

Learner Resource & Assessment

Apply Knowledge of WHS Legislation in the Workplace

BSBWHS302



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BSBWHS302
Apply Knowledge of WHS Legislation
in the Workplace

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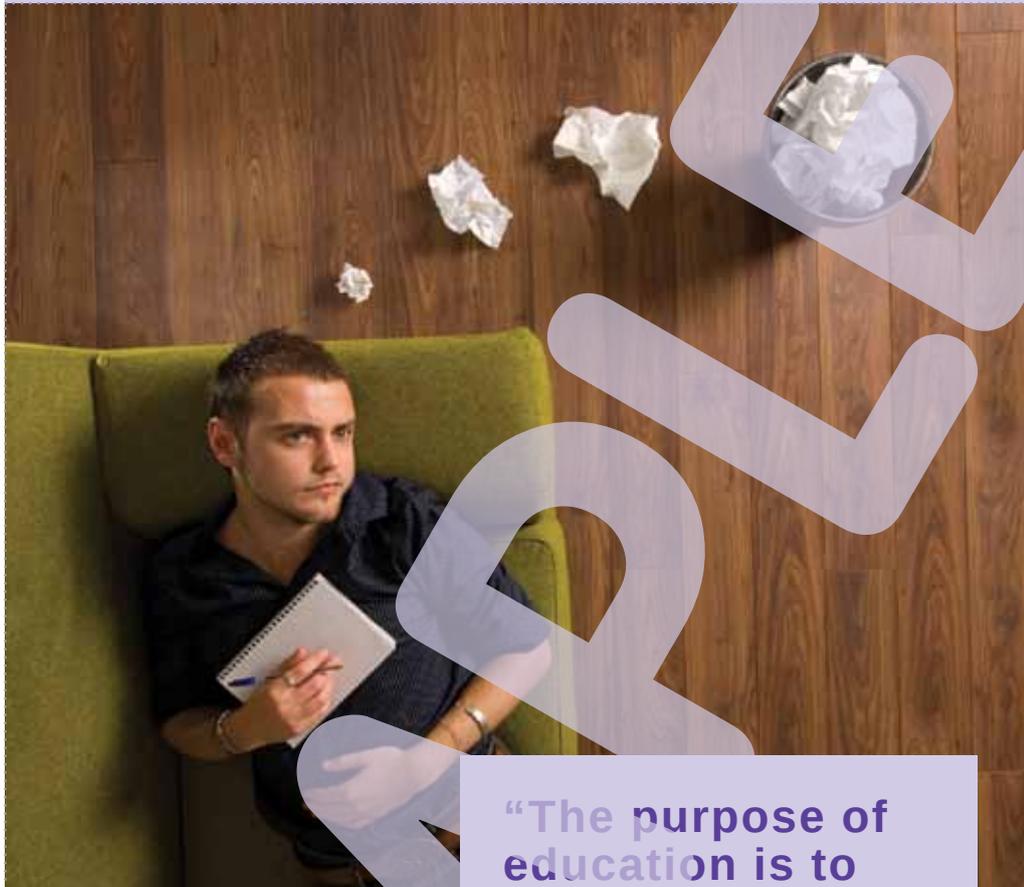
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About BSB Business Services Training Package



“The purpose of education is to replace an empty mind with an open one.” Malcolm Forbes

About the Business Services Industry

The BSB Business Services Training Package covers a diverse range of industries and occupations. Business Services covers a range of cross-industry functions and services supporting the commercial activities of all industries.

Defining Qualifications

When units of competency are grouped into combinations that meet workplace roles, they are called qualifications. These qualifications are aligned to the Australian Qualifications Framework (AQF). Each qualification will have 'packaging rules' which establish the number of core units, number and source of elective units and overall requirements for delivering the qualification.

Delivery and Assessment of Qualifications

RTOs must have the qualifications (or specific units of competency) on their scope to deliver nationally recognised training and assessment. RTOs are governed by and must comply with the requirements established by applicable national frameworks and standards. RTOs must ensure that training and assessment complies with the relevant standards.

