

Work Health and Safety - Other Workers Engagement

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Functional Sub group Personnel/Workforce - Occupational Health & Safety

Summary To assist managers and supervisors in NSW Health to fulfil their legal obligations when engaging "other workers", eg contractors, sub-contractors, volunteers, consultants, labour hire, student placements.

Replaces Doc. No. Contractors - Better Practice Guidelines Including Health/Safety in Engagement/Management/Evaluation [PD2005_227]

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Applies to Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, NSW Ambulance Service, Ministry of Health, Public Hospitals

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WORK HEALTH AND SAFETY – OTHER WORKERS ENGAGEMENT

PURPOSE

This guideline applies to all Public Health Organisations and all other bodies and organisations under the control and direction of the Minister for Health or the Director General of the Ministry of Health. Throughout the attached guideline these bodies and organisations are referred to as '**NSW Health Agencies**'.

The purpose of this guideline is to outline, for NSW Health Agencies, the information necessary to comply with legal responsibilities under the *Work Health and Safety (WHS) Act 2011* and the *Work Health and Safety (WHS) Regulation 2011*, to ensure a safe and healthy work environment when engaging workers who are not employees. This guideline should be read in conjunction with Policy Directive *PD2013_005 Work Health and Safety – Better Practice Procedures*.

Under the *WHS Act & Regulation* the primary duty of care for NSW Health Agencies has been expanded to include all workers, meaning any person who carries out work in any capacity for the NSW Health Agency. The term 'other workers' is used throughout the procedure to differentiate between employees (who are included in the term workers in the legislation) and other workers such as contractors and consultants who are engaged to carry out work under the direction of the NSW Health Agency other than as employees.

The guideline provides a risk management approach to the engagement, management and evaluation of other workers in order to eliminate or minimise health and safety risks associated with their engagement in relation to the nature of the work to be carried out, and the severity of the associated hazards and risks.

KEY PRINCIPLES

When engaging other workers, NSW Health Agencies (acting through their officers, managers and supervisors) are required to:

- Identify the other duty holders, as defined in the guideline, and establish a protocol for consultation, cooperation and coordination.
- Take a risk management approach (when engaging other workers) in identifying hazards and assessing risks as required under *WHS Act & Regulation* to eliminate or, where this is not practicable, minimise risk to health and safety that may impact on workers in relation to the work to be carried out.
- Provide training, information and supervision as appropriate to the nature of the work and the severity of the associated hazards and risks.
- Ensure that Personal Protective Equipment, where applicable, is provided, is properly fitted and is appropriate to minimise the risk to health and safety, and is suitable to the nature of work and any hazard associated with the work to be carried out.
- Ensure that there are adequate first aid facilities.
- Ensure that there are adequate facilities such as toilets, drinking water, washing and eating facilities.

- Ensure provisions are in place to validate that other workers have the appropriate qualification/experience, licenses, training and skills to carry out the work in a safe manner.
- Ensure that procedures are in place to notify WorkCover upon an incident occurring as required by legislation.
- Evaluate and document, as appropriate, the performance of the other workers at the conclusion of the engagement as part of the continuous improvement process.

USE OF THE GUIDELINE

Health and safety in the workplace is a key business risk and is required to be considered in all NSW Health Agency planning decisions.

Each NSW Health Agency is required to have systems in place to identify hazards and eliminate or minimise risks and to provide training to officers, managers and supervisors so that they have the appropriate level of competency in risk assessment and risk management when engaging other workers.

Each NSW Health Agency which engages other workers is required to have processes in place to engage, manage and evaluate the performance of other workers, as appropriate.

REVISION HISTORY

Version	Approved by	Amendment notes
GL2013_011	Deputy Director General	Updated to comply with legislative requirements as set out in the <i>Work Health and Safety Act 2011</i> and <i>Work Health and Safety Regulation 2011</i>
PD2005_227	Director General	First issue as a Policy Directive

ATTACHMENTS

1. Work Health & Safety – Other Workers Engagement: Guideline

Work Health and Safety – Other Workers Engagement



Issue date: October-2013

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1 BACKGROUND

1.1 About this document

The purpose of this document is to provide guidance to NSW Health Agencies in ensuring, so far as reasonably practicable, a safe and healthy work environment for all workers and other persons (e.g. visitors and patients) when other workers are engaged to carry out work as directed by the NSW Health Agency.

