

Assist with compliance with WHS laws

Learner Guide



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1. Assist with determining the legal framework for WHS in the workplace

1.1 - Access current WHS legislation and related documentation relevant to the organisation's operations

From 1 January, 2012 the Commonwealth, state and territory governments introduced a new harmonised work health and safety law which aims to ensure work health and safety laws provide regulators with functions including:

- Providing advice and information to duty holders and the community
- Monitoring and enforcing compliance with work health and safety laws
- Fostering co-operative, consultative relationships between duty holders and the persons and representatives they owe a duty to
- Sharing information with other regulators; and
- Conducting and defending proceedings under work health and safety laws.



Until now, the Commonwealth, State and Territory Governments were responsible for making and enforcing their own health and safety laws. Even though, these jurisdictions are similar, the variations led to confusion. By developing the Model Work Health and Safety laws, Safe Work Australia, working with the Commonwealth, State and Territories harmonised the act, regulations and codes of practice.

Please check your State to ensure that they have met the 01 January, 2012 deadline. Some States have not been able to meet this deadline and are still operating with the previous Occupational Health and Safety Legislation. At the time this learner guide was written, legislation was up to date. However, care should be taken to update your knowledge on an ongoing basis to ensure that you do not give advice that is out of date.

Work Safe and Work Cover (depending on your State/Territory) is now your State/Territory Regulators. Refer to the table below to determine the Regulator who your organisation should report to in the event of an accident/incident in your workplace.

The regulators for each state/territory, the contact details are:

Work Health and Safety	Websites
Commonwealth contacts	<p>Australian Maritime Safety Authority Website: www.amsa.gov.au Telephone: (02) 6279 5000</p> <p>Comcare Website: www.comcare.gov.au Telephone: 1300 366 979</p> <p>Federal Safety Commissioner Website: www.fsc.gov.au Telephone: 1800 652 500</p> <p>National Offshore Petroleum Safety Authority Website: www.nopsa.gov.au Telephone: (08) 6461 7000</p> <p>Seacare Website: www.seacare.gov.au Email: seacare@comcare.gov.au Telephone: (02) 6275 0070</p> <p>Other contacts:</p> <p>National Transport Commission Website: www.ntc.gov.au Email: ntc@ntc.gov.au Telephone: (03) 9236 5000</p>
National Contacts	<p>Australian Chamber of Commerce and Industry (ACCI) Website: www.acci.asn.au Telephone: (02) 6273 2311 (Canberra) or (03) 9668 9950 (Melbourne)</p> <p>Australian Council of Trade Unions (ACTU)</p>

Work Health and Safety	Websites
	<p>Website: www.actu.asn.au/ Telephone: 1300 362 223</p> <p>Australian Industry Group Website: www.aigroup.com.au</p> <p>Australian Manufacturing Workers Union (AMWU) Website: www.amwu.org.au Email: info@amwu.asn.au Telephone: (02) 9897 9133</p> <p>Australian Nursing Federation (ANF) Website: www.anf.org.au Email: anfcanberra@anf.org.au Telephone: (02) 6232 6533</p> <p>Australian Institute of Occupational Hygienists Website: www.aioh.org.au</p> <p>Construction Forestry Mining and Energy Union Website: www.cfmeu.net.au Email: queries@fed.cfmeu.asn.au Telephone: (02) 8524 5850</p> <p>Construction Safety Managers & Officers Association Website: www.constructionsafety.com.au Email: csmoa@bultin.com.au</p> <p>CraneSafe - Crane Industry Council of Australia Website: www.cranesafe.com.au Email: admin@cranesafe.com.au</p> <p>FarmSafe Australia Website: www.farmsafe.org.au Email: info@farmsafe.org.au Telephone: (02) 6752 8218</p> <p>Housing Industry Association Website: http://hia.com.au Email: enquiry@hia.com.au Telephone: (02) 6245 1300</p>

Work Health and Safety	Websites
	<p>Human Factors and Ergonomics Society of Australia Inc. (HFESA) Website: www.ergonomics.org.au Email: secretariat@ergonomics.org.au Telephone: (02) 9680 9026</p> <p>Licensing Line News Website: www.licensinglinenews.com.au Telephone: (07) 3247 5505</p> <p>Master Builders Association (MBA) Website: www.masterbuilders.com.au Telephone: (02) 6202 8888</p> <p>Minerals Industry Risk Management Gateway (MIRMGate) Website: www.mirmgate.com Email: enquiries@mirmgate.com Telephone: (07) 3346 4081</p> <p>National Industrial Chemicals Notification and Assessment Scheme (NICNAS) Website: www.nicnas.gov.au Email: info@nicnas.gov.au Telephone: 1800 638 528 or (02) 8577 8800</p> <p>National Safety Council of Australia (NSCA) Website: www.nasca.org.au Telephone: 1800 655 510</p> <p>Safety Institute of Australia (SIA) Website: www.sia.org.au Telephone: 1800 808 380 or (03) 8336 1993</p> <p>Standards Australia Website: www.standards.org.au Email: mail@standards.org.au Telephone: 1800 035 822</p> <p>The Royal Australian Chemical Institute Inc. (RACI) Website: www.raci.org.au Email: member@raci.org.au Telephone: (03) 9328 2033</p>

Work Health and Safety	Websites
	<p>Working Women’s Centres (NT, SA, QLD) Website: www.wwc.org.au</p>
Australian Capital Territory	<p>WorkSafe ACT Website: www.worksafe.act.gov.au Email: worksafe@act.gov.au Telephone: (02) 6207 3000</p>
New South Wales	<p>WorkCover NSW Website: www.workcover.nsw.gov.au Telephone: 13 10 50</p>
Northern Territory	<p>NT WorkSafe Website: www.worksafe.nt.gov.au Email: ntworksafe@nt.gov.au Telephone: 1800 019 115</p>
Queensland	<p>Workplace Health and Safety Queensland, Office of Fair and Safe Work Queensland, Department of Justice and Attorney-General Website: www.worksafe.qld.gov.au Telephone: 1300 369 915 or (07) 3225 2000</p> <p>WorkCover QLD Website: www.workcoverqld.com.au Email: info@workcoverqld.com.au Telephone: 1300 362 128</p>
South Australia	<p>SafeWork SA Website: www.safework.sa.gov.au Telephone: 1300 365 255</p> <p>WorkCover SA Website: www.workcover.com Telephone: 13 18 55</p>
Tasmania	<p>Workplace Standards Tasmania Website: www.wst.tas.gov.au</p>

Work Health and Safety	Websites
	<p>Telephone: 1300 366 322 (inside Tasmania) or (03) 6233 7657 (outside Tasmania)</p> <p>WorkCover Tasmania Website: www.workcover.tas.gov.au Email: wstinfo@justice.tas.gov.au Telephone: 1300 366 322 (inside Tasmania) or (03) 6233 7657 (outside Tasmania)</p>
Victoria	<p>WorkSafe Victoria Website: www.worksafe.vic.gov.au Email: info@worksafe.vic.gov.au Telephone: 1800 136 or (03) 9641 1444</p>
Western Australia	<p>WorkSafe WA Website: www.worksafe.wa.gov.au Telephone: 1300 307 877 Part of the WA Department of Commerce</p> <p>WorkCover WA Website: www.workcover.wa.gov.au Telephone: 1300 794 744</p>

URL Address:

<http://www.safeworkaustralia.gov.au/AboutSafeWorkAustralia/WhoWeWorkWith/StateAndTerritoryAuthorities/Pages/StateAndTerritoryAuthorities.aspx> Access Date: 20.01.13

As a worker within or endeavouring to enter the work health and safety field, it is essential that you are familiar with workplace health and safety legislation. It is also important that you familiarise with the legislation that impacts on the field in which you operate. For example, if you work in the mining industry, you should also take the time to ensure that you are familiar with the work health and safety legislation within your state/territory that will assist you in solving problems as per your position and duty of care.

It is also important that you are aware of legislation that can impact on the decisions that you make within the workplace.

Legislation may include:

Type of legislation	Brief description	URL Addresses
Common law	<p>The state and federal laws of Australia makes up the common law of Australia. Judges play an important role in common law and covers areas that parliament has never considered and has not passed legislation from.</p> <p>Courts make laws in two ways which include:</p> <p>Through statutes and</p> <p>Through decisions</p> <p>These decisions are part of the body that makes common law.</p>	<p>http://h2g2.com/dna/h2g2/A2498402</p> <p>Access Date: 19.01.13</p> <p>Common Law in Australia</p>
Contract law	<p>A promise or a set of a promise between one or more parties is a contract. In Australia, for a contract to be binding, there must be:</p> <ol style="list-style-type: none">1) Offer and acceptance (a promise for a promise)2) Intention to create legal relations3) Legal Capacity, such as parties must be of legal age, capable to make a legal contract and not incapacitated by anything such as alcohol, that impedes their ability to make a legally binding decision)4) Consideration (the exchange of one thing for	<p>http://www.australiancontractlaw.com/law.html</p> <p>Access Date: 19.01.13</p> <p>Australian Contract Law</p>

Type of legislation	Brief description	URL Addresses
	<p>another)</p> <p>5) Formalities (There are no rules in place for formalities. There just has to be an agreement, except in areas such as complying with legislative requirements)</p> <p>To learn more about Contract Law, refer to the URL Address provided.</p>	
Criminal law	<p>A crime is a breach of the law and may vary according to the level of the offense. For example, a driver chooses not to wear a seat belt and they are fined and lose points on their licence if they are driving. However, when the failure to wear seat belts is denied, then third parties are harmed, yet failure to wear a seat belt could hardly be categorised to cause injury, as there is no guarantee that the injury will occur.</p> <p>To read more about criminal law, refer to the URL Address and right click on the PDFs.</p>	<p>https://www.irwinlaw.com/store/product/425/criminal-laws-in-australia Access Date: 19.01.13</p> <p>Criminal Law in Australia</p>
Dangerous goods	<p>Dangerous goods relates to substances that have the potential to harm people, property and the environment. They may include:</p> <ul style="list-style-type: none"> ➤ Corrosives ➤ Explosives 	<p><i>Guidance on the classification of hazardous chemical under WHS Regulations</i></p> <p><i>Implementation of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) April 2012</i></p>

Type of legislation	Brief description	URL Addresses
	<ul style="list-style-type: none"> ➤ Flammables ➤ Oxidising (feeds fires so they burn more fiercely) ➤ Spontaneously combustible (bursts into flames when lit) ➤ Toxic (poisonous); and ➤ Water reactive (produce flammable or toxic gases if mixed in water) <p>Dangerous goods can include petroleum, chemicals and fertiliser. The current documents that form the national consistent regulatory approach to dangerous goods includes the National Standards and State/Territory codes of practice including their guidance material for hazardous substances and dangerous goods.</p>	<p><i>Codes of practice</i></p> <p><i>Labelling of Workplace Hazardous Chemicals</i></p> <p><i>Managing Risks of Hazardous Chemicals</i></p> <p><i>How to Manage Work Health and Safety Risks</i></p>
Environmental protection	<p>The Commonwealth body for Environmental Protection in Australia is the Department of Sustainability, Environment, water, population and communities which covers the compliance and enforcement of breaches of environmental legislation.</p> <p>The aim of the department is to implement Australian Government policies aimed at protecting Australian heritage and the environment.</p> <p>Each State and Territory in Australia has its own Environmental Protection Agency (EPA). To find the State and Territory heritage organisations refer to the URL</p>	<p>http://www.environment.gov.au/index.html</p> <p>Department of Sustainability, Environment, Water, Population and Communities</p> <p>http://www.environment.gov.au/heritage/organisations/state/index.html</p> <p>State and Territory Heritage Organisations</p>

