

Standard 10: Work Health & Safety Policy and Compliance

New work health and safety (WHS) laws were introduced in New South Wales (NSW) on 1 January 2012. The WHS laws replaced the occupational health and safety (OHS) laws in NSW.

From 1 January 2012, the WorkCover Authority of NSW will administer and provide advice on the:

- *Work Health and Safety Act 2011;*
- *Work Health and Safety Regulation 2011; and*
- The codes of practice.

All clubs must ensure that they have systems in place to implement and monitor their obligations under the abovementioned Act and Regulation, demonstrated by:

- Documented safety policies and procedures that are readily accessible, up-to-date and reviewed regularly;
- Adopting, documenting and implementing a risk management approach of identifying hazards, assessing risks and having appropriate control measures in place on club premises;
- Ensuring workers and volunteers are trained and competent so that they can carry out their work in a safe and skillful manner;
- Regular consultation mechanisms to engage workers and duty holders in WHS; and
- The appointment of a club WHS officer.

This operating standard provides general information about the duties and rights of persons conducting a business or undertaking (PCBU - the new term that includes employers), officers and workers under WHS laws. The standard is not intended to represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek legal advice if you need assistance on the application of the law to your situation and club.

This standard aims to facilitate the achievement of best practice in WHS. It will assist clubs to establish a WHS policy and implement a risk assessment approach to identifying and controlling WHS.

Note: Compliance with this standard does not necessarily mean your club has met its obligations under relevant WHS laws.

It is your responsibility as an officer to ensure the PCBU has arrangements in place to comply with its legal obligations under WHS laws.

It should be noted that club directors and officers may be exposed to personal liability for the work health and safety breaches of their organisation.

You must consult with workers when the club makes a decision that could affect their work health and safety.

You must consult, cooperate and coordinate with other businesses and organisations that have a similar duty for workers that work at your club.

If you have any doubts or queries regarding your obligations under WHS laws, you should contact the WorkCover Authority of NSW or a WHS specialist.

Templates

A WHS Policy template is provided at **ATTACHMENT A**.

A WHS Management Inspection Checklist to assist your club to identify hazards and assess risks on your premises can be found at **ATTACHMENT B**.

Tools and Assistance

A 'Compliance at a Glance' checklist is provided at **ATTACHMENT C**. Clubs should use this checklist to determine what they need to do to improve WHS in the areas of management commitment, consultation, safe work procedures, training and supervision, incident reporting, workers compensation and return to work procedures.

A WHS Document Toolkit is provided at **ATTACHMENT D**. The documents in the toolkit are designed to assist clubs to establish and implement best practice systems and procedures in WHS. This includes codes of practice that provide information on how to achieve the standards required under the WHS legislation, by identifying hazards and managing risks.

Clubs should also ensure they have comprehensive signage in place around their premises that identifies potential WHS hazards and risks for workers, volunteers, contractors and visitors. Clubs can purchase a range of signage from NSW Corrective Services Industries online at www.csi.nsw.gov.au or via telephone on (02) 8346 1620.

Clubs seeking further information on WHS should contact the WorkCover Authority of NSW on 13 10 50 or at www.workcover.nsw.gov.au.

What GRNSW Requires From Your Club

Clubs must have a WHS Policy in place that, at a minimum, includes the best practice standards outlined in the policy template at **ATTACHMENT A**. Clubs must provide GRNSW with a copy of their WHS Policy with evidence of Committee endorsement and adoption of the policy (copy of resolution from Committee meeting minutes). In the future, clubs are only required to provide a copy of their policy to GRNSW when it has been updated or changed.

Clubs must return a completed copy of the WHS Management Inspection Checklist to GRNSW on an annual basis, signed by the WHS officer and one other employee. Clubs should also provide evidence that the Committee has sighted a copy of the completed checklist (copy of resolution from Committee meeting minutes).

Clubs must also return a completed copy of the Risk Assessment and Control Plan to GRNSW on annual basis.

Work Health and Safety Law

From 1 January 2012, new nationally harmonised work health and safety legislation, commenced in NSW. The new legislation replaced the *Occupational Health and Safety Act 2000* and *Occupational Health and Safety Regulation 2001*.

The WorkCover Authority of NSW will administer and provide advice on new legislation which includes:

1. *Work Health and Safety Act 2011*
2. *Work Health and Safety Regulation 2011*
3. The codes of practice.

A Safe Workplace

The new WHS laws may change the way work health and safety is managed in the workplace, however the basics of keeping your workplace safe will remain.

The basics of keeping the workplace safe include:

- Management commitment
- Consultation
- Management of risk
- Training and instruction
- Reporting safety
- Return to work and workers compensation.

Every person conducting a business or undertaking (PCBU - the new term that includes employers) should ensure the ongoing management of work health and safety matters is done effectively. The PCBU must also ensure their workers are made aware of any workplace health and safety policies and standard operating procedures for their own workplace.

Key Elements of the WHS Laws

This operating standard provides a summary of the key elements of the WHS laws (as summarised in the diagram below¹), concentrating on the main provisions that outline what a club needs to do to comply. Clubs should note that this operating standard is not a substitute for reading the relevant sections of the WHS Act, Regulations and associated codes of practice which can be found at www.workcover.nsw.gov.au.



¹ Special WHS Laws Update, December 2011, Industry Edition, AIG Group.

1. Duty of Care

WHS requires a person PCBU to, so far as is reasonably practicable, ensure the health and safety of workers it engages, or workers whose work activities it influences or directs, while they are at work in that business. The PCBU must also ensure the health and safety of other persons, such as visitors, is not put at risk by the activities of the business.

This specifically includes looking at the work environment; work systems; plant and structures used; substances used, handled or stored; as well as providing adequate information, instruction, training and supervision for work to be carried out safely. Access to facilities for the welfare of workers is also required.

What is a person conducting a business or undertaking (PCBU)?

A PCBU is the legal entity conducting the business. It is not intended to mean individual persons unless they are operating the business in their own name – say, as a sole trader or a partner. A person who is a director of, or employed by, a company is not a PCBU – the company is. The responsibilities of individuals who are directors or senior managers of companies is covered in the *Who is an officer* section and more detailed information on PCBUs is provided in the *Person conducting a business or undertaking* section.

Ensuring health and safety is defined as eliminating risks, so far as is reasonably practicable, or if that is not possible, minimising the risks.