The types of other workers that are engaged by NSW Health generally fall into one of the following categories:

1. Labour hire
2. Visiting Practitioners
3. Contractors and Sub-Contractors and their employees
4. Consultants
5. Volunteers, and
6. Student Placements.

Other workers do not include employed staff of NSW Health Agencies.

This document incorporates a Work Health and Safety risk management approach to other worker management, and provides NSW Health Agencies with a framework for their engagement, management and evaluation.

1.2 Key definitions

Agency: As defined in the NSW Health PD2013_005 *Work Health and Safety – Better Practice Procedures* is all public health organisations and all other bodies and organisations under the control and direction of the Minister for Health or the Director General Ministry of Health. NSW Health Agencies include:

- The NSW Ministry of Health
- A Local Health District
- A statutory health corporation
- An affiliated health organisation in respect of its recognised establishments and recognised services.

Consultation refers to the process whereby advice, views, concerns and information are shared between interested parties which include employees, other workers such as contractors, sub-contractors, volunteers prior to making a decision that affects their health and/or safety in the workplace. The aim of consultation is to ensure that there is sufficient information to make well-informed decisions and that the workers who may be affected are given reasonable opportunity to provide their views and understand the reasons for decisions.

Cooperation may involve implementing arrangements in accordance with any agreements reached during consultation with other duty holders and complying with those arrangements.

Coordination requires duty holders to work together through planning and organising of agreed activities in order that there is a seamless health and safety system in place without any gaps.

Other Workers are defined in section 1.1 of this document.

Other Persons as defined in PD2013-005 *NSW Health Work Health and Safety Better Practice Procedures* include: patients, consumers, clients, customers, sales representatives and visitors entering or utilising the public health organisation's workplace.

Other Duty Holders are other persons who have a duty for the same matter such as contractors, labour hire agencies, volunteer organisations, retail stores located on NSW Health premises and other NSW Health Agencies (who may commission the work).

Person conducting a business or undertaking (PCBU): Under the *Work Health and Safety Act (WHS Act) 2011* the term ‘employer’ is replaced by ‘persons conducting a business or undertaking’ (PCBU). A PCBU conducts a business or undertaking alone or with other PCBUs, and is responsible for the primary duty of care for workplace health and safety, as far as is reasonably practicable. A PCBU may be an organisation or an individual.

Each NSW Health Agency constitutes a PCBU.

Personal Protective Equipment (PPE) means anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Plant is defined in the *WHS Act* as any machinery, equipment, appliance, container, implement and tool and any component of any of these things and anything fitted or connected to any of those things.

So far as reasonably practicable under the *WHS Act* means that which is, or was at a particular time reasonably able to be done in relation to ensuring health and safety taking into account and weighing up all relevant matters, including:

- a) The likelihood of the hazard or the risk concerned occurring
 - b) The degree of harm that might result from the hazard or the risk
 - c) What the person concerned knows, or ought reasonably to know about the hazard or the risk and the elimination or minimisation of the risk
 - d) The availability and suitability of ways to eliminate or minimise the risk
- After assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Worker is defined under the *WHS Act* s7 as “person who carries out work in any capacity for the PCBU” (NSW Health Agency) and in relation to NSW Health Agencies include:

- Employees
- Visiting Practitioners
- Contractors
- Sub-contractors
- Employees of contractors and sub-contractors
- Employee of a labour hire company
- Volunteers
- Apprentices or trainees
- Students.

Workplace is a place where work is carried out for a business or undertaking (the NSW Health Agency) and includes any place where other workers go, or are likely to be, while at work, including vehicles, vessels, aircrafts and other mobile structures.

