Putting workplace health and safety laws to work

By Marnie Douglas, Founder, Ergoworks

- Companies employing home-based workers now face increased responsibilities and significant non-compliance penalties under new harmonised WHS laws

- Determination of whether a home worker's work practices and environment are acceptable requires specialised qualifications but organisations can adopt a number of proactive measures to address this situation

- Two SMEs provide an insight into how this sector, large listed companies or public sector agencies can respond to the challenges posed by the harmonised WHS laws

In January this year new national harmonised work health and safety (WHS) laws were introduced throughout Australia. These were underpinned by the intention to deliver the same work health and safety protections to all Australian workers and were intended to simplify existing Occupational Health and Safety legislation. It appears that this has been achieved however a practical framework for the implementation of the new laws is required.

The Commonwealth, New South Wales, Queensland and the ACT have now enacted these laws while the remaining states and territories have yet to determine their response.

Under these laws the term 'employers' is replaced by 'persons conducting a business or undertaking' (PCBU) and 'workers' replaces 'employees'. The WHS laws highlight the PCBU as having, as far as reasonably practical, the primary duty of care for workplace health and safety. The PCBU also has a responsibility to exercise 'due diligence' to ensure compliance with specified duties or obligations. The expectation is that this will be achieved through adoption of a proactive approach to the reduction or elimination of risks and hazards within the workplace for which responsibility is held.[1]

Research highlights complexity of PCBU role

This article will focus on the implications of the WHS laws for home-based workers. The reason for this selection is that the home-based employment sector is one of the most rapidly growing sectors across the globe and Australian trends strongly reflect this. Small and medium sized enterprises (SMEs) employ over five million workers which constitute approximately 95 per cent of all businesses in Australia. Significantly, within this sector, 60 per cent of small businesses allow their staff to work from home according to an International Data Corporation report commissioned by Telstra Business.[2]

The enormity and complexity of the responsibility of PCBU within the home-based worker sector is reflected in statistics compiled by Ergoworks. These statistics highlight the scope of potential workplace health and safety issues around this country. Collated over the past five years, the statistics reveal that 90 per cent of home workers were working in unsafe environments. These statistics were based on workplace assessments undertaken on behalf of a variety of businesses Australia wide.

PCBU have obligations to provide a safe working environment for their workers, regardless of location. Those who work in

close proximity to or visit workplaces on a regular basis are well placed, if appropriately qualified, to be able to identify health and safety needs. However, by way of contrast, PCBU responsible for home-based workers are generally unaware of the conditions home workers have established in their own premises, thereby placing them in an unenviable position with respect to their responsibilities under the new WHS laws.

It is not uncommon, as indicated by the Ergoworks' research, for home workers to adopt unhealthy work practices in unsafe environments. One of the most prevalent practices was the home office not being set up in a dedicated area. When people work from home they don't distinguish between being in the home and the office environment — the lines are blurred. Some alternatives included kitchen tables, lounge chairs and bedside tables. The unsafe environments encountered ranged from using a laptop on a dining room chair to working in the kitchen close to cooking areas with an assortment of trip hazards in close proximity.

The most common injuries encountered were trip related with broken wrists the most frequent. Neck pain resulting from laptop usage without a separate keyboard and mouse was frequent as was lower back pain among workers whose working posture was poor.

Inevitably, these injuries affect workers' productivity and lead to an undesirable end result for PCBU with increased rates of absenteeism, reduced work output and greater compensation claims. The central issue is that many home workers are not setting up their work stations safely, possibly because of laziness, lack of direction or a combination thereof.

While the workers must accept some responsibility for their actions, the WHS laws now clearly stipulate that the primary responsibility rests with PCBU. The potential ramifications of this type of situation are now significant if not addressed appropriately. The penalties related to the enforcement of breaches of WHS responsibilities contained in the new legislation provide a compelling incentive for PCBU to act decisively and in a timely manner.

How can the safety of a work environment be determined?

The determination of whether a home worker's work practices and environment are acceptable requires specialised qualifications and few PCBU possess these. However, a number of proactive measures can be implemented to address this situation. These include ensuring a well-documented home working policy, establishment of home offices with the same working requirements as the main office environment and engaging qualified WHS consultants to undertake risk assessments as well as providing input on policy development and review.

Risk assessments focus on a number of important elements in the audit of home workstations. These elements include all equipment used by the employee, for example:

- chair, desk, keyboard, mouse and phone
- the configuration of equipment including its positioning and
- the adequacy of lighting.