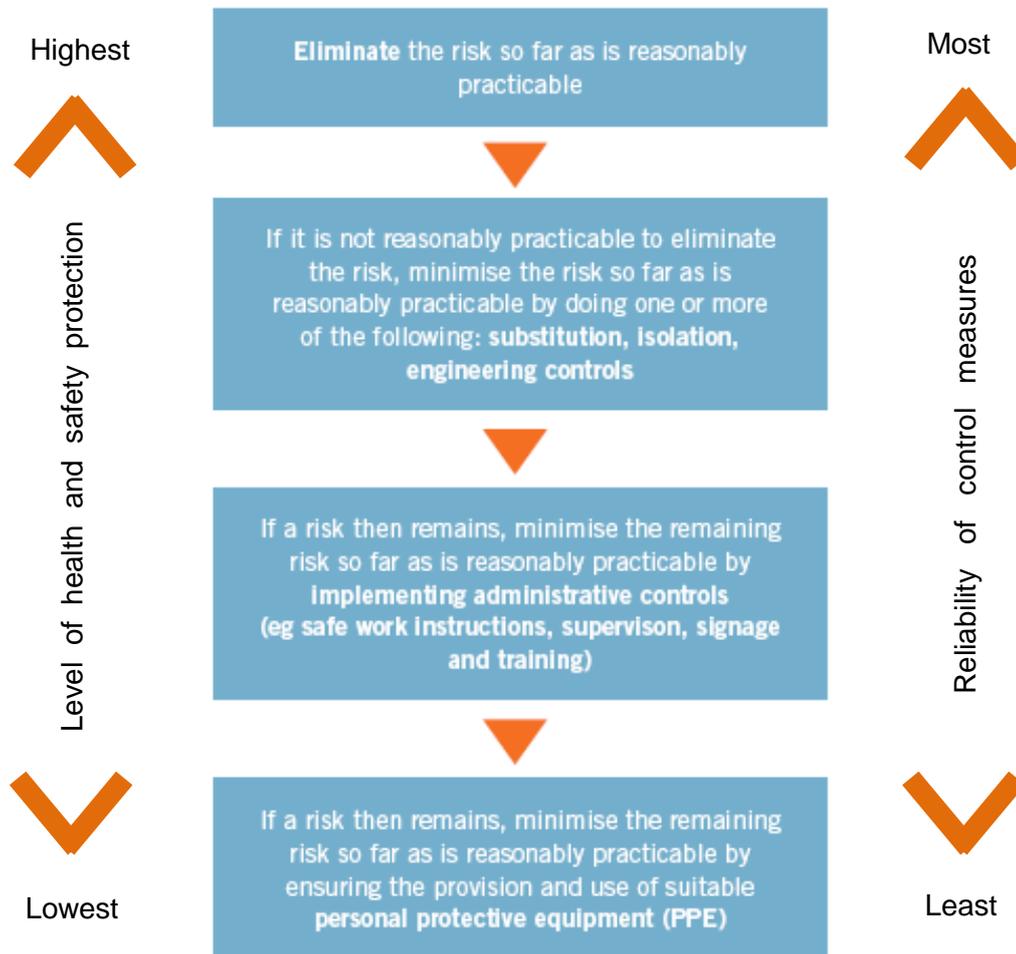
Reasonably practicable is defined as what could reasonably be done at the time to ensure health and safety, taking into account:

- The likelihood of the hazard or risk occurring and the degree of harm it could cause;
- What the business knows or ought to know about the hazard or risk and the available and suitable ways of eliminating or minimising it; and
- After assessing the above, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

More detailed information on this concept can be found in the *Reasonably practical* section.

Codes of practice provide practical guidance on compliance. You should follow a code of practice unless you can show you have an alternative way of meeting your obligations that is at least as safe. There is a specific code of practice setting out a systematic approach to managing risks. Both the Regulations and code refer to the hierarchy of controls as critical element of the risk management approach.

Hierarchy of controls



The process outlined in the hierarchy of controls will help you to identify the most effective and appropriate control, and to meet the obligation of always trying to eliminate a risk first, before looking at ways to minimise it.

The strongest controls are at the top of the hierarchy, with the least preferred and least effective controls at the bottom. These low level administrative and personal protective equipment controls essentially rely on people always doing the right thing, so they are inherently weak, and that is why they are least preferred.

When using the hierarchy of controls you should work from the top down, settling on the highest reasonably practicable solution. You can use a combination of different levels of control – say, isolation and warning signs. If you only apply lower level solutions, you may be asked why the controls above were not reasonably practicable. It may seem obvious to you why a process, machine or substance could not be done away with or modified but always ask the question – why can't I apply a higher level control? You should regularly go back and test whether a higher level control can be applied as things change over time, especially for your most risky work.

2. Meaning of 'workers'

Any person who performs work in any capacity for your club is defined as a 'worker'.

The modern workplace and environment has changed significantly, with a large amount of work carried out by people who are not direct employees. Therefore, WHS laws define 'worker' very broadly to include: employees; contractors; sub-contractors; employees of contractors or sub-contractors; apprentices; trainees; outworkers; employees of labour hire companies; and, volunteers.

The result of these new definitions is that every PCBU must fulfil its health and safety duties to anyone who may be affected by its operations, including volunteers.

Clearly those workers who are not your direct employees may well work for another business or organisation, which would also be a PCBU with the same duty to protect its workers. How you should interact with those other PCBUs to jointly look after those workers, and how responsibility is apportioned between you and the other PCBU, is set out below in the *Obligation to consult, cooperate and coordinate with other duty holders* section.

What obligations do workers and other persons have while at work?

Workers and other persons at a workplace, such as visitors, also have duties under WHS law. These duties do not in any way take away from the PCBU's responsibilities covered above.

Worker duties are very similar to the duties under the previous OHS laws. Clubs should make sure that their workers understand the nature of these duties and should not tolerate material breaches of them without taking the matter up with the worker in an appropriate way consistent with workplace relations laws. A summary of workers obligations under WHS laws is provided in the table below.

Obligations of workers and other persons at work

Worker (section 28)	Other persons at the workplace (section 29)
Take reasonable care for his or her own health and safety	Take reasonable care for his or her own health and safety
Take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons	Take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons
Comply, so far as reasonably able, with any reasonable instruction that is given to them by the PCBU to allow the PCBU to comply with the law	Comply, so far as reasonably able, with any reasonable instruction that is given to them by the PCBU to allow the PCBU to comply with the law
Cooperate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers	

3. **Obligation to consult, cooperate and coordinate with other duty holders**

WHS law clearly identifies that more than one person can have the same duty. For example, GRNSW and a club both hold the duty to ensure the health and safety of a Steward in attendance at a track during a race meeting. In this case, both GRNSW and the club are PCBUs with the same duty towards the Steward.

The following principle (from section 16 of the Act) outlines how these duties interact:

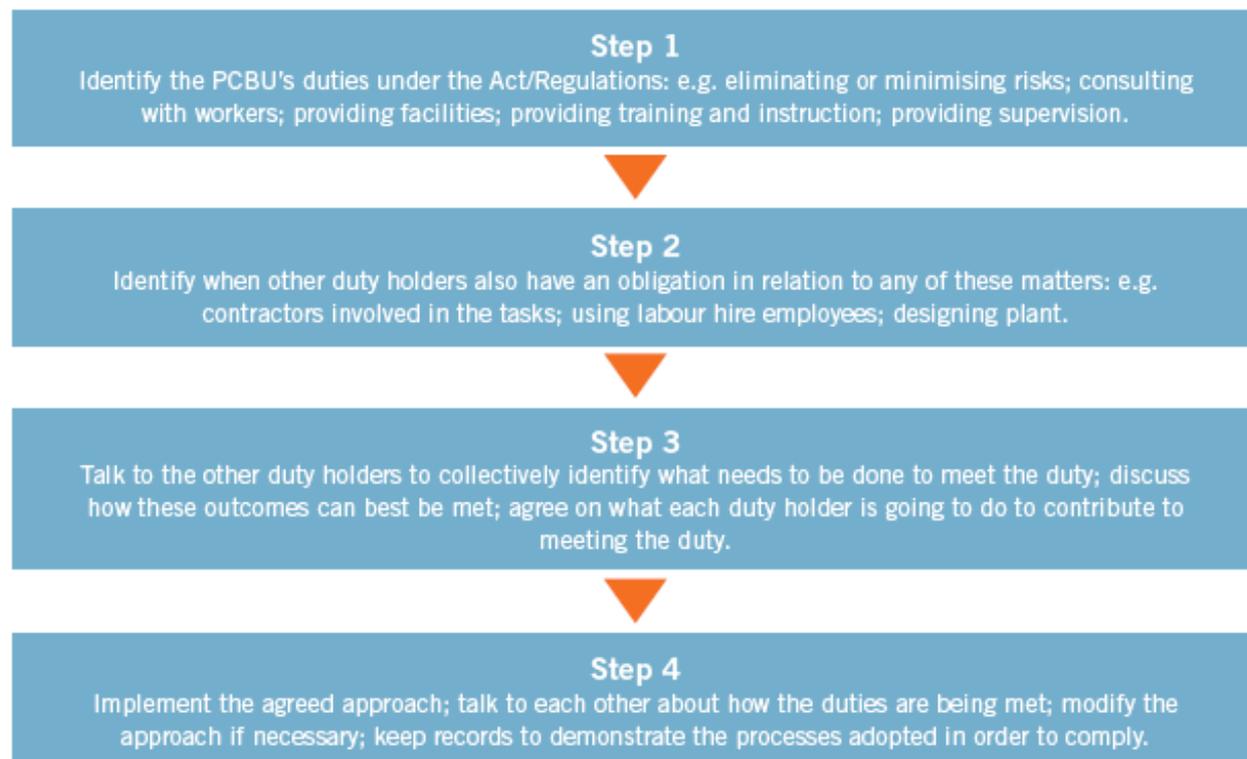
If more than one person has a duty for the same matter, each person:

- *Retains responsibility for their own duty; and*
- *Must discharge that duty to the extent that they have the capacity to influence or control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.*

In order to support this concept, section 46 of the *Work Health and Safety Act 2011* requires duty holders to consult, cooperate and coordinate, so far as is reasonably practicable, with all other persons who have a duty in relation to that matter. For example, in the greyhound racing context, GRNSW and clubs have a duty to consult, cooperate and coordinate with each other to keep Stewards safe while they are in attendance at the track.

This part of the law dealing with influence or control is written in a very deliberate way. A business that has a duty to consult, cooperate and coordinate with another business over the safety of a worker, must do so until it runs up against the actual limits of its influence or control.

How can the PCBU meet the obligations to consult, cooperate and coordinate?



It will be very dangerous for a club to argue that it did not try to consult, or did so only superficially, because it assumed it had no influence or control. A club also cannot contract its control away – even if you formally agree that another organisation will look after an issue that is within your influence or control, you still have to take reasonable steps to make sure that they do so.

Existing safety laws have been interpreted this way on many occasions. The new laws make it clearer in an effort to avoid a risk being unaddressed because everyone thought someone else was looking after it, which is a major cause of accidents in multi-business situations like construction, labour hire and maintenance contracting.

While documentation is important to clarify agreements and demonstrate compliance, it is ongoing conversations and observations that complete the task of meeting these obligations. Exchanging large amounts of paperwork often provides a false sense of security – it is not a substitute for actually knowing who is doing what.

Clubs should ensure they have adequate consultation mechanisms in place that allow duty holders to be actively involved in the identification, management and control of WHS. Managers / Secretaries must also ensure that the workers of duty holders are provided with copies or access to the club's Hazard Report Form, so they have an opportunity to document any WHS concerns and issues.

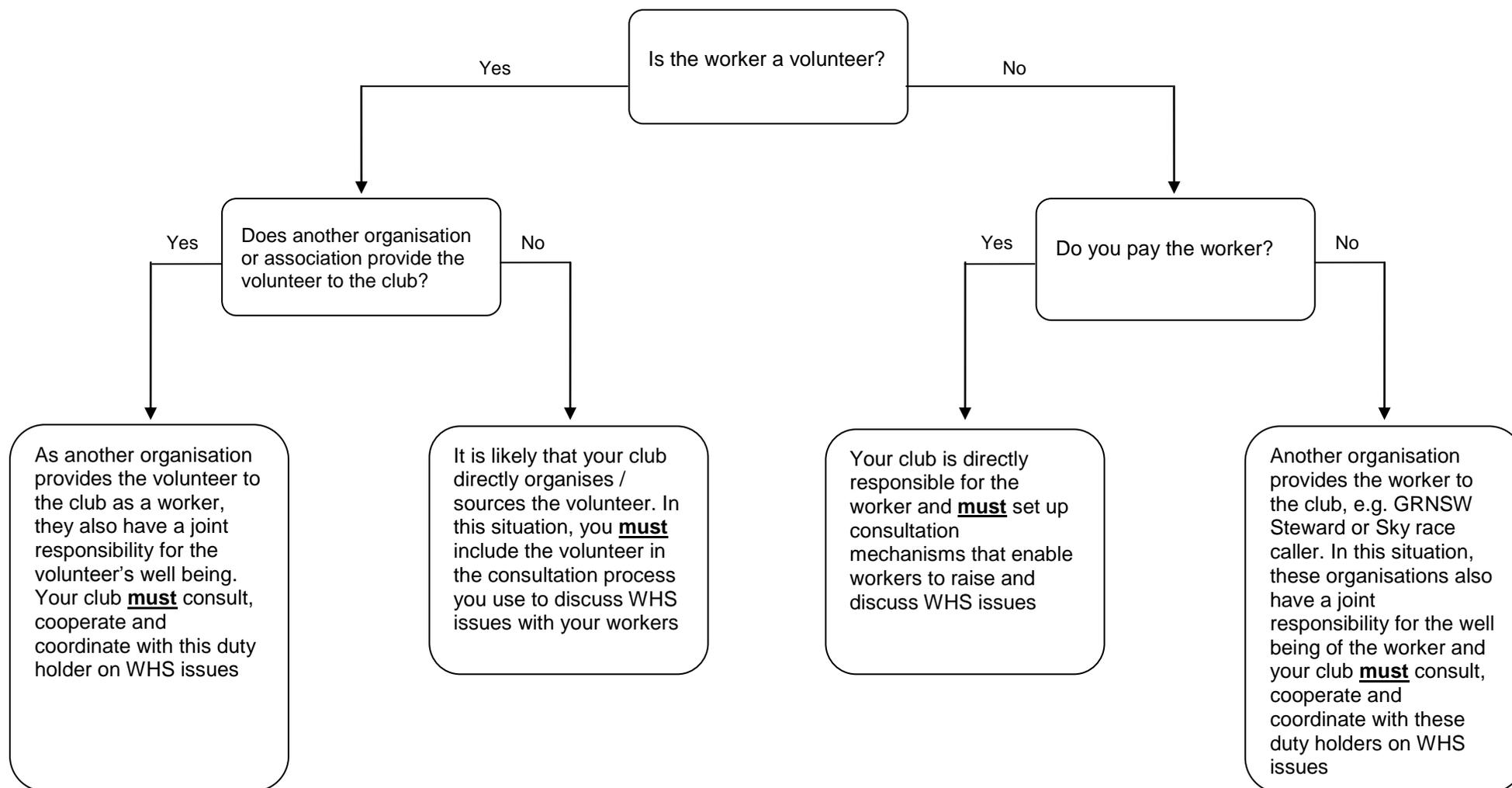
Suggestion: hold a quarterly meeting to discuss WHS with duty holders that have workers that work at your race meetings. Meetings could be held 'in person' at the track or via teleconference, depending on the duty holders' and individual clubs' preference.

