

# Assist with effective WHS management of contractors

Learner Guide



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# 1. Assist with identifying existing contractor WHS arrangements

## 1.1 - Apply knowledge of workplace to identify services supplied by contractors

To effectively manage WHS contractors in your workplace it is important you have an understanding of the organisational structure and where contractors fit into this and what their roles and responsibilities are. Different contractors have different requirements to ensure a safe workplace is maintained depending on the nature of the work that is undertaken.

Using contractors - for maintenance, repairs, installation, construction, demolition and many other jobs - may be routine in your organisation. But many accidents involve contractors working on site. Sometimes you may have more than one contractor on site. You need to think about how their work may affect each other and how they interact with your activities. Clearly, in these circumstances there is more chance of something being overlooked.

There are several types of contractors that may be involved with your organisation, these could include:

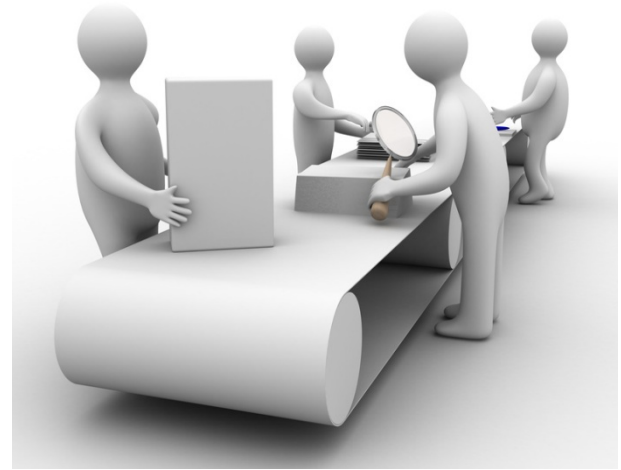
- continuing outsourced work or functions
  - cleaning
  - catering
  - security
- continuing work performed by labour hire workers
  - contract
  - 'temp' work
- major contract work
  - construction industry
- occasional or intermittent work
  - maintenance
  - repairs



- installation or alterations undertaken by independent contractors or subcontractors
- some combination of the above

The types of contractors can be grouped into two main categories, these are:

- **Supervised Contractors** - these conduct work within the organisation that may be similar to that of the organisation employees and they work under the supervision of the organisations management, these typically include labour hire workers and maintenance workers such as cleaners, catering and security.
- **Independent Contractors** - these contractors undertake work on behalf the organisations behalf these would include occasional or intermittent work, installation or alterations or consulting, they would not require to be under the direct supervision of the management.



## Defining roles and responsibilities

Under the new Work Health and safety Laws (WHS laws) the definitions of employers have changed, these are now as a person conducting a business or undertaking (PCBU). In many cases PCBU still refers to an employer but it also used to describe others such as contractors, manufacturers, suppliers, , persons who install, construct or commission plant or structures, franchisees and self employed people. Individuals who are PCBUs include:

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

Legal entities that are PCBUs include:

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



## Who is the worker?

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



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

Workers must take reasonable care for their own health and safety, follow reasonable instructions given by the PCBU and cooperate with reasonable policies or procedures that they have been notified of. A self-employed person can be both a worker and a PCBU. Self-employed people must ensure their own health and safety while at work, so far as is reasonably practicable.

You have a primary duty of care to ensure the health and safety of all your workers. You must eliminate risks that may cause them harm, so far as is reasonably practicable. If it isn't practicable to eliminate the risks, they must be minimised by using appropriate control measures. You must also consult with workers on the measures being taken to ensure work is healthy and safe. As a PCBU, you also owe the same duty of care to independent contractors and others who may be at risk from the work you carry out. Specific duties you must comply with, so far as is reasonably practicable, include:

- providing and maintaining a working environment that is safe and without risks to health (e.g. control of physical, chemical, biological and organisational risks)
- providing and maintaining plant, structure and systems of work that are safe and do not pose health risks (e.g. providing effective guards on machines and regulating the pace and frequency of work)
- providing and maintaining safe systems of work (e.g. how work is organised, work pace and work demands, and procedures to prevent or manage fatigue, stress and violence)
- ensuring the safe use, handling, storage and transport of plant, structure and substances (e.g. toxic chemicals, dusts and fibres)
- providing adequate facilities for the welfare of workers (e.g. washrooms, drinking water, lockers and dining areas)



- providing workers with the necessary information, instruction, training or supervision to work safely and without risk to their health
- monitoring the health of your workers and workplace conditions to prevent injury or illness (e.g. collection and review of injury and incident data, regular hearing tests for workers in noisy environments and analysis of results)
- maintaining any building owned or under your management and control to ensure the health and safety of workers occupying the premises.

It is important in the effective management of contractors to ensure that all contractors meet WHS legislations. As part of your role in managing contractors you must ensure that they have full compliance to WHS regulations. You must ensure that:

**All contractors are aware of their responsibilities and obligations to comply with WHS policies and procedures whilst working for the organisation.**

**All contractors maintain a safe working environment**

**All contractors are familiar with the environment that they are working within**

**All contractors are familiar with and comply with their legal requirements, including risk assessment, licensing, certificates and providing a safe work environment.**

Within your organisation you will have contractors in some capacity, it is vital that you regularly review their WHS systems to ensure that the organisation is fully compliant with all WHS requirements. Part of your role may involve you employing new contractors it is important that you make a thorough assessment of the contractors not only for the suitability for the tasks that need performing but also that they meet all of the organisations WHS systems.

## 1.2 - Access contracts and other relevant contract documentation, information and data

### Assessing contractors

All workers have work health and safety (WHS) responsibilities. Organisations have to ensure that contractors' systems complements the organisations WHS system. In some cases the employing organisation may need to assist contractors, with implementation and maintenance of their WHS systems.

The benefits of assessing contractors will enable the organisation to assess suitability of the contractor but also to ensure safety performance, reduce work related injuries and a systematic approach to identifying hazards and control of risks.



### What you need to do as an employer:

- Provide the project specifications and requirements to contractors before they tender, this will help them decide if they can do the job.
- Ensure competent contractors are employed by using selection criteria.
- Assess any risks to contractors and employees prior to and during the activity,
- Inform contractors of day-to-day company work hazards, including special requirements e.g. permit to work systems, hot work. Emergency procedures, site rules and welfare facilities should be explained.
- Work should be coordinated and controlled, with all parties aware of their responsibilities.
- Communication with all parties on a regular basis during the contract period should be maintained. This ensures current information on activities is imparted.
- Company employees should be made aware of hazards created by contract activity.
- WHS performance should be monitored. All injuries, near misses and cases of ill health should be investigated.
- Maintain records of the contracting work that is being undertaken.
- When the contract ends, review the activity with all parties, discuss what went well and what areas could have been improved.

- Decide if the contractors should go on an approved list for future contracts.

Organisations need to ensure that the contractors they employ have the skills and knowledge to carry out the contract to the required standards without risks to health and safety. Examples for assessing the competency of contractors to carry out the work could include:

- Evidence of experience in the same type of work
- References from previous clients which are checkable
- Accident ill health statistics
- Qualifications, skills and ongoing training programs including health and safety training
- How they will do the work i.e. Risk Assessments and Method Statements
- Criteria for selecting sub-contractors
- The selection of sub-contractors is more often left to the contractor, the same assessment criteria as above can be applied.