Type of legislation	Brief description	URL Addresses
	<p>Address provided in the next column.</p> <p>New codes of practice for this department include:</p> <ul style="list-style-type: none"> ➤ Managing noise and preventing hearing loss at work ➤ How to manage and control asbestos in the workplace ➤ How to safely remove asbestos. ➤ Managing the work environment and facilities. 	
Equal opportunity and anti-discrimination law	<p>All personnel must be treated equally, no matter their race, colour, national or ethnic origins, sex, pregnancy or marital status; age; disability; religion; sexual preference; trade union activities.</p> <p>Anti-discrimination law aims to ensure that personnel and organisations act to ensure that all staff are given an equal opportunity in the workplace.</p> <p>The Commonwealth and State and Territory laws generally cover the same areas of discrimination. There is a gap between each State and Territory and Commonwealth law</p>	<p>http://www.hreoc.gov.au/info_for_employers/law/index.html</p> <p>The Australian Human Rights Commission. Right click the appropriate online information for your State or Territory</p>
Industrial relations law	<p>The Australian Industrial Relations Office, is now called Fair Work Australia is the national body that has the power to carry out a range of functions relating to:</p> <ul style="list-style-type: none"> ➤ Enterprise bargaining 	<p>http://www.dfat.gov.au/facts/workplace_relations.html</p> <p>Department of Foreign Affairs (Australia). For Industrial Relations laws in each State/Territory move to the</p>

Type of legislation	Brief description	URL Addresses
	<ul style="list-style-type: none"> ➤ Industrial action ➤ Dispute resolution ➤ Termination of employment <p>From 1 January, 2010 the National Employment Standards came under the umbrella of Fair Work Australia as part of the modernisation of national awards and the application of a national minimum wage order. Refer to the Fair Work Australian website to find out more about the changes to industrial relations in Australia.</p>	<p>bottom of this page.</p> <p>http://www.fwa.gov.au/</p> <p>Fair Work Australia</p>
Privacy	<p>The Privacy Act 1988 relates to the regulation of information privacy. Privacy laws relate to a set of principles including:</p> <ul style="list-style-type: none"> ➤ How private information should be collected ➤ Storage and security of personal information ➤ Storage of information kept by a record-keeper ➤ How information can be accessed; and ➤ How information can be altered. ➤ How personal information can be used ➤ Limits on the disclosure of personal information. <p>For more information on the Information Privacy Principles refer to the URL address in the next column.</p>	<p>http://www.privacy.gov.au/materials/types/infosheets/view/6541#c</p> <p>Privacy Laws</p>

Type of legislation	Brief description	URL Addresses
Workers compensation	<p>As an employee and you are injured, you have a right to make a claim for workers compensation. As a representative for your employer, you have a legal obligation to report an injury in the workplace to the WorkCover/WorkSafe Authority in your State or Territory. Workers Compensation is an insurance paid by your employer to ensure that you are covered in the case of an injury in the workplace.</p> <p>Safe Work Australia is working to include worker's compensation as part of the harmonisation arrangements between Australian States and Territories. To find out more about Worker's compensation in your jurisdiction refer to the URL Address in the next column.</p>	<p>http://safeworkaustralia.gov.au/WorkersCompensation/Authorities/Pages/Authorities.aspx</p> <p>Commonwealth, State and Territory Contacts</p>
Trade Practices	<p>From 1 January, 2011, the Trade Practices Act was renamed the Competition and Consumer Protection Act. The Act is administered for by the Australian Competition and Consumer Commission.</p>	<p>http://www.accc.gov.au/content/index.phtml/itemId/656442</p> <p>Access Date: 22 November, 2012</p>

As part of the Consultation process, as per the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice, your employer is required to share information with its employees. Part of this means that work health and safety information needs to be available to work group members including:

- Policies and Procedure updates
- Changes to WHS legislation and how it will impact on their job role
- Training needs and training being offered
- Issues relevant to the workplace.



Some information is not readily accessible. At times you may need to research information.

For the purposes of this Learner Guide, remember that when you are required to access information, you should obtain permission to access the information. Permission may include:

- **Obtaining permission to access information from another department or worksite**

Check the organisations' organisational chart to identify the correct member of staff with the appropriate level of authority to authorise access to specific information. Make sure that you follow the correct reporting procedures.

- **Obtaining permission to access personal information from another worker**

Under the WHS Act (Bill) 2011, you will find that when you wish to obtain access to the personal information of another work group member from your area or another area, you should obtain permission (preferably in writing) to access their information. If you are unable to obtain permission to use their information, make sure that any information used is not identifiable and cannot lead back to the work group member.

- **Completing appropriate paperwork for access to computer files**

It is important to make sure that you find out whether you are required to complete a form to obtain access to specific files. As part of the security of the workplace, authorisation is required to access files in another department through the intranet or the extranet. The department supervisor may be required to email technical support or they may be required to send a form to them.

The experiences learnt at one work site or in one area can be transferred to another worksite by drawing on the records from the department to reflect on their ideas. These ideas may assist your work group in identifying other ways in which to resolve an issue.

1.2 - Use knowledge of the relationship between WHS Acts, regulations, codes of practice, standards and guidance material to assist with determining legal requirements in the workplace

The WHS Act and Regulations are a requirement of law. You may be fined, sued or jail for breach of that law. A Code of Practice, conversely is not a legal tool, but can be used to demonstrate that an organisation followed their legal requirements. These codes of practice in turn are used by your employer to develop policies and procedures to ensure that they follow their legal obligation of maintaining a safe workplace.



The National Compliance and Enforcement Policy (2011) sets out to ensure that Commonwealth, State and Territory bodies will work to the harmonisation of work (formerly occupational) health and safety laws. This means that the WHS Laws, WHS Regulations, Codes of practice and Standards all aim to ensure that WHS is consistent throughout Australia.

This does not mean that the Commonwealth Government Regulates the WHS Act and Regulations. It means each State/Territory body will act as a regulator to ensure that WHS Law are consistent. The aim of this consistency is to minimise the confusion that existed prior to the implementation of the laws in each State and/or Territory before 1 January, 2012. Before this date, if you moved between State and or Territory jurisdictions, the WHS laws changed leading to confusion and angst.

Regulators need to work together to monitor the motivators, compliance and any actions that would impede the implementation of the law, regulations, codes of practice and standards. When you consider an Act, it is important to ensure that you understand that what is in the Act is legislative and you can be fined or jailed for not meeting your legal obligations under the Act. One of the reasons for a harmonised approach to WHS is the need to consolidate compliance and minimise confusion or duplication of the law.

Regulatory compliance aims to ensure that organisations and public bodies are aware of the law and take steps to follow them. Regulations are considered to be subordinate legislation that is made by an act of parliament. Organisations make policies based on these regulations. Codes of practice, guidance notes and Standards are some of the tools that your organisation can use to develop policy and procedure within the organisation. In short, they assist organisations in developing the tools to meet their requirements under the law.

In the following section, we will discuss the WHS legislation, regulation, COPs and Standards that will impact on your workplace. This does not preclude you from following your roles and responsibilities as a workgroup member working in a specific environment.

WHS Act 2011

The Objective of this WHS Act 2011 is to provide a nationally consistent and balanced framework aiming to ensure that the health and safety of workers is maintained at all times by:

- Protecting others against harm by eliminating or minimising risks arising from work or substances or plant;
- Ensuring that workers are provided with effective and fair workplace representation through consultation, cooperation and issue resolution
- Encouraging, everyone including unions and employer organisations to take a constructive roles in promoting improvements and assisting workers and persons conducting businesses or undertakings to obtain a healthier workplace
- Promoting the provision for training, advice, education and information in work health and safety
- That appropriate monitoring and corrective action is taken by personnel exercising their powers and performing functions under the Act
- Provide a framework of continuous improvement; and
- Strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety under the Act.

The aim of the WHS Act is to ensure that the highest level of protection is given to workers in the work place. (Section 3)

WHS Regulations

WHS Regulations provides employers with the steps to develop their work health and safety policies and procedures under the Act. They are a legislative requirement. Failure to follow a regulation is a breach of legislative requirements and you may be fined or jailed if found guilty of breaching them.

WHS Regulations in the majority are implemented on 1 January 2012. However as they are transitional; Sections of the Regulations will not apply until a later date. To find out more about the duties that are not imposed on persons in particular refer to Chapter 12.

Code of Practice

Under WHS Act and Work Health and Safety Regulations (the WHS Regulations), an approved code of practice is a practical guide to achieving the standards



required. A COP applies to anyone who has a duty of care as in relation to the circumstances related in the code.

The aim of a code of practice is to ensure that industry both commercial and public is compliant. Even though a code of practice does not cover all hazards and risks in your workplace, you are still expected to consider all workplace risks.

So why comply with a COP?

A COP aims to demonstrate to the Courts that your organisation is compliant with WHS Act and Regulations. The evidence gathered by the organisation can be used to show what is known about a hazard, risk or control and could rely on the code in determining what is *reasonably practicable* in the circumstances to which the code relates.

Note that organisations do not need to follow the code of practice. However, they are required to use another method, such as technical or an industry standard, if it provides the same or a higher level of work practices than the code of practice demonstrates.

Your organisation may also demonstrate their compliance with the WHS Act and Regulations through the use of industry or technical standards, as long as the organisation demonstrates that the technical or industry standard is equal to or better than the code of practice.

There are many standards that you can measure your compliance to WHS against. The aim of standards is to ensure that products, services and systems are safely guided by procedures and specifications. Tasks need to be performed reliably and safely, while aiming to ensure that safety and quality standards are maintained.

Current codes of practice include:

- Confined spaces
- Hazardous Manual Tasks
- How to Safely Remove Asbestos
- How to Manage and Control Asbestos in the Workplace
- Labelling of Workplace Hazardous Chemicals
- Managing Noise and Preventing Hearing Loss at Work
- Managing the risk of falls at workplaces
- Managing the Work Environment and Facilities
- Preparation of Safety Data Sheets for Hazardous Chemicals
- Work Health and Safety Consultation, Cooperation and Coordination.



New codes of practice introduced from July. 2012 include:

- Abrasive Blasting
- Construction Work
- Demolition Work
- First Aid in the Workplace
- Managing electrical risks at the workplace
- Managing risks of hazardous chemicals in the workplace
- Managing risks of plant in the workplace
- Preventing falls in housing construction
- Safe design of structures
- Spray painting powder coating
- Welding work

To have a legal effect in your jurisdiction, consult with the regulators in your State/Territory. These codes of practice can be downloaded from Work Safe Australia at URL Address:

<http://www.safeworkaustralia.gov.au/sites/swa/legislation/model-cop/pages/model-cop.aspx>. Access Date: 18.11.2012.

