Health & Safety at Work Act 2015

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The Health and Safety at Work Act 2015 (HSWA) elevated the obligations on commercial landlords. The HSWA introduced the central concept of “PCBU”s, or Person(s) Conducting a Business or Undertaking. PCBUs owe duties and obligations to workers, tenants and other people (e.g. visitors to a property) to ensure safety. All commercial landlords are PCBUs and therefore owe duties and obligations to workers, tenants and other people (visitors to the property etc) to ensure the property owned by them is safe. If a PCBU fails to meet their obligations, there can be serious consequences.

What duties/obligations do these duties impose on commercial landlords

Commercial landlords have a duty, so far as is reasonably practicable, to ensure their undertakings/business are conducted in a manner that is safe, ensuring the safety of tenants, workers and members of the public who may lawfully enter the property. A landlord also has a duty to ensure their "workers" are safe. These obligations extend to ensuring the workplace (property) is safe, so far as is reasonably practicable, by eliminating or minimising risks and/or hazards.

Who are Workers?

The term "worker" is used throughout the HSWA and refers to an individual carrying out work in any capacity for the PCBU. It covers employees, contractors, apprentices, volunteers and more. Even if a commercial landlord has no employees, they will almost certainly have contractors or sub-contractors carrying out work on the property from time to time who will be considered "workers" such as builders, electricians or plumbers. Commercial landlords owe obligations to these workers if the landlord engages them to provide services.

Commercial landlords are responsible for the activities they undertake, not activities undertaken by their tenants. If a tenant hires a contractor or employee to undertake work or an activity on the property, the commercial landlord owes a duty to that person to the extent that the property is safe, maintained to a reasonably practicable standard and that their undertakings do not pose a risk to them (the same as they would to any visitor to the property).

What is Reasonably Practicable?

The term "reasonably practicable" appears throughout the HSWA and means what is or was reasonably able to be done to ensure safety, taking into account or weighing up the relevant factors. These factors will depend on the specific circumstances but will include the cost involved to eliminate or reduce the risk, the likelihood of the hazard occurring, the severity of risk if it were to occur and more.

As PCBUs, it is also important to note that other parties have duties under the HSWA

Under the HSWA commercial landlords are not the only party who owe duties to ensure workplace safety. The commercial landlord's tenants, workers and officers all owe duties, and these duties overlap. Others, including any person who is present at the workplace but

not a worker, such as a customer, passerby or casual volunteer, will also owe duties.
An officer, in the context of a commercial landlord will usually be the director(s) of the company, and/or the property manager, if there is one. However, any person who exercises significant influence over the business will also be considered an officer if they are not the PCBU (for example – see the recent Gibson decision).

Officers hold different duties. If a commercial landlord has obligations under the HSWA arising from being a PCBU, the officer has a duty to exercise due diligence to ensure the PCBU is complying with their obligations. Officers also have a duty to exercise care, diligence and a level of skill that is reasonable as an officer. This takes into account the nature of the business, position of the officer and the nature of the responsibilities the officer has undertaken. So, any officer of the commercial landlord, regardless of their position as either a director or property manager (in most cases), must take all reasonable steps and exercise the appropriate due diligence to ensure the PCBU is meeting their health and safety obligations. These steps might include the officer continuously learning and keeping up to date with health and safety issues, or familiarising themselves with the organisation's work environment and what kind of risks anyone associated with the organisation may encounter and more.

Workers and other people at the workplace owe a duty to act reasonably to ensure their safety and the safety of others around them. They also owe a duty to follow any reasonable policy, procedure or instruction implemented or issued by a PCBU relating to health and safety.

Key principles that apply to PCBUs regarding their duties

Alongside the duties described above, there are also other duties that apply to PCBUs contained in the HSWA. The following are the key takeaways from these duties for commercial landlords:

- Duties/obligations cannot be transferred to other parties;
- More than one PCBU can have the same duty or an overlapping duty;
- If a duty overlaps, then consultation between the parties must occur.

Commercial landlords, their tenants and any contractors they engage are likely to be PCBUs themselves, holding their own HSWA obligations. Where there is more than one PCBU, their duties may overlap. When this happens, a PCBU cannot transfer its duties/obligations to the

other PCBU. Instead, they must consult to ensure both/all parties meet their obligations under HSWA.
An effective way to manage compliance can be to create an overlapping duties document. This document ought to contain details of all the duties that are held by each PCBU, where they overlap between the parties and how each PCBU will do their part to fulfil that responsibility, ensuring that each are meeting their HSWA obligations. PCBUs should also ensure their employment agreements and contractor agreements (as applicable) are prepared in a way that each party's duties and obligations are clear. All PCBUs should have an up-to-date hazard register and a health and policy should be prepared and kept up-to-date so that all contractors, employees and tenants know what the hazards are for the property and what responsibilities they hold to minimise or eliminate risk.

This is a brief overview of a commercial landlord's health and safety obligations under the HSWA. While this article should not be taken as constituting legal advice, or as a substitute for taking advice, if you would like further advice or if you require any assistance with HSWA compliance, please contact Patrick Anderson or Colleen Bain.