Work Health & Safety Practitioner

Reading

THE DUTY OF CARE PART 1

January 2012
Overview

This reading covers the concept of general duty of care as it applies to WHS legislation. It briefly outlines the similarity with common law, the Robens Report and ILO Convention 155 (both of which have had a significant impact on modern WHS legislation) and discusses in detail the duties of the person in charge of the business or undertaking (PCBU). To give the discussion a legislative context and to show how the principles discussed have been applied in law, reference is made throughout to the model Work Health and Safety Act.

Objectives

After reading this information you should be able to:

- outline the key differences between statute law and common law, particularly as it relates to the general duty of care concept;
- recognise the influence of the Robens Report and ILO Convention 155 on modern OHS legislation;
- describe the concept of practicability; and
- describe the key elements of the statutory general duties of the person in charge of the business or undertaking (PCBU).
Section 1: INTRODUCTION

Glossary of terms

When they are first used, glossary terms are indicated with an asterisk (*). Make sure that you are familiar with the Glossary of terms before going any further.

Robens Report

Lord Robens chaired the British Committee of Inquiry in Safety and Health at Work, which was established in 1970 to review the provisions made for occupational safety and health and to recommend any changes required (Robens 1972). The Committee’s report, which was presented to Parliament in July 1972, became widely known as the "Robens Report“. This report had far reaching effects beyond Britain and its recommendations have formed the basis of modern WHS legislation in a number of countries, including Australia.

Statute Law

Statute law is developed through the process of Government and includes Acts and supporting regulations. The terminology may differ in various jurisdictions; for example, the term ordinance is used in some jurisdictions but not others, however the principle is the same. Statute law is enforceable and breaches may result in prosecution.

Common Law

Common law has developed as a result of civil actions. This occurs when a person believes that he or she has been wronged by another party and takes that party to court, seeking justice. Common law claims typically seek some form of redress, frequently monetary. Common law is established (and changed) over time, through decisions made by the courts (precedents).
Workplace

"Traditional" WHS legislation applied narrowly to specified areas such as factories, shops, warehouses and construction sites. In contrast, a feature of modern general duty of care style legislation is that it applies as broadly as possible. This is reflected in the definition as a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. The definition includes such places as aircraft, ships, vehicles, farms, forests, buildings and other structures.

1.1 Duty of care is owed by one person to another

The concept of general duty of care is the cornerstone of modern WHS legislation in many jurisdictions throughout the world, including Australia. While the history, development and implementation of such legislation vary across jurisdictions, common principles apply.
The terms "primary duty of care" or "duty of care" relate to broad responsibilities, expressed in general terms, of a wide range of persons who are connected with the work or working environment. These include the person in charge of the business or undertaking (PCBU) which includes employers, self-employed persons and others, such as people who control workplaces, design and construct buildings or manufacture and supply plant; and workers. The concept reflects the fact that a "duty of care" is owed in law by one person to another. Examples of such duties include:

- a PCBU must, as far as is reasonably practicable, ensure the health and safety of workers and others; and
- workers must take reasonable care for their own health and safety, and that of others, at work.

1.2 Statute law and common law

The WHS legislation referred to in this reading is statute law. Statute law is developed through the process of Government and includes acts and their supporting regulations. The terminology may differ in various jurisdictions; for example, the term ordinance is used in some jurisdictions but not others, however, the principle is the same. Statute law is enforceable and breaches may result in prosecution.

There is another body of law called common law, which has developed as a result of civil actions. This occurs when a person believes that he or she has been wronged by another party and takes that party to court, seeking justice. Common law claims typically seek some form of redress, frequently monetary. Common law is established (and changed) over time, through decisions made by the courts (precedents).

The general duty of care concept is based on principles established under common law and has subsequently been incorporated into statute law. While consideration of the common law duty is useful for the understanding of legislation incorporating the concept, it is important not to confuse common law and statute law. In particular, it is important to recognise that the general duty of care in statute law may vary significantly from similar duties under common law. Depending on how the relevant requirements are framed in individual legislation, the statutory provisions may be
more limited, more extensive or otherwise different to common law duties. Similarly, statutory duties may vary considerably between jurisdictions, depending on the wording of the legislation. Nevertheless, "general duty of care style" legislation contains similar principles across jurisdictions.

