

HEALTH AND SAFETY AT WORK ACT 2015

THE HEALTH AND SAFETY AT WORK ACT 2015 ("HSWA") AIMS TO PROVIDE A BALANCED FRAMEWORK TO SECURE THE HEALTH AND SAFETY OF WORKERS AND WORKPLACES.

IT SETS OUT RESPONSIBILITIES FOR MANAGING WORK-RELATED RISKS THAT COULD CAUSE SERIOUS INJURY, ILLNESS OR EVEN DEATH. THE HSWA FOCUSES ON MANAGING WORK RISK, AND REQUIRES BUSINESSES TO ENGAGE WITH WORKERS AND ENABLE THEM TO ACTIVELY PARTICIPATE IN HEALTH AND SAFETY AT WORK.

Definitions

Hazard:

an actual or potential cause of harm, including a person's behaviour.

Notifiable Event:

the death of a person, a notifiable injury or illness, a notifiable incident.

Notifiable Incident:

an unplanned or uncontrolled incident in relation to a workplace that exposes a worker or any other person to a serious risk to that person's health or safety.

Notifiable Injury or Illness:

serious work-related illnesses or injuries, e.g. requiring a person to be admitted to hospital for immediate treatment.

PCBU:

person conducting a business or undertaking, whether alone or with others, and whether or not for profit or gain.

Worker:

an individual who carries out work in any capacity for a PCBU.

Workplace:

a place where work is being carried out, or is customarily carried out for a business or undertaking, including a motor vehicle.

Persons Conducting a Business or Undertaking ("PCBU")

A PCBU has the primary responsibility for people's health and safety at work. The primary duty of care is very broad. A PCBU must have, so far as is reasonably practicable, effective practices in place for:

- providing and maintaining a safe work environment, with safe plant and structures, safe systems of work and adequate facilities for workers' welfare;
- safe use, handling and storage of plant, substances and structures;
- provision of information or training to protect people from risks to their health and safety;
- monitoring workers' health and workplace conditions, to prevent illness or injury.

"Reasonably Practicable"

Many duties under HSWA apply "so far as is reasonably practicable". "Reasonably" means doing what other businesses would reasonably do in the same situation. Something is "practicable" if it is possible or capable of being done. Different businesses will have different risks, depending on the work they do. Every PCBU should assess:

- what its work-related health and safety risks are, especially those risks with the potential to cause serious harm;
- the likelihood of those risks occurring;
- the degree of harm that could result from those risks;
- options to eliminate the risks, or to minimise the risks (where they can't be eliminated); and
- the costs of elimination or minimisation (costs should only take precedence over safety when grossly disproportionate to the risk).

Officers' Duties

Officers are individuals in a position within a PCBU that allows them to exercise significant influence over the management of the business. This will usually be the director or chief executive. PCBUs can have more than one officer. Officers must exercise due diligence to ensure the PCBU meets its HSWA obligations. Officers must ensure they take reasonable steps to:

- acquire and keep up-to-date knowledge of health and safety matters;
- gain an understanding of the nature of the operations of the business and generally of the hazards and risks associated with those operations;
- ensure the business has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety;
- ensure the business has appropriate processes for receiving, considering and responding in a timely way to information regarding incidents, hazards and risks;
- ensure the business has and implements processes for complying with its duties under HSWA; and
- verify the provision and use of resources and processes.

The extent of an officer's due diligence duty will depend on the nature of the business' operations and the nature of the officer's role and responsibilities.

Overlapping Duties

PCBUs who operate together, either at the same site, or in some other arrangement, must work together to fulfill their primary duties of care. PCBUs with overlapping work must communicate, consult, cooperate and coordinate to meet their health and safety

obligations to workers and others, so far as reasonably practicable.

Businesses are not able to contract out their HSWA duties. However, where work overlaps they can make reasonable arrangements with other PCBUs to meet HSWA obligations, taking into account the level of influence or control each has over the overlapping work.

PCBUs have obligations to all workers and others affected by their work, not just those they directly employ or engage. To avoid issues where there are overlapping duties, it is helpful to make sure:

- PCBUs understand how each other's work may add to health and safety risks in the workplace as a whole, or in a chain of work activities;
- each PCBU knows who is taking care of a particular health and safety issue;
- the PCBU managing a particular risk is the one in the best position to do so; and
- all PCBUs are aware of what other work is happening at a shared site or using shared resources, and when.