Organisations that employ contractors and sub-contractors have a responsibility under WHS legislation to protect them from harm caused by company work activities. Similarly, contractors and sub-contractors must cooperate with the client and each other to ensure they do not do anything that puts themselves or others at risk.

## Required documentation and information

Documentation requirements will vary depending upon the nature of the work being undertaken by the contractors. Before any contractors undertake any works for the organisation all relevant documentation should be produced signed and checked, it is the overseeing management's responsibility to ensure that this is accomplished, some of the documentation typically required could include:

➤ **Contracts**

A contract is an agreement between two or more parties by which legal rights and obligations are created and which the law will enforce. It is a formal written agreement signed by both parties.

➤ **Scopes of work**

A scope of work is a framework guide that outlines the division of work that is to be undertaken under a contract or subcontract. Usually these are broken down into specific tasks roles and responsibilities. A well set out scope ensures that you are able to monitor and manage the project to ensure that project work is conducted systematically and successfully.

➤ **Contractor statements**

Contractor statements are usually required by the employing organisation, it is a statement that the contractor signs to say that they agree to follow company policies, procedures and codes of practice. These are often in a document that outlines what the contractors' roles, responsibilities and obligations to the organisation are whilst they are undertaking work for them. Often these will form part of the induction process with the contractors.

➤ **Safety management plan**

WHS regulations require contractors to prepare a written WHS Management Plan for the workplace before any work commences. The purpose of the plan is assist contractors and the employing organisation to effectively apply WHS management systems. It can be used by the contractor in the understanding of requirements.



**Under regulation 309 WHS 2011 WHS management plan preparation it states:**

(1) The principal contractor for a construction project must prepare a written WHS management plan for the workplace before work on the project commences.

Maximum penalty:

- (a) in the case of an individual-\$6,000, or
- (b) in the case of a body corporate-\$30,000.

(2) A WHS management plan must include the following:

- (a) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the project,
- (b) the arrangements in place, between any persons conducting a business or undertaking at the workplace where the construction project is being undertaken, for consultation, co operation and the co-ordination of activities in relation to compliance with their duties under the Act and this Regulation,
- (c) the arrangements in place for managing any work health and safety incidents that occur,
- (d) any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules,
- (e) the arrangements for the collection and any assessment, monitoring and review of safe work method statements at the workplace.

➤ **Permit to work**

In some work cases it is a legal requirement to have a permit to work in certain hazardous work environments. A Permit to Work is required for all work performed involving hot work and/or is in confined spaces.



## How to Manage Work Health and Safety Risks Code of Practice section 67

### Confined space entry permit

- (1) A person conducting a business or undertaking at a workplace must not direct a worker to enter a confined space to carry out work unless the person has issued a confined space entry permit for the work.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (2) A confined space entry permit must:
- (a) be completed by a competent person; and
  - (b) be in writing; and
  - (c) specify the following:
    - (i) the confined space to which the permit relates;
    - (ii) the names of persons permitted to enter the space;
    - (iii) the period of time during which the work in the space will be carried out;
    - (iv) measures to control risk associated with the proposed work in the space; and
  - (d) contain space for an acknowledgement that work in the confined space has been completed and that all persons have left the confined space.
- (3) The control measures specified in a confined space permit must:
- (a) be based on a risk assessment conducted under regulation 66; and
  - (b) include:
    - (i) control measures to be implemented for safe entry; and
    - (ii) details of the system of work provided under regulation 69.
- (4) The person conducting a business or undertaking must ensure that, when the work for which the entry permit was issued is completed:
- (a) all workers leave the confined space; and
  - (b) the acknowledgement referred to in subregulation (2)(d) is completed by the competent person.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.



➤ **Evidence of insurances**

Generally contractors are responsible for their own insurance cover and bear the commercial risk for losses suffered from any work performed. However depending upon the terms of the contract the organisation may have liability insurance and workers' compensation obligations. So it is vital that this is clarified before any works commence and evidence of contractor insurance are seen and checked.

➤ **Evidence of induction training**

It is usually the responsibility of the contractor to ensure that their skills and competencies are kept up with current processes and technologies. However it is likely that the employing organisation will have its own induction process in place for its own employees but also for contractors. It is important that on-site training is undertaken prior to the commencement of work as this ensures the safety of the organisation's employees but also the contractors and sub-contractors.

➤ **Evidence of licences**

In some industries the contractors may need to have specific licences to undertake certain high risk works.

**How to Manage Work Health and Safety Risks Code of Practice section 81 states:**

A person must not carry out a class of high risk work unless the person holds a high risk work licence for that class of high risk work, except as provided in regulation 82.

**Notes**

- 1 See section 43 of the Act.
- 2 Schedule 3 sets out the high risk work licences and classes of high risk work that are within the scope of each licence. Schedule 4 sets out the qualifications required for a high risk work licence.

**82 Exceptions**

- (1) A person who carries out high risk work in either of the following circumstances is not required to be licensed:
  - (a) work carried out:
    - (i) in the course of training towards a certification in order to be licensed to carry out the high risk work; and
    - (ii) under the supervision of a person who is licensed to carry out the high risk work;
  - (b) work carried out by a person who, having applied for a licence to carry out the high risk work on the basis of a certification, is awaiting a decision on that application.

- (2) A person who carries out high risk work involving plant is not required to be licensed if:
- (a) the work is carried out at a workplace solely for the purpose of the manufacture, testing, trialling, installation, commissioning, maintenance, servicing, repair, alteration, demolition or disposal of the plant at that workplace or moving the plant within the workplace; and
  - (b) the plant is operated or used without a load except when standard weight loads with predetermined fixing points are used for calibration of the plant.
- (3) For the purposes of subregulation (2)(a), moving does not include loading plant onto, or unloading plant from, the vehicle or equipment used to move the plant.
- (4) A person who carries out high risk work with a crane or hoist is not required to be licensed as a crane operator if:
- (a) the work is limited to setting up or dismantling the crane or hoist; and
  - (b) the person carrying out the work holds a licence in relation to rigging, which qualifies the person to carry out the work.

**Note**

See Schedule 3 for the classes of crane operator licence.

- (5) A person who carries out high risk work with a heritage boiler is not required to be licensed as a boiler operator.

➤ **Evidence of certificates of competency and training**

These documents show that the contractors have been trained to a competency standard and that they are proficient to carry out the task trained for. For the organisation it is important to ensure that they have met the minimum training requirements for the task required for maintaining standards of work but also for meeting legislative requirements.



### 1.3 - Identify content relevant to contractor WHS arrangements

All WHS responsibilities of all personnel involved in the project which can have an effect on the health and safety of the staff, workplace and to the performance of the project, from the tender process to completion of contract.

