

# PRIMARY INDUSTRIES HEALTH AND SAFETY PARTNERSHIP



## Work Health and Safety Legislative Responsibilities

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**Rural Industries Research and  
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# **Work Health and Safety Legislative Responsibilities**

by Tony Lower

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#### **Researcher Contact Details**

A/Prof Tony Lower  
PO BOX 256  
Moree NSW 2400

Phone: 02 6752 8210  
Fax: 02 6752 6639  
Email: [tony.lower@sydney.edu.au](mailto:tony.lower@sydney.edu.au)

In submitting this report, the researcher has agreed to RIRDC publishing this material in its edited form.

#### **RIRDC Contact Details**

Rural Industries Research and Development Corporation  
Level 2, 15 National Circuit  
BARTON ACT 2600

PO Box 4776  
KINGSTON ACT 2604

Phone: 02 6271 4100  
Fax: 02 6271 4199  
Email: [rirdc@rirdc.gov.au](mailto:rirdc@rirdc.gov.au)  
Web: <http://www.rirdc.gov.au>

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# Foreword

There are specific work health and safety responsibilities for all businesses that are required by law.

This summary document aims to provide relevant state/territory information to assist those working in the primary industries to access information that can be used to improve their work health and safety systems and practices.

This report is an addition to RIRDC's diverse range of over 2000 research publications and it forms part of our Primary Industries Health and Safety Partnership program, which aims to support increasingly healthy, safe and productive working lives in the primary industries through investment in RD&E to drive sustainable improvements to work health and safety outcomes.

Most of RIRDC's publications are available for viewing, free downloading or purchasing online at [www.rirdc.gov.au](http://www.rirdc.gov.au). Purchases can also be made by phoning 1300 634 313.

**Craig Burns**

Managing Director

Rural Industries Research and Development Corporation

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# Helping You Manage Safety in the Primary Industries – a guide

This guide aims to assist people working in the primary industries (agriculture and fishing) in understanding their legal Work Health and Safety (WHS) responsibilities and being able to easily access important state/territory and national information to help meet these requirements. This work has been funded by the Primary Industries Health and Safety Partnership (Rural Industries Research and Development Corporation).

In recent years there has been an attempt to “harmonise” WHS requirements across all states and territories with the aim of reducing the complexity and variations that previously existed. This has resulted in the development of a Model Work Health and Safety Act and Regulations plus relevant Codes of Practice. As at May 2014, all states/territories with the exception of Victoria and Western Australia have WHS legislation based on the Model WHS Act and Regulations.

The basic components of the health and safety legislation in Victoria and Western Australia are similar (though not identical) to those where the model laws have been adopted.

This summary has been developed to simplify the process for understanding and adopting the WHS laws in each state/territory, regardless of their status in relation to the Model Act and Regulations. For the fisheries sector there is also the additional complementary requirement as defined under the [National Standard for Commercial Vessels](#) to ensure safety and develop a safety management system which will be mandatory from 2016. As a summary document, the information provided does not represent a full view of all the necessary information and you are advised to obtain relevant expert advice if required.

Agriculture and fishing have a wide range of WHS elements that need consideration when managing your business. Throughout this document there are case studies of incidents that have occurred and the implications of these for the business. In some cases because no clear actions to address WHS were taken this has led to a prosecution, however in others where steps had been taken to reduce risks, the consequences for the businesses were less severe.

The document is broken into five major sections covering:

1. Essential definitions that you need to be aware of
2. WHS planning and action
3. A list of relevant web links to information in each state/territory to assist you in managing WHS
4. A list of other national resources that can assist you in managing WHS
5. A quick user-guide checklist of high-risk issues and registers for records that must be included for specific commodities (aquaculture, cotton, grains, marine fishing and sugar).

## DEFINITIONS

There are new definitions (with hyperlinks for further information) that have been introduced and are used in those states / territories that have adopted the Model WHS Act and Regulations (all apart from Victoria and Western Australia).

### [Person Conducting A Business or Undertaking \(PCBU\)](#)

This term refers to those individuals with the primary duty of care for health and safety. You have a responsibility to any worker (this includes employees or contractors) and visitors. On some occasions there will be a number PCBUs involved in work e.g. if you employ a contractor who has workers, both you as the farm owner/manager and the contractor will be a PCBU and have a joint responsibility. In the fishing sector share catch arrangements may also determine whether an individual is considered an employer or worker, a summary can be found [here](#).

### Worker

A worker is a person that carries out work in any capacity for the business (PCBU) and includes - employees, contractors, labour hire staff, self employed people and volunteers. For example, depending on your commodity sector this would include farm workers, deck hands, fencing contractors, seasonal workers and students on work placement at the farm or boat. In some cases people can be both a PCBU and a worker e.g. a spraying or harvesting contractor who has their own business is a PCBU, but when contracted by another business (farm) to do a job, they will also be a worker for that business.

### Officer

Officers (e. g. company directors, partners, farm owner-managers) make or participate in making decisions that affect the whole or a substantial part of the business. Officers must keep informed, manage WHS and have a plan to ensure that the PCBU meets its health and safety duties.

The duties of Officers include taking reasonable steps to:- (a) have an up to date knowledge of WHS matters; (b) understand hazards and risks relevant to the farm business; (c) ensure the use of appropriate resources and processes to eliminate or minimise risks to health and safety; (d) ensure a system is used to receive, consider and respond to information on hazards and risks in a timely way; (e) ensure they implement processes for complying with any WHS duty (e.g. reports notifiable incidents, consults with workers, complies with notices, provides training and instruction etc) ; and (f) confirm that all of this is being done. Officers make the decisions that are going to impact on health and safety. They are not the person who implements a decision already made.

### Reasonably Practicable

Means doing what could reasonably be done at a particular time to ensure the health and safety of workers and others. Those with responsibility must meet the standard of behaviour expected of a reasonable person in such a position. Things to consider when working out what is reasonably practicable include how likely a person is to be exposed to harm, how serious a potential injury may be (e.g. life-threatening or requiring no treatment/simple first aid), what the person knows about the hazard or risk and ways of eliminating or minimising it.

