a work health and safety criteria for the assessment that the WHSO must comply with

Immunity for WHSO's

Section 103G of the WHS Act states that a WHSO who is not the PCBU is not personally liable for anything done or omitted to be done in good faith:

- In performing functions under the WHS Act; or
- In the reasonable belief that the thing was done or omitted to be done in the performance of a function under the WHS Act.

INSPECTOR POWERS AND FUNCTIONS

Workplace Health and Safety Queensland (WHSQ) Inspectors have the following functions and powers under the WHS Act:

- to provide information and advice about how to comply with the law
- to help resolve work health and safety issues
- to help resolve right of entry disputes
- to review a disputed PIN
- to issue notices to require compliance with the law
- to investigate contraventions and assist to prosecute offences.

An inspector in a workplace may require a person to provide information about and access to a document, as well as answers to questions. While inspectors will be able to compel answers, the answers to questions or information provided cannot be used as evidence against that person in civil or criminal proceedings. Inspectors may also copy and retain documents and seize evidence.

OFFENCES AND PENALTIES

WHSQ actively enforces the law, and a breach of WHS laws can have a range of consequences, including:

- on-the-spot fines
- improvement or prohibition notices
- prosecutions
- heavy fines
- imprisonment
- enforceable undertakings and other non-monetary sanctions.

Prosecutions are usually initiated by WHSQ and its inspectors.

Industrial manslaughter

Industrial manslaughter provisions in the WHS Act, *Electrical Safety Act 2002* and the *Safety in Recreational Water Activities Act 2011* commenced on 23 October 2017. These provisions make it an offence for a PCBU, or a senior officer, to negligently cause the death of a worker. In particular, the offence applies if:

- A worker dies, or is injured and later dies, in the course of carrying out work for the business or undertaking (including during a work break); and
- The PCBU's, or senior officer's, conduct cause the death of the worker (i.e. the action or inaction of the PCBU, or senior officer, substantially contributes to the death) and;
- The PCBU, or senior officer, is negligent about causing the death of the worker (i.e. the person's action or inaction departs so far from the standard of care required).

Where a PCBU, or senior officer, commits industrial manslaughter, a maximum penalty of 20 years imprisonment for an individual, or \$10 million for a body corporate, applies.

For the purposes of the industrial manslaughter offence, a PCBU has the same meaning as under section 5 of the WHS Act or section 21 of the Electrical Safety Act. For example, a PCBU can be a sole trader, a partnership, company, unincorporated association or government department.

A senior officer is:

- An executive officer of a corporation (i.e. a person who is concerned with, or takes part in, the corporation's management); or
- For a non-corporation, the holder of an executive position who makes, or takes part in making, decisions affecting all, or a substantial part, of a PCBU's functions.

The use of the term 'senior officer' for the industrial manslaughter offence is intended to capture individuals of the highest levels in an organisation (those who can create and influence safety management and culture at their workplace). The rationale for capturing these higher level officers is to ensure health and safety is managed as a cultural priority within organisations and to guarantee that safety standards are managed and supported from the top down.

Examples of senior officers may include:

- a director or secretary of a corporation
- Chief Executive Officers
- Chief Financial Officers or Chief Operations Officers
- General Counsel
- General Managers
- Office holders in a unincorporated association (i.e. a club president).

WHS REGULATION

The WHS Regulation supports the WHS Act by specifying the way in which a duty under the WHS Act must be performed and prescribing procedural or administrative matters (e.g. requiring licences for specific activities and the keeping of records). If the Regulation prescribes a way of preventing or minimising a risk, duty holders must follow the prescribed way to comply with the Regulation. Similarly, if the Regulation prohibits exposure to a risk, the person must ensure the prohibition is not contravened.

If a risk at a workplace is not covered by the Regulation or a code of practice, a duty holder must choose an appropriate way to manage exposure to the risk.

The WHS Regulation covers a wide range of matters including:

- representation and participation (Chapter 2)

- managing risks to health and safety and general workplace management (Chapter 3)
- hazardous work involving noise, hazardous manual tasks, confined spaces, falls, demolition work, electrical safety and energised electrical work, diving work and licensing of high risk work and accreditation of assessors of competency (Chapter 4)
- plant and structures (Chapter 5)
- construction work (Chapter 6)
- hazardous chemicals including lead (Chapter 7)
- asbestos (Chapter 8)
- major hazard facilities (Chapter 9); and
- review of decisions, exemptions, and prescribed serious illnesses (Chapter 11).

