



Health & Safety in Residential Building Work in the Workplace

Policy Background

- Managing workplace health and safety is an important part of running any business today.
- Businesses involved in residential building work have responsibilities across a broad range of activities and have obligations to both employees of the business and others working for a secondary party engaged by the principal.
- The variety of work undertaken on a residential building project and the range of businesses involved in undertaking that work creates a complex arrangement in relation to workplace health and safety.

Policy Issues

- It is important to recognise the unique nature of residential building work, particular low rise domestic construction.
- Given the complex nature of the workforce involved in residential building work the responsibility to effectively and practically control activity on a building site is a shared one.
- The expectations for workplace health and safety compliance need to be fair, practical and capable of being readily understood by all parties in the supply chain, both on site and off site.
- Suitable alternatives need to be provided in the legislative framework to allow a business to show compliance with workplace health and safety requirements.

HIA's Policy Position on Health & Safety for Residential Building Work in the Workplace

HIA has adopted the following principles in relation to the development of legislation for safer workplaces and more appropriate Workplace Health & Safety (WHS) regulation and procedures.

HIA considers that these principles should be used as a benchmark for considering current and future WHS regulations for residential building work.

1. Practicality of Compliance

WHS laws and associated WHS instruments, such as codes of practice, should be easy to comply with. This means every WHS law and associated instrument must:

- a. be easily read and understood by those persons who must comply with it;
- b. be flexible and not unduly prescriptive to achieve compliance;
- c. be set at a level that is reasonably practicable for industry to comply;
- d. minimise red tape and compliance burdens that do not advance safety; and
- e. not result in duplication.

2. Certainty of Compliance

Employers, employees and contractors should be able to know with certainty that they have complied with WHS laws. This means WHS laws and associated WHS instruments should be simple, clear and:

- a. focus on practical safety solutions for achieving compliance rather than unrealistic or negative action;
- b. be based on standard build processes and current industry practice; and
- c. incorporate 'deemed to comply' options or provisions where appropriate.

3. Fairness of Enforcement

- a. A culture of education, consultation and improvement, including where a breach has occurred, having an opportunity for immediate voluntary compliance, for example, by using enforceable undertakings, must precede any action of enforcement.
- b. Where a WHS offence is a criminal offence the prosecution procedure should be subject to the usual criminal law principles and be heard in the usual forums.
- c. The accused should be presumed innocent until proven guilty of an offence.
- d. Prosecutions should only be commenced by the regulator and not any other third party.
- e. Prosecutions should not be unnecessarily delayed.

4. Liability based on 'actual' Control

- a. The structure of primary duties imposed by WHS laws should be such that a duty arises only if the person or entity has effective and practical control of the activity.
- b. The level of liability should not have a negative impact on principal contractors where they cannot reasonably be expected to have control, or where their authority has been ignored.
- c. As a general principle, obligations and responsibility for safety should be shared by all persons directly involved in carrying out a work activity.

5. National Consistency

- a. A national, independent WHS body should be retained with power to research and recommend laws and regulations based on research, industry consultation and real independent data.
- b. Prior to making any recommendations in relation to WHS laws and other WHS regulatory instruments and guidance materials, the national independent body and State/Territory regulators should:
 - i. consult directly with HIA, rather than via other collective industry bodies; and
 - ii. make available, at all stages of the consultation process, all data and supporting information used to justify the proposed recommendations.
- c. WHS laws and associated regulatory instruments, whether developed by a national body or by a State/Territory body, should:
 - i. undergo a comprehensive RIS process that considers the impact of each change to individual businesses in each jurisdiction to which the proposed changes are to be implemented, in addition to any collective national impact;
 - ii. be based on objective (scientific/verifiable) evidence and research, rather than on existing State/Territory provisions that command compliance with the highest and most onerous legal standards; and
 - iii. adopt nationally consistent terms and definitions.
- d. A consistent approach should be implemented for collecting and reporting of WHS incidents to inform the appropriateness of future regulatory changes and identify actual, as opposed to perceived, deficiencies with current regulations. The reporting of the data should separate residential building from commercial and civil activity.