



fact sheet

Work Health & Safety

NUMBER 21

August 2012

Considerations for construction projects

This fact sheet provides information about matters that Commonwealth agencies should consider in relation to construction work, under the *Work Health and Safety Act 2011* (the Act) and the *Work Health and Safety Regulations 2011* (the Regulations). It is designed to provide general information only and should not be relied upon as legal advice.

A quick recap

The Act operates by imposing duties on a 'person conducting a business or undertaking' (PCBU), officers, workers and others. For agencies that are legally part of the Commonwealth (this includes most FMA Act agencies), the PCBU is the Commonwealth. For bodies that are 'public authorities' under the law (that is, most CAC Act agencies), the relevant body is the PCBU.

PCBUs and their duties

The Act imposes a 'primary duty of care' (s 19) on all PCBUs and 'further duties' depending on the nature of the PCBU's business or undertaking (ss 20–26). The 'primary duty of care' applies to the Commonwealth and public authorities, including all departments and FMA and CAC Act agencies. This duty obliges the Commonwealth and public authorities, so far as is 'reasonably practicable' (amongst other matters):

- to ensure the health and safety of workers (s 19(1))
- to ensure that the health and safety of other persons is not put at risk (s 19(2))
- to provide and maintain a safe work environment, safe systems of work and safe plant and equipment (s 19(3)(a)–(c))
- to provide ongoing information, training, instruction and supervision (s 19(3)(f)).

Officers and their duties

'Officers' also have particular duties under the Act. In a Commonwealth agency, the chief executive officer is likely to be regarded as an officer, and so might others within the agency who make, or participate in making, decisions that affect the whole or a substantial part of business or undertaking of the Commonwealth or public authority – for example, of the agency. All officers have a duty to exercise 'due diligence' to ensure that the PCBU complies with its duties. Due diligence requires officers (amongst other matters):

- to gain a knowledge of the hazards and risks associated with the business's operations (s 27(5)(b))
- to ensure that there are appropriate resources to eliminate or minimise risk to health and safety arising from the business's operations (s 27(5)(c))
- to ensure that the processes in place to eliminate or minimise risk to health and safety are implemented (s 27(5)(e)).

Workers and others

Both workers and persons who find themselves at a workplace must take 'reasonable care' for themselves and others and comply with reasonable instructions (s 29). Workers must also cooperate with reasonable policies and procedures of the PCBU.

Provisions specific to construction

Chapter 6 of the Regulations details specific duties relating to construction work. For the purposes of Ch 6, 'construction work' means any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure. Excluded from the definition is manufacture of plant, prefabrication (unless it is carried out at a place specifically established for the construction work), testing, maintenance and repair work of a minor nature.

Chapter 6 interacts with the design, tender and contracting stage of the construction process. In addition, the Act contains some specific obligations on designers.

Design phase

During the design phase of a project:

- the PCBU that commissions the construction work (that is, the department or agency on behalf of the Commonwealth) must consult with the designer to ensure that risks to health and safety arising from the design during construction are eliminated or minimised so far as is reasonably practicable (reg 294)
- the designer must provide the PCBU with a hazard report that identifies risks to persons carrying out the construction work arising from the design (reg 295)
- if the PCBU engages a principal contractor for the construction project, the PCBU must give the principal contractor any information it has concerning relevant hazards and risks (reg 296).

Finally, the Act imposes a further duty on designers to ensure that plant, substances and structures are designed so as to avoid risk to health and safety of persons who will be constructing or using the structure (s 22).

Design consultancies should be reviewed to take into account the obligations on the PCBU and designer under the Act and Regulations.