1.3 The common law duty

The courts have determined the common law duty to mean that all PCBUs must take reasonable care for the safety of their workers. This recognises the greater level of control the PCBU has over working conditions, compared to the worker, and the PCBU's consequent greater control over matters affecting WHS.

Sometimes this common law duty is described in terms of:

- safe work practices (e.g. use of appropriate hand tools for the task);
- safe place of work (e.g. equipment is well laid out and lighting is suitable for the task); or
- safe system of work (e.g. tagging procedures exist for maintenance of equipment).

The overriding general duty always remains.

In common law, an employee may claim damages through a civil court for injuries arising from a PCBU's failure to take reasonable care. These are commonly called "negligence claims". The courts recognise that the actions of a worker may contribute to an injury and may reduce the size of a damages payout for "contributory negligence".
1.4 The differences between common law and statute law

Under common law, there must be some damage to a person or property before action can be taken.

Under statute law there is no need for an injury to occur before enforcement action can be taken to have an unsafe situation fixed. The focus is on prevention of such unsafe situations, through enforceable duties.

Under statute law, the courts may impose fines for breaches of the legislation, and there are usually no payouts for negligence to injured parties.

A further difference relates to the standard of proof required in the event of an action in the courts. In the case of WHS statutes in jurisdictions such as Australia, the prosecution must prove the case "beyond reasonable doubt" (the standard for criminal law). Under common law, on the other hand, the court needs only to be convinced of the plaintiff's case "on the balance of probabilities".

1.5 The “reasonable person”

In common law, each case is decided on its merits and the courts determine whether the action taken by the employer is reasonable in any particular case. They consider the way a hypothetical "reasonable person" might behave in each situation, to determine the standard of care which should apply in any particular case. It is based on the values of the society of the day and, in the end, will involve a value judgment.

There is no legal definition of how a reasonable person would behave (although there is considerable case law or precedents), and the final decision would depend upon the facts of each situation.
For PCBU's, there is emphasis on the increased level of care that would be considered reasonable by today's standards. In a High Court of Australia decision, the following comment was made regarding the employer's obligation:

". . . what reasonable care requires will vary with the advent of new methods and machines and with changing ideas of justice and increasing concern with safety in the community . . . What is considered to be reasonable in the circumstances of the case must be influenced by current community standards."

from Bankstown Foundry case final appeal: Mason, Wilson and Dawson JJ (160 CLR 301).

The PCBU's position is covered very well in the following summary:

- “The overall test is the conduct of a reasonable and prudent employer taking positive thought for the safety of his workers in light of what he knows or ought to know;
- where there is a recognized and general practice which has been followed for a substantial period in similar circumstances without mishap, he is entitled to follow it unless in the light of common sense or newer knowledge it is clearly bad;
- where there is developing knowledge, he must reasonably keep abreast of it and not be too slow to apply it; and
- where he has in fact greater than average knowledge of the risks, he may therefore be obliged to take more than the average or standard precautions."

from a statement by Swanwick J. Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd (1968) 1 WLR 1776
1.6 The Robens Report

Lord Robens chaired the British Committee of Inquiry in Safety and Health at Work, which was established in 1970 to review the provisions made for work safety and health and to recommend any changes required (Robens 1972). The Committee's report, which was presented to Parliament in July 1972, became widely known as the "Robens Report". This report had far reaching effects beyond Britain and its recommendations have formed the basis of modern WHS legislation in a number of countries, including Australia.

Robens made a number of criticisms of the then current (often referred to as "traditional") legislative framework, which was characterised by detailed prescriptive requirements. The report noted that there was an excessive amount of this legislation, that it was fragmented, inflexible, out of date, limited in its coverage, and its enforcement was not particularly effective. The report considered the existence of too much law to be counterproductive, by conditioning people to rely on rules imposed by external agencies.