### Due Diligence

Due diligence is the duty of the Officer to ensure that the farm business (PCBU) complies with its responsibilities under the WHS laws. The duties of Officers outlined above reflect these requirements.

### *Victoria and Western Australia*

In these two states the Model Act and Regulations have not been adopted and while the language differs slightly the intent of laws to ensure health and safety is comparable to those that have adopted the Model laws. For precise wording refer to the [Victorian OHS Act 2004](#) and [Western Australia OHS Act 1984](#).

### Self-employed

A person who is not an employer but who works for gain (e.g. sole farmer owner/operator with no employees).

### Employer

A person who employs one or more other persons under contracts of employment or contracts of training.

### Employee

A person employed under a contract of employment or contract of training (e.g. farm workers).

#### **Case Study - Effective WHS implementation**

A farm foreman was using a grain elevator to load a truck from a silo. Some straw and trash had collected around the top roller bearing of the elevator discharge. Having seen this and while standing on the back of the truck, he reached up to clear away the build-up of straw, overbalanced and grabbed the top of the elevator with his other hand. His hand became entangled in the drive resulting in serious crush and de-gloving injury to his hand and fingers.

The incident was investigated by a work health and safety inspector. An improvement notice was issued but there was no prosecution or fine as the farm had a WHS plan in place that included ensuring that the machine was properly maintained, guards were in place and that safety induction and instruction in the use of the grain elevator had been provided for all workers. The worker also admitted that he was working contrary to safe work instructions given to him.

*This business had utilized the Managing Grain Production Safety materials as the basis of its WHS development and had done all that was “reasonably practicable” to maintain health and safety in their workplace. Despite the occurrence of an injury to a worker, no proceedings were taken against the business as it had an effective WHS plan and system in place which it implemented.*

## **WHS PLANNING AND ACTION**

Both PCBU's (employers) and workers (employees & contractors) have responsibilities for a safe work place. The critical responsibility of a PCBU is to provide a safe workplace and ensure the safety of all those who work or visit the workplace (farm, boat, processing site). In the same way, workers must contribute by taking reasonable care for their own health and safety and for that of others, complying with reasonable instruction and cooperating with policies and procedures (e.g. use of personal protective equipment) from the PCBU.

### **STEP 1**

An effective approach to [Managing Risks to Health and Safety](#) consists of:

1. Identifying hazards
2. Assessing risks
3. Controlling risks
4. Reviewing control measures
5. Keeping records of the steps you take

Developing a WHS plan is essential and also assists in bringing together all of the parts necessary to address safety in a systematic way to meet your WHS legal requirements.

## STEP 2

To be able to undertake these steps and develop your WHS plan it is important that your farm or fishing business has a specific WHS plan that is implemented and that keeps records of the actions taken. Specific issues that you are required to take in implementing WHS are listed below, with further details (and information links) on each of these outlined in Table 1 as relevant to each state / territory. In developing your businesses WHS Plan, you must include the following:

- *Management commitment* - clearly outline your own responsibilities and those of any workers; provide resources to meet those responsibilities; get involved
- *Consultation* - involve your workers when identifying and addressing safety issues
- *Management of hazards and risk* - identify tasks that are a risk for workers, take action to control these risks and develop simple procedures to manage risks where they cannot be eliminated
- *Training and instruction* - train workers in safe work procedures and make sure they are followed
- *Reporting safety* - have a system for reporting hazards, near-misses and incidents; act upon these
- *Return to work and workers compensation* - make sure all workers are covered by a worker's compensation policy with an injury notification system in place and return to work program

### **Case Study - Man Overboard**

A prawn trawler crew member who was not wearing a personal flotation device (PFD) fell overboard while releasing a net into the sea. He drowned before his fellow workers could rescue him. While the company had PFD's in place on the trawler, they did not have in place any procedures which required crew members to wear life jackets.

The Magistrate stated that he regarded the offence as very serious given the foreseeable consequence of death resulting from a crew member falling overboard whilst not wearing a life jacket, and given his view that the company had shown a disregard for the safety of its crew members. A fine of \$60,000 was imposed after reduction for guilty plea from notional fine of \$70,000. On appeal, this was subsequently reduced to \$48,000.

*Although PFD's were available, the business had not followed due process in having a system in place to identify when PFDs should be used and how to use them. Simply having Personal Protective Equipment available without ensuring its use when relevant circumstances are present (e.g. weather or specific work practices), is not a satisfactory defence under WHS law. You need to have a well defined WHS system/plan that addresses known risks using best practice control measures, implement it, maintain relevant records of such and revise it.*

**Case Study - Cane harvesting**

A cane bin was overloaded by the harvesting contractor which caused it to derail when it moved along the train line. The owner of the cane farm, who was well experienced in the operation, was driving the tractor at the siding to move a cane bin back onto the lines.

A second worker was at the siding, of which the tractor operator was not aware. When the bin was moved back onto the rails, the second worker was hit by the bin. The worker received severe injuries to their leg which required surgery and extensive rehabilitation.

Following investigation by the WHS Inspector, it was found that the cane farmer and the harvest contractor both had an effective WHS policy in place; both entities had provided safety inductions to their workers in consultation with the sugar mill. The second worker has disregarded the information they had been provided and did not follow the policy of positive communication required at the siding.