1.3 Legal and legislative framework

Information on relevant legislative requirements are outlined in Appendix A

The primary duty of care imposed on NSW Health Agencies, which are PCBUs under s.19 of the *WHS Act* is to ensure so far as is reasonably practicable:

- 1) The health and safety of:
 - a) workers engaged, or caused to be engaged by the PCBU

- b) 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
 - c) other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- 2) That the health and safety of other persons is not put at risk from work carried out
 - 3) The provision and maintenance of a work environment without risks to health and safety, and
 - a) the provision and maintenance of safe plant and structures
 - b) the provision and maintenance of safe systems of work
 - c) the safe use, handling, and storage of plant, structures and substances
 - d) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities
 - e) 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
 - f) 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.

2 NSW Health Agency Responsibilities

The NSW Health Agency has primary duty of care under the *WHS Act* in ensuring a healthy and safe work environment for all workers where the work being carried out is under the direction of the NSW Health Agency. The NSW Health Agency therefore has the same health and safety duties to other workers as to employees.

The *WHS Act* requires all persons who conduct a business or undertaking (NSW Health Agency) to ensure, so far as is reasonably practicable that workers and other persons are not put at risk from work carried out as part of the business or undertaking such as when engaging or having some control or influence over other workers.

When engaging other workers, the NSW Health Agency may share the duty of care for the other workers with other duty holders such as contractors, sub-contractors and labour hire or volunteer organisations.

While the *WHS Act* requires the NSW Health Agency to ensure a healthy and safe work environment, it does not mean that everything necessary to achieve the outcome has to be provided by the NSW Health Agency. For example, PPE, plant, safe work procedures/practices, designs, etc, can be provided by the other duty holder such as a contractor or sub-contractor.

Where it is common practice to engage other workers who are specialists or have the technical expertise to carry out the required work the NSW Health Agency is entitled to rely on the expertise.

However, the NSW Health Agency still carries the responsibility in ensuring the requirements of the *WHS Act* are met. When relying on specialists or technical experts, the NSW Health Agency will need to ensure that the experts:

- Do in fact have the required expertise to ensure the work can be carried out safely
- Have systems, processes and procedures in place to ensure the work can be carried out safely
- Carry out the work in a manner which does not create a health and safety risk for the NSW Health Agency's own workers or others at the workplace
- Provide the required level of supervision.

2.1 Consultation, Cooperation and Coordination with Shared Duty Holders and Other Workers

In situations where there is a shared responsibility for health and safety with another PCBU, there is a requirement to consult, cooperate and coordinate activities with other duty holders to help address any gaps in managing health and safety risks that can occur when:

- There is a need to clarify how the activities of each person may add to the hazards and risks to which others may be exposed
- Duty holders assume that someone else is taking care of the health and safety matter
- The person who takes action is not the best person to do so.

Consulting, cooperating and coordinating activities with other duty holders should result in ensuring that each duty holder understands how the activities of the NSW Health Agency may impact on health and safety, and that the actions that need to be taken by each duty holder to control the risks. Duties that are shared with other duty holders are not transferrable and each person:

- a) Retains responsibility for the person's duty in relation to the matter
- b) Must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

A consultative approach will need to be taken between NSW Health Agencies where the NSW Health Agency which commissions the work is different to the NSW Health Agency that manages or controls the workplace as both have a duty of care under the *WHS Act* as shared duty holders.

Where employees from one NSW Health Agency are working at another NSW Health Agency's workplace, for example HealthShare employees working at a NSW Hospital such as kitchen staff, each NSW Health Agency's responsibility for work health and safety for the employees at the workplace, including training responsibilities, should be documented.

Shared duty to consult responsibility examples:

Labour Hire Workers

When labour hire workers are engaged through a labour hire company, a duty of care is shared between the NSW Health Agency (host duty holder) and the labour hire company. In these situations the NSW Health Agency must discuss the hazards and risks associated with the work, and what precautions will be taken, with the labour hire company.

Contractor

Entering into contracts with contractors may involve more than one NSW Health Agency having work health and safety responsibilities as part of the contract as well as multiple other duty holders. When entering into these contracts all duty holders should review the scope of the activities to be undertaken, discuss the safety requirements of the workplace, any safety issues that may arise and how they will be dealt with, taking into account that responsibilities for safety matters cannot be transferred. An agreement of how consultation, cooperation and coordination will occur during the project should be reached and documented.