Expect two more codes of practice to be introduced in the early part of 2013 and these are:

- Preventing and Managing Fatigue in the Workplace; and
- Responding to Workplace Bullying.

Be aware that there is also legislation, standards and codes of practice that may relate to your industry. Industry information can be found at the Safe Work Australia Website at URL Address:

<http://www.safeworkaustralia.gov.au/sites/swa/industryinformation/pages/industryinformation.aspx>. Access Date: 18.11.2012

These WHS standards aim to guide organisations and may include:

Australian standards

To be able to compete in a globalised market, organisations need to develop and maintain the safety of their products, while addressing environmental, social and technological issues. Standards Australia¹ writes that there are seven benefits to having standards and they are that they:

- Protect Australia in ensuring that expected standards are met consistently
- Support Australian innovation by acting as a platform for new ideas.
- Boost Australian production and productivity by saving money for business by helping to ensure that production costs are cut.
- Stimulate business competition by giving business a competitive edge over those that do not meet expected standards
- Link Australia to the world through ensuring that Australian standards are equivalent to International Standards
- Complement Australian regulation and make markets work better by being formed based on the laws of the land. They protect Australia against terrorism and help to ensure that Australian laws are consistent throughout Australia.
- Reward participants that work on the Australian Standards by increasing their knowledge, networks, professional development and competitive advantages.



At the same time, Australian Standards assist in making Australia a safer place.

Exposure standards²

Exposure standards aim to ensure that individual exposure to chemicals in the workplace are kept at a minimum so that workers are not impaired or in any discomfort on the job.

Guidance notes

If you ever require any help with legislation, regulations, standards and codes of practice, you should read the guidance notes relating to the topic. For a list of guidance notes for your State or Territory go

¹ <http://www.standards.org.au/DevelopingStandards/BenefitsofStandards.aspx>

²

<http://safeworkaustralia.gov.au/SafetyInYourWorkplace/HazardousSubstancesAndDangerousGoods/RegulatoryPackage/Pages/ExposureStandards.aspx>

to URL Address:

http://www.commerce.wa.gov.au/WorkSafe/Content/About_Us/Legislation/Guidance_notes.html

Access Date: 19.01.13

Industry standards

Industry standards provide your industry with information pertaining to their conduct, performance and actions to ensure that industry is consistent. Industry standards are usually performance based and in alignment with internationally adopted standards



International standards³

The International Standard Organisation (ISO) is a global organisation that develops standards upon which processes and procedures are developed so that industry has a chance to ensure consensus arises from not only industry, but all of its stakeholders. ISO is also a bridge between the public and private sectors and takes into consideration the needs of society.

Standards ensure that product and service characteristics such as safety, quality and reliability aimed at meeting the expectations of the buyer. To read more about ISO standards, refer to URL Address:

<http://www.iso.org/iso/home.htm> Access Date: 19.01.13

National standards developed by Safe Work Australia

SafeWork Australia is the national standards for WHS. Compliance including for new Legislation, regulations that are supported by

- Approved codes of practice; and
- Guidance Material

These national standards are regulated by State/Territory Authorities.

Regulations and standards developed by WHS regulators

These national standards in turn operate to ensure that the Commonwealth, each State and Territory within Australia works together to ensuring that WHS laws are reflected in their Regulations and Codes of Practice. The regulators outlined in the above table are responsible for ensuring the development of their own WHS laws, but now are harmonised to ensure that no confusion appears within the new WHS Act and its Regulations.

³ <http://www.iso.org/iso/home.htm>

Guidelines

If you ever require any help with legislation, regulations, standards and codes of practice, you should read the guidance notes relating to the topic. For a list of guidance notes for your State or Territory go to URL Address:

http://www.commerce.wa.gov.au20/WorkSafe/Content/About_Us/Legislation/Guidance_notes.html

Access Date: 18.11.2012

1.3 - Assist with identifying and confirming the duties, rights and obligations of individuals and parties as specified in legislation

Your job description and your employers associated work health and safety policies and procedures will provide you with a firm grasp of your responsibilities and actions under the WHS Act. If you are not sure of where to find this information, ask a member of your workgroup or your supervisor.

When you are not sure about the changes to the Legislation and Regulations, refer to your State/Territory Regulators (see Section 1.1 of this Learner Guide). To obtain a clear idea of the responsibilities and actions of your employer, refer to the following section of this Learner Guide for the list and appropriate sections of the Act.

Personnel that have duties, rights and obligations that they have a legal obligation to perform under WHS legislation relate to the following personnel, including:

➤ Employees

Section 28 of the WHS Act requires that workers take care of their own health and safety and ensure that they

- do not make any omissions that affect others health and
- they must comply as far as reasonably practicable to their employer's instructions and cooperate with any policy and procedure that they have been notified about.

One of the responsibilities an employee has is to report a notifiable incident (Section 35) about incidents regards the death, serious injury or illness of a worker and a dangerous incident. Once the employer becomes aware of the incident, they must ensure that the regulator is notified immediately (**Section 38**).

➤ Employers

As far as reasonably practicable, employers must ensure that their workers and the activities that they perform are influenced and directed by the person conducting a



business or undertaking while the workers are working. This means that the health and safety of others:

- Are not put at risk from work carried out
- Are protected by a work environment without risks to others health and safety by ensuring:
 - That plant and structures are maintained;
 - That a safe system of work is maintained;
 - That plant, structures and substances are handled, stored and transported safely;
 - That adequate facilities for the welfare of others is easily accessible and appropriate for the workplace;
 - That provisions for conducting business are made by providing information, training, instruction or supervision to protect others from risk; and
 - That workers health and safety is monitored in the workplace.
- By maintaining premises that workers are required to occupy as part of their job and ensuring that others are not exposed to risk. **(Section 19)**

➤ **Self-employed persons**

Under Section 19 (5) of the WHS Act, a self-employed person is a person conducting a business or undertaking must also ensure that they attend to their own health and safety as reasonably practicable.

➤ **Persons in control of workplaces**

- Persons conducting a business or undertaking are required
 - to maintain control of the workplace, except in the case of a prescribed person or the occupier of a residence for conduct of business,
 - to provide the ability to enter and leave a workplace as far as reasonably practicable for



the purpose of ensuring the health and safety of others. **(Section 20)**

- In a similar nature, fixtures, fittings and plant so far as practicable must ensure that they are without risks to the health and safety of any person.

Designers, manufacturers, importers, suppliers of plant and substances

The designer **(Section 22)**, the manufacturer **(Section 23)**, the importer **(Section 24)** and the suppliers of plant **(Section 25)** must ensure:

- That plant, substance and structure are used or could reasonably be expected to be used, in the workplace; and
- That as far as practicable:
 - Handle, store and construct the plant or substances at a workplace; or
 - Assemble or use such for which it was designed or proper storage, decommissioning, dismantling or disposal of; or
 - For which the use of the substance and assembly or use of the structure; it was designed or manufactured, demolition or disposal of (in case of the plant) and proper handling, storage or disposal (in case of the substance); or
 - Those in the vicinity or who are exposed to the plant, substance or structure at the workplace and whose health and safety may be exposed.

The substance or plant must be:

- Tested, analysed, calculated or examined as for the performance of the above
- Supplied with sufficient information for its purpose and the results of testing, analysing, calculating it or examining any hazardous properties of the substance identified by testing; and
- The conditions ensured that it is without risks to health and safety when used for the purpose for which it was designed; and
- This information must remain current. **(Section 26)**

➤ **Erectors and installers of certain plant**

The person who conducts a business or undertaking that installs, constructs or commissions plant or a structure:

- For the purpose it is to be used;
- That the plant or structure is without risk to the installer, the constructor or the person/s using the plant or structure;
- That those who use it; use it properly, decommissioning or dismantling of the plant or disposal or demolition of the structure; and
- To ensure that anyone in the vicinity is not put at risk or exposed to the risk.



➤ **Employees and Contractors**

Under **Section 7** of the WHS Act, a contractor is now considered to be a contractor or subcontractor when they carry out work in any capacity for a person conducting a business or undertaking.

Workers must:

- Take care of their own health and safety,
- Ensure that they do not make errors that place others at risk; and
- Comply to reasonable instruction allowing them to comply with the Act; and
- Must cooperate to reasonable policy and procedures to ensure health and safety in the workplace. **(Section 29)**

➤ **WHS committees**

The Health and Safety Committee must be established within two months after being requested to do so by:



1. A health and safety representative for a work group of workers carrying out work in the workplace; or
2. Five or more workers employed in the workplace; or
3. If required by regulation, in the time stated by regulation (**Section 75**); or
4. Any one conducting a business introducing a committee based on their own initiative.

Health and Safety representatives and committee members should:

- Become familiar with the Work Health and Safety Act 2011.
- Work Health and Safety Regulation 2011 (the Regulation). As yet, there is no Work Health and Safety Code of Practice for Committees
- Consider whether an WHS Committee is the most appropriate consultation arrangement for health and safety matters in your workplace
- Determine the composition of the WHS Committee, ensure that different workgroups are adequately represented
- Consult and educate managers and employees to let them know the WHS Committee's purpose, start date and their role in supporting the Committee
- It is beneficial to consider inviting sub-contractors and their employees to observe Committee meetings, particularly when common WHS issues arise.
- Committee members should be allowed to invite a delegate from a trade union or employer association to a Committee meeting. The delegate may address the meeting if the Chairperson agrees.
- There are no formal qualifications required of Committee members, however the following characteristics would be beneficial in Committee representatives:
 - Ability to effectively represent members of the workgroup
 - Ability to see other viewpoints
 - Commitment to improving the management of WHS
 - Communication skills
- Explain to employees what is involved in being on an HS Committee and what



training will be provided if they are elected or appointed

Constitution of Committee

- When there are two or more representatives in the workplace, they may choose one (1) or more of their number to act as a committee member. (However, the person/s need to consent to be members of the committee)
- Half the committee members must be workers not nominated by a person by a person conducting the business or undertaking.
- If agreement is not made within a reasonable time, the regulator shall appoint an inspector to decide the matter.
- An inspector can decide the constitution of the HS Committee or that committee will not be established. Any decision made by the inspector is taken as an agreement between parties (Section 76)

Functions of committee

- To cooperate between the person conducting a business or undertaking and workers in instigating, developing and actioning measures to ensure worker safety in the workplace
- To develop rules, standards and procedures relating to health and safety that are to be complied with; and
- Any functions prescribed by regulation or agreed between person conducting the business or undertaking (**Section 77**)

Meetings of committee

- Must be run at least once every three months and at the request of at least half of the committee members (**Section 78**)

Employer's duties to committee members

- To allow committee members; a reasonable time to attend meetings
- To pay committee members
- To allow committee members access to information relating to persons on hazards and other risk information pertaining to the health and safety of workers at the work place, except in



the case of personal information without the worker's consent.