Qualification Training Pathways

A pathway is the route or course of action taken to get to a destination. A training pathway is the learning required to attain the competencies to achieve career goals. Everyone has different needs and goals, and therefore requires a personalised and individual training pathway.

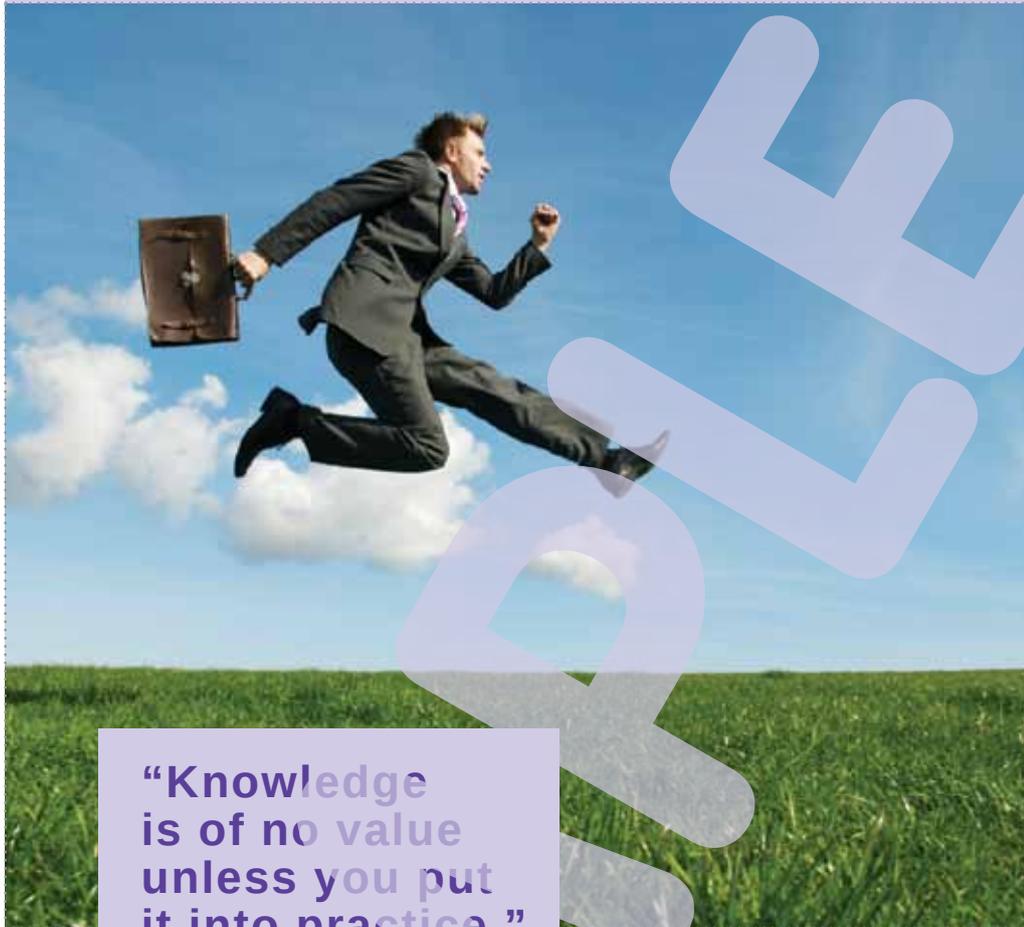
Foundation Skills

Foundation Skills are the non-technical skills that support the individual's participation in the workplace, in the community and in education and training.

Australian Core Skills Framework (ACSF)

This Assessment meets the five ACSF core skills as described in the Foundation Skills mapping.

Introduction



**“Knowledge
is of no value
unless you put
it into practice.”**

Anton Chekhov

This unit standard, BSBWHS302 Apply Knowledge of WHS Legislation in the Workplace is about being able to apply understanding of the Work Health and Safety (WHS) legal framework in the workplace. It includes determining relevant legislation and contributing to any actions to ensure compliance with WHS legislation, codes, and standards is achieved.