Responsibilities of Workers and Others

Workers and others in a workplace, including visitors and customers, must:

- take reasonable care of their own health and safety, and reasonable care that others are not harmed by their actions or inaction;
- follow, as far as they are reasonably able to, the PCBU's reasonable health and safety instructions.

Workers must also follow any reasonable policy or procedure relating to health and safety. Workers have the right to stop work if they believe it is unhealthy or unsafe.

Worker Engagement and Participation

The HSWA requires all PCBUs, regardless of size, to have clear, effective and ongoing ways for workers to raise concerns or suggest improvements to health and safety practices. PCBUs must also ensure they ask for, and take into account, workers' views on matters that could affect their health and safety.

Health and Safety Representatives & Committees

A health and safety representative (HSR) is a person chosen by other workers to speak or act on their behalf about health and safety matters. Any worker can ask for an HSR and any PCBU can choose to have an HSR. PCBUs with 20 or more workers must arrange an election for an HSR if asked.

Health and safety committees (HSCs) bring together HSRs, workers and representatives

of the PCBU to improve health and safety at work. Five or more workers or an HSR can request that the PCBU consider establishing an HSC, or a PCBU can establish an HSC on its own initiative. An HSC is a way for a PCBU and its workers to cooperate on ways to ensure workers' health and safety.

Identifying Hazards

There are some obvious areas in which drivers and contractors should investigate the existence of hazards. They are:-

- office and administration areas, including lighting, ventilation, the adequacy of office furniture especially for those who use keyboards. Other hazards include wires or cords in areas where someone could trip over them.
- for larger operators who are employers rather than owner-drivers, your premises will be more extensive and you should address methods of storage, including hazardous or dangerous substances, methods of directing vehicles calling in at dispatch, the use of fork hoists and other specific hazards.
- your vehicle. Is it maintained in a safe condition? It is conceivable that the owner of a motor vehicle could be prosecuted under the HSWA for maintaining or operating a vehicle in an unsafe condition.
- your loads. Make sure you are aware of, and act on, procedures for the safe handling of dangerous and hazardous goods. Make sure you load and unload your vehicle safely and that your loads are safely and securely stacked.
- your activities on customers' sites. You should be mindful of customers' safety requirements on their own sites, and observe these. You may identify requirements of your own which apply to the work you do on customers' sites.

Each PCBU will have special features which might raise safety issues, and which should be thoroughly considered from a health and safety perspective.

Notifiable Events

A PCBU must ensure the regulator is notified as soon as possible after the PCBU becomes aware of a notifiable event. Notification is required even if emergency services attend. The 'regulator' is usually WorkSafe.

If a notifiable event occurs, the PCBU who manages or controls the workplace must take all reasonable steps to ensure the site where the event occurred is not disturbed until authorised by an inspector. There are some exceptions to this, including interfering to help an injured person, or remove a deceased person. Work may continue in other parts of the workplace while the site of the notifiable event is preserved for inspection.

Offences

There are significant penalties for breaches of the HSWA. Some penalties for breaching key duties are set out below:

For reckless conduct in respect of a duty that exposes an individual to a risk of serious injury, serious illness or death (s 47 HSWA):

- 5 years' imprisonment or a \$300,000 fine, or both, for an individual who is not a PCBU (i.e. a worker or other person in the workplace);
- 5 years' imprisonment or \$600,000 fine, or both, for an individual who is a PCBU (e.g. self employed);
- \$3 million fine for anyone else (e.g. an organisation that is a PCBU).

For failure to comply with a duty that exposes an individual to a risk of serious injury, serious illness, or death (s 48 HSWA):

- \$150,000 fine for an individual who is not a PCBU (i.e. a worker or other person in the workplace);
- \$300,000 fine for an individual who is a PCBU (e.g. self employed);
- \$1.5 million fine for anyone else (e.g. an organisation that is a PCBU).

For failure to comply with a duty (s 49 HSWA):

- \$50,000 fine for an individual who is not a PCBU (i.e. a worker or other person in the workplace);
- \$100,000 fine for an individual who is a PCBU (e.g. self employed);
- \$500,000 fine for anyone else (e.g. an organisation that is a PCBU).

This summary is intended only as a guide. It is not a full summary of the Health and Safety at Work Act 2015.

If you have specific questions, or need legal advice on a particular issue, please contact Cathy Fisher or Shafraz Khan at Fortune Manning Lawyers. Cathy and Shafraz have extensive experience in all areas of the law relating to the transport industry.

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