Examples of duty holders who have shared responsibility to provide a safe physical work environment for their workers at NSW greyhound racing tracks, include:

- Tabcorp - staff that work in on-course TAB facilities;
- Skychannel - race callers;
- Caterers and other race day contractors;
- Video operators; and
- GRNSW - Stewards and veterinarians.

The following tool will help you to identify duty holders that must be consulted as part of your club's obligations under WHS legislation. It may be possible for your club to consult with workers and duty holders at the same time, however, clubs must note that all duty holders and workers must be included in the process of determining what consultation mechanisms will be used to consider and discuss WHS issues.

Tool to Identify Duty Holders



4. Obligations to consult with workers

The overarching worker consultation obligation is outlined in section 47 of the WHS Act. A PCBU must, so far as is reasonably practicable, consult with workers who carry out work for the PCBU and are, or are likely to be, directly affected by a health and safety matter.

Consultation is required whenever the PCBU is identifying risks and how to control them; making decisions about the adequacy of facilities; proposing changes that may affect health and safety; or making decisions about procedures that relate to health and safety (section 49).

Section 48 of the Act outlines what is required as part of consultation:

- Relevant information about the matter must be shared with workers;
- Workers must be given the opportunity to:
 - Express their views and raise work health and safety issues; and
 - Contribute to the decision-making process.
- Views of workers are taken into account by the PCBU;
- Workers are advised of the outcomes; and
- If the workers consulted are represented by a health and safety representative, that person must be involved in the consultation.

Do I have to consult with contractors and labour hire employees?

Yes. The broad definition of workers in the WHS Act means that anyone you engage to undertake work for your club is a worker. This means that you need to consult, so far as is reasonably practicable, with all workers whose health and safety may be affected by your actions or decisions. This is a situation where it may be appropriate to consult, cooperate and coordinate with other duty holders to identify how to best meet this collective obligation.

Does consultation need to lead to agreement?

While an agreement is preferable, it is not necessary. The important consideration is whether the consultation was a genuine process of sharing information and taking views into account. Ultimately, the PCBU has the responsibility to eliminate or minimise risks and make the decisions to do so.

What is the best way to undertake consultation?

There is a code of practice titled *Work health and safety consultation, co-operation and co-ordination*. It states “you may establish any arrangements for consultation to suit your workers and workplace situations... as long as those arrangements are consistent with the requirements of the WHS Act” (sections 48 and 49).

Including health and safety as an agenda item in other meetings (such as tool box or regular staff meetings) may be the best approach for some organisations, while others will find it more appropriate to set up formal processes such as safety committees.

Suggestion: hold a monthly meeting with all workers, contractors and volunteers at your club before a race meeting, with WHS as a standing / ongoing agenda item. Note, such a meeting could be held specifically for WHS purposes and if no issues are raised by attendees, could be closed immediately.

The important consideration is whether the processes you set up provide you with good and timely information from workers about health and safety issues and how they might be addressed.

Issue Resolution

In addition to the consultation obligations, the WHS Act (sections 80 to 82) and the Regulations (22 to 23) establish requirements to have procedures in place to resolve issues. The requirements apply if “a matter about work health and safety arises at a workplace or from the conduct of the business or undertaking and the matter is not resolved after discussion between the parties to the issue”.

A PCBU is required to:

- Have an agreed procedure for dealing with issues, that meets the minimum requirements outlined in the Regulations;

OR

- Apply the default procedure outlined in the Regulations.

Further information on this topic is provided in the *Issues resolution* section.

5. Upstream duty holders

The Act and Regulations establish obligations on businesses who:

- Design plant or structures (section 22);
- Manufacture plant, substances or structures (section 23);
- Import plant, substances or structures (section 24);
- Supply plant, substances or structures (section 25); and
- Install, construct or commission plant or structures (section 26).

These upstream duty holders have obligations to eliminate and minimise the risks, so far as is reasonably practicable, associated with their plant, substances or structures; and to provide the necessary information to enable them to be used safely. The obligations relating to the design of structures include their final use, and also the health and safety of those constructing them. In relation to supplying plant, the obligations extend to those who sell second hand plant. Upstream duties have been established to focus on eliminating or minimising risks at their source. It is much easier to deal with a health and safety issue during the design phase than to try and retrofit a solution once the plant, substance or structure is in use in the workplace.

6. Right of entry

Legislation in most states and territories has, for many years, included a right for union officials who hold appropriate permits to enter a workplace to inquire into a suspected breach of safety law. In a few states, these same people have also had a right to enter the workplace to consult or advise workers or to assist a health and safety representative. The WHS laws establish a right to enter for both purposes. Other provisions in the WHS Act and Regulations establish other circumstances where a union may become involved in the workplace. The following tables provide a summary of the key considerations for union right of entry provisions under WHS laws.

Requirement	Entry for a suspected contravention	Entry to consult and advise workers
Prior notice of entry	X	✓
Prior notice to inspect/copy relevant documents	X	N/A
Prior notice to inspect employee records	✓	N/A
Prior notice to inspect information held by another person	✓	N/A
Ability to advise workers of risk	✓	✓
Ability to cause work to cease	X	X
Enforcement powers	X	X

Section of Act	Subject	How
s68	Powers and functions of HSRs	HSR can request assistance of any other person.
s70	General obligations of PCBUs in relation to HSRs	PCBU must allow a person to assist HSR the PCBU can refuse access "on reasonable grounds".
s52	Negotiations for agreement for a work group	Can represent the workers in place of HSR.
s61	Election of HSRs	Assist in conducting the election.
s81	Resolution of health and safety issues	Attend with view to resolving issue.

When right of entry powers are being exercised.....

The union official:

- Must comply with any WHS or other legislated requirement that applies to the workplace; and
- Must not delay, hinder or obstruct any person or disrupt work at the workplace.

The business:

- Cannot refuse or unduly delay a permit holder entitled to enter the workplace.

7. Due diligence

WHS makes it clear that where duties are held by an organisation (such as a company), there is an obligation on the officers of the organisation to exercise due diligence to ensure that the organisation complies with those duties (section 27). In other words, those who make decisions about how an organisation is run have their own individual obligation to contribute to it being run in compliance with WHS laws, for example, club managers / secretaries.

The six steps of due diligence

The reasonable steps officers must take to ensure they are exercising due diligence includes, but is not limited to:

1. Acquiring up to date knowledge of WHS matters.

Examples of how to keep up to date on WHS matters include:

- Enhancing the expertise of your officers through training, information sessions and /or conferences;
- Understanding what the *Work Health and Safety Act 2011* requires and the strategies and processes for eliminating hazards and risks;
- Keeping up to date with changes in WHS matters, legislation, codes of practice and safety guidelines;
- Accessing industry specific WHS information such as from industry associations; and
- Subscribing to publications and websites such as www.workcover.nsw.gov.au.

2. Gaining an understanding of hazards and risks of the club.

Giving proper consideration to the hazards and risks associated with the operations of your club is an important obligation for officers when making decisions.

An appropriate understanding required for decision making could be gained by:

- Undertaking regular inspections of the workplace/s;
- Consulting with workers and volunteers about WHS hazards and risks;
- Having a way of identifying and managing health and safety risks;
- Having a sound knowledge of the PCBU's risk management system, which may require obtaining appropriate advice;
- Actively participating in how the PCBU conducts its WHS risk management processes; and
- Understanding the WHS regulatory requirements for hazards and risk that impact on the organisation's operations.

