

A black and white photograph of a hand holding a clapperboard. The clapperboard has a striped top section and a white bottom section with text. A blue rectangular box is overlaid on the left side of the image, containing white text. The background is blurred, showing the faces of people.

# A. LAWS, DUTIES, AND CODES OF PRACTICE

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Version 11

## A. LAWS, DUTIES, AND CODES OF PRACTICE

### 1. INTRODUCTION

Screen production is a unique industry, presenting unique workplace hazards. Film sets and locations can be stressful, high-risk environments, where people are asked to do extraordinary things. Most workplaces do not feature action stunts, pyrotechnics, animals, action vehicles, high voltage cabling and cranes.

Everyone involved in screen production - whether writers, producers, directors, grips, gaffers, stunt performers, runners, or extras - need to work to create and promote a safety culture.

This is called Workplace Health and Safety – WHS (terms such as ‘Occupational Health and Safety’ cover the same area but will not be used here).

This WHS Manual updates previous industry safety advice and has been jointly produced by Screen Producers Australia (SPA) and the Media Entertainment and Arts Alliance (MEAA) in consultation with industry. This document builds on previous iterations of film and television industry safety guidelines including:

- DRAFT NATIONAL SAFETY GUIDELINES dated 10 November 2004, produced by the Screen Production Safety Review Committee encompassing representatives from Media Entertainment and Arts Alliance, the Screen Producers’ Association of Australia, Fox Studios Australia (representing film studios), the Australian Broadcasting Corporation (representing public broadcasting) and the New South Wales Film and Television Office (representing state funding agencies).
- FILM AND TELEVISION INDUSTRY SAFETY GUIDANCE NOTES published by the Australian Film Commission in 1995.
- FILM INDUSTRY RECOMMENDED SAFETY CODE, approved by SPAA and MEAA on 17 August 1983.

MEAA and SPA acknowledge the work of many contributors to this and previous versions of screen safety guidelines. We note in particular the work of Joe Pampanella in revising and updating the draft 2004 guidelines and assisting in the preparation of this latest industry guide.

This Manual is directed at productions of all levels in all media – from music videos to international co-productions – and aims to:

- explain the legal framework that governs WHS in Australia;
- provide guidance for screen workers to identify, avoid, and manage risks - from the start of pre-production to the wrap;
- facilitate WHS compliance, through provision of forms, checklists, templates, and other documents; and
- provide an incident response guide.

This Manual is divided into sections which are arranged from general to particular issues and track the screen production process from beginning to end.

This Manual is published online, with the intention that it will be a living document, subject to ongoing consultation, review and updating.

PLEASE NOTE: The information provided in this document is general in nature and provided as a guideline, for information only. It is not a legal document, and is not a substitute for the relevant legislation, regulations and codes of practice. Users must ensure that due consideration is given to the particular circumstances of their project and any specific risks that may arise, including seeking advice from a qualified professional.

## 2. MONITORING AND CONTINUOUS IMPROVEMENT

These Guidelines will be the subject of ongoing review to ensure that:

- the screen industry's approach to safety follows 'best practice' principles; and
- that these practices are reflected in the industry guidelines

This work will be overseen by a monitoring group comprising two nominees each from SPA and the MEAA.

The monitoring group will meet at least twice annually, or as pressing and important screen safety issues arise.

The objectives of the monitoring group will be:

- to review and ensure the accuracy and relevance of the Screen Safety Guidelines;
- to follow the principles of 'continuous improvement' in providing safety guidance to the screen industry;
- to determine interim and permanent responses to critical safety issues and incidents;
- to make representations and seek changes to government and industry regulation of screen safety issues; and
- to assist screen safety committees wherever established in individual Australian jurisdictions.

The monitoring group will obtain expert external advice on matters as required.

## 3. WHS LAW IN AUSTRALIA

In Australia WHS is a State, not a Federal, government responsibility – so WHS compliance is made more complicated because each State and Territory has its own WHS laws.

To deal with this, the Federal government passed the *Work Health and Safety Act (Cth)* in 2011, with the intention that each State would use it as a model for their own laws, thus harmonising the system across Australia.

In 2012, laws reflecting the Federal legislation were passed by New South Wales, Queensland, South Australia, Tasmania, Australian Capital Territory and Northern Territory. Victoria and Western Australia retain their own systems; however, they share the same basic general principles.

Discussion of WHS law in this Manual will be based on the model Federal legislation as enacted by the majority of States. The assumption is made that compliance with the model legislation will generally ensure compliance with Victorian or WA legislation, except where specifically notified.

