

Information on Health and Safety at Work Act (HSWA) 2015

The Health and Safety at Work Act (HSWA) 2015 comes into force on 4 April 2016. This legislation replaces the Health and Safety in Employment Act 1992.

The CoPTTM will be updated when the new legislation is finalised.

Prior to the effective date, all parties need to be made aware of their responsibilities in relation to the new legislation.

Here is some initial information as a guide about the HSWA.

It will be important for each company to identify their own responsibilities in relation to the HSWA and it is strongly advised that the company's sub-contractors are also advised of their responsibilities and how they co-relate.

Summary of key roles in the HSWA

Term	Explanation
PCBU (Person Conducting a Business or Undertaking)	<p>This will usually be a business entity, such as a company, rather than an individual.</p> <p>The PCBU will have the primary duty of care under the HSWA to ensure the health and safety of its workers and others affected by the work it carries out.</p> <p>It will also need to consult with other PCBUs where it shares a worksite or are part of a contracting or supply chain, to make sure all workers are safe and healthy.</p>
Officers	<p>Officers include directors and other people who make governance decisions that significantly affect a business.</p> <p>Officers have a duty of due diligence to ensure their PCBU complies with its H&S obligations.</p>
Workers	<p>A worker is any person who carries out work in any capacity for a PCBU.</p> <p>This includes all staff, contractors and volunteers.</p> <p>Therefore, the STMS or delegated TC is classed as a worker as they carry out work for a PCBU.</p> <p>All workers must take reasonable care to ensure the H&S of themselves and others, and to comply with the PCBU's reasonable instructions and policies.</p>
Other people	<p>Other people who come to the workplace, such as visitors or customers, also have some H&S duties.</p>

It's all about taking your share of the responsibility for what you can control.

Key changes in the new legislation

Eliminate and minimise

The law currently provides for a three tiered approach for managing safety hazards i.e. eliminate, isolate and minimise.

Refer Section 3 of the HSWA

The HSWA provides a two tiered approach, being to eliminate and where this is impracticable minimise risks.

Isolation is merely a control measure for minimising a risk.

Person Conducting a Business or Undertaking (PCBU)

The current law places duties on defined participants i.e. employers, principals, the self-employed, persons controlling a place of work and suppliers of plant.

Refer Section 17 of the HSWA

These are all replaced under the HSWA by a new primary duty holder, being a **PCBU**.

A PCBU means a person conducting a business or undertaking:

- whether the person conducts a business or undertaking alone or with others; and
- whether or not the business or undertaking is conducted for profit or gain.

A PCBU *does not* include employees or directors of PCBUs (directors are covered as officers – refer to Officers below), volunteer associations, and occupiers of a home who employ or engage another person solely to do residential work.

Officers

Refer Section 18 of the HSWA

The HSWA introduces a positive duty on officers to exercise **due diligence** to ensure that the PCBU complies with that duty or obligation.

This is a key change from the HSE Act, where directors of a company can only be held liable where they have directly participated in, contributed to, or acquiesced in their company's failure.

Under the HSWA, officers may be convicted for a breach of due diligence regardless of whether the PCBU has been convicted of an offence.

Due diligence includes taking reasonable steps to:

- acquire, and keep up-to-date, knowledge of work health and safety matters
- gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations
- ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety

- ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information
- ensure that the PCBU has, and implements, a process for complying with any duty or obligation of the PCBU under the Act
- verify the provision and use of resources and processes.

Worker duties/Personal safety

Refer Section 19 of the HSWA

A worker is defined as a person who carries out work in any capacity for a PCBU, including work as an employee, a contractor or subcontractor, an employee of a contractor or subcontractor or an employee of a labour hire company who has been assigned to work for the PCBU, an outworker, an apprentice or trainee, a person gaining work experience or undertaking a work trial, a volunteer or a person of a prescribed class.

The HSWA's definition is broad, and like the PCBU definition is designed to encompass a number of relationships that are typical in a work environment (such as employees, contractors, subcontractors, employees of contractors or subcontractors, volunteers and trainees).

The new legislation confirms the obligation on workers to keep themselves safe, to not harm others and to reasonably follow policies, procedures and instructions related to their health and safety.