The report proposed a flexible system, whereby employers and workers would consult and achieve a high degree of "self-regulation", supported by general legislative requirements and voluntary codes and standards. It was recommended the existing statutory provisions be replaced with a new comprehensive enabling Act containing a clear statement of the general principles of health and safety responsibility. In the words of the Report:

"the Act should begin by enunciating the basic and over-riding responsibilities of employers and employees. This central statement should spell out the basic duty of an employer to provide a safe working environment, safe equipment, trained and competent personnel, and adequate instruction and supervision. It should also spell out the duty of an employee to observe safety and health provisions and to act with due care for himself and others."
It was recommended the principal Act be supported by regulations and non statutory codes of practice, with a preference for the latter "in the interests of intelligibility and flexibility, and as a means of providing practical guidance towards progressively higher standards" (page 46).

Whilst certainly the most significant report of its time, similar conclusions were being drawn elsewhere. Some three months before the release of the Robens Report, a report recommending legislation incorporating general duty of care provisions was released in South Australia. Whilst lacking the detail of the Robens Report, the general comments and recommendations contained in the report of the Select Committee of the South Australian House of Assembly were similar (Brooks 1993).

However, unlike Robens, the Select Committee envisaged a system which would rely on statutory regulations for the statement of detailed requirements (rather than through voluntary codes as proposed by Robens) (Brooks 1993).

Many of the principles outlined in the Robens report have subsequently been adopted by legislation in Britain, all Australian jurisdictions and in the model Act, New Zealand and many other jurisdictions particularly those which use British or Australian legislation as a base.

1.7 ILO Convention 155

The International Labour Organisation's (ILO) Convention 155 (1981) concerning Occupational Safety and Health and the Working Environment sets standards for national policy on WHS for member countries ratifying the convention. Article 16 deals with the employer's duty, expressed in similar, broad terms as the general duty of care style legislation discussed in this reading. Article 16 states:

"1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health."
2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.

3. Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health."

The convention also deals with matters such as workplace cooperation, including that of workers; provision of information and training; and duties of designers, manufacturers, importers and providers of machinery, equipment or substances for occupational use.

Adoption of new OHS legislation, consistent with the Robens philosophy, has assisted Australia to ratify ILO Convention 155.
Section 2: CONCEPTS AND DEFINITIONS

2.1 Practicability

An absolute requirement for a PCBU to ensure the health and safety of employees at work would be particularly onerous and therefore the model Act qualifies the duty through use of the concept of "reasonably practicable".

In the model WSH Act 'reasonably practicable' represents what can reasonably be done in the circumstances. This means that the duty holders must satisfy the duties as far as they are reasonably able to, taking into account and weighing up all relevant matters, including:

- the likelihood of the relevant hazard or risk occurring;
- the degree of harm that might result from the hazard or risk;
- what the person knows, or ought reasonably to know, about the hazard or risk and the ways of eliminating or minimising the risk; and
- the availability and suitability of ways to eliminate or minimise the risk.
Only after assessing these matters can the cost of eliminating or minimising the risk be taken into account, including whether the cost is grossly disproportionate to the risk.

This definition provides clear guidance on what is meant by practicable. The action must be capable of being done (practicable), it must also be reasonable (reasonably practicable) and, in assessing what is reasonable, the Act further specifies the matters which must be taken into account. The risk and severity of injury must be weighed up against the overall cost and feasibility of the safeguards needed to remove the risk, in the context of what is known about the hazard.

While the cost of putting safeguards in place is a factor, it must be measured against the consequences of failing to do so. Cost is not an excuse for failing to provide appropriate safeguards, particularly where there is risk of serious, or frequent but less severe, injury.

Common practice and knowledge throughout the relevant industry are taken into account when judging whether a safeguard is "reasonably practicable". Individual PCBUs could not claim that they did not know what to do about certain hazards if those hazards were widely known by others in the same industry, and safeguards were in place elsewhere.

Example:

Exposed mechanical gears on rotating equipment are hazardous. Clothing, hair, hands or fingers can get caught, causing serious injuries.

