

## BULLETIN

# Information for a person conducting a business or undertaking

Overview of your responsibilities to provide a healthy and safe workplace.

The Work Health and Safety laws (WHS laws) aim to provide all workers with a healthy and safe workplace. As a person conducting a business or undertaking (PCBU), you have duties to ensure that no one's health or safety is put at risk from the work that you carry out.

This information sheet outlines who a PCBU is and what your health and safety duties are as a PCBU in relation to eliminating risks, reporting incidents, consulting with other PCBUs and your workers, and worker representation mechanisms.

## Who is a PCBU?

PCBU is a new term in the WHS Act that replaces 'employer' in the Northern Territories old health and safety legislation. If you previously had duties as an employer, you are now a PCBU under the WHS laws.

In many cases PCBU still refers to an employer but it's also used to describe others such as contractors, designers, manufacturers, suppliers, importers, persons who install, construct or commission plant or structures, franchisees and self-employed people. It's a broad concept aimed at capturing all types of working arrangements.

A PCBU is the main duty holder. They may be an individual person or legal entity, working for profit or not-for-profit.

Individuals who are PCBUs include:

- committee members in unincorporated associations
- partners in partnerships
- individual trustees of trusts and sole traders
- self-employed people.

Legal entities that are PCBUs include:

- incorporated bodies, including incorporated associations
- private and public companies
- trustees or cooperatives that are companies
- local authorities.

A **person** may be an individual or organisation such as a company, voluntary association or partnership.

A **business** is generally an enterprise that is conducted with a view to making a profit which has a degree of organisation, system and continuity.

An **undertaking** is generally not for profit or commercial in nature, although it may have elements of organisation, system and continuity.

## Who is a worker?

A worker is any person who works for a PCBU, whether they are paid or not.

A worker can be:

- an employee
- a contractor or subcontractor
- an employee of a contractor or subcontractor
- an employee of a labour hire company assigned to work in a business or undertaking
- an outworker
- an apprentice or trainee
- a student gaining work experience
- a volunteer.

Workers must take reasonable care for their own health and safety, follow reasonable instructions given by the PCBU and cooperate with reasonable policies or procedures that they have been notified of.

A self-employed person can be both a worker and a PCBU.

Self-employed people must ensure their own health and safety while at work, so far as is reasonably practicable

## Your duties

You have a primary duty of care to ensure the health and safety of your workers and eliminate risks that may cause them harm, so far as is reasonably practicable. If it isn't practicable to eliminate the risks, they must be minimised by using appropriate control measures. You must also consult with workers on the measures being taken to ensure work is healthy and safe.

As a PCBU, you also owe the same duty of care to independent contractors and others who may be at risk from the work you carry out.

Specific duties you must comply with, so far as is reasonably practicable, include:

- providing and maintaining a working environment that is safe and without risks to health (e.g. control of physical, chemical, biological and organisational risks)
- providing and maintaining plant, structure and systems of work that are safe and do not pose health risks (e.g. providing effective guards on machines and regulating the pace and frequency of work)
- providing and maintaining safe systems of work (e.g. how work is organised, work pace and work demands, and procedures to prevent or manage fatigue, stress and violence)
- ensuring the safe use, handling, storage and transport of plant, structure and substances (e.g. toxic chemicals, dusts and fibres)
- providing adequate facilities for the welfare of workers (e.g. washrooms, drinking water, lockers and dining areas)
- providing workers with the necessary information, instruction, training or supervision to work safely and without risk to their health
- monitoring the health of your workers and workplace conditions to prevent injury or illness (e.g. collection and review of injury and incident data, regular hearing tests for workers in noisy environments and analysis of results)
- maintaining any building owned or under your management and control to ensure the health

and safety of workers occupying the premises.

### Reasonably Practicable

To work out what is 'reasonably practicable' in a given situation, you, as the PCBU, must consider the following factors:

- the likelihood of the relevant hazard or risk occurring (e.g. the probability that someone could be injured by the work being done)
- the degree of harm that might result (eg fatality, multiple injuries, medical or first aid treatment, long or short-term health effects)
- what you know, 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.

After taking these factors into account, you may also consider costs related to available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

### Entry permit holders

A work health and safety entry permit holder is a union official who has completed a prescribed training course, and holds a valid and current entry permit under the *Commonwealth Fair Work Act*.

An entry permit holder may enter your workplace during work hours to inquire into a health and safety breach if they reasonably suspect one has or is occurring. While there, they may inspect anything that directly relates to the matter, consult any worker who is entitled to be represented by the union and warn anyone they believe is exposed to a serious risk.

You must not refuse or delay entry of the permit holder, or hinder or obstruct them (e.g. not providing access to records the permit holder is entitled to inspect).

For more information, see *Information about right of entry*.

Further duties for PCBUs involved in specific activities

If you are engaged in the activities in the table below, you have further duties. These are again limited by the test of reasonable practicability.

Specific activities	Duties
PCBUs involved in management or control of workplaces	<ul style="list-style-type: none"> <li>Ensure the workplace and the means of entering and leaving the workplace are without risks to the health and safety of any person.</li> </ul> <p>For example, a building owner has responsibilities relating to the whole building including entry and exit points. A tenant has responsibility for the part of the building that is their workplace, as well as safe entry and exit to that part of the building.</p>
PCBUs involved in management or control of fixtures, fittings or plant at workplaces	<ul style="list-style-type: none"> <li>Ensure fittings, fixtures and plant are without risks to the health and safety of any person.</li> </ul> <p>For example, replace or repair torn carpets to prevent tripping or falling.</p>
PCBUs that design, manufacture, import or supply plant, substances or structures	<ul style="list-style-type: none"> <li>Ensure plant, substances or structures are without risks to the health and safety of any person.</li> <li>Conduct relevant analysis and testing to ensure plant, substances or structures are safe and without risks to health.</li> <li>Provide information to all relevant people on the purpose of the plant, substance or structure, results of tests or research into risks, and any conditions for use to ensure they are safe and without risks to health.</li> </ul> <p>For example, a person who designs a scaffold must ensure it is structurally sound and not going to pose any risk to persons working on it or people near it.</p>
PCBUs that install, construct or commission plant or structures	<ul style="list-style-type: none"> <li>Ensure plant or structure is installed, constructed or commissioned in a way that does not cause risks to health and safety.</li> </ul> <p>For example, a person who installs business signs must ensure the equipment is correctly installed, connected and grounded, to ensure there are no risks to themselves or others who will use, decommission, dismantle or work in the vicinity of the sign.</p>