Description of WHS responsibilities must include the name, position and appropriate authority of personnel to ensure that WHS requirements are met during the course of the project and to define who will implement and maintain workplace health and safety practices in line with the WHS Legislation obligations. The responsibilities should also define who can make decisions and take actions on any occurring WHS issues. Positions that should be defined their WHS responsibilities include:

- Corporate Management (Managing Director, Project Director)
- Superintendent or Representative of the Principal
- Project Managers, Site Managers - WHS Management Representative
- WHS Committees, as required - Employees
- Contractors and subcontractors Subcontractor's information include names, positions, contact details, WHS roles and responsibilities in connection with the project.

Under the WHS Act, a worker is a person who carries out work in any capacity for a PCBU, including work as a contractor or subcontractor (and includes workers who are provided by labour hire companies). A PCBU must ensure, so far as is reasonably practicable, the health and safety of contractors who are workers, engaged or caused to be engaged by the PCBU, while the contractor is at work in the business or undertaking.



## Contractors in the workplace

When contractors are engaged to perform work, a PCBU should take the following steps to ensure health and safety in the workplace:

Select contractors based on their expertise and their work health and safety record—this may require contractors to provide documented safety records(see section 1.2).

### **Insist on a culture that demonstrates the contractor’s commitment to safety.**

- Provide induction training for all contractors prior to commencing work for the PCBU. The PCBU should determine the level of induction by the location and risk of the work being undertaken on behalf of the PCBU and be in line with other induction programs the PCBU delivers to all workers.
- Provide contractors with work health and safety information, instruction and training that is easy to understand and relevant to the workplace and work the contractors are required to perform.
- Consult, cooperate and coordinate activities with all PCBUs and workers who are responsible for the work being performed—including involving the PCBUs and their workers in identifying, assessing, and managing work health and safety issues as they arise.
- Ensure all workers—regardless of which PCBU they work for—have a legislated right to be represented in the workplace by a health and safety representative (HSR). It is essential that any temporary worker (contractor) at the workplace is provided with relevant information that clearly details how they can access the HSR for the work group they are undertaking work in, or know what is expected of them in relation to reporting hazards, concerns or issues.
- Assess the risks in consultation with the contractors and seek to find ways to employ the hierarchy of controls in managing those risks.
- Contractors also have a duty as workers under the WHS Act. While at work, a contractor must take reasonable care for his or her own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of others.
- The contractor must also comply—so far as the worker is reasonably able—with any reasonable:
  - instruction given by the PCBU to allow the person to comply with the WHS Act
  - policy or procedure the PCBU notified to the contractor relating to health and safety in the workplace.



## Induction of contractors

Part of the management of contractors' role will involve the induction of contractors. Inductions are an important part of your safety management system. The induction process ensures that contractors develop good working practices. It also enables the contractors to feel like part of the company, it demonstrates commitment by the organisation of promoting safe working practices and also enables contractors to understand the organisations expectations, values and ethics.

### What needs to be included in an induction?

- review of job description and expectations of the role
  - Explanation of office/site safety rules and requirements
  - Explanation of contractor/contractor employee WHS responsibilities
- explanation of where the contract work fits into the organisations operations
- orientation of the layout of the site or workplace
  - building layout
  - including exit points
  - assembly areas
  - location of the following amenities explained
    - toilet
    - kitchen
    - drinking water
    - staff facilities
  - explanation of the means of obtaining security passes and related security issues
- workplace policies, procedures, and codes of practice
  - Explanation of No-smoking and Drugs & Alcohol Policy
- harassment policies
- health and safety policies
- emergency procedures
  - explanation of emergency evacuation procedures



- local positions of fire extinguishers with fire fighting equipment identified and use explained



○ e  
mergency Wardens (senior person in charge of the shift)

○ e  
mergency phone numbers.

○ l  
identification and location of first aid kits

➤ d

etailed description of safe work practices relevant to the contractors role

- explanation of how to access health and safety information
- explanation of incident reporting requirements - ALL incidents MUST be reported to the responsible PCBU

## Health and safety instruction and training

As well as induction training it may be necessary to undertake some WHS training with contractors. In some instances, this may be on the job training. In other instances, the need for training may be brought to your attention.

***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.

### Tools to use to minimise gaps in learning

Empowerment encourages workers to take more control of their work environment. Legal obligations require that workers are trained when a gap in learning is identified. The following tools can assist management and supervision in identifying the need for risk.

### 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                 |

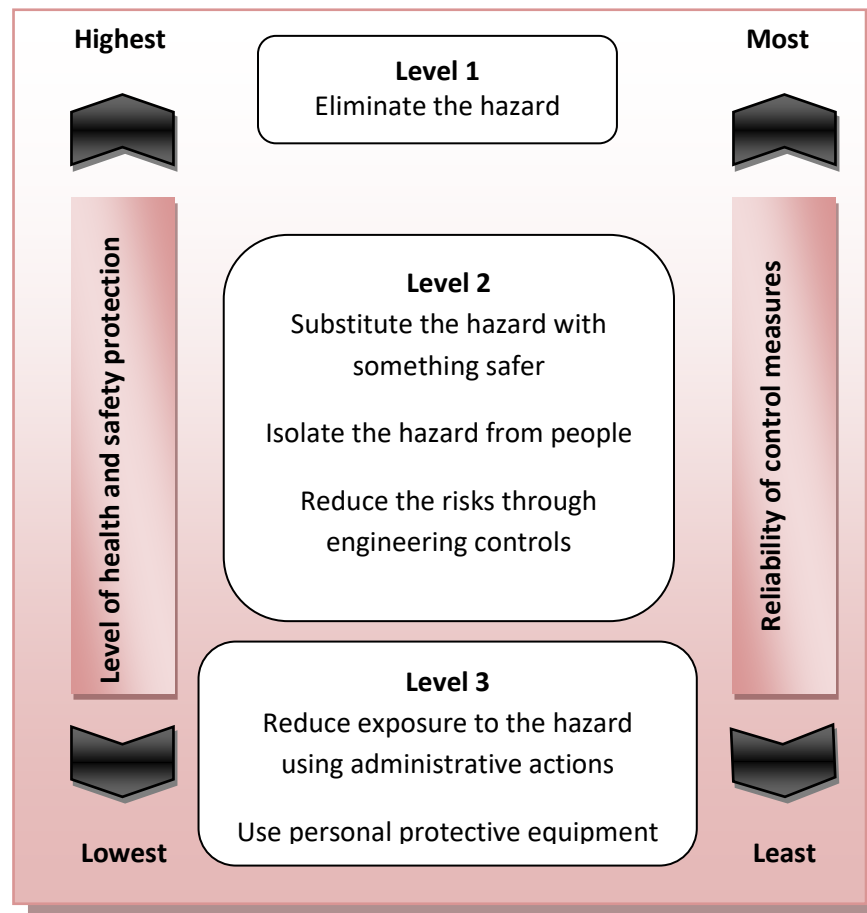
Whenever new equipment or technology is introduced into an organisation, workers are appointed, there is a new development in policies and procedures, or any other changes occur within the workplace, a Training Needs Analysis should be conducted.



Sometimes training will not be the solution to a problem, but in most cases, training is required in order to fix a situation that has come up, train staff in proper use of equipment or to assist in the minimisation of incidents in the workplace.