*This case study illustrates the importance and benefits of having a system in place and ensuring that it is implemented. Not only does it reduce incidents and lost productivity, it also strengthens compliance with legal WHS requirements and assists in preventing further prosecution and fines.*

**Table 1:** Links to core WHS resources in your state/territory to help you develop your WHS Plan

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Core WHS Resources</b>								
<b>Home</b>	<a href="#">WorkSafe ACT</a>	<a href="#">Workcover NSW</a>	<a href="#">NT WorkSafe</a>	<a href="#">Workplace Health &amp; Safety QLD</a>	<a href="#">SafeWork SA</a>	<a href="#">WorkSafe TAS</a>	<a href="#">WorkSafe VIC</a>	<a href="#">Worksafe WA</a>
<b>Agriculture &amp; Small Business</b>	<a href="#">ACT - Ag</a>	<a href="#">NSW - Ag</a>	<a href="#">NT - Ag</a>	<a href="#">QLD - Ag</a>	<a href="#">SA - Ag</a>	<a href="#">TAS - Ag</a>	<a href="#">VIC - Ag</a>	<a href="#">WA - Ag</a>
<b>Management Commitment</b>	<a href="#">ACT - Commitment</a>	<a href="#">NSW - Commitment</a>	<a href="#">NT - Commitment</a>	<a href="#">QLD - Commitment</a>	<a href="#">SA - Commitment</a>	<a href="#">TAS - Commitment</a>	<a href="#">VIC - Commitment</a>	<a href="#">WA - Commitment</a>
<b>Consultation</b>	<a href="#">ACT - Consultation</a>	<a href="#">NSW - Consultation</a>	<a href="#">NT - Consultation</a>	<a href="#">QLD - Consultation</a>	<a href="#">SA - Consultation</a>	<a href="#">TAS - Consultation</a>	<a href="#">VIC - Consultation</a>	<a href="#">WA - Consultation</a>
<b>Safe Work Procedures</b>	<a href="#">ACT - Work Procedures</a>	<a href="#">NSW - Work Procedures</a>	<a href="#">NT - Work Procedures</a>	<a href="#">QLD - Work Procedures</a>	<a href="#">SA - Work Procedures</a>	<a href="#">TAS - Work Procedures</a>	<a href="#">VIC - Work Procedures</a>	<a href="#">WA - Work Procedures</a>
<b>Training &amp; Supervision</b>	<a href="#">ACT - Training</a>	<a href="#">NSW - Training</a>	<a href="#">NT - Training</a>	<a href="#">QLD - Training</a>	<a href="#">SA - Training</a>	<a href="#">TAS - Training</a>	<a href="#">VIC - Training</a>	<a href="#">WA - Training</a>
<b>Reporting Safety</b>	<a href="#">ACT - Notifications</a>	<a href="#">NSW - Notifications</a>	<a href="#">NT - Notifications</a>	<a href="#">QLD - Notifications</a>	<a href="#">SA - Notification</a>	<a href="#">TAS - Notification</a>	<a href="#">VIC - Notification</a>	<a href="#">WA - Notification</a>
<b>Return to Work</b>	<a href="#">ACT - RTW</a>	<a href="#">NSW - RTW</a>	<a href="#">NT - RTW</a>	<a href="#">QLD - RTW</a>	<a href="#">SA - RTW</a>	<a href="#">TAS - RTW</a>	<a href="#">VIC - RTW</a>	<a href="#">WA - RTW</a>

### Case Study - Contract Cotton Picking

A backpacker was driving a cotton picker that had been modified to pick up cotton on the ground around modules. The driver had dumped a load of cotton into a module builder and driven off with the basket raised. Other workers attempted to alert the driver by waving and using the 2-way radio. The driver reportedly became confused and continued to drive away with the basket raised. The picker increased speed and started to roll into a table drain. As the picker began to roll, the driver panicked, leaving his seat and jumping off the picker platform breaking a leg.

The WHA was notified of the event in compliance with WHS requirements. A WHS inspector visited the farm and interviewed the farm manager, contractor, co-workers and the injured worker. An assessment of the farm's WHS system was undertaken including relevant risk assessments, control measures and whether a safety induction had been undertaken and safety records maintained (verified by the injured worker, co-workers, contractor and farm manager).

Despite the injury to the driver, the WHS inspector verified that an effective WHS system was in place, that safety inductions were completed and relevant records were on hand. A Corrective Action Plan was issued that required the retro fitment of seat belts to pickers and no further action was required.

***This case study illustrates the importance and benefits of having a system in place and ensuring that it is implemented. Not only does it reduce incidents and lost productivity, it also strengthens compliance with legal WHS requirements and assists in preventing further prosecution and fines.***

### STEP 3

There is also a range of items that need to be included within any WHS Plan for primary industries to control risks, these include the following with further information to assist you in this process also outlined for each state/territory (with hyperlinks) in Table 2:

- *Asbestos* - if you have asbestos in buildings on your property, there are requirements for recording, working with or removing asbestos that you must follow.
- *Confined Spaces* - silos, wells and other confined spaces are a high-risk and require specific training and equipment to work in.
- *Electrical Safety* - you have requirements on-farm in minimizing risks from electricity including fitting and testing of residual current devices (RCDs).
- *Emergency Plans* - a plan that is developed and tested for the most likely types of emergency to occur on your property e.g. flood, fire, medical emergency is required.
- *First Aid* - ensure equipment relevant to the types of issues faced and skills in first aid management are available.
- *Fuel Storage* - volumes of on-farm storage may require registration of your farm with the relevant Work Health Authority.
- *Hazardous Chemicals* - there are specific risk control measures required for hazardous chemicals that you must follow including safe storage, keeping inventory records, recording pesticide application and safe use including PPE.
- *Induction* - is a critical aspect to ensure all workers and contractors have the required knowledge for safe work on your property/boat.

- *Isolated and/or Remote Work* - a clear policy will reduce risks to those working alone or in remote locations. Be prepared (e.g. drinking water), know where workers are working, have communication available (two-way radio/mobile phone), ensure the communications system works in the area you are going to (e.g. mobile reception) and have agreed contact times to report in.
- *Managing Contractors* - contractors are considered “workers” in most states/territories and you need to work with them to ensure health and safety on your property/boat.
- *Manual Handling* - use relevant lifting equipment where you can to reduce manual handling injuries along with other safe lifting practices.
- *Noise* - steps to eliminate / reduce noise exposure should be put in place including monitoring of hearing impacts may be required.
- *Plant and Equipment* - make sure all guarding is in place as there are specific risk control measures required for plant to ensure it is in safe working order.
- *Working at Height* - windmills, silos and other elevated work areas are a high-risk and require specific training and equipment.