An example of multiple duty holders in relation to licensed asbestos removal may include:



Further information can be found in the *Work Health and Safety Consultation, Cooperation and Coordination Code of Practice*.

3 Other Worker Engagement, Management and Evaluation

Risk management systems in NSW Health Agencies should cover other workers, including when:

- Engaging
- Managing
- Evaluating
- Consulting, Cooperating and Coordinating
- Notifying External Incidents to WorkCover.

The risk management strategy should be appropriate to the type of other workers to be engaged and the foreseeable level of risk should clearly state the responsibilities of all duty holders.

3.1 Risk Management

The NSW Health Agency will need to consider the scope of the activities to be undertaken by the other worker, and the risks that may be associated with that role. The risk assessment is also required to identify any potential risks associated with engaging other workers to NSW Health Agency employees and others who may be impacted at the workplace in relation to the work to be carried out by other workers.

Information on how to manage risk through hazard identification, risk assessment and elimination or minimisation of risk can be found in the NSW Health Policy Directive *PD2013_005 Work Health and Safety – Better Practice Procedures*.

The type of other workers in NSW Health would generally fall under one of the following categories:

1. Labour Hire

Both the labour hire company through which other workers are engaged and the NSW Health Agency (host PCBU) have a duty of care for labour hire workers.

An agreement with the labour hire company may include skills or training required prior to engagement, such as basic manual handling training, and post engagement training that will be provided by the NSW Health Agency, such as site induction training and emergency evacuation.

2. Visiting Practitioners

Visiting medical or dental officers are engaged through a service contract.

Based on the risk assessments, consideration should be given to what training should be provided prior to their initial commencement. The training may be general such as induction and fire safety training or can also include training specific to NSW Health Agency work health and safety local policies and procedures.

3. Contractors and Sub-Contractors

Contractors and sub-contractors are in most cases both a PCBU and a worker and have dual roles, which are recognised in the *WHS Act* whereby a person can have more than one duty by virtue of being more than one class of duty holder.

When engaging contractors, consideration should be given to what licences and skills may be required, whether work permits are needed for hot or cold work, or to isolate services/alerts for other reasons, the type of induction required, for e.g. a copy of the asbestos register and asbestos management plan if they are working in an area where there is asbestos.

4. Consultants

A consultant is a person or organisation engaged under contract on a temporary basis to provide recommendations or specialist advice. Generally it is the advisory nature of the work that differentiates a consultant from other contractors.

Example of a consultant is a person or firm engaged to assist in the onsite development of an information technology strategic plan and/or to assist with the development of specifications for the systems and/or to provide advice on implementation.

5. Volunteers

Volunteers work with NSW Health in a number of ways and are engaged through external organisations as well as internally as individual volunteers. In both cases, the NSW Health Agency has a duty of care for the volunteers. Some examples of volunteer activities within NSW Health facilities and hospitals are as follows:

- Operating cafes and kiosks
- Conducting fundraising activities
- Supporting patients in health program areas like Palliative Care and Paediatrics.

While some volunteers under the *WHS Act* may not be considered workers, a volunteer is a worker if they carry out work in any capacity for the NSW Health Agency. It is recommended and is considered prudent that all volunteers be treated as other workers.

6. Student Placement

Universities, High Schools, TAFEs and any other educational bodies which place students for work experience with the NSW Health Agency (host) and the educational body both have a duty of care for the students during their work experience at a Healthcare Facility.

Risk assessments should take into consideration the level of supervision and training required for students to reduce work health and safety risk.