This unit applies to individuals who assist WHS specialists and contribute to compliance with WHS legislation in the workplace.

This manual is broken up into three Elements. They are:

- 1. Determine the Legal Framework for WHS in the Workplace**
- 2. Contribute to Activity that Reflects WHS Legislative Requirements**
- 3. Keep Up-To-Date with Legislation and Relevant Publications.**

At the conclusion of this training you will be asked to complete an Assessment Pack for this unit of competency. The information contained in this Manual will assist you to complete this task.

You will then have demonstrated your ability to understand and apply Work Health and Safety in your workplace.

This unit contributes to the attainment of National Certificates.

SAMPLE



ELEMENT 1:

Determine the Legal Framework for WHS in the Workplace



Performance Criteria Element 1

- 1.1 Identify and access current WHS legislation and related documentation relevant to the workplace, occupation and industry
- 1.2 Apply knowledge of the relationship between WHS Acts, regulations and codes of practice to assist in identifying WHS legislative requirements in the workplace
- 1.3 Identify duty holders
- 1.4 Identify legal obligations and duties for consultation with and training of workers, health and safety representatives, and others
- 1.5 Identify consequences of non-compliance with WHS Acts, regulations, codes of practice, standards and organisational WHS policies, procedures, processes and systems.

Determine the Legal Framework for WHS in the Workplace

Identify and Access Current WHS Legislation and related Documentation relevant to the Workplace, Occupation and Industry

Apply Knowledge of the Relationship between WHS Acts, Regulations and Codes of Practice to assist in Identifying WHS Legislative Requirements in the Workplace

Finding Your WHS Legislation, Codes, Standards, Policies, and Procedures

Work Health and Safety (WHS) legislation defines what is required to ensure a safe and healthy workplace. It is designed to reduce the number of injuries in the workplace by making individuals and corporations responsible to work together to maintain the standards required.

WHS laws apply to the workplace at all times. Employers, self-employed people, managers, supervisors, suppliers, and workers all have responsibilities in regard to workplace health, safety, and welfare. It is important to ensure that apprentices, trainees, and other new staff understand principles of safety and health as they relate to the workplace.

In 2009, Safe Work Australia was established and given statutory functions under the *Safe Work Australia Act 2008*. Safe Work Australia developed the national policy relating to WHS and workers. Safe Work Australia also has responsibility for preparing, and as necessary, revising, a model Act, model regulations, and model Codes of Practice relating to WHS.

The model Act and regulations, and an initial set of priority codes, was adopted by the Commonwealth, most States and the two Territory governments in January 2012. Alignment with all the other States is expected and will be complete in the near future. Safe Work Australia has developed a policy dealing with the compliance and enforcement of the model WHS legislation to ensure that a nationally consistent approach is taken to compliance and enforcement.

Information and copies of Work Health and Safety Law in Australia, and each State is available at <http://www.austlii.edu.au/>. You will also find special areas covered by their own Acts and regulations such as 'dangerous goods'.

Australian WHS legislation is working to achieve the same result. In general, employers must:

- Provide and maintain a safe working environment and safe systems of work
- Provide information to employees in relation to health, safety, and welfare in the workplace.

Employees also have responsibilities under the health and safety laws. Typically, employees are required to:

- Follow instructions and rules in the workplace – for example, to comply with instructions designed to ensure that work is carried out safely
- Work and behave in ways which are safe and do not endanger the health and safety of anyone in the workplace.

Employees who do not comply can be disciplined by the employer under the industrial award or enterprise agreement, or could be prosecuted under the WHS law in their State or Territory. Other people who have responsibilities include the people who visit workplaces who complete maintenance, repairs, cleaning, building and construction, or sales. They have the responsibility to ensure that the goods that are designed, made, supplied, installed, maintained, or repaired will not cause injury or damage the health of people in workplaces.

WHS is regulated by Commonwealth, and State and Territory government bodies. More detailed information on each, and their roles and responsibilities can be found by conducting a 'Google' search on:

- **Work Health and Safety Act of 2011**

They establish workplace health and safety standards, and related purposes.