It can be argued that setting up machines with suitable guarding is costly and sometimes inconvenient. However, industry has shown that mechanical gears can be easily guarded without adversely affecting the operation of the equipment.

What is considered reasonable in any particular case will depend on the specific circumstances. The concept is very similar to the discussion of "reasonable person" under the section "Similarity to Common Law". The difference is that in statutory law, account must be taken of how the general duty is qualified. In the model Act the factors which must be taken into account are specifically listed.
2.2 Hazards and risks

General duty of care style legislation applies to both health and safety at work. A hazard is anything that may result in injury or harm to health.

Injuries are easily recognised. "Health", however, is a broader concept. It includes work-related injuries and diseases, such as industrial deafness, dermatitis, occupational overuse injuries, asbestosis and occupational cancers. It could also include more general health problems like heart disease, high blood pressure and stress, where the work environment and procedures could be shown to be contributing factors.

The PCBU can ensure health and safety by managing risks, which involves:

- eliminating the risks, so far as is reasonably practicable; and
- if not reasonably practicable—to minimise the risks, so far as is reasonably practicable.

2.3 Workplace

"Traditional" WHS legislation applied narrowly to specified areas such as factories, shops, warehouses and construction sites. In contrast, a feature of modern general duty of care style legislation is that it applies as broadly as possible. This is reflected in the definitions of a "workplace" as a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. The definition includes such places as aircraft, ships, vehicles, farms, forests, buildings and other structures.
Section 3: DUTIES OF THE BUSINESS

3.1 Definition of PCBU

The phrase ‘business or undertaking’ is intended to be read broadly and covers businesses or undertakings conducted by persons including employers, principal contractors, head contractors, franchisors and the Crown.

3.2 Overview of PCBU’s duty

The person conducting a business or undertaking has a duty to ensure, so far as is reasonably practicable, the health and safety of:

- workers engaged, or caused to be engaged by the person; and
- workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.
The person conducting a business or undertaking also has a duty to ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

These duties include requiring a person conducting a business or undertaking to ensure, so far as is reasonably practicable:

- the provision and maintenance of a work environment that is without risks to health or safety;
- the provision and maintenance of safe plant, structures and safe systems of work;
- the safe use, handling—including transport and storage of plant, structures and substances;
- 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;
- the provision of, and access to, adequate facilities for the welfare of workers at the workplace; and
- the health of workers and the conditions at the workplace are monitored for the purpose of preventing work-related illness or injury.

There are additional duties for a person conducting a business or undertaking who:

- manages or controls workplaces or fixtures, fittings or plant at workplaces, or
- designs, manufactures, imports or supplies plant, substances or structures; or installs, constructs or commissions plant or structures.

The duties to ensure health and safety require the person conducting a business or undertaking to eliminate the risks to health and safety, so far as is reasonably practicable. If this is not possible, the person conducting a business or undertaking must minimise those risks so far as is reasonably practicable.
3.3 Provide safe systems of work

The PCBU is required to provide and maintain workplaces, plant and systems of work so that, so far as is reasonably practicable, workers are not exposed to risks.

The emphasis here is on the coordination of all work activity, so that one part does not endanger a person who is working in or on another part. This system of work should take into account the layout of the workplace, the storage and handling of all materials and the location and movement of all people on site.

The following matters need to be considered:

- Planning, of the work.
- Equipment and appliances, whether they are appropriate for the job and whether workers know how to use them.
- People, carrying out the task need to have appropriate information, instruction, training and supervision.
- Plans and procedures, for dealing with problems or mishaps, including the need for warning devices, emergency stop buttons, evacuation plans and so on.

A safe system of work implies that all aspects of the work have been considered as an integrated whole. While the work may be broken into tasks for the purpose of hazard identification, it is necessary to consider the effects of all components on each other.