3.2 Risk Assessment

The NSW Health Agency should:

- Conduct and document a *WHS* risk assessment prior to work commencement if necessary. A risk assessment is required where:
 - There is uncertainty about how a hazard may result in injury or illness
 - The work activity involves a number of different hazards and there is a lack of understanding about how the hazards may interact with each other to produce new or greater risks
 - Changes at the workplace occur that may impact on the effectiveness of control measures.
- Risk assessments are not necessary where: the risk controls are already known, there is legislative requirement that the risk is controlled in a specific way, or where codes of practice, standards and other industry specific guidance material sets out a way of controlling hazard or risk that is applicable to the situation. For example there are specific codes of practice for electrical risks and asbestos which set out controls that may be used (unless there is a higher standard).
- A risk assessment is mandatory for high risk work such as working in confined spaces or electrical work.
- Provide detailed information about the nature of the work to be carried out to the other duty holder such as a labour hire company or the other worker when engaging directly so as to ensure that the most suitable other workers are engaged and include details of:
 - The work environment
 - Any plant to be used
 - Organisational and work health and safety arrangements
 - Health and safety risks associated with the work, for example working in a confined space or manual handling
 - Any skills and knowledge required.
- Prior to engagement, ensure an assessment is carried out where relevant of the other workers' capability and suitability to carry out the work in a safe manner so as to minimise risk to the work health and safety of the other workers, NSW Health employees and other persons such as patients and visitors.

The assessment can be carried out by a third party where it is established that the third party has the relevant expertise to carry out the assessment, and could be contractors, educational bodies and labour hire agencies with the completed assessment provided to the NSW Health Agency.

The assessment should include, but is not limited to:

- Verification that the selected other workers have the necessary qualifications, licences, skills and training to carry out the work safely.
- The skills in using any necessary plant (e.g. forklift) or PPE.
- Any health requirements, such as immunisation or health monitoring
- The development of specific documentation, such as Safe Work Procedures/Practices, Asbestos Control Plans, etc
- Permit-to-Work requirements
- Supervisory requirements.

- Establish who will be responsible for providing and maintaining any required PPE and plant.
- Establish relevant points of contact for health and safety between the NSW Health Agency and the duty holders/other workers (e.g. contractor, consultant or labour hire company) as well as agreed frequency and means, for e.g. tool box talks.
- It is essential to consider the potential for risks associated with engaging other workers, such as:
 - Hazardous manual tasks, for example patient handling
 - Exposure to dangerous goods or hazardous chemicals
 - Exposure to aggression/violence
 - Increased vehicular traffic where there is presence of heavy vehicles and mobile plant
 - Disposal of waste
 - Security risks
 - Asbestos presence/containment
 - High risk work such as working in confined spaces, at height or hot work such as electrical work
 - Heat or cold stress
 - Buried pipes, concealed wires, etc.
- Where the risk cannot be eliminated and needs to be minimised, some risk controls to be considered are:
 - Correct qualifications and skills to carry out the work
 - Correct licences for the work to be carried out, for example a Class A Asbestos Removal licence for the removal of friable asbestos, plumbing licence, correct licences for waste removal, etc.
 - Work Permits to work in Confined Spaces, electrical work, plumbing work, etc..
 - Safe Work Procedures/Practices
 - Working at Height procedures
 - Signage such as where Asbestos is located, where work permits are required, etc.
 - PPE.

Further information can be found in the *How to Manage Work Health and Safety Risks Code of Practice* and *Managing the Work Environment and Facilities*.

3.2.1 Criminal Record Checks and Working with Children Checks

Prior to engagement of other workers, the requirements set out in PD2013_028 *Employment Checks – Criminal Working Checks and Working with Children Checks* should be considered and the relevant checks undertaken, where appropriate.

3.3 Information, Training, Instruction and Supervision

The NSW Health Agency should ensure on engaging other workers, that:

- Induction and other training is provided, taking into account their possible unfamiliarity with the workplace and the policies and procedures and reflects:
 - The nature of the work carried out by the other worker,
 - The nature of the risks associated with the work at the time the information, training or instruction is provided
 - The control measures implemented

- Adequate supervision is provided where necessary, taking into account other workers unfamiliarity with the site or the nature of the work. For example, clinical students gaining work experience should be properly supervised.

3.4 Personal Protective Equipment (PPE)

The NSW Health Agency, who directs the carrying out of work, is required to ensure that PPE appropriate to the work that is to be carried out is provided by the NSW Health Agency or the duty holder with shared responsibility such as a contractor, where it is established that they have the expertise to do so.