#### **Case Study - Safety Induction**

A work experience student interested in tuna farming and aquaculture was assisting with operations on a boat. The student suffered a fracture and de-gloving injury to his right index finger and a laceration to his left index finger when attempting to untie a mooring line.

It was found that the company failed to provide a full induction on starting his work experience placement, failed to provide a proper induction when he boarded the vessel, and failed to ensure that he was properly supervised whilst on board the vessel. Further the company allegedly failed to ensure that the student did not undertake any tasks prior to being properly trained to undertake them.

Some mitigating factors involving miscommunication were taken into consideration, with the Magistrate handing down a conviction and a reduced penalty of \$7,500.

***Despite having safety policies including an induction booklet, the business had failed to adequately implement its own system. The effective implementation of any WHS plan or system is crucial to ensuring that health and safety are maximized.***

**Table 2:** Links to other important WHS resources in your state/territory that can help you in developing and implementing your WHS plan

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
<b>Issues for inclusion in WHS Plans</b>								
<b>Asbestos</b>	<a href="#">ACT - Asbestos</a>	<a href="#">NSW - Asbestos</a>	<a href="#">NT - Asbestos</a>	<a href="#">QLD - Asbestos</a>	<a href="#">SA - Asbestos</a>	<a href="#">TAS - Asbestos</a>	<a href="#">VIC - Asbestos</a>	<a href="#">WA - Asbestos</a>
<b>Confined Spaces</b>	<a href="#">ACT - Confined Space</a>	<a href="#">NSW - Confined Space</a>	<a href="#">NT - Confined Space</a>	<a href="#">QLD - Confined Space</a>	<a href="#">SA - Confined Space</a>	<a href="#">TAS - Confined Space</a>	<a href="#">VIC - Confined Space</a>	<a href="#">WA - Confined Space</a>
<b>Electrical Safety</b>	<a href="#">ACT - Electricity</a>	<a href="#">NSW - Electricity</a>	<a href="#">NT - Electricity</a>	<a href="#">QLD - Electricity</a>	<a href="#">SA - Electricity</a>	<a href="#">TAS - Electricity</a>	<a href="#">VIC - Electricity</a>	<a href="#">WA - Electricity</a>
<b>Emergency Plans</b>	<a href="#">ACT - Emergencies</a>	<a href="#">NSW - Emergencies</a>	<a href="#">NT - Emergencies</a>	<a href="#">QLD - Emergencies</a>	<a href="#">SA - Emergencies</a>	<a href="#">TAS - Emergencies</a>	<a href="#">VIC - Emergencies</a>	<a href="#">WA - Emergencies</a>
<b>First Aid</b>	<a href="#">ACT - First Aid</a>	<a href="#">NSW - First Aid</a>	<a href="#">NT - First Aid</a>	<a href="#">QLD - First Aid</a>	<a href="#">SA - First Aid</a>	<a href="#">TAS - First Aid</a>	<a href="#">VIC - First Aid</a>	<a href="#">WA - First Aid</a>
<b>Hazardous Chemicals</b>	<a href="#">ACT - Chemicals</a>	<a href="#">NSW - Chemicals</a>	<a href="#">NT - Chemicals</a>	<a href="#">QLD - Chemicals</a>	<a href="#">SA - Chemicals</a>	<a href="#">TAS - Chemicals</a>	<a href="#">VIC - Chemicals</a>	<a href="#">WA - Chemicals</a>
<b>Induction</b>	<a href="#">ACT - Induction</a>	<a href="#">NSW - Induction</a>	<a href="#">NT - Induction</a>	<a href="#">QLD - Induction</a>	<a href="#">SA - Induction</a>	<a href="#">TAS - Induction</a>	<a href="#">VIC - Induction</a>	<a href="#">WA - Induction</a>
<b>Isolated &amp;/or Remote Work</b>	<a href="#">ACT - Isolated/ Remote</a>	<a href="#">NSW - Isolated/ Remote</a>	<a href="#">NT - Isolated/ Remote</a>	<a href="#">QLD - Isolated/ Remote</a>	<a href="#">SA - Isolated/ Remote</a>	<a href="#">TAS - Isolated/ Remote</a>	<a href="#">VIC - Isolated/ Remote</a>	<a href="#">WA - Isolated/ Remote</a>
<b>Managing Contractors</b>	<a href="#">ACT - Contractors</a>	<a href="#">NSW - Contractors</a>	<a href="#">NT - Contractors</a>	<a href="#">QLD - Contractors</a>	<a href="#">SA - Contractors</a>	<a href="#">TAS - Contractors</a>	<a href="#">VIC - Contractors</a>	<a href="#">WA - Contractors</a>
<b>Manual Handling</b>	<a href="#">ACT - Manual Handling</a>	<a href="#">NSW - Manual Handling</a>	<a href="#">NT - Manual Handling</a>	<a href="#">QLD - Manual Handling</a>	<a href="#">SA - Manual Handling</a>	<a href="#">TAS - Manual Handling</a>	<a href="#">VIC - Manual Handling</a>	<a href="#">WA - Manual Handling</a>

<b>Noise</b>	<a href="#">ACT - Noise</a>	<a href="#">NSW - Noise</a>	<a href="#">NT - Noise</a>	<a href="#">QLD - Noise</a>	<a href="#">SA - Noise</a>	<a href="#">TAS - Noise</a>	<a href="#">VIC - Noise</a>	<a href="#">WA- Noise</a>
<b>Plant &amp; Equipment</b>	<a href="#">ACT - Machinery</a>	<a href="#">NSW - Machinery</a>	<a href="#">NT - Machinery</a>	<a href="#">QLD - Machinery</a>	<a href="#">SA - Machinery</a>	<a href="#">TAS - Machinery</a>	<a href="#">VIC - Machinery</a>	<a href="#">WA - Machinery</a>
<b>Working at Height</b>	<a href="#">ACT - Heights</a>	<a href="#">NSW - Heights</a>	<a href="#">NT - Heights</a>	<a href="#">QLD - Heights</a>	<a href="#">SA - Heights</a>	<a href="#">TAS - Heights</a>	<a href="#">VIC - Heights</a>	<a href="#">WA - Heights</a>

## **Codes of Practice**

Further information that can assist in helping you develop your WHS plan can be found in the relevant national Codes of Practice. These Codes are practical guides to help you achieve the standards of health, safety and welfare required under the Work Health and Safety (WHS) Act and the relevant WHS/OHS Regulations in a state/territory.

