

Work Health and Safety Act (2011) and Changes Effective July 2018

Introduction

The Work Health and Safety Act 2011 (WHS Act 2011) have come into force in all jurisdictions on 1st January, 2012. The introduction of uniform national safety legislation means the (The Company) will need to adjust to the new obligations.

Why do we have uniform work health and safety legislation?

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.

Who is covered by the WHS Act?

Workers in Australia are protected including employees, contractors, subcontractors, outworkers, apprentices and trainees, work experience, students, volunteers and employers who perform work. The WHS Act 2011 also provides protection for the general public so that their health and safety is not placed at risk by work activities.

What are the General Principles?

The WHS Act outlines the general health and safety duties of Persons Conducting a Business or Undertaking (PCBU), officers of companies, unincorporated associations, government departments and public authorities (including local governments), workers and other people at a workplace. In this context (The Company) and its officers is considered a PCBU. These general duties require (The Company) 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, through the application of the Hierarchy of Control.

Consultation, Cooperation, Coordination and Communications

(The Company) and its officers must so far as reasonably practicable consult and communicate with, cooperate with and coordinate activities with other PCBU's who have a duty of the same matter. This means for example the (The Company) will need to consult, coordinate activities and cooperate with its contractors, subcontractors, suppliers and other persons who may have a duty under the act in relation to work (The Company) does.

Health and Safety Representatives

Workplace Health and Safety Officers (WHSO) are no longer recognised under the WHS Act. The new legislations requires' (The Company) to allow for the election of Health and Safety Representatives (HSR) from identified work groups.

The role of an HSR is generally limited to their own work group unless there is a serious risk to the health or safety of other workers. An HSR can:-

- Inspect the workplace or any area where work is carried out by a worker in the work group;
- Accompany a workplace health and safety inspector during an inspection of the area the HSR represents;
- Be present at an interview with a worker that the HSR represents (with their consent) and the PCBU or an inspector about health and safety issues;
- Request a health and safety committee be established;
- Monitor compliance measures by the PCBU;
- Represent the work group in health and safety matters;
- Investigate complaints from members of the work group;
- Inquire into any risk to the health or safety of workers in the work group.

An HSR is not personally liable for anything done, or not done, in good faith while carrying out their role.

Note: Directorate Safety Committees which are currently established will continue under the new act.

Roles and Responsibilities

Definition of an Officer

An officer is a person who makes or participates in making decisions that affect the whole or a substantial part of the business. Officers (in the context of The Company being a PCBU) will be the executive leadership team including the directors and the CEO or persons acting in these roles.

Duty of an Officer

It is the duty of an officer to exercise due diligence to ensure (The Company) complies with its health and safety duties and obligations. An officer may be charged with an offence under the WHS Act 2011 independently of any breach of duty by (The Company).

Due diligence includes personally taking reasonable steps to:

- 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 Company) has, and uses, appropriate resources and processes to eliminate or reduce risks to health and safety;
- Ensure (The Company) has appropriate processes to receive and consider information about incidents, hazards and risks, and to respond in a timely manner;
- Ensure (The Company) has and implements a process for complying with the duty and any obligation under the act e.g. reporting notifiable incidents and consulting the workers.

Definition of a Worker

A worker is a person who carries out work in any capacity for (The Company) including employees, contractors, subcontractors, employees or a contractor or subcontractors, employees of labour hire companies, outworkers, apprentices, trainees, work experience, students and volunteers.

Note: Officers will also be considered to be workers in circumstances where they are required to perform work for (The Company).

Duty of a Worker

A worker for the purpose of the act will have personal obligations to exercise reasonable care for their own safety and the safety of others when carrying out that work. Failure to do so will expose the worker to prosecution and penalties.

CHANGES EFFECTIVE 12 October 2017- Commence 01 July 2018

On 12 October 2017, the Queensland Parliament passed the *Work Health and Safety and Other Legislation Amendment Act 2017* (the amendment Act).

The amendment Act amends the *Work Health and Safety Act 2011* (WHS Act), *Electrical Safety Act 2002* (ES Act) and the *Safety in Recreational Water Activities Act 2011* (SRWA Act) to implement key recommendations of the Best Practice Review of Workplace Health and Safety Queensland. A summary of the amendments is outlined below.

Provisions to commence on assent of the amendment Act:

- introduction of a new offence of industrial manslaughter in the WHS Act with mirror amendments in the ES Act and SRWA Act
- requirement for a person conducting a business or undertaking (PCBU) to provide the regulator with a list of Health and Safety Representatives and deputy Health and Safety Representatives for each work group
- prohibiting enforceable undertakings being accepted for contraventions, or alleged contraventions, of the WHS Act that involve a fatality, with mirror amendments to the ES Act and the SRWA Act, and
- providing that codes of practice will expire five years after they are approved to allow for more timely review of codes.

Provisions to commence on 1 July 2018:

- restoring the status of codes of practice as existed under the repealed *Workplace Health and Safety Act 1995* to require the safety measures in a code to be followed unless equal to or better than measures can be demonstrated
- mandating training for Health and Safety Representatives within six months of being elected to the role, with refresher training to be undertaken at three-yearly intervals
- introducing the ability for a PCBU to appoint a Work Health and Safety Officer (WHSO)
- requiring a PCBU to display a current list of WHSOs for the workplace
- enabling the appointment of a WHSO or the election of a HSR to be permissible as evidence that a PCBU has taken action to mitigate health and safety risks, and
- clarifying inspector investigation powers under section 171 of the WHS Act to ensure these powers are not inappropriately limited by a legal technicality.