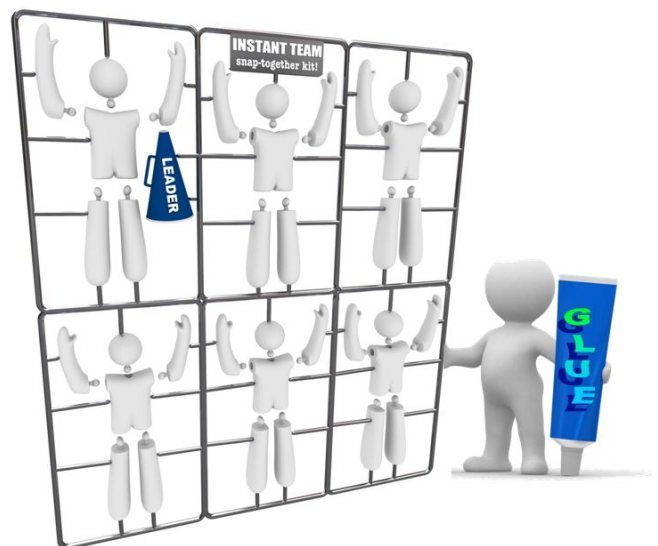
- Where consent is not given, the information may be provided in a form where:
- The worker's identity is not clear; and
- You could not be expected to lead to the identification of the worker

When managing health and safety risks, managers need to be aware of and understand the importance of communicating with all staff any applicable processes and procedures that are required, that are going to ensure everyone is safe in the workplace, and that require follow up.

There should be an appointment of Health and Safety Representatives within an organisation that can also monitor and report back any findings and act as the point of liaison between management, staff, HS Committee members and themselves.

➤ **HS representatives**

A WHS representative is elected when they are a member of the workgroup; and not eligible if they have been disqualified (**Section 60**) by the Magistrates Courts if they performed an act for an improper purpose; or disclosed information that they should not have provided outside their role health and safety representative (**Section 65**). When performing their duties, health and safety representatives are not personally liable for anything done or left out when performing their task and acted in the belief that they performed their tasks as per the Act (**Section 66**).



The responsibility of the health and safety representatives includes:

- Represent workers in the work group in matters relating to work health and safety;
- Monitor the process in place to ensure that compliance occurs in relation to the workers of the group
- To investigate the complaints of the members of their workgroup; and

- To ask if there are any risks to the health and safety of workers arising from the conduct and actions of the business.

To perform these tasks, HS representatives may need to:

- Inspect the workplace at any time after giving reasonable notice and without notice in the event of any incident or situation that places members of the workgroup at risk
- Attend an inspector during an inspection at which they work; including be:
 - Present during an interview between a worker and an inspector; or
 - The person conducting the business or undertaking
- With the consent of one of more workers that the health and safety represents, be present at an interview concerning work health and safety between the groups of workers including the workers who gave their consent (**Section 68**).

The health and safety representative cannot however, access any personal or medical information without identifying the worker and could not be reasonable expected to lead to the identification of the worker.

1.4 - Assist with seeking advice from legal advisors where necessary

Organisations, depending on their industry, size and the technical requirements may resort to employing or contracting internal or external practitioners. It is always important to make sure that you interpret your legal responsibilities under the law. For instance, at the time that this Learner Guide was written, it was current. However; with the harmonisation of work health and safety and the transitional period of one year in some cases of work health and safety legislation, it is important to note that legislation and codes of practice will be continuously updated.

At the same time, some of the States/Territory has clearly stated that they have not been able to meet the 1 January, 2012 timeline for the implementation of the required aspects of the new work health and safety system.

Refer to your State/Territory Regulators to determine when WHS Act and Regulations are or will be introduced to your State/Territory.

There is also a keep up to date with changes to SafeWork section. You can obtain continuous updates of changes as they occur and the impact the changes will have to work health and safety.

Legal practitioners, either internal or external

It is often preferable that you consult internal professionals about health and safety issues. External bodies or personnel may charge high fees that you may not have the level of authority to consult with. These legal advisors may include:

- **WHS professional bodies** can give you industry advice regarding a specific industry. When your workplace does not have staff with the correct skills and knowledge, WHS professional bodies will be able to provide you with names of external consultants who can provide you with:

- Safe systems of work and their improvement
- Identifying, eliminating and controlling hazards
- Taking samples or measurements of workplace environments such as whether the workplace has a high level of air borne contaminants.

The type and source of advice will be determined by your needs and the need to ensure that you met your legal obligations under the WHS Act.

- **WHS specialists** may found from specific Societies within a specific industry. Some of these societies include:

- Human Factors and Ergonomics Society of Australia for Ergonomist Specialists
 - <http://www.ergonomics.org.au/membership/cpe/cpes-ohs-specialists.aspx>
- Toxicology in Australia for Toxicologist Specialists
 - http://healthengine.com.au/search_interest.php?q=Toxicology
- Audiological Society of Australia for Audiologists
 - <http://www.audiology.asn.au/>

- **Regulatory authorities (for codes of practice, legislation)** Regulation in Australia is developed by government bodies. A list of regulatory bodies in Australia include:

- Australian Bureau of Statistics
<http://www.abs.gov.au>



- Australian Competition and Consumer Commission
<http://www.accc.gov.au/>
- Australian Industrial Relations Commission
<http://www.airc.gov.au/>
- Australia New Zealand Food Authority
<http://www.foodstandards.gov.au/>
- Australian Pesticides & Veterinary Medicines Authority
<http://www.apvma.gov.au/>
- Australian Securities & Investment Commission
<http://www.asic.gov.au>
- Australian Taxation Office
<http://www.ato.gov.au/>
- Australian Workplace
<http://www.workplace.gov.au/>
- Competitions & Markets Advisory Committee
<http://www.camac.gov.au/>
- Consumer & Employment Protection, Governments of Western Australia
<http://www.safetyline.wa.gov.au.>
- Department of Employment & Workplace Relations
<http://www.dewrsb.gov.au/>
- Department of Treasury
<http://www.treasury.gov.au/home.asp?ContentID=521>
- Insolvency & Trustee Service Australia
<http://www.itsa.gov.au/>
- Legislative Assembly for the ACT
<http://www.legassembly.act.gov.au/>
- National Industrial Chemicals Notification and Assessment Scheme
<http://www.nicnas.gov.au>
- Ombudsman
<http://www.comb.gov.au>
- Productivity Commission
<http://www.pc.gov.au>

- Reserve Bank of Australia
<http://www.rba.gov.au>
- Superannuation Complaints Tribunal
<http://www.sct.gov.au>
- The Takeovers Panel
<http://www.takeovers.gov.au>
- Safe Work Australia
www.safeworkaustralia.com.au
- Workplace Health & Safety, Queensland Government
<http://www.whs.qld.gov.au>
- Workplace Standards Tasmania
<http://www.wst.tas.gov.au>

The strategic role of regulation is increasing due to the effects of globalisation and technological development. Regulation may be local, national, international and global and regulation is important to public policy. Each State/Territory has a regulatory body that has a large impact on people, organisations and the environment.

- **Unions** such as the Australian Council of Trade Unions (<http://www.actu.org.au/Campaigns/HealthSafety/default.aspx>) Date 19.01.13 see the implementation of the new WHS laws as a chance to achieve the best standards in health and safety for the country. Trade unions played a large role in the development of WHS laws in place today and will assist in ensuring that standards are maintained. A list of unions that may be able to assist you can be found at the Unions Australia website at URL Address: <http://www.unionsaustralia.com.au/unions.aspx> Access Date 19.01.13
- **Employer groups** represent a specific industry or type of business. The members of the employer group usually work with other businesses to build competition to stimulate growth in Australia. Employer groups will ensure that their members are up to date with industry trends and will assist members in operating their business (industry) more effectively. Employer groups make sure that all employers have an opportunity to represent and promote their interests in the current and future markets.
- **Industry bodies** work with the government in the development of vocational education and training at both State/Territory and National Levels. The aim of industry



bodies is to use experts who can assist on training needs and delivery to specific industries.

The five main industry bodies in Australia include:

- Australian Chamber of Commerce and Industry (ACCI)
<http://www.acci.asn.au/>
- Australian Council of Trade Unions (ACTU)a
<http://actu.asn.au/>
- Australian Industry Group
<http://www.aigroup.asn.au/>
- Australian Institute of Training and Development
<http://www.aitd.com.au/>
- Business Council of Australia
<http://www.bca.com.au>

Government HS inspectors

Regulators have the power to appoint an inspector (**Section 156**). Some of the ways in which an inspector may be appointed is through:

➤ **Referral of issue to regulator for resolution by inspector (Section 82)**

When an issue is not resolved in regards to the effective resolution of an issue within an organisation, both or either a worker or health inspector may request that the regulator appoint an inspector to inspect the work area when they feel that:

- 1) The worker feels that they are at risk in the workplace and believe that they are exposed to a hazard in their work area or close to the area in which they work (**Section 84**)
- 2) The health and safety representative may direct a worker or work group to cease work if they are at risk only after consulting with the employer or their representative when an issue is not resolved as part of issue resolution issues including:



- When an issue is not resolved in a timely manner that is effective and
- No agreed resolution can be found in either procedure or via WHS Regulations (**Section 81**)

➤ **Request to regulator to appoint inspector to assist (Section 89)**

An inspector can be appointed upon the request of the person conducting the business or undertaking to resolve issues relating to the cessation of work. When no resolution can be found in either workplace procedure or the regulations, then an inspector can be requested.

➤ **Application for assistance of inspector to resolve dispute (Section 141)**

The assistance of an inspector can also be requested when a dispute arises that cannot be resolved in regards to a WHS entry permit-holder and the person conducting a business or undertaking.

The Regulator may resolve the dispute in any way it sees fit including

- Mediation - is when a third person mediates and guides a discussion between two parties in conflict so that a WHS problem can be resolved.
- Conciliation – is another form of problem solving for disputes where a conciliator meets separately with both parties to resolve their differences when mediation does not work.
- Arbitration is a technique for resolution of disputes outside the courts, where parties to the dispute that is resolved through the participation of an arbitrator such as an Inspector delegated by the State/Territory Regulator. Arbitrators and inspectors can impose legally binding decisions for both sides that is enforceable.



The Regulator may use its own initiative to resolve the dispute; or they may deal with the party upon whom the dispute relates including:

- A WHS entry permit-holder
- The relevant union
- The relevant person conducting the business or undertaking;
- Any person to whom the WHS entry-holder has exercised rights of entry; or

- Anyone affected by the WHS entry permit holders right of entry.

This means that in this instance that an inspector may not be delegated to resolve the dispute. In any other instances, you should use industry experts to direct you to the appropriate experts to assist in the application of work health and safety law.