To be legally relevant a model Code of Practice must be approved in that state/territory. Table 3 highlights the approved codes of practice most relevant to agriculture. Currently, all states/territories apart from Victoria have approved these codes.

A code of practice applies to anyone who has a duty of care in the circumstances described in the code. In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the WHS Act (or OHS Act in WA), in relation to the issue addressed.

Like regulations, codes of practice deal with particular issues and do not cover all hazards or risks which may arise. The health and safety duties require duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist.

Under the WHS/OHS Act in a state/territory, approved codes of practice are admissible in court proceedings. Courts may regard an approved code of practice as evidence of what is known about a hazard, risk or control and may rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

### **Case Study - Quad Safety and PPE**

A worker employed on a mixed grain-sheep-beef farming enterprise fell off a quad when travelling from one part of the farm to another, hit her head and died. The farm had a health and safety policy which was revised approximately every six months by their OHS manager. They also had undertaken a risk assessment on the wearing of helmets and had helmets available for use, however it was not mandatory for staff to use them. The risk assessment indicated that when quads were driven less “aggressively” a helmet was not required. This was based on the suggestion that helmets were considered to be restrictive, irritating or uncomfortable and present a risk of heat stroke.

The farm owner pleaded guilty to the charges as the risks from use of quads including death and injury are well known and foreseeable. Wearing a helmet is one way to assist in managing risks from quads and was both available and feasible. A fine of \$80,000 was imposed with the magistrate noting that the penalty was reduced (the maximum penalty was \$550,000), due to mitigating factors including the presence of a health and safety policy.

This case illustrates that if an existing known control measure for a risk is available, in this case use of a helmet on a quad (or similarly guarding on exposed moving equipment e.g. PTO shaft), it must be used regardless of any risk assessment that is conducted.

***While having a health and safety policy in place, the business had not followed due process in addressing an obvious risk. Simply having a policy or plan in place without ensuring its effective implementation will not control all relevant risks, or be a satisfactory defence under WHS law. You need to have a well defined WHS plan that addresses known risks using best practice control measures, implement it, maintain relevant records of such and revise it.***

**Table 3:** Model Codes currently endorsed and relevant to primary industry

Topic Area	Model Code Title	Jurisdictions Approved
Asbestos	<a href="#">How to Manage and Control Asbestos in the Workplace</a>	ACT, NSW, NT, QLD, SA, TAS, WA
Confined Spaces	<a href="#">Confined Spaces</a>	ACT, NSW, NT, QLD, SA, TAS
Consultation, co-operation & co-ordination	<a href="#">Work Health and Safety Consultation, Co-operation and Co-ordination</a>	ACT, NSW, NT, QLD, SA, TAS, WA
Electrical	<a href="#">Managing Electrical Risks in the Workplace</a>	ACT, NSW, NT, QLD, SA, TAS, WA
Excavation	<a href="#">Excavation Work</a>	ACT, NSW, NT, QLD, SA, TAS, WA
Falls from heights	<a href="#">Managing the Risk of Falls at Workplaces</a>	ACT, NSW, NT, QLD, SA, TAS, WA
Environment & Facilities (including remote work / emergency plans)	<a href="#">Managing the Work Environment and Facilities</a>	ACT, NSW, NT, QLD, SA, TAS, WA
First Aid	<a href="#">First Aid in the Workplace</a>	ACT, NSW, NT, QLD, SA, TAS, WA
Hazardous substances	<a href="#">Managing Risks of Hazardous Chemicals in the Workplace</a>	ACT, NSW, NT, QLD, SA, TAS, WA
Manual Handling	<a href="#">Hazardous Manual Tasks</a>	ACT, NSW, NT, QLD, SA, TAS, WA
Noise	<a href="#">Managing Noise and Preventing Hearing Loss at Work</a>	ACT, NSW, NT, QLD, SA, TAS, WA
Plant and Equipment	<a href="#">Managing the Risks of Plant in the Workplace</a>	ACT, NSW, NT, QLD, SA, TAS, WA
Risk Management	<a href="#">How to Manage Work Health and Safety Risks</a>	ACT, NSW, NT, QLD, SA, TAS, WA

There are also other draft codes that are currently under discussion and that are relevant to agriculture and fishing, these include the following:

- [Working in the Vicinity of Overhead and Underground Electric Lines](#)
- [Managing risks of plant in rural workplaces](#)

These draft codes are subject to approval by the Ministerial Council and further details on progress will be available on the [Safe Work Australia](#) website.

### **Case Study - Cotton Module Builder**

A worker employed by a cotton picking contractor was seriously injured when he was standing under a module builder tramper that workers were trying to lower. The picking crew had finished picking a field and the contractor left them to get directions to the next field. He gave the crew instructions not to move machinery and not to lower the tramper. He would do this when he returned.

The contractor was away longer than anticipated and the harvest crew decided that they could be helpful and save time by lowering the tramper. They attempted to lower the tramper without taking up the weight with the hydraulics and used a sledge hammer to knock / free the lock pins. This they eventually achieved (with a lot of force) and the free-falling tramper seriously injured the worker (head, neck, shoulder and chest injuries) standing underneath.

Triple 000 was contacted and dispatched emergency services, ambulance and police. The WHS authority was notified and investigated the incident.

Following investigation by the WHS Inspector, it was found that the contractor had an effective WHS plan (including an emergency plan), had provided a safety induction, training and supervision of his picking crew. Further, the inspector verified that the contractor had given clear instructions not to lower the module builder tramper.