Reasonably practicable

The current standard under the HSE Act 'all practicable steps' is replaced in the HSWA with a new '**reasonably practicable**' standard.

Refer Section 22 of the HSWA

'**Reasonably practicable**' is defined as: '...that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including:

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

The new standard is broadly similar to the existing concept of 'all practicable steps', except that the assessment of costs must only be taken **after** the assessment of the risk and the ways to eliminate that risk.

This means that costs will only take precedence over safety when the cost of taking a step is 'grossly disproportionate' to the risk.

Primary duty of care

Refer Section 36 of the HSWA

The HSWA introduces a new general duty on all PCBUs to ensure, so far as reasonably practicable, the health and safety of:

- workers employed or engaged, or caused to be employed or engaged, by the PCBU while the workers are at work in the business or undertaking; and
- workers whose activities in carrying out work are influenced or directed by the PCBU while the workers are carrying out the work.

PCBUs must also ensure, so far as reasonably practicable, that the health and safety of other people is not put at risk from work carried out by the PCBU.

There are also specific duties imposed on PCBUs in respect of:

- the management and control of fixtures, fittings, and plant in the workplace;
- the design and manufacture of plant to be used in a workplace; and
- the supply, importation and installation of plant to be used in a workplace.

Offences and penalties

Refer Sections 47 to 49 of the HSWA

The HSWA creates three offence tiers relating to breaches of the health and safety duties. The offences and the respective maximum penalties can be summarised as follows:

Action	Offence	Penalty
Reckless Conduct in respect of duty <i>Section 47</i>	A person commits an offence against this section if the person: <ul style="list-style-type: none"> • has a duty, and • without reasonable excuse, engages in conduct that exposes any person to whom the duty is owed to risk of death or serious injury/illness, and • is reckless as to that risk 	Upon conviction the following may apply: <ul style="list-style-type: none"> • for an individual who is not a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$300,000, or both • for an individual who is a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$600,000, or both • for any other person, to a fine not exceeding \$3 million.
Failure to comply with a Duty <i>Section 48</i>	A person commits an offence against this section if the person: <ul style="list-style-type: none"> • has a duty, and • fails to comply with that duty, and • exposes an individual to risk of death or serious injury/illness 	Upon conviction the following may apply: <ul style="list-style-type: none"> • for an individual who is not a PCBU or an officer of a PCBU, to a fine not exceeding \$150,000 • for an individual who is a PCBU or an officer of a PCBU, to a fine not exceeding \$300,000 • for any other person, to a fine not exceeding \$1.5 million.
Failure to comply with a Duty <i>Section 49</i>	A person commits an offence against this section if the person: <ul style="list-style-type: none"> • has a duty, and • fails to comply with that duty 	Upon conviction the following may apply: <ul style="list-style-type: none"> • for an individual who is not a PCBU or an officer of a PCBU, to a fine not exceeding \$50,000 • for an individual who is a PCBU or an officer of a PCBU, to a fine not exceeding \$100,000 • for any other person, to a fine not exceeding \$500,000.

Other orders which the court may impose at sentencing

Refer Sections 153 to 156 of the HSWA

In addition to the fines and imprisonment that may be imposed, the HSWA provides for new orders which the court may impose at sentencing:

- **Adverse publicity orders** – requiring the offender to publicise in a particular manner the offence, its consequences, and the penalty imposed.
- **Restoration orders** – requiring an offender to take specified steps to remedy any matter caused by the offence.
- **H&S project orders** – requiring an offender to undertake a specific project for the general improvement of work health and safety.
- **Court-ordered enforceable undertakings** – adjourning the proceeding for up to two years, during which the offender undertakes to comply with certain conditions.

What do I need to do?

If your business already has a strong commitment to H&S, you might not have to do anything new.

If not, you'll need to think about what could go wrong in your business and how to manage your health and safety risks. Make sure all staff understand it, and use these tips to get on the right track:

- Identify H&S hazards and risks, and take steps to prevent these from happening
- Make sure your H&S policies are led by management, understood by all staff and reviewed regularly
- Hold regular training on H&S matters
- Engage workers in H&S matters that affect them
- Support all officers to get up to date with H&S issues and key risk factors.
- Report and monitor H&S goals
- Regularly review any incidents
- Carry out frequent H&S audits.