If you are further interested in the roles and responsibilities of a WHS inspector, refer to the following sections of the WHS Act. The Sections include:

- HS inspectors may be appointed by regulators (Section 156)
- Accountability of inspectors (Section 159)
- Functions and powers of inspectors (Division 9.2)
- General powers of inspectors include:
 - Powers of entry (Sub division 9.3.1 - Section 163 – 165)
 - Search warrants (Sub division 9.3.2 – Section 167 – 169)
 - Limitation of entry powers (Sub division 9.3.3 – Section 170)
 - Specific powers of entry (Sub division 9.3.4 – Section 171 – 181)

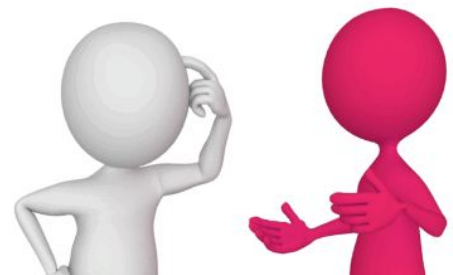
Please note that you will not be assessed on the further roles and responsibilities of an inspector in this section of the Learner Guide.

2. Assist with providing advice on WHS compliance

2.1 - Assist with providing advice to individuals and parties about their legal duties, rights and obligations, and where they are located in WHS legislation

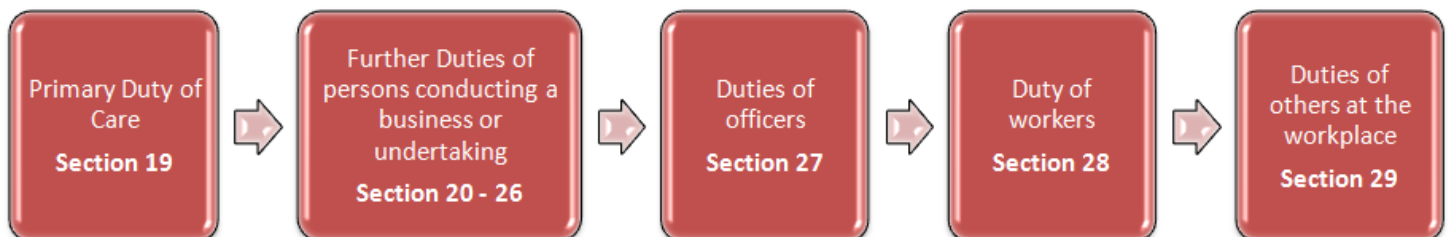
The collection and arrangement of duties, rights and obligations, usually by subject of the laws and the statutory rules, regulations that govern the area or subject of law of practice. Codes are usually arranged for the appropriate legislation into a plan or system that appropriate personnel can follow when they perform their duties rights and obligations.

Codification allows personnel to easily access information such as their duty of care such as under the WHS Act, which is accessible, user friendly and easy to follow. Work health and safety legislation is the codification of the common law duty of care. This means that all duty holders must do everything that is “reasonably practicable” to protect the work health and safety of everyone at the workplace. This duty of care falls on all:



- Employers
- Company directors
- Managers
- Supervisors
- Employees
- WHS representatives and committees
- Contractors

The aim of regulations is to minimise risk of injury or illness at the workplace. The management and control of risk in the control of hazards and risks in the workplace and provide them with opportunities to contribute and participate in the process. The Work Health and Safety Consultation, Cooperation and Coordination Code of Practice for example provides for workers to take a more proactive action in the decision making process through consultation. The more that workers and others participate and contribute to work health and safety, the more informed their decisions shall be.



Duty holders under the Common Law duty of care need to prove to the satisfaction of the court that the actions that they have taken to protect others from risk are reasonable and practicable. Duty holders need to clearly know what their duty is, what the implications are for each group and what happens if they do not comply.

Codification ensures that:

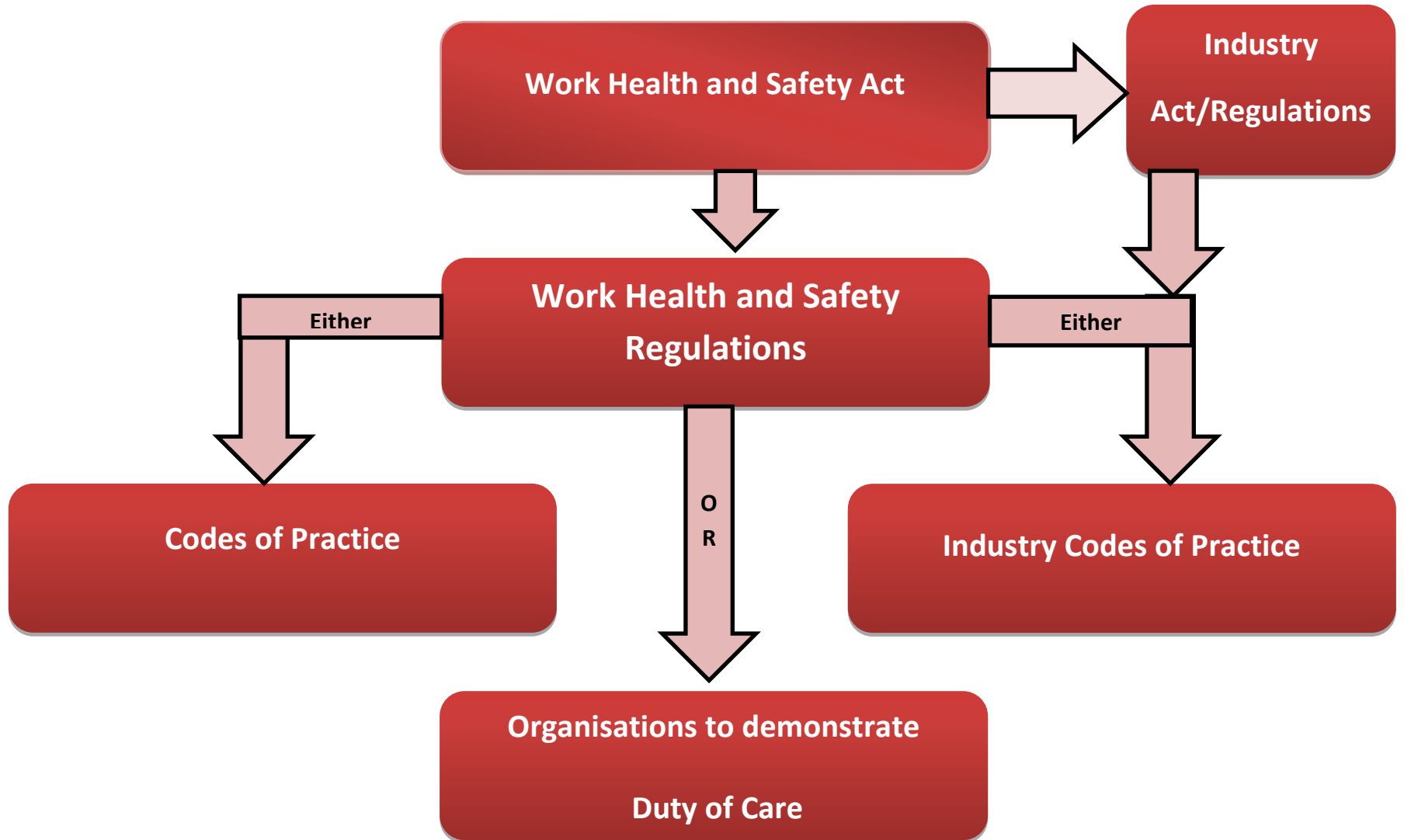
- Employees know the information held by the employer about hazards in the workplace and how to control them. If the employee has any information about improving the hazard control, then they have an obligation to do so.
- The forms of consultation and participation are up to the employees in the workplace, and may include the election of a health and safety representative to act for them.

- That all legislative contingencies are identified. Confidentiality of information and its connection to the WHS Act and Privacy Act 1988.
- The contribution of the community in the work health and safety process

To support the regulations and legislation, there are the voluntary codes of practice which will provide organisations and their representatives with the way to promote best practice and can be adjusted to suit the needs of each workplace.

Where an organisation does not choose to conform to a work health and safety code of practice or an industry code of practice, they are required to demonstrate their duty of care. This duty of care requires that they develop a safety management system that reflects the practices and demonstrates their duty of care.

Codification of Work Health and Safety



To support the codification of duty of care, employers are required to provide support for the work health and safety legislation, regulations and codes of practice by:

- Ensuring that they provide a health and safety work environment for workers and others
- Provide risk management system
- Providing training, information and education so workers and others such as health and safety representatives can contribute and participate in the decision making process
- Providing a systematic approach to managing work health and safety.

Prohibition notices can be issued when a serious risk to the health and safety of a person who is exposed to immediate or imminent exposure to a hazard or an activity that a person performs that will involve a serious risk to their immediate

2.2 - Assist with providing advice to individuals and parties about the functions and powers of the WHS regulator and how they are exercised, and the objectives and principles underpinning WHS

Once an application from a party to resolve an issue under the WHS Act for an inspector has been delegated by the State/Territory Regulator, they are given the right to issue the following notices:

Prohibition notices

The inspector can give a prohibition notice to the person who controls the activity instructions either verbally or in writing that prohibits:

- The activity; or
- The execution of that activity.

This will continue until the inspector is satisfied that the risk is remedied. The prohibition notice should state:

- The reason for or the belief that the prohibition notice should exist;
- A brief outline of the activity and the risks involved; and
- The provision of the Act that the inspector believes is being contravened.
- Or may state the directions to be followed to remedy the risk (**Section 195**)

The prohibition notice may include the prohibition of the activity or exposure across a workplace or part of that workplace, anything not to be used in connection to the activity; and any procedure that should be followed in relation to the activity. **(Section 196)**

For example, the introduction of a new chemical to a worksite caused a noxious odour that caused workers to complain of nausea and illness by the end of the workday. The safety data sheet stated that the chemical is environmentally friendly. However, when in contact with the raw material in the workplace, it would emit the noxious odour.

In this case, the worker received a prohibition notice that stated that the worker could not apply the chemical to the surface as it placed workers at risk. The worker had to comply with this prohibition order or notice. **(Section 197)**

Failure to comply with Section 197 can lead to fines up to and including:

- \$100 000 for individuals; and
- \$500 000 for a body corporate

Improvement notices

For example, when the employer knew that the chemical on the raw materials caused a noxious odour in the example above, they should have taken steps to resolve the problem instead of putting the worker/s in the area or performing the task at risk.

In this case the improvement notice may include directions on:

- Whether to replacing or use the chemicals that do not place workers at risk;(which is a remedy or prevents the likely contravention); and
- The compliance must be reasonable in all the circumstances **(Section 192)**

Improvement notices are issued by an inspector when they are a:

- ***Remedy under the WHS Act***
- ***Prevent a contravention of the WHS Act***
- ***Remedy the things or operations causing the contravention or likely contravention. (Section 191)***

The person who is issued the notice must comply within the time specified or they can be fined. (Section 193) However, the person who was issued the notice can apply for an extension on the compliance period only if the compliance period has not ended **(Section 194)**.

Failure to comply with the improvement notice, may lead to a fine up to and including:

- \$50 000 for an individual; and
- \$250 000 for a body corporate.