Following the investigation, the WHS inspector found that improvements could be made and recommended that the safety information in the Module Builder Operator's Manual be improved and a Safe Work Method Statement developed for workers who operate the module builder.

***There was no fine or prosecution by the Work Health and Safety Authority because there was a work health and safety plan, the worker had disregarded safety instructions and the contractor's work health and safety was being managed appropriately.***

### **Guidance Materials**

Safe Work Australia also publishes guidance materials on a range of issues (Table 4). Guidance materials also help duty holders comply with the law but differ from a code of practice by allowing duty holders (farmers) wider discretion to choose the options that best suit their circumstances.

Guidance material contributes to the overall state of knowledge regarding hazards, risks and controls and may be tendered as evidence in court proceedings. As per the codes of practice, these materials have been approved by all jurisdictions with the exception of Victoria.

**Table 4:** National guidance material relevant to primary industry

<b>Guidance Material Title</b>	<b>Jurisdictions Approved</b>
<a href="#">Fatigue management - a worker's guide</a>	ACT, NSW, NT, QLD, SA, TAS, WA
<a href="#">Guide on exposure to solar ultraviolet radiation (UVR)</a>	ACT, NSW, NT, QLD, SA, TAS, WA
<a href="#">Guide to Model Work Health and Safety Regulations</a>	ACT, NSW, NT, QLD, SA, TAS, WA
<a href="#">Guide for managing the risk of fatigue at work</a>	ACT, NSW, NT, QLD, SA, TAS, WA
<a href="#">Health monitoring for exposure to hazardous chemicals - Guide for persons conducting a business or undertaking</a>	ACT, NSW, NT, QLD, SA, TAS, WA
<a href="#">Health monitoring for exposure to hazardous chemicals - Guide for workers</a>	ACT, NSW, NT, QLD, SA, TAS, WA
<a href="#">How to determine what is Reasonably Practicable to meet a health and safety duty</a>	ACT, NSW, NT, QLD, SA, TAS, WA
<a href="#">Worker representation and participation guide</a>	ACT, NSW, NT, QLD, SA, TAS, WA

### ***Sector Specific Risks***

The information provided to this point highlights the steps that all businesses must take to address health and safety in a comprehensive way and to meet legal requirements. It has also provided you with a range of resources specific to your state/territory to assist you in developing and implementing your WHS plan.

Of course all businesses are different and with this in mind the following points highlight commodity specific areas of highest risk that farmers and fishers should take into consideration for your WHS Plan. Within each sector the following items (Table 5) provide a starting point drawing on the available injury evidence and are consistently featured as areas requiring WHS attention. However, you must look at all hazards and risks relevant to your business, as no two businesses will be the same.

**Table 5:** High-risk issues for WHS planning in different commodity sectors

Sector	High-Risks
<b>Aquaculture</b>	<ul style="list-style-type: none"> <li>• Aquaculture ponds/diving (drowning)</li> <li>• Aerators/pumps (electricity/ entanglement)</li> <li>• Harvesting (cuts/ piercing/ infection / poisoning)</li> <li>• Quads (collisions/ falls/ rollover)</li> </ul>
<b>Cotton</b>	<ul style="list-style-type: none"> <li>• Aircraft</li> <li>• Electricity (overhead powerlines - pickers, module builders, spray rigs)</li> <li>• Excavators</li> <li>• Farm utes (collisions)</li> <li>• Irrigation channels (drowning)</li> <li>• Module builders (falls/ crush injury/ suffocation)</li> <li>• Pumps (entanglement)</li> <li>• Quads (collisions/ falls/ rollover)</li> </ul>
<b>Grains</b>	<ul style="list-style-type: none"> <li>• Aircraft (crash)</li> <li>• Chaser bins (entanglement/ runover)</li> <li>• Drowning (children in dams)</li> <li>• Farm utes (collisions)</li> <li>• Grain augers (entanglement/ electricity)</li> <li>• Headers (crush injury/ entanglement/ runover/ electricity)</li> <li>• PTO drives</li> <li>• Quads (collisions/ falls/ rollover)</li> <li>• Round bale lifters (crush injury)</li> <li>• Silos (falls)</li> <li>• Tractors and trailed equipment (entanglement/ runover)</li> <li>• Tyre repair (crush under vehicle)</li> </ul>
<b>Marine</b>	<ul style="list-style-type: none"> <li>• Boats (drowning)</li> <li>• Hooks, spikes and knives (hand injury)</li> <li>• Marine animals (cuts/ piercing/ infection / poisoning)</li> <li>• Netting (entanglement/ drowning)</li> <li>• Diving (drowning)</li> </ul>
<b>Sugar</b>	<ul style="list-style-type: none"> <li>• Cane firing</li> <li>• Cane harvesters (collision/ runover)</li> <li>• Electricity (overhead powerlines)</li> <li>• Farm utes (collisions)</li> <li>• Haul out trucks (collisions)</li> <li>• Quads (collisions/ falls/ rollover)</li> <li>• PTO drives</li> <li>• Tractors (rollover/ runover/ collisions)</li> <li>• Trains (collisions)</li> <li>• Tyre repair (crush under vehicle)</li> <li>• Water (irrigation channels / wells)</li> </ul>

Don't forget that there may be issues specific to your business that are not listed above and that should or could also be included to ensure you have a safe workplace. You need to think through and pinpoint the issues that will be of relevance to your business and its operation.

## STEP 4

As a part of any WHS system you should frequently review and revise the control measures that you are putting in place to ensure that they are working effectively. The frequency of review will depend on the nature of the risks and any changes in the way you undertake your business e.g. changes in a procedure you use, an injury/ near-miss event occurring, or the purchase of a new piece of equipment will all require that a review is undertaken.