CODES OF PRACTICE

The WHS Act and WHS Regulation are supported by 38 codes of practice. 20 of these are based on national model codes, and 18 are Queensland specific.

A code of practice provides practical guidance for people who have work health and safety duties. Codes give guidance on:

- how to achieve the standards required under the Act
- effective ways to identify and manage risks.

Under the WHS laws, PCBU's are required to comply with an approved code of practice or follow another method, such as a technical or an industry standard, to manage hazards and risks, as long as it provides an equivalent or higher standard of work health and safety to the standard required in the code.

Codes of practice are admissible in court proceedings to demonstrate what is known about a hazard, risk or risk control and a court may rely on an approved code of practice in determining what is reasonably practicable in relation to a matter. In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the Act.

AUSTRALIAN STANDARDS

Australian and international standards are published documents that set out specifications, procedures and guidelines that aim to ensure products, services and systems are safe, consistent and reliable.

Standards are not laws, so there is no general requirement to conform to a standard. However, where the WHS laws require conformance with a standard, a failure to do so may result in a breach of the WHS laws.

If a code of practice recommends following a specific standard, then it would be reasonable to consider that the standard forms part of that code of practice.

A standard may also be considered information that a duty holder knows, or ought reasonably to know, about a hazard or risk and about the ways to eliminate or minimise the risk.

HOW TO MEET YOUR WHS OBLIGATIONS

If the WHS Regulation prescribes a way of preventing or minimising the risk, then you must follow the prescribed way. Similarly, if the WHS Regulation prohibits exposure to a risk, the person must ensure the prohibition is not contravened.

If a code of practice states a way of managing exposure to the risk, a person must follow the method described in the code or manage the hazards and risks arising from the work in a way that provides an equivalent or higher standard of work health and safety than specified in the code.

If there is no regulation or code of practice that states a way to manage the risk, then the person must take reasonable precautions and exercise proper diligence to ensure the obligation is discharged. Section 17 of the WHS Act identifies the obligations for a duty holder to eliminate or manage risks to health and safety, and detailed guidelines on the risk management process can be found in the [How to manage work health and safety risks Code of Practice 2011](#).

With the introduction of the industrial manslaughter offence, it is important that a proactive health and safety management system is implemented and monitored for the workplace.

The systems that should be developed to satisfy the guidelines of the WHS Act, WHS Regulation, codes of practice and relevant Australian Standards include:

- Workplace health and safety policy
- Responsibility and accountability statements for personnel
- Suppliers, sub-contractors, and purchasing controls
- Health and safety consultation mechanisms
- Risk management procedures
- Training, i.e. Induction and ongoing training
- Incident reporting and investigation procedures
- Emergency planning
- Manual handling and ergonomics
- Hazardous substances management
- Noise management
- Specific workplace issues, i.e. Infection control
- Electrical testing
- Plant and equipment
- Working at Height.

As previously discussed, to meet the due diligence requirements the workplace health and safety policy should include procedures for:

- continuously identifying and managing safety risks at the workplace through a structured risk management program;
- training all persons on the health and safety legislation and on risk management methodology;
- reporting and monitoring the safety performance of the company through a structured auditing program; and
- managing safety incidents by thorough incident investigation conducted by competent staff.

AMENDMENTS TO THE LEGISLATION

It is important to ensure you maintain up to date copies of the relevant legislation for your workplace. This can be achieved by a number of methods, however the most common methods are:

- **Queensland Legislation - Office of the Parliamentary Council**

www.legislation.qld.gov.au/OQPChome.htm

All Queensland legislation, current and superseded can be downloaded from this site in Adobe

Acrobat format. You can also subscribe to automatic email updates from here.

- **Worksafe Queensland**

Using Worksafe Queensland's website located at www.worksafe.qld.gov.au. This site provides links to the WHS Act and Regulation on the Queensland Legislation website.

- **eNEWS**

eNEWS is a free email subscription service produced by Worksafe Queensland that provides up to date information on legislative changes and topics of interest for health and safety professionals. An added feature is the reporting of prosecutions that have occurred within Queensland. The service can be subscribed to on the Worksafe website.

- **Safework Australia**

www.safeworkaustralia.gov.au

Safe Work Australia is an Australian government statutory body responsible for developing national work health and safety policy. It publishes a range of WHS and workers' compensation data to provide a national picture of work-related injuries, fatalities and diseases, as well as research, case studies and other resources.

Version	Date	Author
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