Where the NSW Health Agency provides the PPE, there is a need to ensure that the PPE provided to other workers:

- Is selected to minimise the risk to health and safety, and is suitable to the nature of the work and any hazard associated with the work to be carried out
- Is a suitable size and fit and reasonably comfortable for the worker who is to use or wear it and is in good working order
- Is maintained, repaired or replaced so that it continues to minimise risk to the worker who uses it
- Includes appropriate information, training and instruction in the:
 - Proper use and wearing of PPE, and
 - The storage and maintenance of PPE.

The other workers must, so far as the worker is reasonably able, use or wear the equipment in accordance with any information, training or reasonable instruction provided.

3.5 Provision of First Aid Facilities and Personnel

The NSW Health Agency is required to ensure that there are adequate first aid personnel and facilities when engaging other workers. The first aid personnel and facilities, in some instances, will be provided by a contractor, for example, when major construction work is being carried out. These arrangements should be explicitly agreed with other duty holders.

For further information on what is required under the *WHS Regulations*, please refer to *Information Sheet – Provision First Aid Facilities and Personnel* and the *First Aid in the Workplace Code of Practice*.

3.6 Provision of Adequate Facilities

The NSW Health Agency is required to ensure, so far as reasonably practicable, the provision of adequate facilities for use by other workers, including toilets, drinking water, washing and eating facilities. Some facilities may be provided by the other duty holders, such as toilets. These arrangements should be explicitly agreed with the other duty holders.

For further information on what is required under the *WHS Regulations*, please refer to *Managing the Work Environment and Facilities Code of Practice*.

4 Engagement

Once the Risk Assessment has been completed, the NSW Health Agency should document the information, for e.g. it may be a contract/agreement, which outlines each duty holder's work health and safety responsibilities. The documented information should include:

- How consultation will occur; for long term projects this could be a combined Work Health and Safety Committee that includes NSW Health Agency/ies, contractor and sub-contractor representatives.
- The responsibilities for day to day safety matters, for example where there is high risk work such as asbestos removal, working in confined spaces or working at heights the contract/agreement includes responsibilities:
 - For ensuring the other workers have the appropriate skills and licences to carry out the work for which they have been engaged
 - Responsibilities for observing the other workers at nominated frequencies to ensure that they are complying with the agreed safe work practices.
- The responsibilities for providing and maintaining PPE where required.
- The responsibilities for providing and/or maintaining plant where required.
- Induction and ongoing training responsibilities, for e.g. where there is a primary contractor and sub-contractors, the responsibilities for induction may become the responsibility of the primary contractor.
- Clear definition of the other workers own *WHS* responsibilities, including their duties as required under *WHS Legislation* while the other workers are at work, which are as follows:
 - a) To take reasonable care for their own health and safety
 - b) Take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons
 - c) Comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the NSW Health Agency to allow compliance with the *WHS Act*
 - d) Co-operate with any reasonable policy or procedure the NSW Health Agency relating to health or safety at the workplace that has been notified to workers.

Please note that the *WHS Act* makes it clear that the NSW Health Agency cannot avoid responsibility for their obligations under the *WHS Act* by contracting them out to someone else and this should be taken into consideration when entering into contracts/agreements.

5 Management

The NSW Health Agency is required to ensure:

- The NSW Health Agency workers who are responsible for engaging other workers understand their obligations under the *WHS Act* in carrying out this function
- The other workers to be engaged have the required expertise to carry out the work safely
- The licences, skills and safe work practices/procedures are appropriate for the work to be carried out
- That ongoing training, where identified at time of engagement, is provided which is relevant to the degree of risk the other workers will be exposed to while at the NSW Health workplace
- Consultation, Cooperation and Coordination occurs as agreed with the other duty holder(s)

- Ongoing monitoring, evaluation and review is conducted, in line with the level of risk
- Ongoing monitoring of the other workers compliance to the *WHS* requirements as outlined in the contract and any issues addressed.

