



General Information

THE WORK HEALTH AND SAFETY (WHS) LEGISLATION

The objective of the WHS Legislation is to protect the health, safety and wellbeing of our workers and others (i.e. the University community) by requiring safe systems of work to eliminate, or minimise the risks to health and safety.

Responsibilities outlined in legislation apply to:

- Person(s) Conducting a Business or Undertaking (PCBU) e.g. University
- Officers
- Workers (including contractors and volunteers)
- Others, such as designers, manufacturers and importers.

The health and safety legislation is made up of three parts:

- 1. The WHS Act 2012 (The Act)**
 - Sets out the general requirements for protecting health and safety in the workplace
 - Requires officers to consult with workers and their representatives and work together to resolve any health and safety issues.
 - Gives powers to government inspectors from SafeWork SA to inspect workplaces and investigate health and safety issues. Inspectors can initiate prosecutions which can result in penalties and fines depending on how serious the offence is.
 - Sets out responsibilities for officers.
- 2. The WHS Regulations 2012 (The Regulations)**
 - Set out the general principles and practical steps that should be followed in order to prevent injury and illness at work.
- 3. Codes of Practice**
 - Set out practical guidance on how to comply with legal requirements. The University is required to follow the requirements in the Codes of Practice unless another solution can be applied with is as good or better
 - Codes of Practice can be found on the [SafeWork SA website](#).

Other Australian Standards

- If included in the Regulations they become a regulatory requirement and must be followed
- Other Australian Standards should be considered as general information that is available to assist in meeting WHS obligations. Australian Standards can be accessed via login at the [University library](#).

Person conducting a business or undertaking (PCBU) Duties

Every [PCBU](#) has a duty to ensure, so far as is [reasonably practicable](#), the health and safety of workers whilst they are at work. This wide-range of responsibilities includes taking action to control risks associated with hazards in the workplace. PCBUs must take into account the severity of the risk, knowledge about the hazard and ways to eliminate or reduce the risk.

As a minimum, PCBUs are required to ensure so far as is reasonably practicable:

- the provision and maintenance of a work environment without risks to health and safety
- the provision and maintenance of safe plant and structures
- the provision and maintenance of safe systems of work
- the safe use, handling and storage of plant, structures and substances
- the provision of adequate facilities for the welfare of workers at work of including ensuring access to those facilities

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Person conducting a business or undertaking (PCBU) Duties (Continued)

- the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking
- that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

Officer duties

An officer is:

- a director or secretary of the corporation; or
- a person:
 - who makes, or participates in making decisions that affect the whole or a substantial part, of the business of the corporation; or
 - who has the capacity to affect significantly the corporation’s financial standing;
 - in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the persons professional capacity or their business relationship with the directors or the corporation); or
 - a receiver, or receiver and manager, of the property of the corporation; or
 - an administrator of the corporation; or
 - an administrator of a deed of company arrangement executed by the corporation; or
 - a liquidator of the corporation.

An officer of the PCBU must exercise [due diligence](#) to ensure that the PCBU complies with their duty or obligation. The Act identifies six steps in order to demonstrate due diligence.

- acquire and keep up-to-date knowledge of work health and safety matters
- gain an understanding of the nature of the operations of the business and generally of the hazards and risks associated with those operations
- ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety
- ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information
- ensure that the PCBU has, and implements, processes for complying with any duty or obligation
- verify the provision and use of resources and processes.

Workers duties

- A person is a [worker](#) if they carry out work in any capacity for a PCBU including:
 - an employee
 - a contractor or subcontractor
 - an employee of a contractor or subcontractor
 - an employee of a labour hire company who has been assigned to work in the PCBU
 - an outworker
 - an apprentice or trainee
 - a student gaining work experience
 - a [volunteer](#)

Workers must take reasonable care to protect their own health and safety, and the health and safety of others that may be affected by their actions or omissions at work.

Workers responsibility for health and safety only extends to things that they have control over. However, they must cooperate with their employer in ensuring health and safety in the workplace.

