



Australian Government

Comcare

# THE WHS ACT AND CONTRACTORS IN THE COMMONWEALTH

This fact sheet will assist a Person Conducting a Business or Undertaking (PCBU), in the Commonwealth jurisdiction, with an understanding of the Commonwealth's *Work Health and Safety Act 2011* (Cth) (WHS Act) in relation to contractors. The term contractor is referred to in this fact sheet as both the contractor as a PCBU and contractor as a worker.

Under the WHS Act, a worker is a person who carries out work in any capacity for a PCBU, including work as a contractor or subcontractor (and includes workers who are provided by labor hire companies). A PCBU must ensure, so far as is reasonably practicable, the health and safety of contractors who are workers, engaged or caused to be engaged by the PCBU, while the contractor is at work in the business or undertaking.

## CONTRACTORS IN THE WORKPLACE

When contractors are engaged to perform work, a PCBU should take the following steps to ensure health and safety in the workplace:

- > Select contractors based on their expertise and their work health and safety record—this may require contractors to provide documented safety records.
- > Insist on a culture that demonstrates the contractor's commitment to safety.
- > Provide induction training for all contractors prior to commencing work for the PCBU. The PCBU should determine the level of induction by the location and risk of the work being undertaken on behalf of the PCBU and be in line with other induction programs the PCBU delivers to all workers.
- > Provide contractors with work health and safety information, instruction and training that is easy to understand and relevant to the workplace and work the contractors are required to perform.
- > Consult, cooperate and coordinate activities with all PCBUs and workers who are responsible for the work being performed—including involving the PCBUs and their workers in identifying, assessing, and managing work health and safety issues as they arise.
- > Ensure all workers—regardless of which PCBU they work for—have a legislated right to be represented in the workplace by a health and safety representative (HSR). It is essential that any temporary worker (contractor) at the workplace is provided with relevant information that clearly details how they can access the HSR for the work group they are undertaking work in, or know what is expected of them in relation to reporting hazards, concerns or issues.
- > Assess the risks in consultation with the contractors and seek to find ways to employ the hierarchy of controls in managing those risks.

Contractors also have a duty as workers under the WHS Act. While at work, a contractor must take reasonable care for his or her own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of others.



The contractor must also comply—so far as the worker is reasonably able—with any reasonable:

- > instruction given by the PCBU to allow the person to comply with the WHS Act
- > policy or procedure the PCBU notified to the contractor relating to health and safety in the workplace.

## CONTROL IS A FACTOR

The PCBU should consider through the procurement process, each party's degree of control:

- > Who controls the work being undertaken? Where the contractor has specialised knowledge of the work to be performed, the PCBU should remind the contractor of his or her work health and safety requirements under the WHS Act.
- > Is the workplace or activity shared with other PCBUs? If more than one person is responsible for the same matter under the WHS Act, each person—so far as is reasonably practicable—must consult, cooperate and coordinate activities with all other persons responsible for the same matter.
- > Are control measures in place and have these measures been clearly communicated?

The PCBU should address and resolve these matters during the planning and negotiation phases of the procurement process. The PCBU should ensure clear lines of accountability for all stakeholders in relation to the respective activity or work.

## ASSURANCE AND VIGILANCE

It is important to consider work health and safety through all stages of the procurement and contract process:

- > During the initial procurement stages and before the contract commences all parties should engage WHS practitioners and subject matter experts to ensure contracts include essential WHS requirements.
- > During the duration of the contract, the PCBU should ensure checkpoints are included in the contract. These checkpoints provide a PCBU with a review process to ensure adequate supervision and oversight of the contract agreements and work performed by the contractors—this includes work plans tailored to take into account changes in the work environment or activity.
- > After completing the required work in the contract, the PCBU should assess the final product or work activity to ensure compliance under the WHS Act.

## FURTHER INFORMATION

Comcare will continue to deliver education and consultation programs to the jurisdiction. This includes workplace meetings, forums, training courses and the Comcare conference

You can contact Comcare by emailing [whs.help@comcare.gov.au](mailto:whs.help@comcare.gov.au) or by phone on 1300 366 979.

## DISCLAIMER

The information in this fact sheet is provided by Comcare for the purpose of providing industry, government and the public with information about the development and implementation of national model work health and safety legislation in accordance with the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety of July 2008.

Comcare recommends that users exercise their own skill and care with respect to use of information in this fact sheet. This fact sheet is not a substitute for independent professional advice and users should obtain appropriate professional advice relevant to their particular needs and circumstances.