6 Evaluation

The NSW Health Agency is required to:

- Conduct a post-engagement performance review of the work carried out where the degree of risk was high, which includes compliance with *WHS* criteria and the Register of Injuries
- Determine, as appropriate, whether the other worker, when a contractor or sub-contractor, should be included or remain on a Preferred Supplier List where the control of the list is held by the NSW Health Agency
- Provide feedback to any other duty holder as appropriate
- Provide feedback to NSW Health employees who are responsible for procurement where the feedback will be of benefit in evaluating the procurement process
- Evaluate the Engagement and Management practice for other workers where the outcome of the performance review indicates that the *WHS* requirements were not met.

7 Reference Documents

The following documents can assist in compliance with the relevant sections of the *WHS Act & Regulation* and this procedure:

NSW Health Work Health and Safety: Better Practice Procedures

http://www0.health.nsw.gov.au/policies/pd/2013/PD2013_005.html

Employment Checks – Criminal Working Checks and Working with Children Checks

http://www0.health.nsw.gov.au/policies/pd/2013/PD2013_028.html

NSW Health Easy Guide to Engaging Consultants

http://10.192.65.122/pas/Documents/Easy%20guide%20engaging%20a%20consultant_DRAFT.pdf

The following Codes of Practice:

How to Safely Remove Asbestos

How to Manage and Control Asbestos in the Workplace

Confined Spaces

Construction Work

Work Health and Safety Consultation, Cooperation and Coordination

Demolition Work

Managing Electrical Risks in the Workplace

Managing the risks of Falls at workplaces

Managing the Work Environment and Facilities

First Aid in the Workplace

Labelling of Workplace Hazardous Chemicals

Preparation of Safety Data Sheets for Hazardous Chemicals

Managing Risks of Hazardous Chemicals in the Workplace

Excavation Work

Hazardous Manual Tasks

Managing Noise and Preventing Hearing Loss at Work

Managing risks of Plant in the Workplace

How to Manage Work Health and Safety Risks

<http://www.safeworkaustralia.gov.au/sites/swa/model-whs-laws/model-cop/a-z-cop/pages/a-z>

The following Information Sheets can provide an overview to assist in compliance to legislative requirements:

Provisions of First Aid Facilities and Personnel

Hazardous Classification Criteria for Chemicals in the Workplace under WHS Regulations 2011

Hazardous Chemicals Identification

Hazardous Chemicals – Managing Hazardous Chemicals in the Workplace

Hazardous Chemicals Using, Handling, Labelling, Storage and Transportation

Asbestos Management, Identification and Control

Asbestos Removal Management

<http://internal.health.nsw.gov.au/jobs/safety/ohsleg.html>

Appendix A - Legislative Requirements

WHS Act s19 – Under this section of the Act, the NSW Health Agency has primary duty of care to ensure, so far as is reasonably practicable:

- 4) The health and safety of:
 - d) workers engaged, or caused to be engaged by the person, and
 - e) 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.
 - f) other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- 5) Must ensure, so far as is reasonably practicable: the provision and maintenance of a work environment without risks to health and safety, and
 - g) the provision and maintenance of safe plant and structures, and
 - h) the provision and maintenance of safe systems of work, and
 - i) the safe use, handling, and storage of plant, structures and substances, and
 - j) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities, and
 - k) 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, and
 - l) 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.
- 6) A self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work.

Note. A self-employed person is also a person conducting a business or undertaking for the purposes of this section.

WHS Act s20 Duty of persons conducting businesses or undertakings involving management or control of workplaces

The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.

WHS Act s21 Duty of persons conducting businesses or undertakings involving management or control of fixtures, fittings or plant at workplaces

The person with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

WHS Act s28 Requires that while at work, a worker must:

- take reasonable care for his or her own health and safety, including that his or her acts or omissions do not adversely affect the health and safety of other persons, and
- comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act, and
- co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

WHS Act s16 – More than one person can concurrently have the same duty and each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.

If more than one person has a duty for the same matter, each person:

- a) retains responsibility for the person's duty in relation to the matter, and
- b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

WHS Act s47 requires that a PCBU (NSW Health Agency) must so far as is reasonably practicable, consult with workers who carry out work for the PCBU (NSW Health Agency) who are, or are likely to be, directly affected by a matter relating to work health or safety.

