



## Arboriculture Industry - WHS implications

(Gill F. and Stavrou R.)

The following list details Australian regulations and statutory provisions applicable to tree work at height. This section does not intend to provide an interpretation of the law; rather it is guidance in the form of a summary and/or outline of key points.

### **Work Health and Safety Act 2011 (Commonwealth) and the supporting Work Health and Safety Regulations 2011**

Safe Work Australia (SWA) provides leadership and coordination for national efforts to prevent workplace death, injury and disease. Safe Work Australia succeeds the Australian Safety and Compensation Council (ASCC) and National Occupational Health and Safety Commission (NOHSC).

#### ***A brief overview of the 'Work Health and Safety Act 2011***

**This overview is not meant to be an exhaustive summary of the legislation.**

At the start of 2012 the legislation regarding Work Health and Safety has changed considerably. Every person now has a role regarding safety in the workplace.

Work Health and Safety legislation provides that a '**person conducting a business or undertaking (PCBU) 'must ensure so far as reasonably practical' that 'the health and safety of workers and other persons is not put at risk from work carried out by the conduct of the business'.**

**Within this legislation the onus of proof has been reversed.**

The law now considers what the employer could have done that was '**reasonably practicable**' to prevent the risk to health and safety.

**New legislation has been introduced in NSW, QLD, NT, ACT, SA, and Tasmania and soon to be introduced in all the remaining states. Although all states and territories are not aligned, best safety management practice will ensure a smooth transition period across all jurisdictions.**

#### **Changes**

**'The changes to legislation will apply to all businesses and undertakings of the Commonwealth';** all states and territories will be affected now and in the future.

In relation to the '**primary duty of care**', the WHS law has moved beyond the traditional employer and worker relationship. It now includes all persons who carry out work in any capacity for a business or undertaking; and includes workers, labour hire workers, contractors, subcontractors, visitors and volunteers.

#### **Contractors**

Contractors and subcontractors that may be engaged by a business to perform work, now have further obligations to provide relevant information to the employer or business.



## Work Health and Safety Commitment Policy

Develop a policy, which states:

The PCBU is responsible for Work Health and Safety (WHS) and will comply with current legislation covering WHS and ensure that all workers are provided with information, instruction, training, resources and supervision, having regard to the hazards and risks associated with the organisation's activities and identifying those hazards.

How the organisation intends to consult with workers on WHS matters.

The policy should be signed and dated by senior management and be readily accessible to all workers, contractors, visitors and volunteers.

## Consider how the following affects your business

### Type of work performed & nature of hazards:

#### *Incident Management*

Incident management includes:

Training of all workers on incident reporting procedures,

Who to report to and the chain of responsibility,

Location and type of form for formalising incident reporting

- training workers as to what a **'notifiable incident'** is, and the requirements for reporting to the state regulator e.g. WorkCover NSW, and
- encouraging workers to report all incidents, accidents, injury and near misses, and
- reporting all incidents.

This may seem insignificant at the time of the incident; however established reporting procedures will enable the PCBU to gather vital information for the enterprise. This information can be used to monitor recurrence of incidents and safety performance. This enables the business to identify potential hazards that may emerge from work tasks, that were not apparent at the time or until the incident occurred, gathering of incident reporting data by the PCBU. This data can then be used to develop procedures to eliminate the identified hazard or risk or apply suitable controls to manage the risk.

Following an Incident you are required to provide refresher training to worker on the subject related to the incident) use a preventative method of retraining using the original JSA, SWP, SWMS, SDS or WMS for the refresher training or procedure that has failed.

#### *Personal Protective Equipment (PPE)*

- **'must'** be supplied by employer, at no cost to the workers, and
- accompanied by appropriate training in the use of the PPE, and
- correctly used by the workers,
- inspected and maintained by the user,
- where inadequate or requiring replacement, the employer **'must'** be advised of the need for replacement or substitution and the expiry date of the PPE using established workplace procedures.

#### *Fatigue*

Fatigue is a major cause of injury and death in high risk work; the PCBU needs to ensure that

- fatigue awareness training and information is provided to all workers, and
- rosters, breaks and job rotation are provided, where appropriate, to reduce fatigue.



## **Manual Handling**

Many soft tissue injuries and even some serious injuries, in the workplace, relate to incorrect manual handling. The PCBU should ensure that;

- hazardous manual handling tasks are assessed and controls put in place,
- appropriate training in manual handling is provided,
- *Toolbox Talks* are delivered, to an individual or work team using appropriate methods,
- evidence of training is collected, using a training form to outline the content, date and details of all attendees including the attendee signatures,
- *Refresher Training* is provided as soon as possible after an accident, incident, injury, or near miss and is delivered to the individual worker, or group of workers involved.
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## **Plant and Equipment (P&E)**

The PCBU needs to be aware that:

- *Licensing* requirements for plant operators often varies between jurisdictions, and
- workers **'must'** be trained in the *Safe Operating Procedures* (SOPs) for each piece of plant or equipment, and
- *Service and Maintenance Records* must be kept for each piece of plant or equipment, and
- *Emergency Planning* exists that deals with things such as breakdowns, refuelling, spills, etc.