In particular, workers must:

- use equipment provided to protect health and safety;
- follow reasonable instructions the PCBU gives on health and safety;
- ensure they are not so affected by alcohol or another drug to endanger their own or any other persons’ health and safety; and
- report any problems if they believe the work to be unsafe.

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How the Legislation is enforced

The Act assigns responsibility to SafeWork SA inspectors to ensure the legislation is followed. Inspectors do not need an appointment to make a visit to a workplace. They may call at a workplace at any time to carry out an inspection, investigate an injury or incident that has occurred, audit health and safety systems or take other action.

Inspectors have the power to inspect and examine anything (including a document) at the workplace, take photographs or films, make measurements, take and remove for analysis a sample of any substance or thing without paying for it, and interview any person about health and safety at the workplace. It is an offence to hinder or obstruct an inspector doing their job [Act s165, s188].

Inspectors' notices

If an inspector finds that the Act or Regulations have been breached they may issue a legal notice. There are three types of notices:

1. Improvement Notice

An Improvement Notice states that the Act or Regulation is being breached and may include directions about action required to resolve the problem.

2. Prohibition Notice

A prohibition notice may be issued where there is an immediate risk or potential for an immediate risk to health and safety. The notice prohibits the performance of unsafe work. This unsafe work cannot recommence until the inspector is satisfied that adequate steps have been taken to eliminate or minimise the risk to health and safety.

3. Non-disturbance Notice

A non-disturbance notice may be issued to preserve the site at which a notifiable incident has occurred for a specified period or prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances

More information on Notices can be found in sections 191 – 201 of the Act.

Prosecution and penalties

Inspectors can initiate prosecutions for breaches of the Act or Regulations, which may result in substantial [penalties or fines](#). The amount of the fine depends on the type and severity of the offence. A jail term may also apply for serious offences where a person recklessly breaches their duty of care or obligation knowing that their action is likely to seriously endanger another person's health and safety. Fines are identified under sections 31-33 and 230 of the Act.

The role of the The South Australian Employment Tribunal (SAET) (authorising authority)

The [South Australian Employment Tribunal \(SAET\)](#) have an important role to play in the resolution of health and safety disputes and legal proceedings under the Act. The Commission deals with matters both in formal hearings and more informally depending upon the nature of the matter and the parties involved.

Workgroup Disputes

If there is a failure of negotiations (including negotiations concerning the variation of an agreement), any person who is or would be a party to the negotiations may ask the regulator (SafeWorkSA) to appoint an inspector to resolve the issue (WHS Act s52).

Right of Entry

Unions may apply to the South Australian Employment Tribunal (SAET) to have one or more of their officials granted a WHS entry permit. This permit allows union entry into workplaces for specified purposes. If a dispute arises regarding an entry permit holder's right of entry, or rights after entry, the WHS Act provides mechanisms to resolve the dispute. This includes the appointment by SafeWork SA of an inspector to assist in resolving the dispute or the South Australian Employment Tribunal (SAET) may deal with the dispute. The South Australian Employment Tribunal (SAET) maintains a publicly available register of current WHS entry permit holders at <https://www.saet.sa.gov.au/>

Person must not intentionally and/or unreasonably hinder or obstruct an entry permit holder from entering a workplace or in exercising any rights that an entry permit holder has after entry to the workplace.

More information about right of entry can be found on [SafeWorkSA](#).

Legal proceedings

prosecutions taken by SafeWork SA inspectors for a breach of legislation are heard and determined by a magistrate in the Industrial Relations Court. If a decision is appealed, a judge or full panel of judges in the Industrial Relations Court hears the appeal.

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Further information

- [SafeWorkSA Website](#)
- [SafeWork Australia Website](#)
- [WHS Act 2012](#)
- [WHS Regulations 2012](#)
- [How to Determine What is Reasonably Practicable to Meet a Health and Safety Duty](#)
- [Codes of Practice](#)
- [The South Australian Employment Tribunal \(SAET\)](#)
- [Due Diligence](#)
- [Penalties](#)
- [PCBU, Officer and Worker](#)
- [Volunteer](#)

Should you have any queries, please contact any member of the [Health, Safety and Wellbeing team](#)

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