## Risk assessment

The **hierarchy of risk control** is a tool that is used to assist organisations in ranking the level of protection and reliability a hazard control technique has in regards to eliminating risk.



The most effective type of control is to eliminate the risk. Consultation is an essential part of the risk control process. Consulting with workers and/or their representatives draws on the experience of these personnel and will assist you in the decisions that you make. Their involvement will also assist you in accepting the changes that are implemented to ensure that they perform their job safely.

When you choose a control for a specific risk it is essential that you determine the control measure that is most effective. In some instances you may be required to use two or more of the control measures to ensure that the workers have the highest level of protection.

Some of the risks may be resolved immediately, while there are times where short term fixes are put in place while the best method of resolving the risk is determined. When you choose a control focus on the highest control first which is to eliminate the risk.

**Chapter 2, General risk and workplace management, Part 3.1 Managing risks to health and safety from the WHS Regulations** provides you with the legislative requirements in regards to managing risk and the hierarchy of controls. **How to Manage Work Health and Safety Risks Code of Practice** will provide you with the guidance on how to determine which level of control a hazard has.



**Remember a code of practice does not need to be followed. A code of practice may be considered to be evidence by the courts to prove that the parties reacted reasonable practicable in regards to the circumstances that arose.**

To have legal effect in a jurisdiction, the model Code of Practice must be approved as a code of practice in that jurisdiction. To determine if this model Code of Practice has been approved as a code of practice in a particular jurisdiction <http://www.safeworkaustralia.gov.au/sites/swa/about/who-we-work-with/state-territory/pages/authorities>

**Hazard controls may include:**

### **Level One Control Measures**

#### **Actions taken to eliminate hazards entirely**

In most instances, eliminating a risk is more practical. However, elimination of a risk should occur when a process or procedure are developed during the planning stage. It will be cheaper to introduce elimination during the planning stage so that the control measures are aligned to the needs of the department. For example, a sound proof room will minimise a workers exposure to loud music if they work in a night club. This will minimise their exposure to risk while they are working for long periods of time.



## Level Two Control Measures

When the elimination of a risk is not reasonably practicable, the second level of control measures should be considered.

### *What is reasonably practicable?*

**Section 18** of the WHS Act defines reasonably practicable as a “duty to ensure health and safety that in the performance of their work, which they assess:

- The chance of a hazard and risk happening
- The amount and level of harm that could arise from that risk.
- The amount of information a person may require in regards to the risk; and
- Whether there are suitable ways in which to minimise the risk based on the resources available and suitable in the control and minimisation of the risk.

For example, recent rains have caused pressure on the roof of your main entrance. Structurally the reception area is sound; however there are cracks in the walls that have allowed water to seep through. This water is seeping into the main entrance making the polished marble floors slippery. Severe cuts in budget due to the fluctuating interest rates have recently occurred in an effort to retain staff. This means that the amount of capital resources available to resolve WHS issues is low. Sealing the wall is expensive as the cracks in the roof have the potential of becoming bigger without further review.

The costs of replacing the roof to eliminate the risk may be too high. While you are attempting to resolve the risk you could ensure that the day cleaner checks the floor every hour when it was raining to mop up the floor. The amount of maintenance may vary according to the amount of rain. Signs have been strategically placed to let clients, the public and other workers know that

### **What should you do?**

To ensure that you are ‘reasonably practicable’ you should consider whether you should:

- **Substitute another product or process to replace the hazard**



In this instance, you could review the processes in place and determine whether there is another way in which you can repair the roof without replacing the whole roof in the interim.

➤ **Isolate the hazard**

In what ways can you isolate the hazard? If there are any ways, what should/could you do? Isolation is separating the potential for harm against those exposed to the risk. There is only so long that signs and regular maintenance will work before the hazard becomes a risk.

➤ **Use engineering controls**

Could you capture the water before it hits the marble floors? Consultation with appropriate qualified personnel should occur to ensure that you have the information you require to make an informed decision. Re-diverting the water flow using engineering controls to make sure that the water flows away from the marble floors will minimise the risk. The resources available will influence the decision that you make. “Engineering controls are physical, meaning that they use a mechanical device or process” (How to Manage Work Health and Safety Risks Code of Practice).

## Level Three Control Measures

### Improve administrative controls such as changing policies, procedures or providing training

The hazards are not controlled at the source. Risk is minimised through the behaviour of staff and their supervisors. Even though these are the least effective way in which to minimise risk, staff should be trained on the procedures in place to control the risk. When a change process is implemented, it is important to make sure that staff are informed of the change, the type of change and when the change is officially implemented.

Using **PPE** (Personal protective equipment) may include:

- **Head protection** – such as a helmet should protect the head from falling debris in a work environment.
- **Face and eye protection** – includes a face mask to protect the worker from inhaling foreign fumes such as chemicals and pollution. Eye protection includes goggles and safety glasses that protect the eyes from falling debris and from chemicals and fumes.
- **Respiratory protection** should be worn in closed areas and may be worn to protect against inhaling foreign chemicals and fumes.
- **Hearing protection** such as ear muffs and ear plugs should be worn by workers who work in a noisy area or are using a noisy machine, especially if they are working in the area or using the equipment for a long period of time.
- **Hand protection** protects hands from germs or chemicals and other foreign matter.

- **Clothing and footwear** includes safety boots, high visibility clothes such as overalls and pants to ensure that workers are not protected from the elements or chemicals and from risk of falling or dropped items, including debris.

Administrative controls and PPE should only be used to protect workers from risk. They should only be used when:

- The control measures that could be used are not practical for the given situation
- It can be used as an interim measure until a more appropriate control measure can be used; and
- To back up another higher control measure.

**Chapter Three, Part 3.2, Division 5, Sections 44 to 47** of the WHS Regulations provide strict instructions about the PPE that should be used at a workplace including:

- Ensuring that PPE is chosen to minimise risk to the health and safety of personnel in the workplace
- That the PPE is appropriate to the nature of the work and hazards associated with the work;
- That the PPE fits the person wearing it;
- That the worker wears the PPE as far as is practicable; and
- That sufficient PPE is available in the case that PPE should be replaced, repaired or maintained so that risk is minimised

PPE must be worn by workers as far as reasonably practicable in accordance with the instructions training and information they receive. This includes training during the coaching and mentoring process, during formal or informal training or when they are provided with procedures that require the use of PPE.

### **How to Manage Work Health and Safety Risks Code of Practice section 37**

#### **Maintenance of control measures**

A duty holder who implements a control measure to eliminate or minimise risks to health and safety must ensure that the control measure is, and is maintained so that it remains, effective, including by ensuring that the control measure is and remains:

- (a) fit for purpose; and
- (b) suitable for the nature and duration of the work; and
- (c) installed, set up and used correctly.



## Consultation

Duty to consult workers you must consult with your contractors, so far as is reasonably practicable, on issues affecting their health and safety. This includes identifying hazards and assessing risks arising from work, and proposing changes that may improve the health and safety of workers and contractors. You must also consult with your workers/contractors and take their views into account when making decisions about:

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

Consultation must involve:

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

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

## Communication

One way in which appropriate information may be communicated is through the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice. When you consult with contractors, you should take measures to work together to determine how consultation will occur. Section 47(2) of the WHS Act requires that "if a person conducting a business or undertaking and the workers have agreed to procedures for consultation, the consultation must be undertaken according to those procedures."