## STEP 5

Record keeping is essential to maximise the effectiveness of your safety system and also to provide concrete evidence of how you have managed safety which will be required if an injury event occurs. There are a number of records that should be maintained within all primary industry businesses, with these being outlined in Annex 1. For the agricultural sector examples of all registers required for record keeping are available at the [Australian Centre for Agricultural Health and Safety](#) website. While these are commodity specific registers, they are relatively generic and would also appear useful for businesses within the fisheries sector.

### **Case Study - Vehicle injury**

A worker was driving a ute to monitor ponds on a prawn farm. The vehicle slipped and rolled into the dry pond. The driver was trapped in the vehicle and sustained a fracture to their arm which required surgery.

The worker was able to call for assistance from the 2 way radio that was recently installed in the vehicle to meet the legislative requirements for isolated workers.

Following the investigation, the WHS inspector found that the business had a documented safe system of work in place; they had provided information, training and supervision for workers. The cause was foreseeable, however the worker was driving at low speed in a well maintained vehicle, the incident was out of the control of the owner of the business. That combined with the business recently undertaking a BMP module and increasing their capacity to manage WHS, meant that the compliance action did not include a prosecution or fines.

*This case study illustrates the importance and benefits of having a system in place and ensuring that it is implemented. Not only does it reduce incidents and lost productivity, it also strengthens compliance with legal WHS requirements and assists in preventing further prosecution and fines.*

## DEVELOPING YOUR WHS PLAN

To assist in developing your WHS Plan, the following points outline a common contents page for a WHS Plan and how issues can be ordered.

## **WHS PLAN - TABLE OF CONTENTS**

### **1. HEALTH AND SAFETY POLICY - VISION AND MISSION**

### **2. PROVIDING A SAFE WORKPLACE**

- Identifying Hazards
- Risk Assessment
- Risk Control

### **3. WORKING SAFELY**

- Reporting hazards and unsafe work practices
- Consultation
- Safety Induction
- Training
- Instruction
- Supervision
- Safety information
- Vehicle and Machinery Safety
- Electrical Safety
- Confined Spaces
- Manual Handling
- Working at Height
- Pesticides, Fuels and Chemicals
- Noise
- Asbestos
- Dust
- Sun Protection
- Workplace bullying and Aggression
- Sexual Harassment
- Drugs and Alcohol
- Workplace Disputes
- Purchasing for Safety
- Personal Protective Equipment (PPE)

### **4. EMERGENCY PREPAREDNESS AND RESPONSE**

- Emergency Planning
- Emergency Telephone Numbers
- First Aid
- Fire Safety

### **5. INJURY MANAGEMENT, REHABILITATION AND RETURN TO WORK**

- Health Surveillance and Injury Registers
- Health Surveillance and Injury Records

### **6. WORKERS COMPENSATION AND PERSONAL ACCIDENT INSURANCE**

### **7. REVIEWING WORK HEALTH AND SAFETY**

## Where to get more help with WHS

The information in this guide provides you with links to many resources that can help you improve health and safety for your business. If you are seeking additional assistance you can contact your relevant state / territory Work Health Authority on the following numbers. All states/territories will provide free assistance to help you with WHS issues.

<b>Australian Capital Territory</b> Worksafe ACT (02) 6207 3000 <a href="mailto:worksafe@act.gov.au">worksafe@act.gov.au</a>	<b>New South Wales</b> WorkCover NSW 13 10 50 <a href="mailto:contact@workcover.nsw.gov.au">contact@workcover.nsw.gov.au</a>
<b>Northern Territory</b> NT WorkSafe 1800 019 115 <a href="mailto:ntworksafe@nt.gov.au">ntworksafe@nt.gov.au</a>	<b>Queensland</b> Workplace Health and Safety Queensland 1300 369 915 <a href="#">WHS Enquiry Form</a>
<b>South Australia</b> SafeWork SA  1300 365 255 <a href="mailto:help@safework.sa.gov.au">help@safework.sa.gov.au</a>	<b>Tasmania</b> WorkSafe Tasmania  1300 366 322 <a href="mailto:wstinfo@justice.tas.gov.au">wstinfo@justice.tas.gov.au</a>
<b>Victoria</b> WorkSafe Victoria 1800 136 089 <a href="mailto:info@worksafe.vic.gov.au">info@worksafe.vic.gov.au</a>	<b>Western Australia</b> WorkSafe 1300 30 78 77 <a href="mailto:safety@commerce.wa.gov.au">safety@commerce.wa.gov.au</a>

For agricultural businesses you can also obtain free resources and advice from the [Australian Centre for Agricultural Health and Safety](#) (University of Sydney) based at Moree in NSW. The Centre is an independent evidence-based agency aiming to assist farmers in meeting their health and safety responsibilities with practical advice and support.

The following links to agencies and/or specific resources may also prove useful in assisting you with WHS issues.

Sector	Primary	Secondary
Fisheries	<a href="#">Australian Maritime Safety Authority (AMSA)</a>	<p><i>Government Departments</i></p> <p><a href="#">Marine &amp; Safety Tasmania</a>  <a href="#">Maritime Safety Victoria</a>  <a href="#">NSW Maritime</a>  <a href="#">NT Department of Transport - Marine Safety Branch</a>  <a href="#">QLD Maritime Safety</a>  <a href="#">SA Boating &amp; Marine</a>  <a href="#">WA Department of Transport - Marine</a></p> <p><i>Industry</i></p> <p><a href="#">Commonwealth Fisheries Association</a>  <a href="#">National Aquaculture Council</a>  <a href="#">Northern Territory Seafood Council</a>  <a href="#">Professional Fisherman's Association</a>  <a href="#">NT Primary Industries Training Advisory Council</a>  <a href="#">Queensland Seafood Industry Association</a>  <a href="#">Seafood Industry Victoria</a>  <a href="#">Southern Rock Lobster Clean and Green Program</a>  <a href="#">Tasmanian Seafood Industry Council</a>  <a href="#">Western Australian Fishing Industry Council Inc.</a>  <a href="#">Wildcatch Fisheries South Australia</a></p>
Cotton	<a href="#">Cotton Australia (myBMP)</a>	<p><a href="#">Australian Centre for Agricultural Health and Safety</a>  <a href="#">Cotton Research &amp; Development Corporation</a></p>
Grains	<a href="#">Rural Industries Research &amp; Development Corporation</a>	<p><a href="#">Australian Centre for Agricultural Health and Safety</a>  <a href="#">Grains BMP</a>  <a href="#">Grains Research &amp; Development Corporation</a></p>
Sugar	<a href="#">Smartcane BMP (Canegrowers)</a>	<p><a href="#">Australian Centre for Agricultural Health and Safety</a>  <a href="#">Canegrowers</a>  <a href="#">Sugar Research Australia</a></p>