Each State has the following framework of WHS laws:

- (a) an Act, to outline broad responsibilities, duties, offences, process, and enforcement measures;
- (b) Regulations to set out specific requirements for particular hazards and risks;
- (c) Codes of Practice to provide information on specific issues relating to meeting WHS requirements (eg confined spaces, noise); and
- (d) establishment of a Regulating Agency to administer the laws, inspect workplaces, provide advice, enforce laws and impose penalties for breaches.

## **LINKS**

[Safe Work Australia](#) – inter-government body established to develop national WHS policy

### **Commonwealth**

*[Note: covers workers for Commonwealth Government, agencies, and authorities]*

[Comcare](#)

[Commonwealth Codes of Practice](#)

[Work Health and Safety Act 2011 \(Cth\)](#)

[Work Health and Safety Regulations 2011 \(Cth\)](#)

### **Australian Capital Territory**

[ACT Codes of Practice](#)

[Work Health and Safety Act 2011 \(ACT\)](#)

[Work Health and Safety Regulation 2011 \(ACT\)](#)

[WorkSafe ACT](#)

### **New South Wales**

[NSW Codes of Practice](#)

[SafeWork NSW](#)

[Work Health and Safety Act 2011 \(NSW\)](#)

[Work Health and Safety Regulation 2017 \(NSW\)](#)

### **Northern Territory**

[NT Codes of Practice](#)

[NT WorkSafe](#)

[Work Health and Safety \(National Uniform Legislation\) Act 2011 \(NT\)](#)

[Work Health and Safety \(National Uniform Legislation\) Regulation 2011 \(NT\)](#)

### **Queensland**

[Workplace Health and Safety Queensland](#)

[Work Health and Safety Act 2011 \(Qld\)](#)

[Work Health and Safety Regulation 2011 \(Qld\)](#)

[Qld Codes of Practice](#)

### **South Australia**

[SA Codes of Practice](#)

[SafeWork SA](#)

[Work Health and Safety Act 2012 \(SA\)](#)

[Work Health and Safety Regulations 2012 \(SA\)](#)

## Tasmania

[Tas Codes of Practice](#)

[Work Health and Safety Act 2012 \(Tas\)](#)

[Work Health and Safety Regulation 2011 \(Tas\)](#)

[WorkSafe Tasmania](#)

## Victoria

[Occupational Health and Safety Act 2004 \(Vic\)](#)

[Occupational Health and Safety Regulations 2017 \(Vic\)](#)

[Vic Compliance and Codes of Practice](#)

[WorkSafe Victoria](#)

## Western Australia

[Occupational Safety Act and Health 1984 \(WA\)](#)

[Occupational Safety Act and Health Regulations 1996 \(WA\)](#)

[WA Codes of Practice](#)

[WorkSafe WA](#)

### *Contractual WHS Obligations*

Where a production is funded by a State funding body, broadcaster or other party, funding contracts are likely to impose WHS obligations that both restate and build on the obligations imposed by law. Producers may be required to provide reports and other documents to evidence compliance with relevant WHS legislation.

## 4. WHS LEGISLATION KEY CONCEPTS

The purpose of WHS is clearly stated in the model Commonwealth legislation:

*The main object of this [WHS] Act is ... to secure the health and safety of workers and workplaces by ... protecting workers and other persons against harm to their health safety and welfare through the elimination or minimisation of risks arising from work... (s.3)*

### (a) PCBUs and Workers

**EVERYBODY WHO ENGAGES, DIRECTS, MANAGES OR CONTROLS THE WORK OF OTHER PEOPLE ON SET IS A PCBU WITH LEGALLY ENFORCEABLE WHS DUTIES OF CARE TO MANAGE HEALTH AND SAFETY RISKS.**

#### PCBU

Firstly, we identify the class of person who has the primary duty to provide a safe workplace. This is the Person Conducting a Business or Undertaking (PCBU). Unless you are in Victoria or Western Australia, in which case it is the employer.

PCBU is a broad concept used in the model legislation to capture all types of modern working relationships. It can apply to any undertaking, even if it is not for profit or gain.

The term PCBU includes employers, but also includes contractors and any other person who exercises management or control over any part of the workplace. There can be multiple PCBUs on the production at any time.

If you are director or officer of a company or other entity that is a PCBU, then you have a legal obligation to ensure that the entity complies with its WHS obligations including:

- (i) understand and keep up to date on WHS;
- (ii) understand the operations of the PCBU and the hazards and risks involved;
- (iii) ensure appropriate resources and processes are available to eliminate or minimise risks and hazards;
- (iv) ensure there are processes for you to receive and respond to information about incidents, hazards and risks;
- (v) ensure there are processes in place for complying with duties under WHS Legislation (including reporting, consultation, and training); and
- (vi) take steps to verify that the WHS processes and resources are being used.