This means that contractors can assist in ensuring that communication of information in regards to the consultation process is appropriate for their needs. The method used should aim to save time and

confusion as appropriate communication skills will be required to share information or to provide views and opinions on the topic being communicated.

An important part of the consultation process is the communication of information. To be effective, the agreed method of consultation between the employer representative and the worker needs to be addressed. This means that effective consultation should cover:

- Who needs to be consulted
- What the consultation is about
- How the consultation will occur (be communicated)
- How information is shared
- The opportunities given to workers to discuss concerns
- How feedback will be given
- How consultation will happen with workers with special language and literacy needs
- Timeframes for reviewing procedures

In some instances, workers, contractors and/or workgroups will apply for a health and safety representative to represent them in the consultation process. This is one way in which to overcome the communication and consultation problems that may arise from cultural difficulties.

### **Dealing with issues raised in consultation process**

Each organisation will have its own procedures, processes and systems in place to ensure they are consulting with workers on issues that relate directly to their safety and well being, and to ensure they are meeting the required legislative expectations to do so.

Management need to make sure they collaborate with team members to resolve any grievances or issues that workers are unhappy with in the workplace that relate to WHS and safety.

If a change is made to any of the processes or procedures, these changes need to be communicated accordingly so team members can understand and be aware of these changes.

Health and safety risks are not just those obvious risks that can create physical harm. There are a number of additional risks that can also be considered health risks such as bullying in the workplace, working shifts and long hours, harassment, discrimination and other forms of emotional risks.

Management can be held liable for any of the above issues taking place if they do not take reasonable steps to prevent the above from happening. There have been a number of cases over the years where employers have been held liable to negligence when they have known of bullying or harassment taking place in a working environment but not intervened and done something to stop the situation from repeating or reoccurring.

The processes to assist in the resolution of these matters should be clearly identified, well documented, constantly improved and communicated to all relevant staff members appropriately.

Therefore, accurate and succinct WHS Plans and WHS Programs will have very clear guidelines and procedures that relate to how they are going to be implemented, what grievance procedures there are in place and how they are going to be followed through.

## Representation

During the consultation process it may be useful for the contractors to have representation, a health and safety representative will be familiar with the Work Health and Safety Regulation 2011. They will be proficient in the:

- Ability to effectively represent members of the workgroup
- Ability to see other viewpoints
- Commitment to improving the management of WHS



- Communication skills

### **1.4 - Assist with identifying workplace policies, procedures, processes, systems, practices and activities relevant to contractor WHS arrangements**

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.

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                                                                                                                                   |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Common law</b></p>   | <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><a href="http://h2g2.com/dna/h2g2/A2498402">http://h2g2.com/dna/h2g2/A2498402</a></p> <p>Common Law in Australia</p>                         |
| <p><b>Contract law</b></p> | <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"> <li>1) Offer and acceptance (a promise for a promise)</li> <li>2) Intention to create legal relations</li> <li>3) 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)</li> <li>4) Consideration (the exchange of one thing for</li> </ol> | <p><a href="http://www.australiancontractlaw.com/law.html">http://www.australiancontractlaw.com/law.html</a></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>                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                        |
| <b>Criminal law</b>    | <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 pdf's.</p> | <p><a href="https://www.irwinlaw.com/store/product/425/criminal-laws-in-australia">https://www.irwinlaw.com/store/product/425/criminal-laws-in-australia</a></p> <p>Criminal Law in Australia</p>                                                                                      |
| <b>Dangerous goods</b> | <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"> <li>➤ Corrosives</li> <li>➤ Explosives</li> </ul>                                                                                                                                                                                                                                                                                                                        | <p><a href="http://safeworkaustralia.gov.au/SafetyInYourWorkplace/">http://safeworkaustralia.gov.au/SafetyInYourWorkplace/</a></p> <p>HazardousSubstancesAndDangerousGoods/Proposedrevisions/<br/>Pages/ProposedRevisions.aspx</p> <p>Update revisions to chemicals once confirmed</p> |

| Type of legislation             | Brief description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | URL Addresses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                 | <ul style="list-style-type: none"> <li>➤ Flammables</li> <li>➤ Oxidising (feeds fires so they burn more fiercely)</li> <li>➤ Spontaneously combustible (bursts into flames when lit)</li> <li>➤ Toxic (poisonous); and</li> <li>➤ Water reactive (produce flammable or toxic gases if mixed in water)</li> </ul> <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>The new workplace chemicals model work health and safety Regulations will be supported by a suite of additional regulatory material.</p> <p>Stakeholder comment has been received on the following material currently being developed by Safe Work Australia:</p> <p><i>Draft National Code of Practice for the Labelling of Workplace Hazardous Chemicals - <a href="#">View submissions</a></i></p> <p><i>Draft National Code of Practice for the Preparation of Safety Data Sheets - <a href="#">View submissions</a></i></p> <p><i>Draft Australian Criteria for the Classification Hazardous Chemicals (previously known as the 'Approved Criteria'). - <a href="#">View submissions</a></i></p> |
| <b>Environmental protection</b> | <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><a href="http://www.environment.gov.au/index.html">http://www.environment.gov.au/index.html</a></p> <p>Department of Sustainability, Environment, Water, Population and Communities</p> <p><a href="http://www.environment.gov.au/heritage/organisations/state/index.html">http://www.environment.gov.au/heritage/organisations/state/index.html</a></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"> <li>➤ Managing noise and preventing hearing loss at work</li> <li>➤ How to manage and control asbestos in the workplace</li> <li>➤ How to safely remove asbestos.</li> <li>➤ Managing the work environment and facilities.</li> </ul>                                                                                                                                                                           |                                                                                                                                                                                                                                                                    |
| <p><b>Equal opportunity and anti-discrimination law</b></p> | <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><a href="http://www.hreoc.gov.au/info_for_employers/law/index.html">http://www.hreoc.gov.au/info_for_employers/law/index.html</a></p> <p>The Australian Human Rights Commission. Right click the appropriate online information for your State or Territory</p> |
| <p><b>Industrial relations law</b></p>                      | <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"> <li>➤ Enterprise bargaining</li> </ul>                                                                                                                                                                                                                                                                                                    | <p><a href="http://www.dfat.gov.au/facts/workplace_relations.html">http://www.dfat.gov.au/facts/workplace_relations.html</a></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"> <li>➤ Industrial action</li> <li>➤ Dispute resolution</li> <li>➤ Termination of employment</li> </ul> <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><a href="http://www.fwa.gov.au/">http://www.fwa.gov.au/</a></p> <p>Fair Work Australia</p>                                                  |
| <b>Privacy</b>      | <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"> <li>➤ How private information should be collected</li> <li>➤ Storage and security of personal information</li> <li>➤ Storage of information kept by a record-keeper</li> <li>➤ How information can be accessed; and</li> <li>➤ How information can be altered.</li> <li>➤ How personal information can be used</li> <li>➤ Limits on the disclosure of personal information.</li> </ul> <p>For more information on the Information Privacy Principles refer to the URL address in the next column.</p> | <p><a href="http://www.privacy.gov.au/materials/types/infosheets/view/6541#c">http://www.privacy.gov.au/materials/types/infosheets/view/6541#c</a></p> <p>Privacy Laws</p> |

| Type of legislation                | Brief description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | URL Addresses                                                                                                                                                                                                                                        |
|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Workers compensation</b></p> | <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><a href="http://safeworkaustralia.gov.au/WorkersCompensation/Authorities/Pages/Authorities.aspx">http://safeworkaustralia.gov.au/WorkersCompensation/Authorities/Pages/Authorities.aspx</a></p> <p>Commonwealth, State and Territory Contacts</p> |

The WHS Bill (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 OHS laws changed leading to confusion.