## Annex 1

### List of required WHS records

Resource	WHS Reference
WHS Plan (Safety Action Plan)	Officers have a duty to exercise due diligence to ensure that the business or undertaking complies with the WHS Act and Regulations. This includes taking reasonable steps to ensure that the PCBU has and uses appropriate resources and processes to eliminate or minimize risks to health and safety i.e. to plan WHS, keeping up to date with WHS requirements, safety issues, providing resources to ensure health and safety is managed in the workplace. Where there is high risk work; you must conduct a Job Safety Analysis, develop Safe Work Method/ Safe Operating Procedures and ensure a Safety Induction.
Hazard Checklists	Identify hazards and controls based on risk management principles as broadly described in the WHS Acts and Regulations Chapter 3 General risk and workplace management. That is - all hazards and risks are eliminated (where reasonably practicable or where there is a known solution described in Codes of Practice) and controlled using the hierarchy of controls (risk management), including risk assessment of new machinery.
Records of Consultation	WHS Regulations require consultation with workers and is mandatory under section 49 of the WHS Acts and Regulations records be kept worker consultation.  <i>Code of Practice Consultation, Coordination and Cooperation in the Workplace</i> describes record keeping of worker consultation.
Training Registers High Risk Work Licences <i>Cranes</i> <i>Fork Lift Trucks</i> <i>Elevating Work Platforms</i> <i>Construction Safety</i> <i>Induction</i> <i>Machinery Safe Operation</i> <i>Worker Safety Induction</i> <i>Working at Heights</i> <i>Confined Spaces</i> <i>Hot Work</i> <i>First Aid Training</i> <i>PPE Training</i>	All workers receive competency based training for High Risk Work delivered and assessed by Registered Training Providers approved by State Work Health and Safety authorities to issue High Risk Work Licences.  Duty to provide safety information and instruction.
Machinery and Safety Maintenance Records	WHS Regulations to complete safety risk assessment of new machinery

Resource	WHS Reference
Chemical Storage Register/ Manifest Major Chemical Stores	WHS Regulations Chapter 7 Hazardous Chemicals Dangerous Goods Acts - transport and storage State Pesticide Acts
Safety Data Sheets Manifest	WHS Regulations Chapter 7 Hazardous Chemicals for all hazardous chemicals used in the workplace
Pesticide Use Records	Various State Pesticide Acts
Electrical Safety Inspection and Testing Residual Current Devices  Inspection, Testing and Tagging Portable Electrical Equipment and Appliances	Work Health and Safety Regulations Chapter 4 High Risk Work Part 4.7 General electrical safety in workplaces and energised electrical work Division 6 Residual Current Devices  Australian Standards AS/NZS 3760:2010 In-service safety inspection and testing of electrical equipment
Machinery and Electrical Tag and Lockout Register	Required when working on machinery and electrical equipment where guards are removed, exposed electrical hazards/ isolating electrical motors  Electrical Safety Regulations
Asbestos Register	Identifying and recording the location of asbestos and asbestos containing products in the workplace  WHS Asbestos Regulation  Code of Practice How to Manage and Control Asbestos in the Workplace
Confined Spaces Inspection and Entry Records	WHS Regulations Chapter 4 Hazardous Work Part 4.3 Confined Spaces  WHS Confined Spaces Regulations describes the requirement for training, identifying and working in confined spaces e.g. wells, silos, irrigation pump sites and pipe work.  Code of Practice <i>Confined Spaces</i> provides identifying and recording working in confined spaces.
Emergency Plans	Emergency Preparedness described in WHS Regulations Chapter 3 Part 3.2 Division 4 Emergency Plans. An emergency plan must be prepared, maintained and implemented by the PCBU.  Code of Practice: <i>Managing the Work Environment and Facilities</i> .
First Aid Kits Register	Code of Practice: <i>First Aid in the Workplace</i>  The WHS Regulations place specific obligations on a person conducting a business or undertaking in relation to first aid, including

Resource	WHS Reference
	<p>requirements to:</p> <p>(a) provide first aid equipment and ensure each worker at the workplace has access to the equipment</p> <p>(b) ensure access to facilities for the administration of first aid</p> <p>(c) ensure that an adequate number of workers are trained to administer first aid at the workplace or that workers have access to an adequate number of other people who have been trained to administer First Aid.</p>
Smoke Detectors Inspection and Testing Register	Inferred - Described in Australian Standard <i>AS 12239-2004 Fire detection and fire alarm systems – Smoke alarms</i>
Fire Extinguishers Inspection Register	<p>Inferred - Described in Australian Standard <i>AS 2444 - Selection and Location of Portable Fire Extinguishers</i></p> <p>Australian Standard <i>AS1851.1: Maintenance of Fire Protection Equipment (Part 1: Portable fire extinguishers)</i></p>
Recording and Notifiable Incidents (Serious Injury and Near Miss Incidents)	The WHS Act and Regulations Part 3 Notifiable Incidents creates a duty on Persons Conducting a Business or Undertaking to notify the Work Health and Safety Regulator immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred
Medical Reports and Records Health Surveillance/ Monitoring Asbestos/ Dusts Chemical Exposure Noise and Hearing Injury	WHS Regulations Chapter 7 Hazardous Chemicals Division 6 Health Monitoring and a requirement that these records are maintained for 30 years.
Rehabilitation and Return to Work	Various State Worker's Compensation Acts and Regulations