3. Officers ensure that the club has and uses appropriate resources to eliminate or minimise risk.

Examples to help ensure risks to health and safety are eliminated or minimised include:

- Providing an effective governance structure and work health and safety management system;
- Establishing and maintaining a system to manage risks to health and safety; and

- Scrutiny and oversight to ensure allocation of resources to manage work health and safety in matters such as:
 - Safe plant and equipment;
 - Maintenance of plant and equipment; and
 - Training of workers.

4. *Officers ensure that the club has and uses appropriate processes to receive and consider information about WHS.*

Implement a reporting system to ensure information about incidents, emerging hazards and risks is:

- Communicated;
- Considered;
- Acted upon promptly; and
- Remedial actions monitored.

5. *Officers ensure that the club has and implements processes to comply with duties.*

Officers must ensure the areas requiring compliance are identified and that they exercise an appropriate level of scrutiny and oversight of the PCBU to ensure it complies with its WHS obligations. These obligations include:

- Reporting of notifiable incidents;
- Duty to consult with workers;
- Action on improvement, prohibition and non disturbance notices;
- Obligations to provide information, training and instruction to workers about work health and safety;
- Obligations for health and safety representative training;
- Licensing and registration obligations;
- Obligations for union right of entry requirements; and
- Duty to consult, cooperate and coordinate activities with other duty holders.

6. *Officers verify that 3, 4 and 5 happen.*

An officer must verify the PCBU has implemented the work health and safety system and is legally compliant. This includes:

- Ensuring Board reports include relevant WHS information;
- Ensuring adequate resources and safety processes are in place and being used;
- Actively verifying and auditing safety arrangements; and
- Ensuring the PCBU has addressed any identified gaps and provided detailed reports to the Board on actions taken to address safety issues.

Who is an Officer?

Directors and officers may be exposed to personal liability for the health and safety breaches of their club.

An officer is defined as anyone who makes or participates in the making of decisions that affect a business or undertaking, or a substantial part of it. From a greyhound perspective, it is important to note that as a club manager or secretary you will be deemed to be an officer under WHS laws.

Officers have high level obligations for work health and safety. These obligations are important as health and safety commitment and leadership from the top levels of the business or undertaking is critical to health and safety outcomes. In practice, due diligence will operate more effectively if the whole management team tries to apply its principles, regardless of who may legally be an officer.

An officer can be:

- A director or secretary of a corporation;
- Any person who can make, or participate in making, decisions that affect the whole, or a substantial part, of the business of the corporation;
- A person who has the capacity to affect significantly the corporation's financial standing;
- A receiver, or receiver and manager, of the property of the corporation;
- An administrator of a corporation;
- An administrator of a deed of company arrangement executed by a corporation;
- A liquidator of a corporation; and
- A trustee or other person administering a compromise or arrangement made between the corporation and someone else.

It is important for all PCBUs to identify their officers within their company or organisation and ensure they are aware of their due diligence obligations.

Officers must ensure the PCBU has arrangements in place to comply with its legal obligations. It is an officers duty to exercise due diligence to ensure their business or undertaking fulfils its health and safety obligations under the *Work Health and Safety Act 2011*.

As an officer, what should I do to demonstrate due diligence?

- Understand your WHS duties and those of the organisation;
- Understand what risk management requires, including what is meant by 'reasonably practicable' and the hierarchy of controls;
- Know the industry's WHS issues;
- Know the club's operations and the key things that can potentially harm peoples' health and safety;
- Allocate appropriate resources, with clear support from the Committee or Board, to enable the club to implement control measures and generally comply with the WHS duties. This is more than establishing a safety management system, it is about establishing a culture where dealing with health and safety is built in to how you do business and where information about problems and solutions freely flows up, down and across the organisation;

- Make sure you check the club is actually doing what it says it is about health and safety. Audits and injury reports can provide valuable data, but an officer needs to seek out their own verification that the club is complying with the law;
- Talk to workers and volunteers; ask them if supervisors and managers talk to them about safety; test their knowledge of the health and safety requirements in the workplace; seek their views on how health and safety could be improved in the workplace. Compare these responses with the official reports you get on compliance; and
- Ensure WHS processes are verified, monitored and reviewed.

Person Conducting a Business or Undertaking

A PCBU may be an individual person or an organisation conducting a business or undertaking.

Examples of PCBUs who are individuals include:

- Partners in partnerships;
- Sole traders and self employed people;
- Individual trustees of trusts (as with some family businesses); and
- Committee members of unincorporated associations if they employ someone.

Examples of PCBUs that are organisations include:

- Public companies;
- Private companies;
- Trustees that are companies;
- Cooperatives that are companies;
- Government departments and authorities;
- Incorporated associations if they employ someone;
- Local authorities (municipal corporations or councils);
- Independent schools; and
- Universities.

A health and safety duty is owed by a PCBU if it:

- Arranges, directs or influences work to be done; and
- Contributes something towards the work being done.

Duties of a person conducting a business or undertaking

The principles that apply to all duties in the *Work Health and Safety Act 2011* are:

1. A duty is not transferable;
2. A person may have more than one duty;
3. More than one person can have the same duty; and
4. Risks are managed to ensure they are eliminated or minimised, so far as is reasonably practicable.

Primary duty of care

The PCBU has a primary duty of care to ensure workers and others are not exposed to a risk to their health and safety.

A primary duty of care is owed by a PCBU when it:

- Directs or influences work carried out by a worker;
- Engages or causes to engage a worker to carry out work (including through subcontracting); and
- Has management or control of a workplace.

The PCBU must meet its obligations, so far as is reasonably practicable, to provide a safe and healthy workplace for workers or other persons by ensuring:

- Safe systems of work;
- A safe work environment;
- Accommodation for workers, if provided, is appropriate;
- Safe use of plant, structures and substances;
- Facilities for the welfare of workers are adequate;
- Notification and recording of workplace incidents;
- Adequate information, training, instruction and supervision is given;
- Compliance with the requirements under the work health and safety regulation; and
- Effective systems are in place for monitoring the health of workers and workplace conditions.

Reasonably Practicable

'Reasonably practicable' means doing what is effective and possible to ensure the health and safety of workers and others. All people must be given the highest level of health and safety protection from hazards arising from work, so far as is reasonably practicable.

A PCBU should always seek to eliminate, so far as is reasonably practicable, any health and safety risks. If a risk cannot be eliminated, the PCBU must minimise the risk, so far as is reasonably practicable, by:

- Substituting (wholly or partly) the hazard with something with a lesser risk;
- Isolating the hazard from any person exposed to it; and
- Implementing engineering controls.

If these controls do not fully eliminate or minimise the risk, the PCBU must implement administrative controls and then, if appropriate, ensure the provision of suitable personal protective equipment. A combination of controls may be used to minimise a risk if a single control is not sufficient. In determining control measures, the PCBU should identify and consider everything that may be relevant to the hazards and risks and the means of eliminating or minimising the risks.

The PCBU, when determining what is reasonably practicable, should take into account:

1. Likelihood of the risk or hazard causing harm

Where there is greater likelihood of the hazard or risk causing harm, the PCBU must give greater attention and effort to eliminate or minimise the risk.