- **Work Health and Safety Regulations 2011**

The general principle of each of the State legislations is:

Employers should do everything that is reasonably practicable to set up a working environment that is both safe and without risk to the health of all employees, contractors, and other people in or near the workplace.

WHS Regulations, Codes, Standards, Policies, and Procedures

In addition to the specific WHS Acts, there are regulations and Codes of Practice which also impact on the management of WHS in the workplace. This is because there are hazards that have the potential to cause severe injury and even death. The regulations and Codes explain the responsibilities of those controlling the risks associated with specific hazards.

The differences between regulations and Codes are:

- Regulations are legally enforceable
- Codes of Practice, while not legally enforceable, do provide advice on how to meet regulatory requirements and can be used in courts as evidence that legal requirements have or have not been met.

You will need to gain understanding of the different WHS Acts, regulations, and Codes of Practice to assist in identifying WHS legislative requirements in the workplace. You will gain this by identifying what documentation is required for your industry and reading and re-reading the contents of these and referring to these constantly. Some of these documents may seem to have conflicting information. You will always defer to the highest document, e.g, The Act, then the Regulations, then all others. A best practice or Code can always be improved on and should not always be seen as a bench mark but rather the minimum standard required.

Legal requirements include requirements to:

- Identify hazards
- Assess risks
- Eliminate or control risks
- Monitor and review risk assessments and control measures.

Regulations give details on how certain Sections of the Act are to be implemented.

Regulations made under the *WHS Act* cover specific areas of work such as:

- Risk management
- First aid
- Workplace consultation
- Work premises and working environment
- Notification of incidents
- Managing the risk of falls at workplace, e.g, working at heights
- Manual handling
- Noise
- Hazardous chemicals.

Information and copies of Work Health and Safety Regulation 2011 is available at <http://www.austlii.edu.au/>.

There are different types of laws that impact on WHS. Here is how they apply to WHS:

- **Common Law**

The common law system, as developed in the United Kingdom, forms the basis of Australian jurisprudence. The judges' decisions in pending cases are informed by the decisions of previously settled cases. Relating to WHS, it means that as well as having the responsibilities outlined by the relevant *WHS Act*, employers have a common law duty to manage all foreseeable risks of injury at work and to provide:

- Competent staff (which means attention to training them and ensuring they have permits / certificates to use certain equipment or machinery where they are required)
- Sufficient workers to perform the work safely
- A safe place to work and safe work systems / methods
- Proper and safe work plant, equipment, and resources.

- **Contract Law**

These are laws or regulations that are primarily regulated by common law, but statutes are adding an extra element to common law of contract – especially in relation to consumer protection. The WHS legislation is clearly intended to impose obligations for safe workplaces across a wide range of people. Although building owners, property developers, and commercial enterprises can engage a third party to carry out some of their obligations, overall responsibility will remain with the principal. The opportunities for principals to avoid liability for the acts and omissions of their managers, contractors or tenants are severely limited because of the non-delegable nature of many WHS duties.

Employees are entitled to a safe and secure environment, free from physical harm, theft, or harassment. Managers and directors of corporations are allowed to be prosecuted when in breach of the WHS statutes. However, most prosecutions are brought against corporate employers, rather than corporate officers. Enforcement action against designers, manufacturers, and suppliers of plant, equipment, and substances is rarely initiated.

- **Dangerous Goods**

Employers should ensure they are complying with legislative requirements when storing or handling any dangerous goods as defined within Schedule 1, Section 12 of the Regulations. Dangerous goods are classified into nine classes on the basis of immediate physical or chemical risk substances that present an immediate hazard to people, property, or the environment. The hazard presented may be due to properties such as flammability, toxicity, or chemical reactivity.

- **Environmental Protection**

WHS is concerned with protecting the safety, health, and welfare of people engaged in work or employment. The goal of all WHS programs is to foster a safe work environment. As a secondary effect, it may also protect co-workers, family members, employers, customers, suppliers, nearby communities, and other members of the public who are impacted by the workplace environment.