Provisional improvement notices

This notice should not be issued until the health and safety representative has spoken to the person, received the appropriate training, previously completed training for another workgroup or completed training equal to the training corresponding with WHS law. This notice also cannot be issued if an inspector has already issued a provisional notice or an improvement notice relating to the same issue. **(Section 90)**

Notice of the contravention must be in writing and the provisional improvement notice must state:

- What the person is contravening; or
- What has been contravened or
- Is likely to be contravened **(Section 92)**

The provisional improvement notice may give directions on how a contravention may be remedied or prevented. Minor changes may be made to the provisional improvement notices for clarification, to make corrections and to reflect changes of address. The notice may be cancelled by the health and safety representative at any time. This notice must be displayed in a prominent place at or near the workplace where the work is being carried out. This notice must not be removed or damaged. **(Section 93 – 99).**

Provisional improvement notices can be issued by health and safety representatives to personnel in regards to:

- ***Remedying the contravention***
- ***Preventing a contravention from happening or***
- ***Remedying the operations or thing causing the contravention.***

Failure to display a provisional improvement notice and deface said notice during the enforcement of that notice under Section 97 and to contravene the provisional improvement notice may include a fine up to and including:

- \$5 000 for an individual
- \$25 000 for a body corporate

Contravention of the provisional improvement notice may lead to a regulator to delegate an inspector to enter the workplace as soon as possible to review the notice and inquire about the situation, even if the period of compliance with the notice has expired. **(Section 101)**

The person to whom the notice was issued can request that the regulator to review the notice within seven (7) days and Section 101 will apply.

In the instance, where the provisional improvement notice is reviewed, it may be confirmed, changed or cancelled. A copy of this notice should be given to the applicant and the health and safety representative who issued the notice **(Section 102).**

When a provisional improvement notice is confirmed (with or without changes) by an inspector is seen as an improvement by an inspector under the Act.

All notices including improvement and prohibition notices:

- Must be in writing **(Section 203)**
- Must have a direction for an improvement referring to the code of practice or offer a choice of remedies **(Section 204)**
- Make recommendations and failure to comply to an improvement notice or prohibition notice is an offence **(Section 205)**
- May have minor changes made by inspectors to clarify, correct errors and references or to reflect changes in the workplace and may extend the compliance period for the notice **(Section 206)**
- Except for Section 206, the regulator may vary or cancel the notices **(Section 207)**

These notices may be issued or given:

- Through delivering, via post, fax or electronic transmission to the person's last known or usual place of residence or business
- By leaving it at the person's last known or usual place of residence with someone who looks older than 16
- By leaving the notice at the workplace with someone who is management or in control of the workplace; or
- In a prescribed manner **(Section 209)** which may be a regulation or the steps to whom a notice is issued must take to bring it to the attention of other persons.
- Notices must be displayed in a prominent position and must not be defaced or removed during the term the notice is in force **(Section 210)** Failure to comply can lead to fines up to and including:
 - \$5 000 for an individual; or
 - \$25 000 for a body corporate.
- The regulator may – in the case of a prohibition notice take reasonable steps to ensure that a person complies and the owner or person responsible for liability costs of the action. **(Section 211)**

The regulator can apply to the Supreme Court for an injunction compelling a person to comply or restraining them from contravening the notice. The Regulator can do so irrespective of the offence being made and whether compliance with the notice has expired. **(Section 215)**

Where a person still fails to comply, they may be faced with an injunction for non-compliance

How negligence is determined at statutory and common law

Statute Law

Legislation can be single law called (a statute) or a collection of laws. Legislators are members of parliament that make the laws. All personnel must comply with the laws that apply to them.

Statute law creates:

- Frameworks such as the WHS Act which organisations and members of society can operate
- Provides prohibitions and rules that guide the framework; and
- Adjusts to change

Common Law

Rules are made in the federal and state courts. These laws are recognised by the courts and are not subject to statute. Judges play a large role in the shaping of common law. It covers:

- Areas that parliament did not consider or passed as legislation
- Areas that parliament has not considered.

Negligence and Statute Law

Negligence is the:

- Failure to do a thing that a reasonable person would do; or
- Doing something that a reasonable or prudent person would not do.

The law requires that a person has a duty to act with care towards others. If there is a failure to act carefully and an injury arises or someone suffers, then the tort of negligence has been committed.

Modern tort law arose from the case of *Donoghue v Stevenson (1932) AC 562*

Where a manufacturer produces a product that he sells to a consumer who has no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the products preparation, the consumer is placed at risk, the manufacturer owes a duty of reasonable care.

The manufacturer must take reasonable care to avoid acts or omissions which one can reasonably foresee would likely injure another.



The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

Negligence and harm

Negligence does not arise out of careless acts. A person is only liable for harm if there is a foreseeable consequence of their actions, which is a failure to demonstrate reasonable care and skill.

In order to succeed in negligence, the plaintiff must demonstrate:

- That the defendant owed the plaintiff a duty of care
- That the defendant breached that duty of care
- That the plaintiff suffered damage that arose:
 - From the defendant's breach of duty; and
 - Not too remote.

Case: *Levi v Colgate Palmolive* (1941) – A manufacturer does not owe a duty of care to every consumer, but may give rise to precautions to protect abnormal persons known to be likely to be affected.

Duty of care in situations applies including:

- Negligent misstatements – in relation to people being advised
- Suppliers of goods and services to consumers or others being supplied
- Managers to staff

Negligence and Common Law

Under negligence at common law, there will not be a breach of duty where injury arises as a result of a person's failure to act, except in:

- Doctor and patient
- School authority and student
- Local councils
- Statutory authorities

Foreseeability and vulnerability test between the defendant and the plaintiff



Three factors will determine whether the plaintiff was considered vulnerable:

- 1) Was the defendant in control?
- 2) Did the plaintiff rely on the defendant?
- 3) Was the defendant in a position to be protective of the plaintiff?

If yes, then you may be considered liable under the law.

In this case, the courts may rule on economic loss.

Economic loss is the financial loss unaccompanied by physical injury to person or property. There are two situations where you may recover for economic loss including:

- Relational interests- where the plaintiff is not directly affected but is impacted/affected because of their relationship with the primary victim (CASE: Perre v. Apand (1999).)
- Negligent misrepresentation – The existence of a duty of care is whether the information or advice was prepared for the purpose of inducing the plaintiff in acting in a certain way. (CASE: Esanda Finance Corporation Ltd v. Peat Marwick Hungerfords (1997).)

Please note that since 2002, salient care has been used to determine whether a duty of care should be imposed on the defendant. Laws are continuously changing. It is important to make sure that you monitor these changes and how they will impact on you.

Professional liability in relation to giving advice

Another part of negligence is professional liability. Professional liability arises when professionals give advice that is negligent or that fail to perform their duties under the law. If professional advice is given that arises out of advice obtained from technical or HS professionals, they could be found liable of negligence under the law.



3. Assist with WHS legislation compliance measures

3.1 - Assist with assessing how the workplace complies with relevant WHS legislation

One of the objectives of the WHS Act 2011 is to ensure that the balanced and nationally consistent framework to secure the health and safety of workers and the workplace requires a framework for continuous improvement and progressive higher standards of work health and safety. **(Section 3 (g))**

An organisational culture built around the support and reinforcement of health and safety is one of the best ways in which to reinforce a consistent framework. A culture built on health and safety can assist in making sure that the organisation is compliant.

For any culture to succeed, management must demonstrate support for health and safety. Research demonstrates that when management takes a role in the operations of the organisation, then there is an increase in worker support. This means that management should be committed to health and safety. To demonstrate this commitment, they should:

- Provide ongoing feedback to workers on their performance
- Keep up to date with changes in legislation; and
- Actively participate in the work health and safety process.

The representatives of the organisation must ensure that they maintain a system and work organisation that meets the requirements of relevant legislation. This means that all organisational policy and procedures need to be reviewed on a regular basis to ensure that they are compliant with WHS Act and Regulations.

If you happen to work in an industry that has its own set of standards, Acts and Regulations, it is also important that you take the time to ensure that these Acts and Regulations are met, while maintaining a safe work environment for employees and other stakeholders that may work on the work site.



A systematic approach to WHS is required to ensure that compliance is maintained. Your framework should include:

- Policies that set the WHS Standards that will apply in the workplace
- Procedures that aim at meeting the policies.
- Safe work procedures developed to ensure that workers and duty holders have clear instruction of how to perform their tasks safely.
- Procedures to reinforce each party's duty of care including incident notification to both employer and State/Territory Regulators.
- Processes in place to report and record hazards and risks and the processes followed to ensure that compliance is achieved. For this to happen, an organisation can follow the codes of practice as set out by Work Safe Australia.
- Election of health and safety representatives and committees and procedures developed to support their power and functions.
- Processes and procedures also need to be monitored to ensure that continuous improvement is occurring and that organisations are meeting their objectives in regards to work health and safety.
- Maintain updates on procedures in regards to changes in legislation and industry practice.
- That review processes are in place to ensure that the organisation has improved when change is implemented.

Now with the introduction of the new framework, it is essential that you monitor the updates in codes of practice. The transitional period is the period where change is occurring at a rapid pace and organisations need to consistently monitor for changes that apply to their workplace.

It is essential that you use your knowledge of work health and safety to make sure all personnel are aware of the changes and how each change will impact on them and any fines that they may face for non-compliance with the WHS Act and/or Regulations.

To assist you in this endeavour, refer to the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice. This is not a job for only one person. No one can ensure that a safe system of work and work organisation exists. This requires the complete coordination and cooperation of everyone within the organisation.

Consultation requires the participation of all members of a workgroup. You are required to:

- Share information
- Provide them with changes to express their views and opinions
- Take into account their views; and
- Advising them of consultation outcomes.

At the same time other parties that are adversely affected by changes should also be invited to participate with the consultation process especially if the process is going to have a direct impact on them. Management also should be invited to participate. The more that they are committed to work health and safety and demonstrate that support by acknowledging the contributions of workgroup members and other stakeholders, the more that workers will be prepared to take responsibility for their own work environment.

The need to be systematic will provide workers and others with the greatest level of protection from risk because workers will have their roles and responsibilities clearly explained to them. In turn they will know what they should do and who they should do it with.

Management training and knowledgeable personnel in positions of influence need to be able to understand and demonstrate their understanding of work health and safety in relation to their work responsibilities. When a lack of commitment is identified; it is important that you action it by providing training for personnel.



3.2 - Assist with determining the WHS training needs of individuals and parties, and with providing training to meet legal and other requirements

Part of maintaining a system is to identify the training needs of personnel with Health and Safety responsibilities.

Section 19 (3)(b) of the WHS Act, have *“the provision for any information, training, instruction or supervision is made available to persons to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business.”*

Regulation 39 of the WHS Regulations requires that the information, training and instruction provided is suitable and adequate for:

- The nature of the work being performed by the worker; and
- The nature of the risks associated with the work that the worker is performing at the time; and
- The control measures implemented.

Care should be taken to ensure that the information, training or instructions is understandable to the person who receives it.

Training needs analysis

A training needs analysis can be used to identify a gap in workers knowledge.