2. Degree of harm if the hazard or risk is not controlled

Where the degree of harm from a hazard or risk is significant, such as the risk of death or serious injury, then more is required from the PCBU to eliminate or minimise the risk.

3. Knowledge about ways of eliminating or minimising the hazard or risk

The PCBU must consider and understand the risks associated with their business or undertaking. Examples include:

- The potential failure of plant, equipment, systems of work or risk control measures;
- The impact of exposure to hazardous chemicals and materials;
- The potential interaction between multiple hazards that may, together, cause different risks;
- The impact of unusual or infrequent events; and
- The impact of human inadvertence or error, misuse, spontaneity, panic, fatigue or stress that may affect health and safety.

Talking to workers, identifying hazards and analysing previous incidents provides a critical source of information about risks. Knowledge can also be obtained from the WHS Regulations as well as relevant codes of practice and the WorkCover Authority of NSW publications.

4. Availability and suitability of ways to eliminate or minimise risks

A PCBU must consider what is available and what is suitable for the elimination or minimisation of risk. For example, an effective work process is regarded as available if it can be implemented. Likewise, equipment that can be purchased or made is regarded as available.

5. Cost of eliminating or minimising the risk

Cost will not be the key factor in determining what a PCBU should do to eliminate or minimise a risk unless it can be shown to be grossly disproportionate to the risk.

If the risk is particularly severe, a PCBU will need to demonstrate that costly safety measures are not reasonably practicable due to their expense and that other less costly measures could effectively minimise the risk.

A PCBU cannot expose people to a lower level of protection simply because it is in a lesser financial position than another PCBU.

The costs of implementing a particular control can also take into account any savings arising from fewer incidents, injuries and illnesses, potentially improved productivity and reduced turnover of staff.

The more likely the hazard or risk is, or the greater the harm that may result from the hazard, the less weight should be given to the cost of eliminating or minimising the risk.

Note: A PCBU cannot avoid responsibility by attempting to contract out their obligations by giving control to someone else.

Consultation

Clubs should note that the requirement under WHS laws to consult with workers is different to the requirement to consult, cooperate and coordinate with other duty holders. These consultation activities may be conducted separately or together, depending on the club's individual context or preferences.

Management or control of workplaces

Effective management or control of a workplace means ensuring, so far as is reasonably practicable, that there are no risks to the health and safety of anyone at a workplace, or anyone who enters and exits a workplace. It also means ensuring, so far as is reasonably practicable, there are no risks arising from the workplace.

A workplace can include a vehicle, vessel, aircraft, mobile structure or any installation on water where a worker goes, or is likely to be, while at work for a business or undertaking.

A PCBU with management or control of a workplace should:

- Consult with workers when determining the adequacy of facilities for the welfare of workers;
- Consult with other duty holders who may have a shared responsibility to provide a safe physical work environment and facilities;
- Maintain the work environment and facilities in a safe condition;
- Implement appropriate procedures for workers who work in remote or isolated locations such as emergency procedures, communication and accommodation; and
- Prepare, implement and practice emergency plans, to ensure that everyone can be evacuated from the workplace in a controlled manner if an emergency arises.

Management or control of fixtures, fittings or plant at workplaces

A PCBU has a duty to ensure, so far as reasonably practicable, that the management or control of fixtures, fittings or plant at a workplace are without risks to the health and safety of anyone.

Plant includes:

- Any machinery, equipment, appliance, container, implement and tool;
- Any component of any of those things; and
- Anything fitted or connected to any of those things.

Flexibility in setting up consultation arrangements

The WHS Act allows some flexibility in establishing consultation arrangements to best suit the consultation needs of the workers at the workplace.

Health and safety representatives (HSRs) can be elected to represent various work groups and investigate health and safety issues.

A health and safety committee (HSC) can be also established:

- If requested by the HSR; or
- If requested by five or more workers; or
- On the initiative of the PCBU (includes employers).

The role of the HSC is to facilitate cooperation between the PCBU and workers on health and safety matters as well as to develop work health and safety standards, rules and procedures.

The legislation also allows other agreed arrangements to be set up provided the arrangement is agreed to by the workers and is likely to result in better consultation and improved decision making.

Once established, consultation must be in accordance with the procedures agreed to between the PCBU and the workers. Regardless of the arrangement, the obligation of the PCBU to consult with all workers remains.

Other agreed arrangements

Other agreed arrangements are flexible alternatives for establishing agreed consultation arrangements that meet your clubs needs and improve decision making, especially where there is no HSR or HSC.

Some workplaces may need a mix of HSRs, HSCs and / or other agreed consultation arrangements tailored to suit the workers and the work environment. It may be more effective and meaningful to have an alternative arrangement for consultation if workers travel frequently or the business is small.

Other agreed arrangements for consultation on health and safety matters could be through:

- Regular scheduled meetings;
- Team meetings (where work health and safety is always an agenda item);
- One-off meetings;
- Tool box talks;
- Face to face discussions; and
- Briefing sessions.

Though other agreed arrangements do not need to be in a formal process, they must be planned and developed in consultation with workers. For further information on setting up other agreed arrangements, see the *Work health and safety consultation, co-operation and co-ordination* code of practice supplied in your WHS Document Toolkit.

You should note that all consultation arrangements must be consistent with your legal duties under the *Work Health and Safety Act 2011*.

Issue Resolution

Minimum Requirements

The agreed procedure for issue resolution at a workplace must include the default steps set out below (clause 23 of the WHS Regulations)

The PCBU must ensure that the agreed procedure for issue resolution at the workplace:

- Is set out in writing; and
- Is communicated to all workers to whom the agreed procedure applies.

Default issue resolution procedure

This section sets out the default procedure for issue resolution as outlined under WHS laws.

1. Any party to the issue may commence the procedure by informing each other party:
 - a) That there is an issue to be resolved; and
 - b) The nature and scope of the issue.
2. As soon as parties are informed of the issue, all parties must meet or communicate with each other to attempt to resolve the issue.
3. The parties must have regard to all relevant matters, including the following:
 - a) The degree and immediacy of risk to workers or other persons affected by the issue;
 - b) The number and location of workers and other persons affected by the issue;
 - c) The measures (both temporary and permanent) that must be implemented to resolve the issue; and
 - d) Who will be responsible for implementing the resolution measures.
4. A party may, in resolving the issue, be assisted or represented by a person nominated by the party.
5. If the issue is resolved, details of the issue and its resolution must be set out in a written agreement if any party to the issue requests this.

Note: Under the Act, parties to an issue include not only a person conducting a business or undertaking, a worker and a health and safety representative, but also representatives of these persons (see section 80 of the Act).

6. If a written agreement is prepared all parties to the issue must be satisfied that the agreement reflects the resolution of the issue.

A copy of the written agreement must be given to:

- a) All parties to the issue; and
 - b) If requested, to the health and safety committee for the workplace.
7. To avoid doubt, nothing in this procedure prevents a worker from bringing a work health and safety issue to the attention of the worker's health and safety representative.

Offences Under WHS Laws

Obligations on clubs under WHS Laws are in the nature of "Strict Liability" obligations, that is, they do not require proof of any mental element (such as willfulness or negligence) on the part of the clubs.

In addition to PCBUs (employers) and controllers of work premises, workers, directors, committee members and officers concerned in the management of a corporation may also be prosecuted for offences under WHS Laws.