- **Equal Employment Opportunity and Anti-Discrimination Law**

An Anti-Discrimination and EEO Policy can be effective in alerting employees to certain types of behaviour that is unacceptable in the workplace and may be potentially dangerous. Having an effective policy can assist in alerting employees who may be subjected to unacceptable behaviour, to ways in which they can seek assistance from their employer to eliminate the behaviour. The policy can also assist employers to defend themselves from allegations that they are vicariously liable for the actions of employees which contravene relevant legislation. All employers should also supplement their policy with relevant procedures, training, instruction, and supervision.

- **Industrial Relations Law**

Fair Work Australia is concerned with workplace relations but that does not exclude WHS. It also ensures that employers comply with workplace-related laws including the status of contractors and conditions of work, both of which are directly related to WHS. Employing staff as 'contractors' was occasionally used by unscrupulous employers to avoid WHS and workers' compensation responsibilities. Fair Work Australia continues to work to ensure that WHS concerns are addressed and conditions are complied with.

- **Privacy**

Your privacy is protected in many areas when you are dealing with WHS such as how your personal information is collected, stored, accessed, and used.

- **Worker's Compensation**

This is coverage (payments) to workers who sustain a work-related injury or illness which prevents them from working and/or the work-related injury requires medical treatment.

- **Workers' Compensation can be:**

- Weekly payments if the worker is unable to work
- Payment of reasonable medical treatment costs and rehabilitation costs.

A worker who sustains a work-related injury or illness is entitled to make a claim for workers' compensation. A claim for workers' compensation is lodged with the relevant insurer for assessment. Claims are assessed by the insurer in accordance with the current State or Territory legislation.

Finally, there are WHS standards. These include:

- **Australian Standards**

These are set by the *Safe Work Australia Act 2008* which is Commonwealth legislation. It provides for the making of work health and safety standards.

- **Codes of Practice**

These are developed by legislators or industries that give practical advice on how to comply with legal obligations, and provide guidance on hazard identification, risk assessment processes, and risk control.

- **Exposure Standards**

Exposure to chemical agents should be kept as low as practicable, and guidance in the form of exposure standards is developed by the Hazardous Substances Information System (HSIS) to ensure that workers are protected.

- **Guidance Notes**

Industry specific standards and Codes of Practice apply to an industry group. Guidance notes will apply to any workplace throughout Australia. They are not enforceable by law; however, industry specific standards usually aim to achieve the same, if not a better result, than general national standards or Codes of Practice. Each State / Territory has a central piece of law, the principal *Work Health and Safety Act*. Supporting material outlines how employers, in consultation with their employees, should approach the management of health and safety at work. It is important that you are familiar with the WHS legislation and Act that applies within your own State or Territory.

- **Industry Standards**

These are developed by industry or the government to assist in the smooth and safe operation of that industry and cover all industries. These standards govern the way an industry operates.

- **International Standards**

Safety Certification can be obtained from an accredited, independent third party whose recognised standard detailing good safety management system principles are adhered to by your organisation. Certification is a public demonstration of your organisation's commitment to reduce and ultimately eliminate workplace injury. Three of these include:

- AS/NZS 4801 covers Work Health & Safety Management. NCI International (or NCSI) is a leading 3rd party auditor. They have provided risk management, governance, advisory, training, and compliance system solutions for over 20 years. NCSI has also produced a similar certification for office-based and small business environments
- SafetyMap is a safety focused WHS Management System
- OHSMS 18001 is an international safety framework used by organisations as diverse as food producers and mining companies in Chile and small manufacturers in Asia. It is recognised as the international WHS benchmark.

- **National Standards Developed by the Office of the Australian Safety and Compensation Council**

In 2008, an advisory panel was formed to conduct a national review into model WHS laws. It was agreed in-principle to form the Intergovernmental Agreement (IGA) for Regulatory and Operational Reform in WHS. This historic agreement articulated the commitment of all jurisdictions to the implementation of a uniform WHS legislative framework, complemented by consistent compliance and enforcement.

