



## Key PCBU Duties under the WHS Act

### 1 Persons conducting a business or undertaking

The main duty holder under the WHS Act and WHS Regulation is the 'person conducting a business or undertaking' (**PCBU**).

A person will be regarded as a PCBU, whether they conduct a business or undertaking alone, or with others (whether the business/undertaking is conducted for profit or not). A PCBU also includes persons conducting businesses or undertakings as partnerships or unincorporated associations.

A person does not conduct a business or undertaking to the extent they are engaged solely as a worker in, or as an officer of, that business or undertaking.

The primary duty imposed on a person to ensure work health and safety (**WHS**) requires the person:

- to eliminate risks to WHS, so far as is reasonably practicable, and
- if it is not reasonably practicable to eliminate risks to WHS, to minimise those risks so far as is reasonably practicable.

### 2 Workers

The primary duty of care under the WHS Act is owed by the PCBU to its workers. The concept of the worker for the purposes of the WHS Act is broader than 'employee' (used under previous legislation). A worker means a person carrying out work for the PCBU and includes:

- employees
- contractors and subcontractors
- employees of a contractor or subcontractor
- employees of a labour hire company who has been assigned to work in the person's business or undertaking

- outworkers
- apprentices or trainees
- students gaining work experience
- volunteers.

### 3 The primary duty of a PCBU

The primary duty under the WHS Act of a PCBU is to ensure, so far as is reasonably practicable, the WHS of:

- workers engaged or caused to be engaged by the PCBU,
- workers whose work activities are influenced or directed by the PCBU.

The PCBU must also ensure, so far as is reasonably practicable, that the WHS of other persons (e.g. visitors to the site) is not put at risk from work carried out as part of the conduct of the business or undertaking.

As part of carrying out this duty, the PCBU must ensure, so far as is reasonably practicable:

- the work environment is without risk to health and safety
- safe plant and structures are provided and maintained
- safe systems of work are provided and maintained
- safe use, handling and storage of plant, structures and substances
- the provision of adequate facilities for workers' welfare at work (including access)
- the provision of information, training, instruction and supervision necessary to protect all persons from risks to their health and safety at work
- monitoring the health of workers and conditions at the workplace to prevent illness or injury.

## Accommodation

Where the worker occupies the premises out of necessity for the worker's engagement because there is no other accommodation reasonably available (e.g. accommodation provided for remote work), the PCBU must also, so far as is reasonably practicable, maintain any accommodation owned or under the management or control of the PCBU, that is occupied by a worker.

The accommodation must be maintained (so far as is reasonably practicable) so that the worker is not exposed to risks to WHS.

## Self Employed Persons

A self-employed person must also ensure, so far as is reasonably practicable, his or her own WHS while at work.

## 4 As far as is reasonably practicable

Reasonably practicable means 'that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety'. In determining what is 'reasonably practicable' it is necessary to weigh up all the relevant factors.

The WHS Act outlines some of the factors that are relevant in this assessment:

- the likelihood of the hazard or the risk concerned occurring
- the degree of harm that might result from the hazard or the risk
- what the person concerned knows, or ought reasonably to know, about:
  - the hazard or the risk, and
  - ways of eliminating or minimising the risk
- the availability and suitability of ways to eliminate or minimise the risk
- after assessing the extent of the risk and the available ways of eliminating or minimising the risk (i.e. the other factors listed above), the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

## 5 Other duties

In addition to the primary duty PCBUs owe to workers, the WHS Act also imposes further obligations on PCBUs who:

- manage or control workplaces
- manage or control of fixtures, fittings or plant at workplaces
- design, manufacture, import or supply plant, substances or structures
- install, construct or commission plant or structures.

The exact nature of these duties will differ depending on the specific activities undertaken by each PCBU (e.g. are they managing or controlling workplaces or supplying plant? etc).

However, in broad terms, the duties require the relevant PCBU to ensure, so far as is reasonably practicable, that workplaces, fixtures, plant, substances, structures etc, are safe and without risks to WHS.

Some of these duties also include additional elements relating to the undertaking of calculations and testing and the provision of information regarding the plant, substances and/or structures to relevant persons.

## 6 Managing multiple and concurrent duties

It is important to remember that PCBUs may have multiple duties under the WHS Act (e.g. a PCBU may owe duties to its workers as well as to others by virtue of also being a designer and manufacturer under the WHS Act).

A PCBU may also have concurrent duties with other duty holders (e.g. a PCBU who engages labour hire workers will owe duties to the labour hire workers as well the labour hire company itself).

The WHS Act sets out some principles that confirm how multiple and concurrent duties are to be understood and met:

- WHS duties are not transferrable. In other words, a person who has a duty under the WHS Act (e.g. a PCBU, a self employed person or an officer) cannot 'pass on' or delegate their legislative obligations to another person
- a person who has a duty under the WHS Act can have more than one duty by virtue of being in more than one class of duty holder
- more than one person who has a duty under the WHS Act can concurrently have the same duty. Each duty holder must comply with that duty to the standard required by the WHS Act even if another duty holder has the same duty
- if more than one person has a duty for the same matter, each person:
  - retains responsibility for the person's duty in relation to the matter, and
  - must discharge their duty to the extent they have the capacity to influence and control the matter (or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.)

## Consultation

To ensure duty holders take active steps to manage overlapping duties the new WHS Act requires every duty holder to consult, co-operate and co-ordinate activities, as far as reasonably practicable. The new Code of Practice for *WHS Consultation, Co-operation and Co-ordination* provides information on how duty holders can consult, co-operate and co-ordinate their activities, including the following:

- **Communication** should occur at the planning stages of work and be ongoing. It should include information about the movement and use of plant and substances, who has control/influence over aspects of the work, activities of each duty holder, identifying the workers involved, information about hazards and risks and risk control measures.
- **Co-operation** may include implementing arrangements reached during consultation. It also involves responding to reasonable requests from other duty holders and not obstructing communication.
- **Co-ordination** involves organising activities and working together to make sure there are no gaps in WHS measures. Co-ordination should involve identifying when and how control measures are implemented and ensure control measures complement each other. For example, appropriate scheduling of work activities.

The purpose of the document is to provide guidance on relevant provisions of the *Work Health and Safety Act 2011* (NSW) (WHS Act) and *Work Health and Safety Regulation 2011* (NSW) (WHS Regulation). This document should be read in conjunction with those laws. It does not constitute nor should it be relied on for the purposes of legal advice.