Tender phase

The Act and Regulations do not deal specifically with the tender phase of a construction project. However:

- the primary duty imposed on PCBUs – in particular, the duty to ensure the safety of its workers (s 19(1)) and the duty to avoid risk to the health and safety of 'other persons' (s 19(2))
- the duty imposed on officers to ensure that there are processes in place to eliminate or minimise risk to health and safety (s 27(5)(c))

require greater focus on work health and safety management at the tender phase of any project, especially if the contractor will be appointed 'principal contractor'. For example, where it is proposed that the contractor will have control of the site, tenderers should be asked to provide an outline of their work health and safety management strategies as part of their tender response. The outline should deal with management of the obligations that are imposed on the Commonwealth and under Ch 6 of the Regulations, including hazard identification (reg 34), risk minimisation (reg 35), maintenance of procedures (reg 37), site security (reg 298), management of high-risk construction work (regs 299–302), preparation of a work health and safety management plan (regs 307–315) and provision of induction training (regs 316–325). In such situations, work health and safety should be a selection criterion or at least part of a relevant criterion (for example, understanding of the project) when selecting a contractor.

Where it is proposed that the construction work will be undertaken via trade packages let by the Commonwealth or agency, the relevant department or agency must develop a work health and safety plan for the project and include this as part of the tender documents.

Construction phase and principal contractor

During the construction stage of the project, the department or agency that commissions construction work will have primary responsibility for all work health and safety matters unless the department or agency engages another PCBU as principal contractor for the construction project.

In engaging a PCBU as principal contractor, the Commonwealth or public authority must authorise the PCBU to:

- have management and control of the workplace
- discharge the duties of a principal contractor under Ch 6 of the Regulations.

Generally this will be possible where one contractor is responsible for the proposed construction project.

Principal contractors have a number of significant duties under the Regulations. Principal contractors' duties include:

- preparing a written work health and safety management plan for the workplace before work on the project begins and ensuring that people who are to carry out construction work in connection with the project know about the plan before they begin (reg 308)
- taking all reasonable steps to obtain a copy of the safe work method statement relating to high-risk construction work before the high-risk work commences (reg 312)
- ensuring that a copy of the work health and safety management plan for the project is kept until the project is completed
- putting in place arrangements for ensuring compliance at the workplace with certain matters in Pt 3.2 regarding general workplace management, first aid, emergency procedures, personal protection, management of airborne contaminants, hazardous substances, flammable substances and falling objects; and with Part 4.4 regarding falls.

Notwithstanding the appointment of a principal contractor, the department or agency will retain an oversight role to ensure that the principal contractor is effectively managing its work health and safety obligations (reg 297). If the department or agency does not appoint a principal contractor (for example, because the construction work is undertaken by trade packages contracted by the department or agency), the department or agency will retain responsibility for managing work health and safety and will need to perform all of the duties of the principal contractor. Also, the department or agency will potentially have additional duties as a PCBU that installs, constructions or commissions plant or structures (s 26).

Responsibility for work health and safety must now be dealt with in the contract. One strategy for achieving this is as follows:

- the contract should appoint the contractor as the principal contractor for the purposes of the Regulations
- the contractor should be required to provide a copy of its work health and safety plan to the department or agency for incorporation into the construction contract
- the contractor's work health and safety plan should be vetted by the department or agency for compliance with the requirements of the Act and particularly Ch 6 of the Regulations
- the contractor should be required to comply with the endorsed work health and safety plan
- the department or agency (or their project manager) should audit compliance with the plan
- compliance with the work health and safety plan should be a standing agenda item at all project control group meetings.

There could be some contractual mechanism to encourage compliance with the endorsed plan in the event of non-compliance with the contract – for example, retention of any entitlement to payment pending rectification.

Other resources

The Commonwealth work health and safety regulator, Comcare, provides further information on the work health and safety laws at the following address: www.comcare.gov.au/WHS

Safe Work Australia provides a range of information on the national model work health and safety laws, including interpretive guidelines, fact sheets and the agreed National Compliance and Enforcement Policy, at the following address: www.safeworkaustralia.gov.au/Legislation/Resources/Pages/Resources.aspx

More information

If you require further information about work health and safety please contact:

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