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 (Bill), 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.

**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 addresses environmental, social and technological issues. Standards Australia<sup>1</sup> 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.



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



- 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 standards<sup>2</sup>

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 to URL Address:

[http://www.commerce.wa.gov.au/WorkSafe/Content/About\\_Us/Legislation/Guidance\\_notes.html](http://www.commerce.wa.gov.au/WorkSafe/Content/About_Us/Legislation/Guidance_notes.html)

Access Date: 08/02/2013



## 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 standards<sup>3</sup>

The International Standard Organisation (ISO) is a global organisation that develops standard 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: 08/02/2013

## National standards developed by the office of the Australian safety and compensation Council

The Australian Safety and Compensation Council (ASCC), formerly the National Occupational Health and Safety Commission aims to ensure that all Australian workers within their States and Territories work together to improve the efforts to minimise and prevent workplace deaths, injuries and

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<sup>2</sup>

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

<sup>3</sup> <http://www.iso.org/iso/home.htm>

disease. National standards will assist in meeting these aims by ensuring that all State and Territory governments work together to maintain the same standards in regards to Work Health and Safety in the Workplace.

Legislation pertaining to the development of national standards and codes of practice can be found at URL Address: <http://www.comlaw.gov.au/Details/F2005L03863> Access Date 08/02/2013

### **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.

## **2. Assist with evaluating contractor WHS arrangements and making improvements as required**



### **2.1 - Apply knowledge of WHS legislation to assist with determining if contracts and workplace policies, procedures, processes, systems, practices and activities comply with WHS legislative requirements**

Assisting with the management of contractors will require you to have an in depth knowledge of the WHS legislation and were this relates to the organisations workplace policies, procedures, processes, systems, practices and activities. This will enable you to ensure that not only the contractors are complying with WHS legislation but also that the organisation is maintaining its own compliance.

It is essential that the organisations employer and head contractors conduct risk assessments and determine whether it is reasonably practicable to provide a safe system of work for contractor's employees including instruction, training and supervision.

#### **It is important to note that:**

The primary duty of care in respect of contractors is not reliant on the existence of control; under WHS law the Person conducting a business or undertaking (PCBU) has a primary duty of care in respect of workers including contractors and employees of contractors. This is regardless of whether or not the PCBU has actual control over the contractors. When a PCBU engages a

contractor either directly or when it can influence or direct the work activities of the contractor. Importantly, the primary duty to ensure contractor safety is not conditional upon having 'actual control' over the contractor's work.

However, under the WHS laws the primary duty is qualified by the words, 'so far as is reasonably practicable'. This means what steps are 'reasonably practicable' to ensure health and safety, the worker should take into account the following:

- the likelihood of a hazard or risk occurring;
- the degree of harm which may result;
- what the person knows or ought to know or risk and ways of eliminating the risk; and
- the availability of appropriate ways to eliminate or minimise the risk.



Another factor when identifying what is 'reasonably practicable'. Is the cost in some cases, a PCBU may not be required to implement an available control if the cost of implementing that control is 'grossly disproportionate to the risk'.

It is vital within the organisation that there are adequate screening procedures in place in the selection of contractors and each individual organisation will have set standards that comply with WHS legislation in place.

## Contracting procedures

Contracting procedures are usually standardised within organisations. Site induction and safety training is usually provided to contractors and contractors need to demonstrate compliance with site procedures. In most instances, contracts are offered to WHS personnel who have the skills and experience to meet the specialist requirements of the organisation. Most organisations will usually provide contracts based on reputation, quality and price. The suitability of contractors for the required works will initially be assessed at the tender stage.

## Tender Selection

The Criteria for Selection must be clearly stated in the Tender Documents. Such criteria need to cover the critical factors on which the success of the project is based. Typical Criteria for Selection include:

- Previous Experience on similar works

- Financial resources
- Managerial and Personnel resources
- Technical resources
- Current workload
- Dispute Resolution record
- Quality Assurance System
- Environmental Compliance record
- Industrial Relations record
- Work Health and Safety & Rehabilitation record

### **Non - Compliance of contractors**

If it is found that contractors are not complying with their own responsibilities and obligations in their undertakings for the organisation, the organisation will have their own policy in dealing with these situations; this will be made clear during the contract negotiation stage. This could include

**Warning Notice** – Issued to remedy short term deficiencies which can be dealt immediately by the person on whom the notice has been issued. More than one notice can be issued during one visit if there are significant differences in non-compliances

**Improvement Notice** - issued for cases of significant or repeated non-compliance with legal or organisational requirements

If WHS laws are not being met by workers this can have a devastating impact upon the organisation leading to sanctions or significant cost to the organisation. WHS Inspectors may use a range of compliance and enforcement measures against the organisation including:

- advice and information
- notices
  - improvement notice
  - prohibition notice
  - non-disturbance notice
- on-the-spot fines
- seizing things
- suspension or cancellation of a licence or accreditation
- resolving or assisting parties to resolve issues or disputes

- prosecutions
- enforceable undertakings

## 2.2 - Apply knowledge of best practice and workplace WHS information and data to assist with evaluating effectiveness of contractor WHS arrangements

Some organisations may have a Best Practice Work Health and safety policy, this will apply to contractors an example is below.

- To achieve an accident free workplace.
- To make WHS an integral part of every managerial, supervisory and employee position.
- To ensure that WHS is considered in all planning and work activities.
- To involve our workers in the decision making process through regular communication, consultation and training.
- To provide a continuous program of education and training to ensure that our workers safety.
- To identify all possible hazards in the workplace through hazard identification and risk analysis.
- To ensure all potential accident/injuries are monitored and prevented.
- To provide effective injury management and rehabilitation of all workers.
- To establish measurable WHS objectives and targets through workplace monitoring and review
- To comply with relevant legislation and related external requirements.
- To be available to any interested parties, clients and visitors as a means of displaying management's commitment to positive WHS practices.
- Full compliance with all Federal and State WHS Acts and Regulations
- Full compliance with all other reasonably practicable requirements placed upon us
- Measure our effectiveness in reducing the exposure of our workers to work related injuries or illnesses and implement continual improvement plans to reduce work related injuries or illnesses.