### Incident notification

You must contact NT WorkSafe if there is a fatality or serious injury (e.g. amputation, spinal injury, scalping, burn, serious head or eye injury) or dangerous incident at your workplace.

You must also notify NT WorkSafe if there is a serious workplace incident (e.g. building collapse, chemical leak, explosion and fire).

If you are unsure, contact NT WorkSafe for advice.

Your duty extends to work activities wherever they occur and are not restricted to a physical workplace.

Duties are not transferable from one person to another.

### Consultation

#### Duty to consult other duty holders

If you are one of multiple PCBUs with duties relating to the same matter, you must consult, cooperate and coordinate with other PCBUs, so far as is reasonably practicable. This will support effective health and safety management. An example is consultation between a labour hire company and a host employer, followed by collaborative action to ensure labour hire workers are not exposed to risk.

## Duty to consult workers

You must consult with your workers, so far as is reasonably practicable, on issues affecting their health and safety. This includes identifying hazards and assessing risks arising from work, and proposing changes that may improve the health and safety of workers.

You must also consult with your workers and take their views into account when making decisions about:

- ways to eliminate or minimise risks
- the adequacy of facilities for workers' welfare
- procedures for consulting workers
- resolving health and safety issues
- monitoring the health and safety of workers or workplace conditions
- how to provide health and safety information and training to workers.

Consultation must involve:

- sharing relevant health and safety information with workers
- giving workers a reasonable opportunity to express their views, raise issues and contribute to the decision making process
- taking their views into account
- providing information on the results of the consultation.

Consultation allows you to build workers' knowledge of the job and any hazards associated with it. It also signals your commitment to work health and safety, and can encourage workers' acceptance of safety rules and active participation in health and safety improvement initiatives.

## Worker representation

Workplaces have better safety outcomes when workers have the opportunity to input before decisions are made. Worker representation mechanisms, listed below, give workers a voice on health and safety matters and facilitate the duty you have to consult with them.

As a PCBU, your role is to support (and not direct) the establishment of representation arrangements.

## Work groups

A work group is a group of workers who share similar health and safety concerns and conditions. Any worker or group of workers can ask you to set up a work group at one or more workplaces by requesting the election of a health and safety representative (HSR). Once a request is made you must start negotiations with workers within 14 days.

## Health and safety representatives (HSRs)

An HSR represents the health and safety interests of a work group. This can include monitoring the work health and safety actions of the PCBU, investigating complaints from work group members and inquiring into anything in the work group that may pose a risk to workers' health and safety.

A work group can have as many HSRs and deputy HSRs as agreed after consultation, negotiation and agreement between workers and their PCBUs.

## Health and safety committees

An HSC facilitates cooperation between you and workers in developing and carrying out measures to ensure health and safety at work. This includes health and safety standards, rules and procedures for the workplace.

You must set up an HSC within two months of being requested to do so by an HSR, or by five or more workers in a workplace or when required by the Work Health and Safety laws. At least half of the members of an HSC must be workers that have not been nominated by you. An HSR can also be a member of an HSC.

You must not discriminate against a worker because of their involvement in workplace health and safety, for example being an HSR or member of an HSC.

## Your duties to HSRs

As a PCBU, you have obligations to HSRs. You must:

- consult with the HSR on work health and safety, so far as is reasonably practicable

- respond to reasonable requests from the HSR for discussions on work health and safety
- provide access to information on the hazards and risks affecting the work group and the health and safety of members of the work group
- provide resources, facilities and assistance to the HSR (e.g. access to an office, phone, computer, copier, printer, meeting rooms, notice boards)
- allow the HSR (and deputy HSR) to spend the time necessary, in paid time, to exercise powers and perform functions
- allow the HSR to attend an approved training course in paid time, with fees and costs paid by the PCBU
- if there are multiple PCBUs, divide costs relating to the HSR equally between the PCBUs unless agreed otherwise
- allow a person assisting the HSR (e.g. union official) to have access to the workplace
- allow the HSR to perform their functions (e.g. accompanying an inspector and attending interviews with work group members)
- prepare, maintain and display a current list of HSRs and deputy HSRs for each work group, to ensure it is readily accessible to all workers, and provide a copy to NT WorkSafe.

Training courses for HSRs are approved by NT WorkSafe. HSRs and deputy HSRs are entitled to attend an approved course, which can be of their choosing in consultation with you.

You must give HSRs time off work to attend the agreed course within three months of their request. HSRs are entitled to receive the pay they would have received had they not been attending the course. You are required to pay the course fees and reasonable costs associated with course attendance. If there is disagreement about the timing of attendance, the choice of course or payment of fees and costs, an inspector may be called in to determine these matters.

### **Resolving work health and safety issues**

You must try to resolve issues with workers using agreed internal procedures or those outlined in the WHS laws.

If you delegate a representative, they must be sufficiently senior and competent. HSRs are also entitled to have a representative, such as a union official.

If the issue can't be resolved in a reasonable time, an inspector may be requested to assist.