On productions, there will be a variety of situations where individual PCBU's duties overlap with those of other PCBUs. In those situations, all PCBUs, including the production company, must consult, cooperate, and coordinate in order to manage WHS.

In practice, this means that the production company, as the organisation bringing the PCBUs together, should take a leading role in ensuring coordination across the set, designating someone to take that role, and ensuring the process is properly documented. Heads of department may apply their specialist knowledge of a particular area to provide guidance for all aspects of the production involving that particular area.

It is important to note that you cannot transfer a Duty of Care to another person. If one PCBU takes control of a particular aspect of health and safety, it does not eliminate the responsibility of other PCBUs for that matter. All PCBUs involved in the workplace retain responsibility for the risks created by the work they undertake.

## WORKER

Secondly, we identify the class of person to whom this duty is owed. This is the Worker. Unless you are in Victoria or Western Australia, in which case it is the employee.

Again, Worker is a broad concept, used in the model legislation to cover not only employees, but also any person working for a PCBU such as contractors, employees of contractors, volunteers, work experience students etc – anyone providing the benefit of their physical and/or mental effort to the PCBU. It is possible to be both a Worker, and a PCBU at the same time.

### (b) Primary Duty of Care

Each PCBU must ensure that the health and safety of Workers they engage or direct. They must also ensure that the health and safety of other persons are not put at risk.

This general duty includes a number of specific duties:

- (i) provide and maintain a safe work environment;

- (ii) provide and maintain safe equipment and structures;
- (iii) provide and maintain safe systems of work;
- (iv) safe handling and storage of equipment and substances;
- (v) provision of adequate facilities for welfare of Workers;
- (vi) provision of information, training, instruction and supervision of Workers;
- (vii) monitoring the health of Workers; and
- (viii) if applicable, provide safe accommodation.

(c) Further Duties of Care

There are further duties of care to ensure the health and safety of people, that apply if a PCBU:

- (i) manages or controls a workplace, including entry and exit points (noting that workplaces can include vehicles and filming locations);
- (ii) manages or controls equipment;
- (iii) designs, constructs or installs structures or equipment; and
- (iv) manufactures, imports or supplies equipment and substances.

(d) Duties of Workers and Other Persons

Even if you are not a PCBU, you still have duties to:

- (i) take reasonable care of your own health and safety;
- (ii) take reasonable care that you don't risk the health and safety of others; and
- (iii) comply with any reasonable WHS instruction given by a PCBU.

And if you are a Worker, you have one extra duty:

- (iv) co-operate with any WHS policy that has been notified to you by PCBU.

(e) Risk Management

**IF YOU HAVE A DUTY OF CARE, YOU MUST TAKE REASONABLE STEPS TO ELIMINATE RISKS, OR IF THAT IS NOT POSSIBLE, TO MINIMISE THEM.**

If you have a WHS Duty of Care then you must take steps to manage the relevant risks. Risk Management means you must eliminate risks to health and safety so far as is reasonably practicable. Then, to the extent elimination of any risk is not reasonably practicable, you must do what you can to minimise that risk.

WHS Duties of Care require you to take steps to the extent that they are 'Reasonably Practicable'.

'Reasonably Practicable' means that you must take the following factors into account when considering how to eliminate or minimise any risk to health and safety:

- (i) the likelihood of it happening;
- (ii) the degree of harm, severity of consequences if it does happen;
- (iii) what you should be expected to know about the risk and the methods of managing it;
- (iv) the availability and suitability of ways to eliminate or minimise the risk; and
- (v) whether the cost of any way to eliminate or minimise the risk is grossly disproportionate to the risk.

Using this Manual you will be able to perform this Risk Management process in relation to any situation you are likely to encounter in the screen production industry.

(f) Consultation

**PCBUs HAVE A LEGAL OBLIGATION TO CONSULT WITH EACH OTHER AND WITH THEIR WORKERS**

Consultation with others on set is a specific and mandatory requirement under WHS Legislation.

If two PCBUs have overlapping duties of care, then they are required to consult and co-ordinate with each other.

Each PCBU is also required to consult with any Worker who is likely to be affected by any risk, when:

- (i) identifying hazards and risks;
- (ii) making decisions about ways to eliminate or minimise risks;
- (iii) making decisions about the adequacy of facilities for the welfare of Workers; and
- (iv) making decisions about procedures for consultation, dispute resolution, monitoring of health and work conditions and provision of training.

