



CONTRACTORS AND SUBCONTRACTORS UNDER THE *WORK HEALTH AND SAFETY ACT 2011*



Australian Government

Comcare

Disclaimer

This guidance provides a basic and general overview of its subject matter only. It is not a substitute for independent legal and/or other professional advice and cannot be relied on as a statement of the law relating to the *Work Health and Safety Act 2011* (Cth). Comcare recommends duty holders obtain appropriate independent legal advice relevant to their particular needs and circumstances.

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CONTRACTORS AND SUBCONTRACTORS UNDER THE *WORK HEALTH AND SAFETY ACT 2011*

The *Work Health and Safety Act 2011* (Cth) (WHS Act) aims to protect the health and safety of all workers throughout the Commonwealth jurisdiction including contractors and subcontractors. Irrespective of which WHS laws apply to the organisation by which you are employed, if you work at a Commonwealth location then you need to be aware of the following.

The purpose of this guidance is to provide general information about the duties owed to and by you as a contractor or subcontractor under the WHS Act. The guidance also shows PCBUs and workers how to collaboratively engage in consultation and ensure a working environment that is safe and without risk.

CONTRACTORS ARE 'WORKERS' UNDER THE WHS ACT

Under section 7 of the WHS Act, a worker is broadly defined as a person who carries out work in any capacity for a PCBU. This includes employees, outworkers, apprentices, trainees, students gaining work experience, volunteers, contractors, subcontractors and their employees working for a Commonwealth or non-Commonwealth licensee business or undertaking.

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WHO OWES DUTIES UNDER THE WHS ACT?

'Workers' have duties under section 28 of the WHS Act which are subject to consideration of what is 'reasonable'. As a worker, while at work, you have a duty to:

- > take reasonable care for your own health and safety
- > take reasonable care that your acts or omissions do not adversely affect the health and safety of other persons
- > comply, so far as you are reasonably able, with any reasonable instruction given by the PCBU—to help to comply with the WHS Act and/or Work Health and Safety Regulations 2011 (Cth) (WHS Regulations)
- > cooperate with any reasonable policy or procedure of the PCBU relating to health and safety at your workplace.

As a worker, you should be proactive in recognising potential hazards in your workplace and reporting those hazards to a health and safety representative (HSR), manager or the work health and safety section. It is important that you are familiar with the workplace procedures that outline the actions you need to take when reporting an incident.

If you are involved in or witness a health or safety incident in the workplace, you should ensure it is reported through the appropriate channels as soon as possible after it occurs. Early reporting will assist your PCBU to meet their notification obligations as required under the WHS Act.

It is also important that you understand the role and specific work activities you have been contracted to perform, and are aware of your health and safety rights. These rights include:

- > ceasing unsafe work
- > participating in consultation
- > notifying health and safety issues
- > the duties owed to you by your organisation and the Commonwealth PCBU.

Finally, you should be aware of your duties as a worker under the WHS Act and WHS Regulations.

The primary health and safety duty under the WHS Act is owed by a PCBU. This duty is to ensure—so far as is reasonably practicable—the health and safety of workers engaged in work for the business or undertaking. This duty is owed to a PCBU's workers, including you as a contractor or subcontractor.

Example of multiple duties owed to the same worker

A Commonwealth agency—as a PCBU under the WHS Act—engages a specialist building company—also a PCBU under the relevant State or Territory WHS legislation—to undertake building works on a Commonwealth site. During the period of the building works, Commonwealth workers have restricted access to the site and share the site with contractors who are required to be on site to undertake the building works. Commonwealth workers may at times be required to interact, and/or share common areas of the building, with contractors of the building company such as the lifts and building foyer.

As a PCBU, the Commonwealth agency has the following duties under the WHS Act:

- > Section 19—a primary duty to ensure, so far as is reasonable practicable, the health and safety of workers while at work e.g. Commonwealth workers and building company workers/contractors working on site.
- > Section 46—a duty to consult, cooperate and coordinate activities with other duty holders, so far as is reasonably practicable, with all persons who have a duty in relation to work health and safety e.g. with the building company as a PCBU.
- > Section 47—a duty to consult with workers, so far as is reasonably practicable, who carry out work for the PCBU and are, or likely to be, directly affected by a work health and safety matter e.g. with Commonwealth workers and building company workers/contractors working on site.

Please note that the duty of care owed by the Commonwealth PCBU to the building company workers/contractors is subject to the level of influence and control that the Commonwealth PCBU has over the specific work activities being undertaken by the building company workers/contractors while on site.

If contractors are performing a specialist role during the building works—such as lift maintenance or high risk electrical work where part of the workplace is restricted to contractor access only—the Commonwealth PCBU will have less capacity to influence this work activity, i.e. the contractors, as specialists in these activities, will have influence over how the work is undertaken and control over who has access to the worksite.