A prosecution by WorkCover for offences under WHS Laws may be instituted within two years after the offence or, generally speaking, where a coronial inquest has been held, can be two years from the date of the coronial inquest.

Prosecutions under WHS Laws are criminal prosecutions. The financial penalties which may be imposed for a breach of WHS laws can be significant and are outlined in detail in the Act.

Most offences under WHS Laws fall under a new category system as follows:

1. Category 1: Reckless conduct - it is an offence under the WHS Act to recklessly engage in conduct that exposes an individual to a risk of death or serious injury or illness, without reasonable excuse;
2. Category 2: Breach of primary duty - it is an offence under the WHS Act to fail to comply with a health and safety duty owed, exposing an individual to a risk of death or serious injury or illness; and
3. Category 3: Breach of regulatory duty - it is an offence under the WHS Act to fail to comply with a health and safety duty owed.

The following table indicates the maximum penalties for each of these categories:

Category	Body Corporate	Officer	Worker
Category 1	\$3,000,000	\$600,000 or 5 years' imprisonment	\$300,000 or 5 years' imprisonment
Category 2	\$1,500,000	\$300,000	\$150,000
Category 3	\$500,000	\$100,000	\$50,000

Other liability

In addition to liability under WHS Laws, clubs may also be exposed to civil liability in relation to incidents which may occur at their tracks, for example, claims in negligence. It should be noted that different obligations and standards of proof apply in relation to civil claims.

Workers Compensation and Injury Management

The *Workers Compensation Act 1987*, *Work Injury Management and Workers Compensation Act 1998* and the *Workers Compensation Regulation 2003* detail the workers compensation, injury management and return to work responsibilities of employers and workers.

As an employer, you must:

1. Have a workers' compensation policy that covers all workers and volunteers;
2. Report incidents or injuries;
3. Fulfil your responsibilities if a worker is injured;
4. Establish a return to work program; and
5. Display the 'Watching out for you' poster which outlines what to do if there is an injury.

A Return to Work Program Policy template for clubs to implement is provided in the WHS Document Toolkit.

Workers must notify their employer as soon as possible of an injury, permit their nominated treating doctor to release information to the Scheme Agent or insurer and their employer, and participate and cooperate with the development and implementation of injury management and return to work plans.

Employers must have appropriate arrangements in place to support an early and safe return to work of an injured worker as soon as reasonably practicable. This may mean returning the worker to work for reduced hours or to alternative tasks (in consultation with the treating doctor) which are deemed suitable for the worker at any stage in the recovery period. For further information clubs should refer to the WorkCover Authority of NSW.

Risk Management

The following section provides an overview of a suggested risk management process for your club. More detailed information on risk management can be found in the *How to manage work health and safety risks* code of practice supplied in the WHS Document Toolkit.

A step-by-step risk management process

A safe and healthy workplace does not happen by chance or guesswork. You have to think about what could go wrong at your workplace and what the consequences could be. Then you must do whatever you can (i.e. whatever is 'reasonably practicable') to eliminate or minimise health and safety risks arising from your business or undertaking.

This process is known as risk management and involves the following four steps:

1. Identify hazards – find out what could cause harm;
2. Assess risks if necessary – understand the nature of the harm that could be caused by the hazard, how serious the harm could be and the likelihood of it happening;
3. Control risks – implement the most effective control measure that is reasonably practicable in the circumstances; and
4. Review control measures to ensure they are working as planned.

These steps are broken down further below².



² How to manage work health and safety risks, December 2011, Safe Work Australia.

Step 1 – How to identify hazards

Identifying hazards in the workplace involves finding things and situations that could potentially cause harm to people. Hazards generally arise from the following aspects of work and their interaction:

- Physical work environment;
- Equipment, materials and substances used;
- Work tasks and how they are performed; and
- Work design and management.

Note: you may not think that the examples outlined below are hazards from a greyhound racing perspective, however they are likely to be classified as hazards that require action under WHS legislation.

Some hazards are part of the work process, such as mechanical hazards, noise or toxic properties of substances. Other hazards result from equipment or machine failures and misuse, chemical spills and structural failures.

A piece of plant, substance or a work process may have many different hazards. Each of these hazards needs to be identified. For example, the lure and its driving mechanism have many dangerous moving parts that generate significant levels of noise. There are also hazards associated with other manual tasks surrounding use of the lure, i.e. operation of the catching pen gate.

Examples of common hazards in the workplace:

- Manual tasks - Over exertion or repetitive movement can cause muscular strain;
- Hazardous chemicals - Chemicals (such as acids, hydrocarbons, heavy metals) and dusts (such as asbestos and silica) can cause respiratory illnesses, cancers or dermatitis;
- Gravity - Falling objects, falls, slips and trips of people can cause fractures, bruises, lacerations, dislocations, concussion, permanent injuries or death;
- Electricity - Potential ignition source, for example, exposure to live electrical wires can cause shock, burns or death from electrocution;
- Psychosocial hazards - Effects of work-related stress, bullying, violence and work related fatigue; and
- Noise - Exposure to loud noise can cause permanent hearing damage.

Examples of hazards at the greyhound racing track:

- Slip and trip hazards in public areas around the club, for example, toilets, grandstand, stairs and dining areas;
- Noise - workers that operate machinery may be exposed to high levels of noise, for example, mowers, the lure, whipper snippers and tractors;
- Machinery - the greyhound lure is a moving item that has many working parts located at various points around the track, creating hazards for workers, trainers, greyhounds and other visitors. Other machinery including tractors, mowers, water trucks and chainsaws also present hazards to workers; and

- General amenities - safety rails, steps, seating, sharp edges on furniture, exposed wire and nails, glass, tin, old and faulty furniture, are all hazards that could injure a worker or visitor to the track.

Inspect the workplace

Regularly walking around the workplace and observing how things are done can help you predict what could or might go wrong. Look at how people actually work, how plant and equipment is used, what chemicals are around and what they are used for, what safe or unsafe work practices exist, as well as the general state of housekeeping.

Things to look out for include the following:

- Does the work environment enable workers to carry out work without risks to health and safety (for example, space for unobstructed movement, adequate ventilation, lighting)?
- How suitable are the tools and equipment for the task and how well are they maintained?
- Have any changes occurred in the workplace which may affect health and safety?

Hazards are not always obvious. Some hazards can affect health over a long period of time or may result in stress (such as bullying) or fatigue (such as shiftwork). Also think about hazards that you may bring into your workplace as new, used or hired goods (for example, worn insulation on a hired welding set).

As you walk around, you may spot straightforward problems and action should be taken on these immediately, for example cleaning up a spill. If you find a situation where there is immediate or significant danger to people, move those persons to a safer location first and attend to the hazard urgently.

Make a list of all the hazards you can find, including the ones you know are already being dealt with, to ensure that nothing is missed. Use *Assessment and Control Plan* form in the WHS Document Toolkit to record hazards and the action taken to fix them.

A WHS inspection checklist to assist clubs to identify hazards and assess risks is provided at **ATTACHMENT B**.

Consult your workers

Ask your workers about any health and safety problems they have encountered in doing their work and any near misses or incidents that have not been reported. Worker surveys may also be undertaken to obtain information about matters such as workplace bullying, as well as muscular aches and pains that can signal potential hazards.

Review available information

Information and advice about hazards and risks relevant to particular industries and types of work is available from regulators, industry associations, unions, technical specialists and safety consultants.