When assisting in the management of contractors you have a responsibility to keep accurate records for all workers this includes contractors of the following:

- First aid data
- Incident reports
- Injury reports
- Safe work procedures
- Compensation claims data
- Training information and data
- WHS consultation and participation records

**WHS reports including, workplace inspections, hazard and incident reports, technical reports, consultations and observations**

Investigation reports are an excellent way in which to record concerns to be addressed in the workplace. By reviewing these reports you will be able to identify what was done before and whether there is a correlation between similar problems being faced at that moment

**Keeping records of the risk management process:**

- Demonstrates how risk management and decision making was made
- Assists in targeting key hazards and variations in hazard incidence
- Provides the foundation for work procedures
- Follows for the review of risks when there is a change in legislation and business activities; and
- Demonstrates to parties; such as regulators how health and safety is being managed in the workplace

*How to Manage Work Health and Safety Risk, p.20*

## **Monitoring**

**Monitoring is:**

- Reviewing progress
- Identifying problems in planning and implementation
- Making adjustments so that you are more likely to make a difference

One effective way of monitoring is producing action plans, WHS action plans are set to ensure that the goals set in the WHS plan are actioned and met. WHS plans are designed to make sure that the organisations work environment is safe. Failure to develop WHS objectives may be a sign of bad management, lack of communication or a problem with the consultation process.

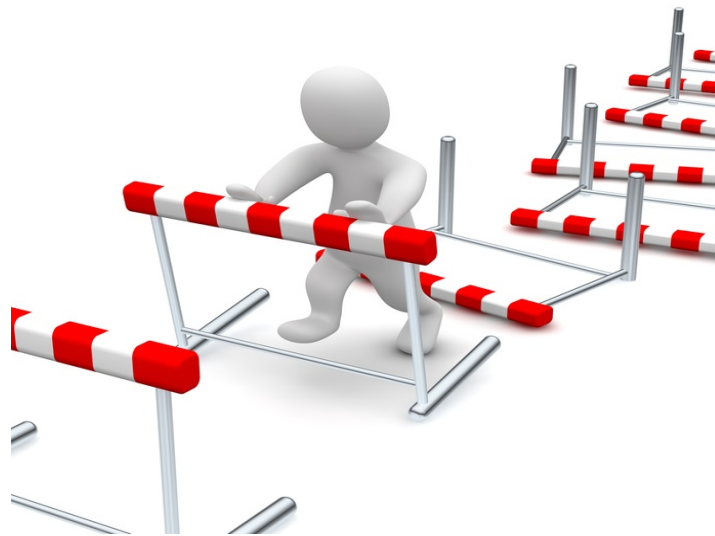
Management's steps to overcome the barriers to the implementation of the action plan may be incorrect. By monitoring all of these steps, you can identify problems in the implementation process and correct the small issues before they become expensive lessons.

A systematic approach to managing an action plan should be developed to monitor WHS action plans. This means that management needs to develop procedures to measure the areas in which the action plans are executed. To empower the team, management should draw on worker experience.

If you have completed the action plan suggesting that the supervisor meets the mentors regularly and that the new workers are provided with more formalised training, then you understand the importance of not pointing the finger.

**Instead, the aim**

**should be to:**



- Identify the cause of the problem
- Take steps to control the cause of the problem.

This ensures that the problem is minimised.

Management needs to understand that even if one action plan works one time, it may not work a second. As part of the continuous improvement process, the original action plan may be used as a template for a new project, however it is important to know and understand that each project is different.

Workgroup members have different knowledge and experience. A barrier that was originally identified may not be considered a barrier now. However, the development of new technology may

give rise to another health and safety issue. This may mean that corrective action may need to be taken.

### How to Manage Work Health and Safety Risks Code of Practice section 38

#### Review of control measures

- (1) A duty holder must review and as necessary revise control measures implemented under these Regulations so as to maintain, so far as is reasonably practicable, a work environment that is without risks to health or safety.
- (2) Without limiting subregulation (1), the duty holder must review and as necessary revise a control measure in the following circumstances:
  - (a) the control measure does not control the risk it was implemented to control so far as is reasonably practicable;

#### Examples

- 1 The results of monitoring show that the control measure does not control the risk.
- 2 A notifiable incident occurs because of the risk.
  - (b) before a change at the workplace that is likely to give rise to a new or different risk to health or safety that the measure may not effectively control;
  - (c) a new relevant hazard or risk is identified;
  - (d) the results of consultation by the duty holder under the Act or these Regulations indicate that a review is necessary;
  - (e) a health and safety representative requests a review under subregulation (4).
- (3) Without limiting subregulation (2)(b), a change at the workplace includes:
  - (a) a change to the workplace itself or any aspect of the work environment; or
  - (b) a change to a system of work, a process or a procedure.
- (4) A health and safety representative for workers at a workplace may request a review of a control measure if the representative reasonably believes that:
  - (a) a circumstance referred to in subregulation (2)(a), (b), (c) or (d) affects or may affect the health and safety of a member of the work group represented by the health and safety representative; and
  - (b) the duty holder has not adequately reviewed the control measure in response to the circumstance.

### 2.3 - Assist with identifying areas of contractor WHS arrangements needing improvement

Identifying areas of contractor WHS arrangement that need improving should be an ongoing process of review, evaluation and action. Reviewing information allows managers to learn from personal experience. Reviewing is a way in which managers can reflect on what is learnt and identify ways in which to improve practice.



**Remember:****WHS Management system**

A WHS Management system walks hand in hand with a systematic approach to WHS. The only way in which a systematic approach to WHS can be maintained is through management taking control of WHS arrangements.

**Management - Take Control**

It is essential that you review your progress, the results that were achieved and the steps put in place to identify where you can improve. A systematic approach to managing WHS requires that management is in control of WHS in the workplace.

**Reviewing WHS arrangements allows management to identify and review:**

- Whether your targets and outcome indicators attained
- Were the ppis used an appropriate measure of performance
- The consultation process
- The decision making process
- How information was communicated
- The problems that were identified and whether the corrective action taken was appropriate.

Since consultation is a primary factor in the review process, it is important that the review the process in consultation with contractors. It is essential that contractors and other stakeholders are consulted for their opinion in the process.

**Areas that management should review include:****Scope**

The scope of a systematic approach to managing WHS should determine whether the understanding of the process was clearly understood. Personal perceptions may vary because the project was not communicated sufficiently or clearly.

When reviewing the scope of a project, management needs to determine whether the expectations and understanding of the goals, procedures, control measures and expectations clear and mutually understood. If parties are not clear on what they are trying to achieve during the consultation process, then they will have varying expectations in regards to frequency and the method used.

Management needs to make sure that the expectations of everyone contributing and participating in the Consultation Process have the same understanding of what needs to be achieved and why?

When expectations are different then:

- Management has identified that the sharing of information is not appropriate; or

- Expectations were not clear.

This means that management will need to review the consultation process as changes to the consultation process must be reviewed by the work groups who are participating in the process.

## Frequency

**Frequency of review refers to:**

- The amount of times that monitoring and evaluation were completed,
- The frequency in which the information they receive was updated,
- Whether stakeholders were provided with sufficient opportunity to share their views and address their concerns; and
- Whether feedback about the decision was made in response to the stakeholder contributions.