The first step of training needs analysis requires that actual training is required. With the introduction of new work health and safety legislation and regulations, many workers will require training to ensure that they are aware of their changing needs.

A Training Needs Analysis is also required when obvious changes such as the one demonstrated above. The aim of a training needs analysis is to ensure that training is identified and effective training occurs to close the gap between what the worker knows and what they need to know.

The identification of training can be obtained by identifying WHS training gaps and these can include identification through:

- Accident report forms
- Comparing current tasks with job performance
- During performance reviews
- Feedback from colleagues
- Feedback from customers / clients
- Manager reports
- Observation
- Incident report forms
- Statistics and figures on incidents and accidents

Skills Audit

A skills audit is another tool that can be used to identify the need for training. This includes:

Interviews with staff members and team members

Observation

Supervisor reports

General Q & A session with team member

Suggestions

Formal assessments

Surveys

Employment and personnel files

Performance appraisals

Many organisations have formal appraisals of worker performance at least once a year. It is a comprehensive written report that sets out all the outcomes and performance requirements on which that individual is to be assessed. Essentially, a performance appraisal is part of the performance plan which is an agreement between managers or teams or individuals determining what needs to be achieved within the required time frame.



Performance plans can help provide staff members with an understanding of their roles and responsibilities and their link to the team and the organisation's objectives. There will be times in which you will need to consult with specialists that can assist you in ensuring that the employee develops the knowledge, skills and attitudes that they require. For instance, a member of the team needs to update the knowledge in regards to financial services. As their manager, you have the skill to ensure that they meet their objectives. However, you may not have the experience to source and identify the skills and knowledge your employee requires.

In this instance, you should consult with another financial service professional who would be able to assist you in ensuring that the employee's skills are maintained. You might also need to consult with them to find out industry processes used to measure the efficiency and effectiveness of their learning.

Developing individual performance plans

Individual performance plans must link the following elements:

- An individual's key result areas.
- The various tasks an individual must perform.
- The key performance indicators for each task (note: meeting performance standards should also be a key performance indicator).
- Time-frames, deadlines.
- Development plan.

Once a training need has been identified, you must take action to ensure that your work group and its members are up to date on the changes to procedures or legislation requirements and how they impact on the business. It is important to make sure that workers are given clear instruction.

There are usually policies and procedures in place that will assist you in determining the best method of providing information, training, instruction or supervision.

Information can be provided through the various channels of communication including:

- Emails
- Posters and signs
- Written procedures

When workers are provided with more support, they may be delegated a mentor or coach, depending on their needs and requirements.

Coach

A coach is a peer or manager who works with an employee to motivate him or her, help in skills development and provide reinforcement and feedback. There are three roles that a coach can play.

The roles that a coach can play may be:

1. One-on-one with an employee

Personalised attention and support will give the worker a chance to ask questions and obtain feedback. A coach can be used to give the worker constructive feedback on their performance so that they can improve their performance to ensure that their outcomes are achieved. It also gives the coach the chance to build worker confidence so that they will willingly participate in the consultation process.



2. To help employees learn for themselves

Workers sometimes do not know how to learn for themselves. Showing them where policies and procedures, MSDSs and manufacturer's instructions can be found and who they can consult with to learn the required skills, will assist in building worker initiative. Worker initiative is built on understanding how they can find out information for themselves. This can help build worker confidence in their abilities.

3. To involve providing resources such as mentors or job experiences

When a worker identifies a lack of ability, they should be encouraged to address the problem. The trust and confidence that they have built with you should encourage them to voice the skills and knowledge that they would like to develop. You may need to provide the workers with a secure work environment where you actively encourage them to voice their concerns and identify the skills they need.

Once a need has been identified, give the worker an environment and resources that will allow them to develop their skills. One way in which you may allocate resources for a worker to address their needs is providing them with a mentor.

Mentor

The advantage of a mentoring program is that all staff will have access to mentors. Mentors will assist workers in improving their performance.

A mentor is “a suitably experienced person that is willing and able to act as a confidential helper to guide and stimulate professional development of staff” (PD, 2011). Mentors can assist in developing effective employees by assessing stakeholder needs and establishing a plan to meet those needs in ensuring that stakeholders are obtaining sufficient support.

The mentor and mentee relationship should not only be confidential and personal, it should support the Health and Wellbeing program. Good mentors must be able to gain staff confidence so that they can be effective in the support process. Continuous consultation through meetings and informal discussions can provide stakeholders with the ongoing support that they require.

Training and development options

Though there are more options, these are the ones that seem to be in vogue at the moment.

In-house training and development occurs within the workplace.

External training and development occurs from external training providers such as TAFE or Registered Training Organisations, or from organisations that have specialised personnel who can provide the knowledge that workers need to learn their duties under the WHS Act.

It is important to note that at times, an organisation may provide more than other form of training. For example, expert knowledge about work health and safety may be taught by external professional providers who have a complete understanding of WHS legislation.

However, industry specific knowledge on how to perform specific procedures may be trained in-house by personnel who have already completed training with a provider.



Training and development options

In house training and development	External training and development
On the job experience	Open program
Structured coaching	Collaborative program
Off the job on own premises/ own trainers	Apprenticeship/traineeship
Off the job on own premises/ bought in trainer	Open/flexible leaning
Open learning delivered on own premises	Competency based training

When you choose either an in-house training option or you outsource, it is clear that you need to consider the different delivery styles and consider their advantages and disadvantages. They will influence the option that you choose.

In-house Training Options			
Category	Type of Training & Development	For	Against
IN HOUSE Training & Development	On the job EXPERIENCE	Inexpensive if supported with skilled and motivated staff	Could be lengthy and expensive if not structured or promote best practice. Will be limited and limiting if not associated with new or better ideas
	Structured COACHING	Inexpensive if well-structured and supported by excellent coaches and mentors with a system of monitoring and evaluation	Possibly missing out on more up to date methodology, systems, ideas
	OFF THE JOB on own Premises / own Trainers	Costs controlled and customised training programmes. Not as dependent upon numbers and more flexible. Very useful for team learning and working	Quality and up to date-ness of Training materials and presenters.
	OFF THE JOB on own Premises / bought in Trainers	Specialisation of Training organisation can bring speedy and effective solutions. Need to have the right number of people involved to get best results	Dependant on quality of training organisation, the willingness and ability to customise materials and can be costly
	OPEN Learning delivered on own premises	Use of technology and e-learning delivered in house and supported by the external training organisation. Can be very useful to deliver a formal structured input.	Some people not comfortable with PC and loses opportunity to network and team learning. Subject materials not customised.

External Training Options			
Category	Type of Training & Development	For	Against
EXTERNAL Training & Development	OPEN PROGRAM	Course content provided by professionals and can make a significant contribution in the short term. Useful for small numbers or an individual.	Can be a hit/miss affair if training needs are not clearly identified to match the programme content and linked to the individual's development.
	COLLABORATIVE PROGRAM	A number of small companies join together to run a specific program using a professional training provider.	The ability to customise the inputs to meet the needs of each firm.
	CERTIFICATED PROGRAM	Normally associated with time off work but can be taken in a person's own time. Programme will be standards based and will be recognised.	Can be lengthy and prescriptive therefore content may not be as specific or customised as required.
	OPEN / FLEXIBLE Learning	The provision of resources to allow individuals to train at their own pace and place. Normally a mix of self-study and coaching using technology and coaching.	The motivation and discipline of the learner as well as the lack of.
	Competency based training	Can be used for a range of purposes to meet organisational needs.	Does not promote comparison between workers or how competent the worker is.

You will have specific protocols that you will be required to follow within your organisation. It is important that you determine those protocols before you allow specific training to begin. For example, if you find a training provider through training.gov.au, your level of authority may not allow you to use that training provider.

If you need to seek expert advice to make a decision, then you should speak to your supervisor to determine whether the manner in which training is going to be conducted is appropriate for the organisation. If you need to contact specialists confirm that you have the level of authority to do so.

Training with the delegation of a mentor or coach may not require signing off as you are not going to be utilising a lot of resources. In most instances the mentor or coach will usually observe the worker and provide them with the support they need to meet their outcomes safely.

It is important that you understand the difference between training to learn a new skill and training to build confidence. The choice of mentor or coach will rely on the answer to this question as the main aim of coaching is to build confidence and the main aim of a mentor is to ensure that the person they are mentoring is learning a new skill.

In most instances, your organisation will usually have a training provider that they prefer to deliver training (either in house or external) to personnel. You may be required to obtain authorisation to obtain more training from personnel.

In some instances, you may even invite a manufacturer or supplier to provide training to personnel. If no one within the organisation has the specialist training required in the operation of plant or equipment; or using specific chemicals safely. You may arrange for the supplier or manufacturer to close the gap in training needs.

Regulations

Regulations however should not be missed.

Section 40 - It is important to note that personnel are not authorised to use plant or substance or its design to be used until they receive the license, permit, registration or other authority as required by regulation.

Section 41 - If a worker does not have the prerequisite requirements: The individual can be fined \$50,000 and a corporate body \$250,000 if they direct or allow a worker to work with plant or substances or its design.

Section 42 - A person must not use plant and substances or its design when it is not authorised in accordance with regulation and must not direct or allow a person using plant or substance or its design when it is not authorised to do so.

Section 43 - A person should not carry out work where regulation requires the work or class of work to be carried out by someone who is authorised to do so.

Section 44 - Requirements for prescribed qualifications or experience

Section 45 - Requirements to comply with conditions of authorisation.

What this means is that a worker should not use or be allowed or directed to use by the organisations plant, equipment, substances and its design where they do not have authorisation under WHS Regulations. To become authorised, personnel must complete a prescribed qualification and associated experience or the work is not carried out under the supervisor of a person who has the prescribed qualifications- in short, an unauthorised worker must work with a qualified supervisor who has the applied qualifications.

The person must comply with the conditions set out in the regulation to obtain the authorisation. Failure to comply may include a maximum penalty of:

- \$20 000 for individuals
- \$100 000 for body corporate

Refer to your State/Territory Regulator to determine the licences, qualifications, registrations, permits and other requirements that you need for your industry.

Please note that some State/Territories at the time that this learner guide was written had yet to change to the WHS Act, its regulations and associated codes of practice. It is essential that you note when your State/Territory moved to the harmonisation of WHS and update your knowledge.

3.3 - Assist with developing and implementing changes to workplace policies, procedures, processes and systems that will achieve compliance

To assist with the development of changes to workplace policies, procedures, processes and systems you will need to understand whether the minimum WHS legislation standards are being met, monitoring will assist you in determining that the minimum standards are maintained and what areas of improvement are required. It should be an objective of the organisation to improve the quality of the health and safety within the workplace.

Evidence suggests that complacency breeds contempt.

What does this mean?

Reflect on your own work experience. You perform tasks every day. As you become familiar with the tasks that you perform, you start to run on automatic when you perform them. If you do not manage your performance, your level of performance may not decline, however your awareness of performing the task may decrease. In turn, the level of risk in performing these



tasks may increase, leading to more risk to yourself and others in the workplace.