Provisions to commence on proclamation:

- expansion of the jurisdiction of the Queensland Industrial Relations Commission (QIRC) to hear and determine disputes relating to work health and safety issues, cease work matters, requests for assistance by Health and Safety Representatives, and the provision of information to Health and Safety Representatives. Disputes will not be able to be lodged with the QIRC until 24 hours after an inspector has been requested to assist with resolving a dispute and the dispute remains unresolved
- establishing an independent statutory office for work health and safety prosecutions. The statutory office will be headed by a WHS Prosecutor appointed by the Governor-in-Council for a five year renewable term, and
- enabling inspectors to make a determination about whether the WHS entry permit holder has a valid right of entry or has complied with notice requirements under sections 119 or 122 of the WHS Act.

A copy of the Act as passed and explanatory notes will be available on the Queensland Legislation website at www.legislation.qld.gov.au/browse/aspassed.

Last updated
02 July 2018

If you do not fulfill your duties or obligations, you are in breach of the *Work Health and Safety Act 2011* (the WHS Act) or the *Electrical Safety Act 2002* (the ES Act) and could be prosecuted.

What is a breach?

A breach occurs when the law is not upheld; when:

- an action is taken that places a person at risk of injury, illness or death
- steps are not taken to avoid a risky situation from occurring
- there is a failure to comply with regulatory requirements.

Examples of breaches

Examples of breaches of the WHS Act include:

- exposing workers to the risk of excessive noise
- working at heights where the risk of falling is not controlled
- allowing unlicensed operators to use specified equipment such as forklifts
- not ensuring that plant is appropriately guarded to eliminate or minimise exposure of workers to moving parts

- failing to have in place safe work method statements for work carried out in or near a confined space
- not notifying the Office of Industrial Relations (OIR) when a notifiable serious injury or illness occurs at your workplace.

Examples of breaches of the ES Act include:

- performing unlicensed electrical work
- carrying out electrical work on energized electrical equipment when not permitted
- allowing unlicensed operators to use specified equipment such as forklifts
- not testing electrical work to ensure it is electrically safe
- not notifying the OIR of a serious electrical incident (SEI) or dangerous electrical event (DEE).

Categories of offences

There are four categories of offences for failing to comply with a health and safety duty under the WHS Act and SRWA Act or an electrical safety duty under the ES Act, depending on the degree of seriousness or liability involved.

Industrial manslaughter: the highest penalty under either the WHS Act, SRWA Act or the ES Act is for industrial manslaughter where a person conducting a business or undertaking (PCBU), or a senior officer, negligently causes the death of a worker.

Where a PCBU, or senior officer, commits industrial manslaughter, a maximum penalty of 20 years imprisonment for an individual, or \$10M for a body corporate, applies. More information and definitions are here.

Category 1: the next highest penalty under either the WHS Act or the ES Act is for a category 1 offence, These are serious breaches where a duty holder who recklessly endangers a person to risk of death or serious injury. Offences involving reckless conduct, will be prosecuted in the District Court.

- Corporation: up to \$3 million
- Individual as a person conducting a business or undertaking (PCBU) or an officer: up to \$600 000 / 5 years jail
- Individual e.g. worker: up to \$300 000/ 5 years jail.

Category 2: failure to comply with a health and safety duty or electrical safety duty that exposes a person to risk of death, serious injury or illness. Offences will be prosecuted in the Magistrates Court.

- Corporation: up to \$1.5 million
- Individual as a PCBU or an officer: up to \$300 000
- Individual e.g. worker: up to \$150 000.

Category 3: failure to comply with a health and safety duty or electrical safety duty. Offences will be prosecuted in the Magistrates Court.

- Corporation: up to \$500 000
- Individual as a PCBU or an officer: up to \$100 000
- Individual e.g. worker: up to \$50 000.

Note: Appeals in Category 1, Category 2 or Category 3 are made to the District Court..

On-the-spot fines

An on-the-spot fine is an alternative to prosecuting alleged offenders directly through the court. It is also called an infringement notice.

On-the-spot fines may be issued for workplace health and safety offences or electrical safety offences prescribed in Schedule 1 of the *State Penalties Enforcement Regulation 2014* (the SPER Regulation).

On 30 June 2017 the *State Penalties and Enforcement Regulation 2014* was amended to introduce two new infringement notice offences or 'on the spot fines' against requirements in the *Electrical Safety Regulation 2013* (ES Regulation) for exclusion zones and unsafe distances when working near overhead and underground powerlines.

Both PCBUs and workers can be issued with an on-the-spot fine. Examples of offences which can be issued with a fine include (but are not limited to):

- failure to comply with an improvement notice
- failure to record a notifiable incident (e.g. a work-caused serious injury or illness)
- allowing persons to carry out high risk work without seeing written evidence that the worker has the relevant high risk work licence
- failure to allow health and safety representative to exercise their powers or functions
- failure to use/wear PPE provided by PCBU in accordance with information, training or reasonable instruction given by PCBU (fine issued to worker)
- failure to test electrical work
- failure to ensure electrical equipment was de-energized before carrying out electrical work.

The fine may be paid in full at any Workplace Health and Safety Queensland (WHSQ) office within 28 days or arrangements can be made to pay an on-the-spot fine of \$200 or more in instalments.

The alleged offender can choose to contest the infringement notice in a Magistrates Court.

Failure to pay

Not paying the fine can lead to further enforcement action, including:

- redirection of wages or funds from a bank account
- issuing of a warrant for the seizure and sale of property
- suspension of the debtor's driver's licence until the debt is satisfied
- registration of the debt for enforcement interstate
- issuing an arrest and imprisonment warrant.

Last updated

02 July 2018

I hereby acknowledged that I have read and understood the changes to the work health and safety act and understand my roles and responsibilities.

Name: _____ Payroll: _____

Branch: _____

Position: _____

Signature: _____