If the goals and measures of the WHS consultation process have been communicated appropriately, then you will be able to obtain a true picture of the workers opinion of whether workers believed that they received appropriate exposure to information so that their participation was sufficient.

If the expectations are not clear, then it will be harder to obtain constructive information. Answers would vary according to the differing expectations of contractors. However, contractors and managers can receive correct information before providing feedback so you would not have to discount information.

Contractors will usually be able to adjust their perceptions as long as they receive a true picture of what management was trying to achieve.

## Method

Was the method (procedure) used appropriate? The methods may include:

- The methods in which information, instruction and training were provided
- The method in which the information, instruction and training was communicated.

Changes to procedures as stated in the WHS Consultation code of practice requires that any changes to procedures must be reviewed in consultation with workers and appropriate stakeholders.

As continuous improvement is an essential part of not only WHS, but also operations management should take the time to review stakeholder expectations and make the appropriate adjustments in consultation with them.

## 2.4 - Assist with developing implementing and evaluating improvements to contractor WHS arrangements

Once you have reviewed your project and updated the action plan, or if necessary raised another action plan to guide or assist a manager in learning how to consult correctly for example, you could also use raise an improvement plan. The secondary action plan could be utilised to meet the targets set in the improvement plan.

### What is an improvement plan?

An improvement plan can be utilised to assist you in improving team or individual performance in meeting outcomes. It is a comprehensive written report that sets out all the outcomes and performance requirements on which that individual or workgroup is to be assessed. Essentially, the improvement plan is an agreement between managers or teams or individuals determining what needs to be achieved within the required time frame.

Improvement 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 work health and safety. You may 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 worker requires.

In this instance, you should consult with another work health and safety professionals who would be able to assist you in ensuring that the work 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 improvement plans

Improvement plans must link the following elements:

- Key result areas.
- The various tasks that must be performed.
- The key performance indicators for each task (note: meeting performance standards should also be a key performance indicator).
- Time-frames, deadlines.
- Development plan.

### To develop an individual performance plan, you must:

1. Review organisational goals associated with results in term of performance, its quantity, quality, cost and timeliness.
2. Turn your goals into smart goals so you are very clear on what you are trying to do and the time in which to complete an allocated task.



Goals that are:

- S**pecific
- M**easurable
- A**chievable
- R**ealistic
- T**ime focused

3. Specify the results that you require. Consult with both your internal and external customer.
4. Ensure that the desired results from your goals will contribute to the organisations results.
5. Prioritise the goals in the form of ranking, percentages, time spent.
6. Outline the measures used to evaluate if and how well the desired results are achieved. Without measures, you are unable to evaluate the results. Measures include timeliness, cost, quality and quantity. For example, to measure whether the customer service representative consistently met its 150 calls a day average.
7. Identify more specific measures for the first-level measures if needed from the measures in point 5. For example, if the customer service representative consistently received calls, were they processed in two minutes? If so, what percentage was processed in this time period?
8. Identify standards for evaluating how well the results were achieved. For example, did the customer service representative meet expectations?
9. Document the performance plan. You must include the desired results, measures and standards.

[http://www.managementhelp.org/perf\\_mng/prf\\_plan.htm](http://www.managementhelp.org/perf_mng/prf_plan.htm).

Consult with workgroups and other managers who will be impacted by the improvement plan. They will be able to provide you with support and ideas that will be appropriate for their work area.

Follow organisational procedures in communicating the changes that the improvement plan may require to meet your targets. Remember to refer to the Consultation agreement that was developed for communicating information and change in your organisation. Both parties agreed to the communication methods and styles, so all parties must agree to any changes that you want to implement.

### Effective communication is when:

- Someone sends a message
- Another receives it and understands it; and
- If necessary provides you with a response.

In a culturally diverse work environment, this is not so easy. When you communicate in a culturally appropriate manner, you need to find ways in which to communicate that accepts and respects the different cultures in a workplace.

Culture is a way in which to identify groups who share common characteristics such as social practices, attitudes and values. All personnel are faced with more than one culture. There are language, community and workplace cultures. Many personnel are not aware of different cultures until someone points out the differences, such as the way people act, their hand gestures, way of dressing and behaving.

Take the time to learn the cultures around you and understand the cultures so that you can be more open and sensitive to other cultures.

It is important to understand that communication is a two way process and you need to work as a workgroup to achieve culturally appropriate communication. When you speak to work group members:

- Do not make assumptions. Even when people come from a specific culture, it does not necessarily mean that you need to treat everyone in that culture in the same manner. People are individuals and should be treated as such. If you would like to know a worker's values, ask them.
- Be prepared to adapt. In the Australian culture if you do not look someone in the eye, it is assumed that the person is a liar. In the culture of the Middle East, this is a sign of respect. Be aware of the differences and be prepared to adjust your communication style to ensure that the receiver receives the message.
- Summarising or paraphrasing. If you have difficulty understanding a work group member summarise and paraphrase them to check your understanding of what is being said.
- Embrace the influences of the people from different cultures. Your way is not necessarily the best way. When a person contributes to a process, take their suggestion on board. You may find that they offer the best option.
- Speak clearly and concisely – speak at the correct speed for each person. Speaking slowly may be considered patronising and speaking too fast may mean that you are seen as making a mockery of them. Instead, break down the information that you are providing into smaller chunks and give them time to interpret the information.
  - You can also use posters, maps and other visual aides to communicate with them
- Consider non-verbal communication. Tone of voice, posture and gestures can be used to communication information. Be aware of the differences and take the time

to learn and understand different non-verbal cues. Something that is in-offensive to you may have different meanings for others.

## Using WHS specialists

Most organisations will provide Management with clear instructions about consulting with specialists. It is important to make sure that you keep in mind that if you manage a department, in most instances consultation with Specialists may be charged against your budget. There may also be a budget for WHS Specialists and technical advisors. This means that you should only use specialists when you need their specific skills.

### WHS Specialists include:

- Ergonomists
- Health professionals
- Industry management advisors
- Occupational hygienists
- Safety engineers
- Safety professionals



A request for WHS specialists may not come from the management team. Providing support for workers and HSRs in some organisations may allow for requests of WHS Specialists. These requests must be considered in the same manner the request for information from another manager is considered.

Organisational policy and procedure will provide you with clear guidelines in regards to contracting the services of a WHS Specialist. As with suppliers, many organisations develop long going relationships with specialists, especially if their advice is required on a regular basis.

### When the need for a WHS specialist is required, your procedures may include:

- Identify type of WHS specialist is required?
- What documents need to be generated for the request of WHS Specialist?
- Where documentation should be sent to?
- At times, speed may be the essence. When can steps in the process be by passed?  
For example, a fault to a process may require the services of an engineer to minimise risk to staff. The risk is urgent as operations have stopped until the risk is minimised.
- Who should be consulted in the organisational chart to find out the names and contact details of specialists?
- What are the steps for researching specialists? This may include:
  - Researching local professionals through employer associations or your network
  - The interview process – references, written and/or verbal
  - Copies of qualifications – Certified if copies original are not available
- What contractual obligations are needed?
- What Induction and training is required to enter the worksite?