Manufacturers and suppliers can also provide information about hazards and safety precautions for specific substances (safety data sheets), plant or processes (instruction manuals).

Analyse your records of health monitoring, workplace incidents, near misses, worker complaints, sick leave and the results of any inspections and investigations to identify hazards. If someone has been hurt doing a particular task, then a hazard exists that could hurt someone else. These incidents need to be investigated to find the hazard that caused the injury or illness.

Step 2 – How to assess a risk

A risk assessment involves considering what could happen if someone is exposed to a hazard and the likelihood of it happening. A risk assessment can help you determine:

- How severe a risk is;
- Whether any existing control measures are effective;
- What action you should take to control the risk; and
- How urgently the action needs to be taken.

A risk assessment can be undertaken with varying degrees of detail depending on the type of hazards and the information, data and resources that you have available. It can be as simple as a discussion with your workers or involve specific risk analysis tools and techniques recommended by safety professionals.

Step 3 – How to control risks

The most important step in managing risks involves eliminating them so far as is reasonably practicable, or if that is not possible, minimising the risks so far as is reasonably practicable.

In deciding how to control risks you must consult your workers and their representatives who will be directly affected by this decision. Their experience will help you choose appropriate control measures and their involvement will increase the level of acceptance of any changes that may be needed to the way they do their job.

There are many ways to control risks. Some control measures are more effective than others. You must consider various control options and choose the control that most effectively eliminates the hazard or minimises the risk in the circumstances. This may involve a single control measure or a combination of different controls that together provide the highest level of protection that is reasonably practicable.

Some problems can be fixed easily and should be done straight away, while others will need more effort and planning to resolve. Of those requiring more effort, you should prioritise areas for action, focusing first on those hazards with the highest level of risk.

Step 4 – How to review controls

The control measures that you put in place should be reviewed regularly to make sure they work as planned – do not wait until something goes wrong.

There are certain situations where you must review your control measures under the WHS Regulations and, if necessary, revise them. A review is required:

- When the control measure is not effective in controlling the risk;
- Before a change at the workplace that is likely to give rise to a new or different health and safety risk that the control measure may not effectively control;
- If a new hazard or risk is identified;
- If the results of consultation indicate that a review is necessary; and
- If a health and safety representative requests a review.

You may use the same methods as in the initial hazard identification step to check controls. Consult your workers and their health and safety representatives and consider the following questions:

- Are the control measures working effectively in both their design and operation?
- Have the control measures introduced new problems?
- Have all hazards been identified?
- Have new work methods, new equipment or chemicals made the job safer?
- Are safety procedures being followed?
- Has instruction and training provided to workers on how to work safely been successful?
- Are workers actively involved in identifying hazards and possible control measures? Are they openly raising health and safety concerns and reporting problems promptly?
- Is the frequency and severity of health and safety incidents reducing over time?
- If new legislation or new information becomes available, does it indicate current controls may no longer be the most effective?

If problems are found, go back through the risk management steps, review your information and make further decisions about risk control. Priority for review should be based on the seriousness of the risk. Control measures for serious risks should be reviewed more frequently.

Keeping Records

Keeping records of the risk management process demonstrates potential compliance with the WHS Act and Regulations. It also helps when undertaking subsequent risk assessments. Keeping records of the risk management process has the following benefits. It:

- Allows you to demonstrate how decisions about controlling risks were made;
- Assists in targeting training at key hazards;
- Provides a basis for preparing safe work procedures;
- Allows you to more easily review risks following any changes to legislation or business activities; and
- Demonstrates to others (regulators, investors, shareholders, customers) that work health and safety risks are being managed.

The detail and extent of recording will depend on the size of your workplace and the potential for major work health and safety issues. It is useful to keep information on:

- The identified hazards, assessed risks and chosen control measures (including any hazard checklists, worksheets and assessment tools used in working through the risk management process);
- How and when the control measures were implemented, monitored and reviewed;
- Who you consulted with;
- Relevant training records; and
- Any plans for changes.

There are specific record-keeping requirements in the WHS Regulations for some hazards, such as hazardous chemicals. If such hazards have been identified at your workplace, you must keep the relevant records for the time specified.

You should ensure that everyone in your workplace is aware of record-keeping requirements, including which records are accessible and where they are kept.

Hazardous Chemicals

Workplace hazardous chemicals are substances, mixtures and articles used in the workplace that can be classified according to their health and physicochemical hazards. Health hazards are hazards like skin irritants, carcinogens or respiratory sensitisers that have an adverse effect on a worker's health as a result of direct contact with or exposure to the chemical, usually through inhalation, skin contact or ingestion. Physicochemical hazards generally result from the physical or chemical properties, like flammable, corrosive, oxidising or explosive substances.

Safety Data Sheets

A safety data sheet (SDS), previously called a Material Safety Data Sheet (MSDS), is a document that provides information on the properties of hazardous chemicals, how they affect health and safety in the workplace and on how to manage the hazardous chemicals in the workplace. For example it includes information on the identity, health and physicochemical hazards, safe handling and storage, emergency procedures and disposal considerations. A SDS is an important tool for eliminating or minimising the risks associated with the use of hazardous chemicals in workplaces.

WHS legislation requires each manufacturer of a chemical product to review the possible health hazards of a chemical against specific criteria. If this review identifies any potential health hazard, the manufacturer must state that the chemical product is a hazardous substance on a SDS.

Potential hazards identified in the health hazards review must be recorded by manufacturers and suppliers on the product labels and SDS using prescribed 'risk phrases'. The label and SDS are the primary sources of health hazard communication from the manufacturer / supplier to the workplace.

The risk phrases on a label or SDS tell workers and PCBU's that a specific health hazard may be associated with the use of and exposure to a chemical product. Many of the phrases also identify whether the substance is more likely to cause a problem by breathing it in (inhalation), getting it on the skin or swallowing.

Clubs must ensure they have adequate labeling and SDS publications for all hazardous chemicals and products used, handled or stored at the workplace. In addition, clubs must provide all workers with access to SDS.

Hazardous chemicals register

A PCBU must ensure that:

- A register of hazardous chemicals used, handled or stored at the workplace is prepared and kept at the workplace; and
- The register is maintained to ensure the information in the register is up to date.

The register must include:

- A list of hazardous chemicals used, handled or stored, and the current SDS for each hazardous chemical listed; and
- The person must ensure that the register is readily accessible to:
 - A worker involved in using, handling or storing a hazardous chemical; and
 - Anyone else who is likely to be affected by a hazardous chemical at the workplace.

Electronic Tag and Testing

All electrical hand tools and electrical equipment must be connected via an RCD (Safety Switch) at the source of power. Portable RCDs, electrical tools/equipment and extension cables must be tested and tagged. Any electrical equipment without a current tag must not be used and reported to the club manager / secretary. All electrical tools must be isolated from the electricity supply at the end of each shift.

Any personal electrical equipment must not be brought onto site without permission from a manager or supervisor and these items should be tested and tagged prior to use.

Manual Handling and Lifting

Manual handling means any activity requiring the use of force exerted by a person to lift, lower, push, pull, carry or otherwise move, hold or restrain any person, animal or object.

A greyhound racing club presents a working environment with many manual handling hazards. Clubs must ensure workers have been provided appropriate training to enable them to carry out his / her duties and responsibilities.

More information on best practice manual handling practices can be found in the *Hazardous manual tasks* code of practice provided in the WHS Document Toolkit.