Examples:

Safe systems of work would ensure that:

- workers are relocated elsewhere in an excavation while a crane lifts materials over their work area;
- a workplace is designed with a one-way circuit to avoid industrial lifttrucks reversing towards workers on site;
- a product is packaged to avoid strain injuries when the packages are handled; and
- data entry operators are given other clerical duties, to limit the time spent at keyboards and to reduce the risk of occupational overuse injuries.
The provision of information, instruction, training and supervision and the provision of personal protective clothing and equipment, are an integral part of a safe system of work.

A safe system of work, takes into account unintended consequences or mistakes ("mishaps"). PCBUs need to consider the possibility of these occurring and take steps to avoid them. When the likelihood of mishaps can be predicted they are "foreseeable" and the PCBU has a duty to prevent them.

When considering the potential for mishaps, the PCBU should take into account the risks of danger through inattentive work or work carried out without suitable instruction and training. Inadvertent acts by workers could result in injury to themselves and others; and in situations where a PCBU can foresee that misjudgement or inattention is likely, the system of work should minimise these risks.

Experience in similar workplaces can alert the PCBU to the sorts of problems that may occur in their own workplaces.

**Identification of Hazards, Assessment and Control of Risk**

The PCBU should apply the following three-step process to ensure workers are provided with a safe and healthy work environment. These steps are:

- identify any hazards associated with the work;
- assess the risk of injury or harm to health associated with each hazard; and
- consider and apply the means by which the risk may be eliminated, reduced or controlled.
3.4 Provide information, instruction, training and supervision

The general duty requires the PCBU to provide workers with the necessary information, instruction, training and supervision to carry out the work safely.

All information, training and instruction should be provided in a way that all workers at the workplace can understand. Where workers do not speak or are unable to read the workplace language, the PCBU should find an alternative method of providing information and training. This would apply to workers with a non-English speaking background (in countries where English is the official language) and to workers who for physical, intellectual or cultural reasons are unable to read. Methods which may be used include:

- organising information to be provided for people in groups with the same language;
- using interpreters;
- audio visual aids;
- provision of written information;
- using graphics;
- using short, simple phrases;
- demonstrating points; and
- access to computer based information through the Internet.

Checks should be made to ensure all information, instruction and training is understood.

Information

The PCBU is required to provide information to employees, to alert them to areas where hazards may exist and to improve their understanding of safe work practices. For example, visual warning signs, posters, booklets, brochures and other written materials could be provided under this duty.
Where health and safety representatives are elected, the PCBU should provide them with information on any hazards that may arise and other information relating to the health and safety of workers at the workplace. The PCBU should ensure that there is a system for health and safety representatives (where they exist) to receive and distribute relevant information and make it readily available to all workers.

Information does not always have to be written. Other forms of information, which could be used, include electronic media, safety videos and tapes. A briefing or hand-over at the beginning of each shift is a useful way of transferring safety information from person to person.

**Instruction and Training**

Instruction and training should be relevant to the health and safety of workers in the workplace and should take the functions of each worker into account.

The position of workers as managers or supervisors would also affect the nature of the training provided. They may have management, or control, of some parts of the work process with other workers under their supervision. This level of responsibility would require more comprehensive training in the administration of health and safety and the organisation of systems of work so workers are not exposed to risks.

The type of training that suits each workplace may vary from place to place and should be determined following consultation with workers and health and safety representatives (where they exist).

The training and instruction given should include:

- health and safety induction training;
- industry based training (i.e.: accredited or certificated courses);
- hazard specific training;
- "on the job" training; and
- "in house" programs.
Induction Training
Induction programs are essential for new workers. Induction can be the first experience or initiation for a person new to the job or particular work environment.

Information given during an induction should include:

- introduction to people with OHS responsibilities at the workplace;
- workplace policies and procedures;
- how to identify hazards;
- reporting of hazards;
- how to carry out the job in a safe and healthy manner;
- information on hazardous work practices;
- where applicable, details of any isolation or "tag-out" procedures;
- reporting of accidents or incidents;
- selection, use, fitting, storage, and maintenance of personal protective equipment;
- where to obtain OHS information;
- information regarding health and safety committee meetings;
- and
- emergency evacuation procedures.