However, if the work involves general building maintenance of a non-specialised nature, such as general cleaning and replacing light globes, then the Commonwealth PCBU will have more influence and control over the work activities being undertaken. That is, the Commonwealth PCBU will be able to dictate how the work is undertaken, whether any areas of the workplace need to be restricted, and who has access to specific areas.

Refer to Part 2 of the WHS Act for further details on health and safety duties.

BEING REPRESENTED ON WORK HEALTH AND SAFETY ISSUES

A work group (WG) is a group of workers in a workplace—or part of a workplace—which is established so that each worker within the group can be represented by a health and safety representative (HSR).

WGs are formed by negotiation and agreement between the PCBU and the workers who will form the WG, or their representatives. These negotiations determine how best to group workers in a way that most effectively and conveniently enables their health and safety interests to be represented, and allows each member of the WG to easily access their HSR.

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CONSULTING WITH WORKERS— WHY, WHEN AND HOW

WHY SHOULD PCBUS AND WORKERS CONSULT?

It is important to ensure that as a worker you are able to participate in the consultation process. The type of activities workers do, and their various working environments and geographical locations, will affect the consultation mechanisms chosen by the PCBU, including meetings or email. Engaging workers in consultation allows the PCBU to provide workers with a meaningful opportunity to express their views on health and safety matters and actively participate in problem solving.

Under Part 5, Division 2 of the WHS Act a PCBU must—so far as is reasonably practicable—consult with workers who carry out work for their business or undertaking who are, or are likely to be, directly affected by a work health and safety matter. This means that the circumstances in each case—including the urgency of the health and safety issue and the seriousness of the risk—will be relevant when determining the level of consultation required.

The PCBU and workers can agree to procedures for consultation that best suit their circumstances. If there are agreed procedures, the consultation must be undertaken in accordance with these.

WHEN DOES A PCBU NEED TO CONSULT WITH WORKERS?

Persons who have a duty in relation to the same matter are required to consult with each other and coordinate activities in relation to the matter. Each PCBU can affect the work health and safety of a specific activity and therefore must share information and cooperate to ensure that each person can meet their health and safety duties without any gaps or inconsistencies.

As a contractor working in a shared workplace, it is important you recognise that all PCBUs contributing to a specific work activity must consult with workers and each other about health and safety issues. Specifically, a PCBU must ensure that consultation occurs with workers when:

- > identifying hazards and assessing risks arising from work and when making decisions about ways to eliminate or minimise those risks
- > making decisions about the adequacy of facilities for the welfare of workers
- > proposing changes that may affect the health and safety of workers
- > making decisions about the procedures, including those for consultation or resolving health and safety issues
- > monitoring the health and safety of workers or workplace conditions and providing information and training to workers
- > when carrying out activities prescribed by the WHS Regulations.

A PCBU may choose to consult with workers about health and safety matters in other instances, e.g. when conducting investigations into incidents or 'near misses'.

HOW SHOULD CONSULTATION BE UNDERTAKEN?

The PCBU's consultation duty requires that:

- > relevant information about the work health and safety matter is shared with workers
- > workers are given a reasonable opportunity to express their views, raise issues and contribute to the decision making process for dealing with work health and safety matters
- > the views of workers are taken into account
- > the workers consulted are advised of the outcome of the consultation in a timely manner.

Consultation does not require consensus or agreement but it does entitle workers to contribute to any decisions made.

Contractors or subcontractors performing work at, with or for a Commonwealth agency—or non-Commonwealth self-insured licensee—are referred to as 'workers' under the WHS Act.

This means that the Commonwealth PCBU has a duty—so as far as is reasonably practicable—to ensure your health and safety while at work when you are engaged by that PCBU. As a worker, you also have a duty to take reasonable care for your health and safety, as well as others at the workplace.

The WHS Act aims to protect the health and safety of all workers and outlines the requirements PCBUs, workers and other relevant parties must follow in order for optimal health and safety to be achieved.

Consultation is a major part of workplace health and safety and as a contractor or subcontractor—and also a worker—it is important that you fully understand your role, rights and responsibilities and the workplace processes that exist in order to fully engage and effectively participate in this process.

FURTHER INFORMATION

You can contact Comcare on 1300 366 979 or via email WHS.help@comcare.gov.au. You can also access information on our website www.comcare.gov.au.

The following relevant Commonwealth legislation is available:

- > *Work Health and Safety Act 2011* (Cth)
- > *Work Health and Safety Regulations 2011* (Cth)
- > Code of Practice: Work Health and Safety Consultation, Cooperation and Coordination

Further guidance and fact sheets are available from Safe Work Australia (www.safeworkaustralia.gov.au):

- > Worker Representation and Participation Guide

WHS 052 August 2018

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