## **Working at Heights and on ladders**

The PCBU must ensure that:

- all persons working at heights have been trained and are competent in working at heights including the relevant emergency rescue procedures, and
- visual and manual inspection of all equipment is undertaken prior to working at heights, and
- the care and maintenance of all equipment is communicated to all workers, and
- the *Manufacturer's Recommendations* for service, inspection schedules are followed or exceeded, and
- all equipment records are to be maintained by the employer for five years.
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## **Hazard Identification and Risk Assessment**

The PCBU **'must'**:

- identify existing hazards in the work environment, and
- establish the requirements for workers to report hazards and risks to health and safety in the workplace, and
- train workers to identify hazards in the workplace, and
- maintain a hazard register, which can be in the form of risk assessments conducted on known hazards, and
- Communicate with workers on how to use a *Safe Work Method Statements* (SWMS), JSAs and SOPs<sup>1</sup> via a toolbox talk.

## **Workplace Inspections**

Workplace or site inspections are carried out in most work environments at quarterly intervals. They usually include a general inspection of the facilities, and in particular, involve the inspection of power points, lighting, fire extinguishers, emergency exits, storage sheds, chemical safety etc. External audits by safety professionals can be used to measure the performance of a workplace safety management system.

State Regulatory Authorities may inspect any workplace and all persons are required to co-operate.

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<sup>1</sup> Different workplaces and regions may have similar documents that relate to their work place, industry and job sites. These are commonly known as Job Safety Analysis (JSA) and Safe Work Procedures (SWP) and are frequently used when instructing workers on how to operate machinery or equipment or to carry out a task or operating new equipment.



## ***Consultation communication and cooperation***

Consideration should be given to how management will communicate with the workers. You may not need to establish separate consultation arrangements if there are regular discussions between managers or supervisors and the workers, for example weekly team meetings. This may often be the case in a small business with only a few workers, where there are direct discussions as part of everyday work.

In organisations where it is not practical to consult each worker individually, election of health and safety representatives or committees may be more appropriate. Some workplaces may need a mix of consultation arrangements to suit different work environments. For example, a business may have a number of full-time workers where structured arrangements involving health and safety representatives and committees may be suitable. On occasions the business may also engage contractors or on-hire workers to carry out specific tasks, where arrangements such as 'toolbox talks' (short discussions on specific health and safety topics relevant to the task) may be the most practical way to consult with them.

The WHS ACT 2011(Commonwealth) does not require a PCBU to reach agreement with their workers on how consultation will occur, but doing so, will help to make the consultation more effective.

## ***Record Keeping***

Current WHS legislation requires all safety related documents and evidence of training and refresher training to be retained for a five year period.

## ***Glossary of terms***

### **Guide on terms used throughout the Document**

Included in this document are various references to sections of the WHS Act and Regulations which set out the legal requirements. These references are not exhaustive. The words, '**must**' '**requires**' and '**mandatory**' indicate that a legal requirement exists and must be complied with. The word '**should**' is used to indicate a recommended course of action, while 'may' is used to indicate an optional course of action.

## **Codes of Practice**

Codes of practice are practical guides to achieving the standards of health, safety and welfare required under the Work Health and Safety (WHS) Act and the WHS Regulations in a jurisdiction.

To have legal effect in a jurisdiction a model Code of Practice must be approved as a code of practice in that jurisdiction. To determine if a model Code of Practice has been approved in a particular jurisdiction, **check with the relevant work health and safety regulator.**

An approved code of practice applies to anyone who has a duty of care in the circumstances described in the code. In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the WHS Act, in relation to the subject matter of the code. Like regulations, codes of practice deal with particular issues and do not cover all hazards or risks which may arise. The health and safety duties require duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist.



Under a WHS Act in a jurisdiction, approved codes of practice are admissible in court proceedings. Courts may regard an approved code of practice as evidence of what is known about a hazard, risk or control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

## References

**Further comprehensive information can be obtained by referring to the following:**

Work Health and Safety Act (Commonwealth) 2011	<a href="http://www.comlaw.gov.au/">www.comlaw.gov.au/</a>
Work Health Safety Regulations 2011 Codes of Practice Safe Work Australia	<a href="http://www.comlaw.gov.au/">www.comlaw.gov.au/</a> <a href="http://www.safeworkaustralia.gov.au/">www.safeworkaustralia.gov.au/</a> <a href="http://www.safeworkaustralia.gov.au/">www.safeworkaustralia.gov.au/</a>
ACT	<a href="http://www.worksafe.act.gov.au">www.worksafe.act.gov.au</a>
QLD	<a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a>
NSW	<a href="http://www.workcover.nsw.gov.au">www.workcover.nsw.gov.au</a>
VIC	<a href="http://www.worksafe.vic.gov.au">www.worksafe.vic.gov.au</a>
WA	<a href="http://www.commerce.wa.gov.au/WorkSafe">www.commerce.wa.gov.au/WorkSafe</a>
SA	<a href="http://www.safework.sa.gov.au">www.safework.sa.gov.au</a>
NT	<a href="http://www.worksafe.nt.gov.au">www.worksafe.nt.gov.au</a>
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