Instruction to Experienced Workers
The PCBU should continue to provide information instruction and training to experienced workers who have previously had relevant health and safety training. A PCBU should not assume that an experienced person does not need to be instructed about the obvious. The PCBU’s duty to instruct and warn workers covers all workers, including experienced ones. Further training or re-training is particularly required when the methods, environment, equipment, procedures, or job change; and if new laws are introduced.
Supervision

The PCBU must provide adequate supervision to ensure workers are not exposed to risks and take reasonable care of their own health and safety and the health and safety of others. The PCBU should:

- Ensure that people in supervisory positions have the skills, knowledge and authority to undertake this role.
- Ensure that workers are adequately supervised.
- Include sufficient monitoring of the work to ensure agreed safe work practices are being followed.
- Ensure that personal protective equipment, such as respirators, garments, eye and hearing protection are used and kept in reasonable condition.

Special consideration must be given to the requirement for supervision of workers working on their own or working in an isolated area, for example, timber workers, exploration geologists and surveyors. As supervision of workers in these circumstances is limited, the PCBU must ensure that workers have suitable access to amenities and can easily communicate with the employer to obtain instructions and emergency assistance.

A PCBU is expected, through supervision, to ensure that workers are following safe work procedures and working in a manner consistent with the instruction and training provided. It is not sufficient to introduce safe procedures without monitoring their implementation to ensure that they are adopted and are effective. Failure to act to rectify unsafe behaviour, or failure to implement an adequate system of supervision to ensure the work is undertaken in a safe manner, would not satisfy the PCBU’s primary duty.

The PCBU has the major responsibility under the general duty. In most cases, the PCBU must provide a safe system of work with adequate information, instruction, training and supervision before workers can take reasonable care for their own health and safety at work.
3.5 Consult and co-operate

A common objective of many of the modern WHS Acts is to foster cooperation and consultation between the PCBU and workers. A statutory requirement for "every employer to consult with his employees or their representatives at the workplace on measures for promoting safety and health at work" was an important recommendation of the Robens Report (Robens 1972).

The PCBU is required to consult and cooperate with health and safety representatives, where they exist in the workplace, and with other workers on OHS matters.

This approach recognises that consultation and cooperation is a key to providing and maintaining a safe and healthy workplace.

Participation of workers is important, as they are most likely to know about risks associated with their work. Health and safety representatives, where they exist, have an important role in this consultation.

PCBU and worker involvement in identifying hazards and assessing and controlling the risks will help ensure workers have a commitment to this process and any changes that result.

Workplace Policies and Procedures

Policies and procedures may need to be developed and implemented, in consultation with workers and the health and safety representative, if there is one.
These require effective planning and may include:

- consultative mechanisms;
- safe work practices;
- accident investigation procedures (including involvement of the health and safety representative);
- induction and training programs;
- dealing with unique characteristics of the work;
- policies and procedures to monitor performance and to review control measures;
- resolution of issues procedures;
- means of access to additional hazard specific information;
- emergency evacuation procedures in the event of an accident, rescue or fire; and
- record keeping.

Some Acts specifically require a written WHS policy; and provide for a formal mechanism for consultation and cooperation through health and safety representatives and committees.

**Health and Safety Representatives and Committees**

There are also duties that require the PCBU to cooperate with health and safety representatives and other workers at the workplace on health and safety matters. This means that they should actively work together with the common aim of improving standards of health and safety in each workplace.

Where a PCBU intends to make changes, which may reasonably be expected to affect the safety or health of workers, the employer should consult health and safety representatives before the changes are implemented.
This consultation gives workers an opportunity to review the intended changes so they can apply their experience and expertise to identify any health and safety problems. For this reason, it is preferable for this consultation to occur in the planning phase. Even where programs are designed to improve the working environment and conditions, consultation should occur before they are introduced.

Health and safety committees provide a means for consultation and cooperation, and establishment of these committees is encouraged.

The legal responsibility for health and safety decisions at a workplace rests with the PCBU. The consultation process should help them to reach decisions which take into account information and recommendations provided by workers or the health and safety committee in the workplace.