Many organisations will have different procedures to monitor the level of performance and in turn compliance of staff in the workplace. For example, the number of incidents in a work area has increased over the last three months. What is the cause of this increase? Monitoring will assist you in determining the cause of the increase of risk and then determine through the consultation process how to minimise the risk.

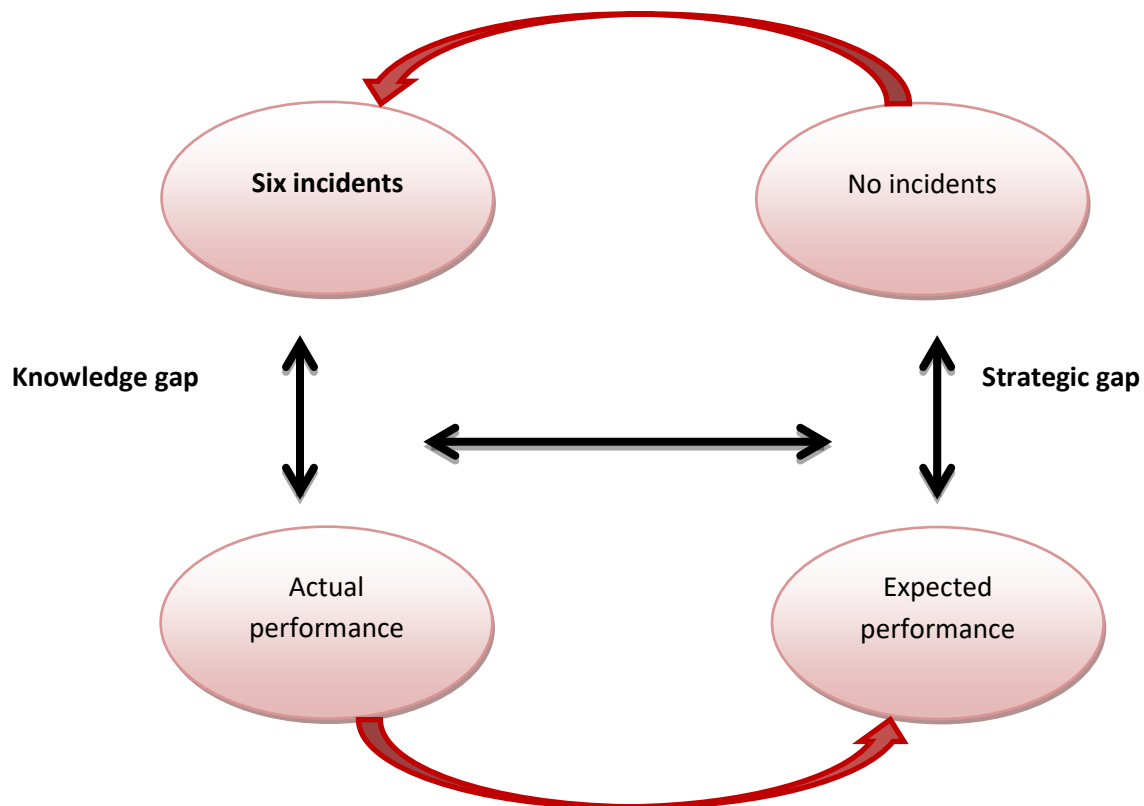
You may ask yourself:	Information you may need to gather as part of the monitoring process	What should you do?
<p>What level of training, information and instruction has the team received during this period?</p>	<p>Have staff received training? If so, what training have they receive?</p> <p>Was the training appropriate to minimise the risks?</p> <p>What information did the staff receive? Was that information appropriate for them to make an informed decision as part of the consultation process?</p>	<p>If the answer in any instance is no, then you need consult with staff and determine the most appropriate method in which to minimise the risk.</p>
<p>What changes to procedures, processes and systems may have caused this increase of risk?</p>	<p>Were any changes made to processes, systems or procedures in the department?</p>	<p>If yes, you should review the process in consultation with your team. When a new procedure is implemented, unforeseen problems may arise that were not identified when the process was reviewed and the decision was made. For example you may not have consulted with a member of the team who could have identified the risk.</p>

A tool that you may use to assist you in identifying gaps in procedures and processes is a gap analysis. Monitoring should be performed in a planned manner. Evaluation of the information monitored should include an assessment of the quality and impact of the health and safety issue that you are monitoring.

A gap analysis is a tool that will assist your organisation in evaluating actual performance and expected performance.



In the instance where there is an increase in incidents in the workplace, you are identifying the actual performance (increase of incidents) is not meeting the expected performance (Nil incidents).



The strategic goal is for there to be no incidents in the workplace. Our monitoring through accident/incident reports shows that there are six incidents arising in the area. This means that actual performance is not aligned with expected performance. The aim of expected performance is to ensure that the organisation does not have:

- Increases in insurance premiums; and
- Staff morale is maintained through a health and safe workplace.

The increase in incidents means that insurance premiums for the workplace are increased and the more incidents that arise not only highlights a problem with the communication and consultation process. It also highlights a further increase in organisational spending to not only replace workers who have been injured, but a decrease in productivity. In most instances when there is an increase in incidents in the workplace, the staff are given the impression that their employer does not care for their safety.

So what should you do?

The Work Health and Safety Consultation, Cooperation and Coordination Code of Practice aims to ensure that your legal obligations under the WHS Act and Regulations are maintained. Procedures are developed to provide you with the steps to perform work duties. Those procedures will include how to monitor worker's health and work conditions. It is important that these procedures are clear and at a level that the parties have information communicated to them in a manner that they understand.

Non-compliance is an obstacle in ensuring that an organisation is not performing its legal obligations under the law, and policies and procedures. As a worker, some of these areas will include making sure that your work group or other personnel within the organisation contribute to achieving compliance.

The area/s that you may find that non-compliance is in:

- Contributing to an Health and safety audit
- Contributing to an Health and Safety inspection
- Contributing to engaging external specialists and consultants
- Contributing to the identification of non-compliance with WHS legislation in the workplace
- Contributing to the implementation, monitoring and evaluation of actions to ensure Health and safety compliance
- Making recommendations about how compliance with Work Health and Safety legislation could be achieved
- Reporting breaches of compliance to responsible persons or authorities
- Where required, carrying out notes or functions specified in legislation or workplace policies and procedures

As we have established your workers and other personnel within the organisation have specific duties upon finding out that non-compliance is occurring in the workplace, you need to consider why this non-compliance has occurred. Non-compliance arises when workers and other personnel are not complying with the law. Organisations must have policies and procedures in place from 1 January, 2012, if there is no compliance, then it is essential that you identify why workers and other personnel are not complying with these policies and procedures.

Failure to comply with the law will lead to penalties. To ensure that you are not faced with litigation for failure to comply with the law, you need to investigate why non-compliance is not occurring.

Consultation with the appropriate personnel and workers will assist you in identifying why compliance does not occur. The questions you may ask include:

- What do you understand about the WHS laws?
- Did you understand your training? If you did not understand part of the training, what part did you not understand? Why?

You should also review your own performance. Are you providing the appropriate support to personnel? Are your consultation processes appropriate? If not, how can you improve?

Once the cause of the failure for non-compliance is identified and understood, appropriate action should be taken.

Appropriate action

If you identify a lack of sufficient knowledge or skills and ability to understand the organisations policies and procedures, you should consider reinforcing their knowledge or developing their skills and knowledge. You can do this through:

- **Mentoring**

Mentoring is the private development of skills, knowledge and skills requires communication and reflection of knowledge. Mentoring can be stand alone or as a support strategy for training. Individuals are given the opportunity of building their self-esteem and recognition that in turn allows them to have an influence in their work area. They also obtain a support system that gives them access to a second opinion and insight into their personal performance.

The key to the success of a mentoring program is sound preparation to the mentoring, including the clear understanding of the knowledge and skills required an effective communication strategy and regular feedback to reinforce worker and other personnel development. As with all aspects of WHS, consultation should be an ongoing process so that workers have a say in their development and to provide feedback on whether they feel that their mentoring program is successful.



➤ **Coaching**

Coaching facilitates positive change when leaders at all levels today. Coaching is a partnering relationship that inspires workers to maximise their knowledge. It assists in learning and development occurring and the improvement of worker performance. A coach provides support for the worker and encourages them to meet their goals. These goals should be established from the start and workers should be provided to contribute to their own learning.



➤ **Training**

Training can be provided both internally or externally to an organisation. Training is a systematic and planned process to ensuring that workers have the skills, knowledge and behaviour required to ensure that work health and safety is learned in the workplace.

Internal training is usually performed by an organisations internal human resource department. External training refers to training that is provided by accredited training providers in the form of short courses, conferences, skill programs and traineeship/apprenticeships.

Courses may be chosen or units within Certificate courses may be chosen. Some organisation's will even develop or obtain an external provider to train on specific WHS issues as required by the workplace.

➤ **Facilitation**

When you need to communicate with more than one person to meet an outcome, you should use both the skills you learnt during the consultation process. Facilitation is a group solving technique that you may use in consultation with workgroup members.

In the role as a facilitator, you should use your skills to follow organisational procedures in regards to the consultation process to assist your workgroup during a meeting for the sharing of information, consultation of ideas or part of the workers contribution to the decision making process.

At the start of any meeting, the work group needs to agree about what the group is trying to achieve. By allowing the group to arrive at a consensus as to the aims of a meeting, you are moving towards empowering them. Empowerment is the process of giving workers control of their work area by demonstrating that you trust them to complete their job outcomes.

The basic features of facilitation include:

- Making sure that you keep the workgroup focused on the issue;
- That the discussion is focused on the task, without controlling the issue
- Participation in the discussion from all work group members; and
- To act to ensure that consensus or agreement on issues is determined.

It is important to encourage all group members to participate in the discussion. This can be done by asking for their opinion. This means that you have to ensure that workgroup members are prepared for the meeting's topic before the meeting begins. This task should be performed when you communicate the meeting to group members and share information about the topic.

Ensure that all workgroup members are treated with respect and that all views are listened to. If a workgroup member is disrespected, then they will not be empowered because they will lose the confidence required to be empowered.

Facilitation needs to make sure that group members are committed to their decisions and/or recommendations. It is important that the workgroup members and people who are impacted by the hazard or risk are participants in the meeting. Their experience and knowledge will contribute to the continuous improvement process which is one of the aims of the work health and safety legislation.



As a facilitator, you should:

- Lead and guide the meeting in an informal manner to ensure that you demonstrate a positive attitude and remain uncritical of the group discussions.
- Ensure that minutes are taken as part of the meeting for not only your historical records but to use as potential evidence in a law of court that your organisation has been following the law.
- Be neutral
- Not express a personal opinion; and
- Consider the costs, especially if an expert is invited to talk to the group.

As a facilitator, it is essential that you do not show any preferences as that will lead the group into forming answers based on your opinion. Remain impartial and provide them with consistent support.

For information on external training providers, refer to www.training.com.au Access Date: 05.12.2011. WHS training may be expensive. Care should be taken to ensure that you provide internal support to workers to reinforce their learning. Coaching or mentoring can assist you in providing the support your workers require.