WHS Act s46 requires that you consult, co-operate and co-ordinate activities with all other persons who have a work health or safety duty in relation to the same matter so far as is reasonably practicable.

WHS Regulation s34 requires that the NSW Health Agency, in managing risks to health and safety, must identify reasonably foreseeable hazards that could give rise to risks to health and safety.

WHS Regulation s35 requires that the NSW Health Agency in managing risks to health and safety, must:

- a) eliminate risks to health and safety so far as is reasonably practicable, and
- b) if it is not reasonably practicable to eliminate risks to health and safety—minimise those risks so far as is reasonably practicable.

WHS Regulation s36

- 1) This clause applies if it is not reasonably practicable for a duty holder to eliminate risks to health and safety.
- 2) A duty holder, in minimising risks to health and safety, must implement risk control measures in accordance with this clause.
- 3) The duty holder must minimise risks, so far as is reasonably practicable, by doing 1 or more of the following:
 - a) substituting (wholly or partly) the hazard giving rise to the risk with something that gives rise to a lesser risk,
 - b) isolating the hazard from any person exposed to it,
 - c) implementing engineering controls.
- 4) If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by implementing administrative controls.
- 5) If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by ensuring the provision and use of suitable PPE.

Note. A combination of the controls set out in this clause may be used to minimise risks, so far as is reasonably practicable, if a single control is not sufficient for the purpose.

WHS Regulation s37 requires that the NSW Health Agency monitors control measures to ensure they remain effective in controlling the risk.

WHS Regulation s38 Where it's not reasonably practicable for the NSW Health Agency to eliminate risks to health and safety, the risk must be minimised by implementing risk control measures by using the hierarchy of controls as defined in *WHS Regulation s38*.

WHS Regulation s39 requires the NSW Health Agency to provide information, training and instruction to a worker that is suitable and adequate and so far as is reasonably practicable that it is readily understandable by any person to whom it is provided and having regard to:

- a) the nature of the work carried out by the worker, and
- b) the nature of the risks associated with the work at the time the information, training or instruction is provided, and
- c) the control measures implemented.

WHS Regulation s40 requires the NSW Health Agency to ensure, so far as is reasonably practicable that the:

- layout of the workplace allows, and is maintained to allow, persons to enter and exit the workplace and move within it safely, both under normal working conditions and in an emergency
- work areas have space for work to be carried out safely
- floors and other surfaces are designed, installed and maintained to allow work to be carried out safely
- lighting enables each worker to carry out work safely, persons to move around safely and safe evacuation in an emergency
- ventilation enables workers to carry out their work without risk to their health and safety.
- workers exposed to extremes of heat or cold are able to carry out work without risk to their health and safety.
- work in relation to or near essential services (such as gas, electricity, water, sewerage and telecommunications) do not affect the health and safety of persons at the workplace.

WHS Regulation s41 requires that the NSW Health Agency who manages or controls a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets, drinking water, washing facilities and eating facilities and that the facilities are maintained so as to be: in good working order and clean, safe and accessible

The NSW Health Agency must have regard to all relevant matters, including the following when ensuring adequate facilities are provided:

- a) the nature of the work being carried out at the workplace,
- b) the nature of the hazards at the workplace,
- c) the size, location and nature of the workplace,
- d) the number and composition of the workers at the workplace.

WHS Regulation s42 When considering how to provide first aid, the NSW Health Agency must consider all relevant matters including:

- the nature of the work being carried out at the workplace.
- the nature of the hazards at the workplace.
- the nature of the hazards at the workplace.
- the size, location and nature of the workplace.
- the number and composition of the workers at the workplace.

WHS Regulation s44-47

Where PPE has been identified in minimising health and safety risks to other workers, the NSW Health Agency who directs the carrying out of work must provide the PPE to workers at the workplace, unless the PPE has been provided by another PCBU.

The NSW Health Agency who directs the carrying out of work must ensure that the PPE provided to the Worker by, for example a labour hire company is selected to minimise the risk to health and safety and provides the worker with information, training and instruction in its use and maintenance.