3.6 Provide of personal protective clothing and equipment

In some work situations, it may not be possible to totally avoid certain hazards and risks. This might include periods while a workplace or work process is redesigned. In such cases, the PCBU must protect workers from the hazards by providing adequate personal protective clothing and equipment.

The PCBU must provide, and where necessary replace, all personal protective clothing and equipment, free of charge to the worker. Ownership of the personal protective clothing rests with the PCBU.

Personal protective clothing and equipment may include, for example, items such as safety goggles when there is a risk of eye injury; steel-toed boots when there is a risk of toe injury; and safety helmets when there is a risk of head injury.

The provision of "protection" may also include other items, such as hats to protect against skin damage.
The PCBU should consider the individual needs of each worker. For example, workers with disabilities may require additional protective clothing and equipment for use at work.

**Example:**
*When a respirator is placed over a worker's nose and mouth, it must form a good seal where it fits against the skin so that all fumes in the air are drawn in through the filters and not through a "leaky" seal.*

*In workplaces where workers require respiratory protection, employers may need to provide different types of respirators to ensure that each employee is supplied with suitable fitting equipment which does not "leak".*

*Equally, facial hair may prevent a proper seal being formed and it may result in a worker being exposed to hazardous substances. The employee in this instance would be required to assist the employer in fulfilling the duty of care, by remaining clean shaven (to the extent necessary for the proper fit of the respirator).*

* As determined in the Australian Industrial Relations Commission on 21 August 1993, in the matter between the Australian Workers' Union and another and Tiwest Pty Ltd (Dec 1754/93).

### 3.7 Provide safe plant and substances

The PCBU’s duty includes a requirement to provide for the safe use, transportation, and disposal of plant and substances at workplaces.

In the model Act the term ‘plant’ is defined broadly to cover a wide range of items, ranging from complex installations to portable equipment and tools.

Plant may include items such as cranes, forklift trucks, railway carriages and vehicles, heavy industrial machinery, gas cylinders, robotic arms, computers, microwave ovens, electrical tools and appliances, as well as hand held tools. Plant may also include scaffolding, ladders and other equipment used on a construction site.
"Substances" means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour.

The PCBU must ensure that workers are not exposed to risks arising from:

- the use, cleaning, maintenance, transportation and disposal of plant; and
- the use, handling, processing, storage, transportation and disposal of substances.

Reference, in legislation, to plant and substances, reminds the PCBU that their duties to provide and maintain a safe system of work and to provide information, instruction, training and supervision apply to all plant and substances at the workplace.

Where hazards cannot be eliminated, the PCBU has a duty to reduce or control them. Personal protective clothing and equipment must be provided when hazards cannot be avoided.

PCBUs are required to take measures that are practicable and reasonable, and the duty extends to all matters under their control.

The emphasis is on health as well as safety. Injuries caused by mechanical equipment are usually quite obvious. Workplaces should have a reporting and recording system which includes details of the location where the accident occurred and the action taken to prevent further similar injuries. All injuries are preventable.

Effects on health may not be so obvious. There is often a delay between exposure to the hazard and the appearance of a related illness or disease.

In some industries, for example in a lead process, the PCBU is expected to monitor the health of all workers at risk. The purpose of this monitoring is to identify any health effects at an early stage and to provide the necessary medical care.
3.8 Report of injury and disease

WHS legislation requires the reporting of certain cases of injury and/or disease affecting workers at the workplace. This includes cases resulting in the death of a worker.

All incidents should be reported to the PCBU immediately, so an investigation can be conducted if necessary.

Reporting of all incidents or "near misses" to the PCBU is also important as recording of these incidents provides valuable data to improve health and safety, and allows for steps to be taken to prevent injury.

Your feedback

WorkSafe is committed to continuous improvement. If you take the time to complete the online Feedback Form at the SafetyLine Institute website you will assist us to maintain and improve our high standards.

REFERENCES & FURTHER READING

Safe Work Australia legislation resources and information:
www.safeworkaustralia.gov.au