- **National WHS Standards and Codes**

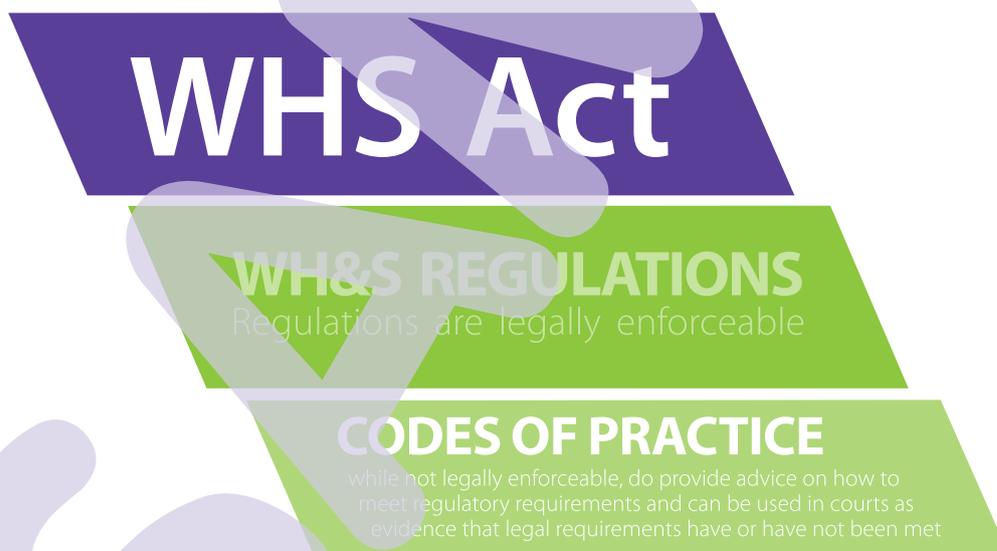
The Australian Safety and Compensation Council (ASCC) declared a number of standards and codes over the reporting period, including:

- The Code of Practice for hazardous Manual Tasks
- The National Code of Practice for Precast, Tilt-up, and Concrete Elements in Building Construction in February 2008
- Managing the Risks of Falls at Workplaces Code of Practice 2011

- **Regulations and Standards Developed by WHS Regulators**

Many of the Australian WHS regulators have brought all supporting WHS regulations together in one general regulation or set of consolidated regulations.

WHS Hierarchy



Identify Duty Holders

Duty of Care

Duty of care is the principle upon which *Work Health and Safety Acts* are based. It means that employers are responsible for planning for the prevention of workplace accidents, injuries, and illnesses.

Employers have a responsibility to exercise a general duty of care for all employees and others who come in to the workplace to ensure their health, safety, and welfare at work. The employer must take all reasonably practicable measures to control risks against all possible injuries within the workplace.

All individuals involved in the design, manufacture, and supply of plant and substances for use by others must ensure that their products do not pose a risk to the health and safety when used properly. They must also provide information on the correct use and potential hazards associated with the use of their products.

Employees also have an obligation to be responsible for their own health and safety, and that of others in the workplace. They must cooperate with the initiatives of the employer or other people so far as necessary to ensure compliance with the Act.

Duty holders are specified in *WHS Acts* and may include:

- Officers
- Persons conducting businesses or undertakings (PCBUs)
- PCBUs who manage or control workplaces or fixtures, fittings or plant at workplaces
- PCBUs who design, manufacture, import or supply plant, substances or structures; or install, construct, or commission plant or structures
- Workers and other persons at a workplace.

Employers must ensure:

- The health, safety, and welfare at work of all the employees of the employer
- That people (other than employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work
- Systems of work are safe
- Equipment is safe and properly maintained
- Employees receive health and safety information and training
- Employees are properly supervised.

This means that employers must:

1. Properly orientate, train, and supervise staff to ensure safe work practices are understood and followed by all employees
2. Consult with all employees about decisions that will affect safety in the workplace
3. Provide suitable personal protective equipment (PPE) to make sure workers can do their job safely and train workers how to use PPE correctly
4. Regularly check WHS systems and procedures to make sure that workers are adequately protected from workplace hazards
5. Provide adequate facilities for the welfare of employees; this covers everything from providing suitable toilet facilities, to conducting risk assessments on premises and procedures
6. Be aware of employers' legal obligations under the *Work Health and Safety Acts* and the *Health and Safety Regulations* and meet those obligations in full.