Consultation means that the PCBU is required to:

- (i) share relevant information with the Workers;
- (ii) provide Workers with an opportunity to raise health and safety issues and contribute to decision making processes;
- (iii) take the views of Workers into account; and
- (iv) advise the Workers of the outcome of the consultation process.

(g) Election of a Health and Safety Representative

Workers may request the PCBU to facilitate the election of a Health and Safety Representative, who must then be involved in any consultation. Workers may also request the PCBU set up a health and safety committee.

WHS laws contain provisions protecting the rights of Workers and Health and Safety Representatives to raise WHS issues, and impose penalties if any PCBU coerces or discriminates against them on this basis.



## (h) Authorisation

### **CHECK WHETHER ALL THE NECESSARY AUTHORISATIONS ARE IN PLACE**

WHS regulations require that licences, permits and registrations may be required in relation to certain workplaces and activities, for example scaffolding, rigging, cranes, electrical work and diving work.

This Manual provides further information regarding the authorisations that may be required in relation to specific activities.

## (i) Notifiable Incidents

### **MAKE SURE YOU HAVE A SYSTEM IN PLACE FOR NOTIFYING YOUR RELEVANT REGULATOR OF ANY WHS INCIDENT**

WHS laws require a PCBU to notify the relevant Regulatory Agency, as soon as they become aware that, in relation to the production, a person has been killed, suffered a serious injury or illness, or there has been a dangerous incident.

If a Notifiable Incident occurs, the PCBU must, as far as is reasonably practicable, preserve the site of the incident until a WHS from the relevant Agency can attend. This requirement does not prevent the PCBU from assisting the injured person or making the site safe.

Further information about this Notification process is provided in Section F of the Manual.

## 5. WHS PRACTICE KEY CONCEPTS

In addition to the concepts used in WHS legislation discussed above, there are other terms and concepts used in the practical application of WHS.

### (a) Risk Assessments

Risk Assessment refers to the practice of Identifying potential hazards in advance, and analysing the risks associated with the identified hazard so that they may then be dealt with through Risk Management.

Risks Assessments are based on considering their likelihood and the severity of the consequences.



*The Risk Management Process – Safe Work Australia*

This may involve processes such as a Script Breakdown Safety Report or Location Report where the producer, the WHS consult together with any crew or other persons involved in the filming.

**(b) Hierarchy of Controls**

Having identified hazards and risks through the Risk Assessment, the PCBU must consider Risk Management - how manage and control the risks.

Hierarchy of Controls sets out the options from most preferable to least preferable, which the PCBU may balance against the cost and practicality of implementing them. These are:

- (i) Remove: removing the risk or hazard entirely;
- (ii) Replace: substitute with a safer alternative;
- (iii) Separate: isolate hazard from person through barriers etc
- (iii) Engineer: use equipment eg, ventilation or lifting aids;
- (iv) Manage: manage risk by methods such as reducing exposure times, increasing training
- (v) Personal Protective Equipment (PPE): provision of safety equipment, for example to persons working at height or stunt performers.

Sometimes a combination of these measures will be required. The Control measures taken should be documented and retained for future reference.

### (c) Safe Work Method Statement (SWMS)

A SWMS is a safety planning tool that identifies the hazards and risks of an activity and documents the control measures necessary to manage those risks. The SWMS should describe to workers in clear terms how risks from the work will be effectively controlled to enable the work to be done safely. A SWMS is not intended to be a procedure or a description as to how to perform a specific task—rather it is a tool to help supervisors and workers confirm and monitor the control measures required at the workplace.

A PCBU must prepare a SWMS—or ensure a SWMS has been prepared—for high risk work activities. A SWMS must be prepared before this work starts. The person responsible for carrying out the high risk work is best placed to prepare the SWMS in consultation with workers who will be directly engaged in the work. Consulting workers is important so they understand the detail of the SWMS and what they are required to do to implement and maintain risk controls. Sharing information and using the knowledge and experience of workers will help make sure the work is performed in accordance with the SWMS. If there is a Health and Safety Representative at the workplace they should also be consulted when developing a SWMS.

A SWMS must:

- identify the work that is high risk
- specify hazards relating to the high risk work and the risks to health and safety
- describe the measures to be implemented to control the risks, and
- describe how the control measures are to be implemented, monitored and reviewed.

A SWMS should be short and focus on describing the specific hazards identified for the high risk work to be undertaken and the control measures to be put in place so the work is carried out safely. A SWMS must be easily understood by workers, including those from non-English speaking backgrounds. When adding each piece of information to the SWMS consider the importance and relevance of the information and whether it will add unnecessary length or complexity to the document.

