

BULLETIN

High Risk Work Licensing – PCBU Obligations

This bulletin outlines the requirements a person conducting a business or undertaking (PCBU) has under the [Work Health and Safety \(National Uniform Legislation\) Act](#) (the Act) and [Regulations](#) (the Regulations) for ensuring the licensing of workers who perform high risk work. Licensing of workers aims to ensure that they have the skills and knowledge to perform high risk work in a safe manner, as to reduce the health and safety risk to themselves and other persons in the workplace.

The Regulations, which commenced in the Northern Territory on 1 January 2012, establishes the nationally uniform competency-based licensing system for persons performing certain types of high risk work (Chapter 4, Part 4.5). The Regulations replace the *National Standard for Licensing of Persons Performing High Risk Work* (the National Standard) which was adopted in the Northern Territory in 2010, however the transitional periods that were put in place during the adoption of the National Standard to allow workers time to transition to a compliant licence remains in place.

Requirement to be licensed

It is an offence under the Act for an unlicensed worker to carry out high risk work which requires a licence. It is also an offence for a PCBU to allow a worker to carry out high risk work without a licence or to direct a worker to carry out high risk work, which they don't have a licence for (section 43 WHS Act).

Maximum penalty: \$20,000 for individuals, \$100,000 for body corporate.

Certain exemptions (Regulation 82), allow an unlicensed individual to perform certain high risk work when the:

- high risk work is carried out in the course of training towards a certification in order to obtain a high risk licence **and** the work is done under the supervision of an individual with a licence in that class of high risk work; or
- high risk work is carried out by an individual who has received their certification for completing high risk work training and is waiting for a decision on their licence application; or
- high risk work involves plant at a workplace and
 - the work carried out is solely for the purpose of the manufacture, testing, trialing, installation, commissioning, maintenance, servicing, repair, alteration, demolition or disposal of the plant at that workplace or moving the plant within the workplace; and
 - the plant is operated or used without a load except for calibration purposes; or
- high risk work with a crane or hoist that is limited to setting up or dismantling the crane or hoist and the individual carrying out the work is licensed in rigging; or
- high risk work carried out on a heritage boiler.

Note: The exemption for moving plant within the workplace does not include loading plant onto or unloading it from a vehicle or equipment used to move the plant.

PCBU requirements to ensure supervision

A PCBU must ensure that the supervisor of an individual carrying out high risk work as part of structured training formulated by a Registered Training Organisation (RTO) for a high risk licence (outlined above), provides direct supervision as required in Regulation 84.

Maximum penalty: \$6,000 for individuals, \$30,000 for body corporate.

Changes to supervision of high risk work

Under the repealed Workplace Health and Safety legislation, an unlicensed worker was able to carry out high risk work if they were under the supervision of a worker who had the relevant licence. This is no longer the case and a worker who does not hold the relevant licence must not carry out high risk work until they have completed the appropriate training with an approved RTO. The only time an unlicensed worker can carry out high risk work under the supervision of a worker with the relevant licence, is via a structured training program, formulated by the RTO, undertaken to obtain a licence.

Maximum penalty: \$6,000 for individuals, \$30,000 for body corporate.

PCBU must sight evidence of a licence

A PCBU at a workplace must not direct or allow a worker to carry out high risk work which requires a licence unless the PCBU sees written evidence provided by the worker that the worker has (Regulation 85):

- a) the relevant high risk work licence for that type of work; or
- b) is undertaking the course of training referred to in Regulation 82(1) (a) (i); or
- c) applied for the relevant licence and holds the certification referred to in Regulation 82(1) (b).

A PCBU must also see written evidence from the worker carrying out the supervision of high risk work, as outlined above, that the worker has the relevant licence for the high risk work they are supervising.

Maximum penalty: \$3,600 for individuals, \$18,000 for body corporate.

Record Keeping

A PCBU is required to keep the written evidence given to them for at least 1 year after a worker carries out high risk work. Written evidence is also required to be kept for at least 1 year from the last occasion a worker carries out supervision of high risk work.

Maximum penalty: \$1,250 for individuals, \$6,000 for body corporate.

Other obligations of the PCBU**Right of worker to cease unsafe work**

Under the WHS Act, a worker may cease or refuse to carry out work, especially high risk work, if they have a reasonable concern that to carry out the work would expose them to a serious risk to their health or safety due to an immediate or imminent exposure to a hazard (section 84).

Should a worker cease work, they must as soon as practicable notify the PCBU and remain available to carry out other suitable work (section 86).

A PCBU cannot penalise a worker's employment entitlements, such as pay, promotions, leave entitlements, superannuation benefits etc, for exercising their rights to cease unsafe work, if they have not unreasonably failed to comply with a direction to carry out suitable alternative work (section 88).

If an issue between a worker and the PCBU has not been resolved after reasonable efforts in relation to the exercise of this right, either party may ask the Regulator to appoint an inspector to attend the workplace to assist in resolving the issue. On attending the workplace, an inspector may exercise any of the inspector's compliance powers under the WHS Act in relation to the workplace (section 82).

Prohibition of Discriminatory Conduct

The WHS Act prohibits a person from engaging in **discriminatory conduct** for a **prohibited reason** (section 104). Discriminatory conduct is defined in section 105 and prohibited reason is defined in section 106.

Maximum penalty: \$10,000 for individuals, \$500,000 for body corporate.

False or Misleading Information

Under the Act, it is an offence to give false or misleading information (section 268). The offence covers attempts to falsify or provide misleading information on the certification of high risk training and a licence. Maximum penalty: \$10,000 for individuals, \$50,000 for body corporate.

Related Information

Additional information on high risk licensing can be found in the following NT WorkSafe guidance material.

Guides

- [Guide to High Risk Licence](#)

Bulletins

- [Licensing Persons Performing High Risk Work](#)

For further information visit www.worksafe.nt.gov.au or contact NT WorkSafe on 1800 019 115.