Self-Employed Workers

- A self-employed person must ensure that people (other than the employees of the person) are not exposed to risks to their health or safety arising from the conduct of the person's undertaking while they are at the person's place of work.

Employees

- An employee also has a duty of care to take responsible care for the health and safety of people who are at the place of work and may be affected by the employee's acts or omissions
- An employee must also cooperate with his or her employer or other person to enable compliance with the Act and regulations.

This means that employees must:

1. Work safely to protect themselves and others from injury and follow all WHS instructions, for example:
 - Wear all PPE provided
 - Follow safe work procedures
 - Not interfere with or misuse anything provided by the employer (equipment, signs, etc.) that is used to keep the workplace safe
 - Not remove or change machine guards
 - Not behave in a way that puts themselves or others at risk
 - Respond to a reasonable request to provide assistance or first aid to an injured person at work.
2. Report any WHS issues, including hazards, injuries, illnesses, and near misses.

Identify Legal Obligations and Duties for Who to Consult with regard to Training of Workers and Health and Safety Representatives

Employers are responsible for the health and safety of their employees and other people. These others may include anyone who is present in the workplace such as contractors, delivery people, or visitors.

Managers and supervisors are directly responsible for WHS within areas under their control. If they are in a position to influence the conduct of the organisation or those involved, the responsibility is extended to any area where a health and safety hazard exists.

Under the WHS Act, employers must provide:

- Safe premises
- Safe machinery and substances
- Safe systems of work
- Information, instruction, training, and supervision
- A suitable working environment and facilities.



The *WHS Acts* describe 'consultation' as:

1. The sharing of information about health and safety matters
2. Reasonable opportunities for employees to express their views about these matters, and the employer taking account of these views
3. Involvement of health and safety representatives in the consultation process
4. Adherence to procedures for consultation agreed to between the employer and employees.

Employers are required under the Act to 'consult with their employees about WHS matters which will or are likely to directly affect employees, including identifying hazards and assessing risks, and making decisions about measures to control risks'.

Health and safety representatives are employees who are elected by other staff to liaise with the employer and keep staff informed. These representatives will consult with the employers on matters which may include:

- Developing, reviewing, and releasing WHS policies, procedures, and forms
- Provision of WHS training
- Provision of WHS information and guidance
- Proposed changes to amenities and facilities
- Efforts to monitor and improve health and wellbeing
- Determining the composition and workings of WHS committee (if required) or other consultative forums
- Changes that may affect the WHS of employees, including work methods, activities, chemicals storage and use, waste and environmental issues, equipment, tools, and workplace layout.

Consultation between employers and health and safety representatives can take many forms. Some of these include:

- Direct consultation with employees, such as face-to-face (usually the best if practicable), telephone conversations, emails, or written notes
- More formal meetings with employees and employer, or management representatives
- Adding WHS to the top of the agenda of general meetings involving the employer and employees
- Providing copies of completed or work-in-progress WHS forms, such as the hazard identification, risk assessment and corrective action form (where appropriate), and asking for feedback
- Providing copies of minutes relating to WHS issues (where appropriate) and asking for feedback.

If there are no WHS Representatives (WHSR), the employer must encourage every employee to represent them for a specific WHS issue, if required, rather than have an elected WHSR. This is a very practical approach to employee representation where services have very low employee numbers.

Identify Consequences of Non-Compliance with WHS Acts, Regulations, Codes of Practice, Standards and Organisational WHS Policies, Procedures, Processes and Systems

Non-Compliance

If the employer fails to meet duty of care obligations, there are penalties. These range from fines to imprisonment, depending on the case. Inspectors have the authority to issue penalties or fines. They may also recommend or commence prosecution for breaches of the *WHS Act* and the *Work Health and Safety Regulation 2011*.