High risk work must be carried out in accordance with the SWMS. The PCBU must put in place arrangements to ensure the SWMS is being complied with, for example workplace visits. If work is not being carried out in accordance with the SWMS then it must stop immediately or as soon as it is safe to do so. In these cases the SWMS should be reviewed and if necessary revised to reflect the safest way to carry out the work that is reasonably practicable. Work must not resume until the work can be carried out in accordance with the SWMS.

A PCBU must also ensure a SWMS is reviewed and as necessary revised if the measures put in place to control risks to health and safety are revised.

The SWMS should be kept at the workplace where the high risk work will be carried out. If this is not possible then a SWMS should be kept at a location where it can be delivered to the workplace quickly. A SWMS can also be kept electronically.

Template SWMSs are included in this Manual, but it is crucial to note that every time, they must be reviewed and revised to ensure that they are relevant and appropriate to the activity they will cover. It is important for a SWMS to reflect the specific circumstances of the workplace in which it will operate—that is the workplace where the high risk work is to be carried out, the work environment and the workers carrying out the work. A generic SWMS used at different workplaces may not meet the requirements of the WHS laws

unless it has first been reviewed to take into account the hazards and risks at the specific workplace and amended as necessary.

### Basic Template

<p><i>NOTE: Work must be performed in accordance with this SWMS.</i></p> <p><i>This SWMS must be kept and be available for inspection until the production to which this SWMS relates is completed. If the SWMS is revised, all versions should be kept.</i></p> <p><i>If a notifiable incident occurs in relation to the work in this SWMS, the SWMS must be kept for at least 2 years from the date of the notifiable incident.</i></p>			
<b>[PCBU Name, contact details]</b>			
<b>Work activity:</b>	[Job description]	<b>Workplace location:</b>	
<b>High Risk Activities:</b>			
<b>Person responsible for ensuring compliance with SWMS:</b>		<b>Date SWMS received:</b>	
<b>What measures are in place to ensure compliance with the SWMS?:</b>			
<b>What are the tasks involved?</b> List the work tasks in a logical order.	<b>What are the hazards and risks?</b> Identify the hazards and risks that may cause harm to workers or the public.	<b>What are the control measures?</b> Describe what will be done to control the risk. What will you do to make the activity as safe as possible?	
<b>Name of Worker(s):</b>	<b>Worker signature(s):</b>		
<b>Date SWMS received by workers:</b>			

#### (d) Induction – Safety Briefing

Everyone working on, or visiting a production must be given an induction at each work site they will attend. It must include an orientation and information relevant to the production. Time will be put aside on the first day of employment at each location or site for this induction.

The Induction might cover:

- (i) an outline of WHS rules and policies;
- (ii) the names and introductions to key contacts and their function/s;
- (iii) distribution of written information, eg. site maps, reporting procedures;
- (iv) site tour including location access points, facilities and amenities, personal protective equipment, first aid facilities, emergency equipment, assembly points;
- (v) material safety data sheets for any relevant hazardous substances; and
- (vi) emergency and evacuation procedures and relevant personnel.

## 6. CONSEQUENCES OF WHS FAILURE

Penalties under model Cth Legislation (guide only)

<i>OFFENCE</i>	<i>WORKER</i>	<i>PCBU</i>	<i>COMPANY</i>
<i>Recklessly expose a person to risk of death serious injury or illness</i>	\$300,000 and/or 5 years imprisonment	\$600,000 and/or 5 years imprisonment	\$3,000,000
<i>Failure to comply with WHS duty which exposes a person to risk of death serious injury or illness</i>	\$150,000	\$300,000	\$1,500,000
<i>Failure to comply with WHS duty</i>	\$50,000	\$100,000	\$500,000

## 7. DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT AND BULLYING

- (a) Australian Screen Industry Code of Practice on Discrimination, Harassment, Sexual Harassment and Bullying

[Code of Practice - Discrimination, Harassment, Sexual Harassment and Bullying](#)

[Complaint Handling procedure - Discrimination, Harassment, Sexual Harassment and Bullying](#)

## 8. WORKING WITH CHILDREN

[Children in the Creative Process – Arts Law Centre of Australia](#)

## 9. COVID SAFE GUIDELINES

<https://www.screenaustralia.gov.au/getmedia/d8ec53c2-5a19-4651-a0da-65abf0577837/COVID-Safe-Guidelines.pdf>

## 10. INTIMACY GUIDELINES

<https://www.meaa.org/campaigns/intimacy-guidelines/>