

WHS Duties of GSP Lessees/Licensees

Greater Sydney Parklands

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Why am I receiving this document?

As a lessee/licensee of a Greater Sydney Parklands (**GSP**) asset, GSP has prepared this document as an information tool to assist you in understanding and implementing your obligations under relevant work health and safety (**WHS**) laws.

GSP has also prepared a Framework Document setting out your contractual obligations and GSP's expectations and requirements in relation to safety. Please refer to the Framework Document provided to you for further detail of safety requirements under your specific lease or licence.



Disclaimer: this document does not constitute legal advice.

Why do I need to comply with the WHS laws?

Compliance with the WHS laws is important for many reasons, including:



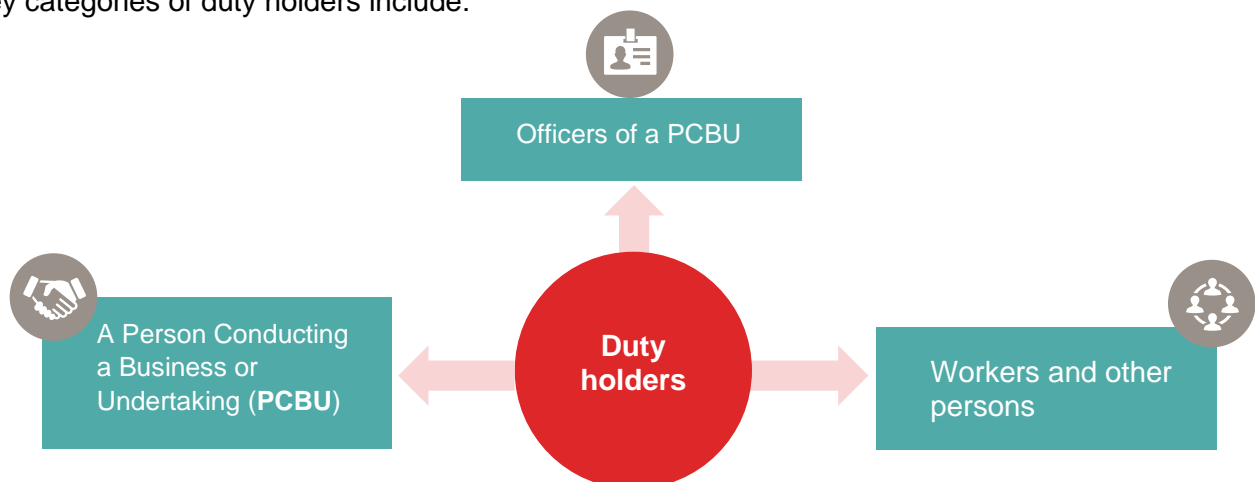
Breaches of the WHS laws are criminal offences, and can lead to significant penalties such as fines and imprisonment.



Compliance with WHS laws is also a contractual requirement under your lease/licence.

Who is subject to duties under the WHS laws?

The key categories of duty holders include:



Who is a PCBU?

Any organisation or individual that carries out a business or undertaking will be a PCBU.



For example, the entity that has entered a lease or licence with GSP will be PCBU

What duties does a PCBU have?

A PCBU is required to ensure, so far as is reasonably practicable, the health and safety of workers, and that the health and safety of other persons is not put at risk from the work it carries out.



For lessees and licensees, this means ensuring that no person is put at risk as a result of the activities you carry out at the GSP asset.

What is the scope of the PCBU duty?

A PCBU is required to meet the standard of what is 'reasonably practicable' in ensuring safety.

What is 'reasonably practicable' in relation to a safety risk means that which is reasonably able to be done, taking into account relevant factors such as:



Likelihood of the risk



Potential consequences of the risk



What is known about the risk and how it can be managed



Availability and suitability of risk controls



Cost of risk controls

There is a clear presumption of safety ahead of cost. Cost can only be considered as a last step in the process, and is only relevant if the cost is grossly disproportionate to the risk.

What other duties does a PCBU have?

PCBUs are also subject to duties in relation to:

Consultation

Incident
notification

Duties under the
WHS Regulation

What are the consultation duties?

A PCBU is required to consult, co-operate and co-ordinate its activities with other persons who hold a safety duty in relation the same matter.



For example, you will need to consult with parties such as GSP, parties on neighbouring properties, your contractors and service providers at the asset (e.g. cleaners, maintenance workers)

PCBU



How can consultation be achieved?

Consultation can be achieved through mechanisms such as attending meetings and sharing information with other duty holders.



Please refer to the Framework Document provided to you for further detail about how consultation with GSP is to occur under your specific lease or licence.

What are the incident notification duties?

The incident notification obligations under the WHS laws include:



A PCBU must ensure that SafeWork NSW is notified of any notifiable incident that arises out of the conduct of its business.



A site where a notifiable incident has occurred cannot be disturbed until confirmation is given by SafeWork NSW.

What is a notifiable incident?



Only the most serious incidents are notifiable, such as the death of a person, or an incident where a person is admitted to hospital as an in-patient.

Further information from Safe Work Australia on the definition of a 'notifiable incident' is available [here](#).

What do I need to report?

You need to notify SafeWork NSW where a notifiable incident occurs at the leased/licensed asset.

You are also required to notify certain incidents to GSP under the relevant lease/licence.



Please refer to the Framework Document provided to you for further detail of the incident notification obligations that apply under your specific lease/licence.

What duties are there under the WHS Regulation?

The WHS Regulation contains specific duties applicable to particular health and safety risks, for example, hazardous chemicals, plant and structures and construction work (and many others).



You should ensure that you are familiar with duties that apply to the specific work activities you carry out at the leased/licensed asset.

Who is an officer of a PCBU?

This will depend on the person's role and the type of organisation they are in. For companies, for example, officers will include all company directors.

What duties does an officer have?

An officer of a PCBU is required to exercise **'due diligence'** to ensure that the PCBU complies with its obligations under the WHS Laws.

'Due diligence' means taking reasonable steps to:



Acquire knowledge about safety matters



Understand the hazards and risks associated with the PCBU's operations



Ensure there are appropriate resources and processes to manage safety



Receive and respond to information about incidents, hazards and risks



Ensure there are processes in place to comply with the WHS law



Verify the resources and processes referred to above

What duties do workers and other persons have?

Workers and other persons are required to take reasonable care of their own health and safety and the health and safety of others. This includes complying with applicable procedures and following reasonable directions of a PCBU.

What penalties can be imposed for breaching the WHS Laws?

The maximum penalties are set out in the table below. The penalties are increased every financial year. There are three categories of offences, as set out in the table below.

Category	Offence	Maximum penalty
1	Engaging in conduct that exposes a person to a risk of death or serious injury or illness, where the conduct is engaged in recklessly or with gross negligence	Body corporate = \$3.8M Individual (officer) = \$761,750 and/or 5 years' imprisonment Workers = \$381,150 and/or 5 years' imprisonment
2	Failure to comply with health and safety duty and the failure exposes an individual to a risk of death or serious injury or illness	Body corporate = \$1.9M Individual (officer) = \$381,150 Workers = \$190,300
3	Failure to comply with health and safety duty	Body corporate = \$634,700 Individual (officer) = \$127,050 Workers = \$63,250