Non-compliance may result from:

- Failure to meet legal requirements
- Inadequate systems of information, instruction training, or supervision
- Plant, equipment, or substances not maintained, or used or stored in an unsafe condition
- Poor consultation practices
- Poor design
- Workplace hazards not identified or controlled
- Workplace systems not in place or inadequate.

You can use various methods to capture consequences of non-compliance including risk assessments and audits.

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Notes

A spiral-bound notebook with lined pages, overlaid with a large, light purple 'SAMPLE' watermark. The notebook is white with a silver spiral binding on the left side. The pages are ruled with horizontal lines. The watermark is a large, semi-transparent, light purple word 'SAMPLE' written in a bold, sans-serif font, oriented diagonally from the bottom left to the top right.



Activity One

Draw a line to complete the statements in the left column with the appropriate ones from the right column.

1	An employer must ensure employees ...	... by the Commonwealth, most States and the two Territory governments, by 2012.
2	It is important for employers to ensure that apprentices, trainees, and other new staff ...	... preparing, and as necessary revising, a model Act, model regulations, and model Codes of Practice relating to WHS.
3	The model Act and Regulations, and an initial set of priority WHS codes have been adopted ...	... to ensure safe work practices are understood and followed by all employees.
4	Safe Work Australia is developing policy dealing ...	... there are penalties.
5	Safe Work Australia also has responsibility for ...	... whose recognised standard, detailing good safety management system principles, are adhered to by your organisation.
6	WHS laws apply ...	... are properly supervised.
7	Employers must properly orientate, train, and supervise staff ...	... directly affect employees, including identifying hazards and assessing risks, and making decisions about measures to control risks'.
8	Safety Certification can be obtained from an accredited, independent third party ...	... with the compliance and enforcement of the model WHS legislation, to ensure that a nationally consistent approach is taken to compliance and enforcement.
9	Employers are required under the Act to 'consult with their employees about WHS matters which will or are likely to ...	... understand principles of safety and health as they relate to the workplace.
10	If the employer fails to meet duty of care obligations ...	... to the workplace at all times.

Key Points Element 1



- All employees have a responsibility to identify and access current WHS legislation, codes, standards, policies, and procedures impacting on their workplace, occupation, and industry
- Apply knowledge of the relationship between WHS legislation, codes, and standards to assist in identifying WHS legal requirements in the workplace
- Identify duty of care arrangements
- Identify legal obligations and duties for consultation with and training of employees, safety representatives, and others
- Identify consequences of non-compliance with WHS legislation, codes, standards, and workplace policies and procedures.

Element 1 – ‘True’ or ‘False’ Quiz

		True	False
Q	The worker must provide themselves with suitable personal protective equipment (PPE) to make sure they can do their job safely and train workers how to use PPE correctly.		
Q	The Work Health and Safety Regulation 2011 replaces all existing Work Health and Safety Regulations, the <i>Construction Safety Act 1912</i> and Regulations and <i>Part Three of the Factories, Shops and Industries Act 1962</i> .		
Q	Work Health and Safety (WHS) legislation defines what is required to ensure a safe and healthy workplace. It is designed to reduce the number of injuries in the workplace by making individuals and corporations responsible to work together to maintain the standards required.		
Q	The <i>Work Health and Safety Act 2011</i> aims to support the Work Health and Safety Regulation 2011 in achieving reductions in the incidence of workplace injuries and disease.		
Q	Duty of care is the principle upon which <i>Work Health and Safety Acts</i> are based. It means that employers are responsible for planning for the prevention of workplace accidents, injuries, and illnesses.		
Q	WHS is regulated by the State and Territory government bodies.		
Q	Employees who do not comply can be disciplined by the employer under the industrial award or enterprise agreement, or could be prosecuted under the WHS law in their State or Territory.		
Q	Other people who have WHS responsibilities include the people who visit workplaces, who complete maintenance, repairs, cleaning, building and construction, and sales.		
Q	Exposure to chemical agents is not allowed under any circumstances.		
Q	Health and safety representatives are employees who are elected by other staff to liaise with the employer and keep staff informed.		