The presence and location of smoke alarms, fire exits and first aid kits are also scrutinised in addition to fire extinguisher access. Trip hazards are examined while exit routes are given due consideration. Advice is also provided on posture alignment as well as the importance of rest and stretch breaks.

Case studies — how two companies addressed WHS issues

Two companies that have embraced the home worker concept for several years are specialist removalists Crown Relocations and the Teachers Health Fund (THF), an Australian private health insurer. These companies recognised the value of this concept to all parties involved and adopted a proactive approach to its implementation.

Both companies expressed concern around the findings of the Ergoworks research which highlighted that a vast majority of Australian home workers were working in unsafe conditions. Crown Relocations viewed the statistics from two perspectives, risk management and employee wellness. In the event of a worker injured when working from home and nothing had been done in terms of risk mitigation, the company recognised it could be exposed to substantial penalties, not just financial. The company established a worker wellness program which actively promoted health and wellbeing among its workers through ongoing education strategies including regular newsletter inclusions.

THF contended that with all work practices there is an element of risk in adopting a home worker approach. However the company believed that it has either eliminated or mitigated the risks of working from home for its workers. Being a clerical-based occupation, workplace health and safety audits were undertaken prior to a worker commencing work from home. The company engaged a professional consultant to undertake an initial ergonomic assessment of the home worksites which is complemented by a WHS audit every six months.

Each company maintained the benefits significantly outweighed the potential risks associated with home workers. Indeed THF adopted the home worker concept initially because worker satisfaction surveys pinpointed the importance of 'flexibility in work/life balance' and this was a means of helping achieve this end, while management practice reviews consistently indicated that higher productivity outcomes resulted from highly engaged workers.

Currently THF has six per cent of its workforce working from home with a further six per cent adopting another form of flexible work option, for example transition to retirement or a compressed work week. The case of a disabled worker was cited in which the potential risk to the worker was offset by not having the person journey to work; in another case, without the flexibility facilitated by THF, a strong capable worker may have been forced

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to resign. Significantly a recently completed employee opinion survey demonstrated that workers acknowledge and value THF's strengths in relation to provision of flexible employment options.

In a similar vein to THF, Crown Relocations considered that effective management and adoption of a diverse workforce required flexibility to allow people to manage their work and home lives. They also asserted there were a number of workers who would probably have resigned due to difficulties in getting to the office. Through provision of the option to work from home, the company was able to retain these highly regarded workers, resulting in a positive outcome for both the employees and the company. Crown Relocations also maintained that the provision of this option substantially enhanced business/worker relationships and that support for home-based workers is also a means for it to actively nurture its human capital.

The companies took considered steps to minimise the risk of injury to workers operating from home. All Crown Relocations' home workers in Australia had home office assessments carried out. The professionals carrying out these assisted the worker make workstation adjustments to ensure it was ergonomically appropriate for the individual and the work performed. They also assessed and made recommendations about the surrounding work area including fire exits, first aid kit, fire extinguisher and ventilation. As a follow-up, the company carried out regular check-ins with these employees to ensure the assessment recommendations were implemented. Ongoing education helped ensure workers' consistency in their use of approved workstations.

THF conducted initial assessments on both WHS and ergonomic elements of workers' home workstations. The company required that home working staff members attend the main office regularly. The formal agreement with staff working from home is reviewed with the staff member every six months to ensure all matters are constantly evaluated and any matter not dealt with is acted upon. THF uses a software system called Ergo Assess, which is rolled out to all workers every 12 months to ensure vigilance of the work environment is ongoing and potential issues are identified and addressed. This facilitates reinforcement and self-assessment of potential ergonomic and/or WHS hazards.

The introduction of the harmonised WHS laws resulted in both THF and Crown Relocations reviewing existing programs and policies with particular attention being paid to those relating to home based workers because of their unique working circumstances. This was to ensure legislative compliance as well as protection for all parties involved. The health and safety

approaches both developed over several years were grounded in sound workplace health and safety principles and practices informed by trained professionals. Only minimal revision was required to ensure compliance with the new laws.

How to implement WHS legislation

While the case studies examined have focused on the SME sector, there are some important insights to be gleaned from the approaches adopted by THF and Crown Relocations within the context of the WHS laws. These include the importance of:

- facilitating workplace awareness and understanding the critical importance of the requirements of the new WHS laws particularly in respect of the duties and obligations of PCBU and the associated penalties
- appointing PCBU and clearly identifying duties and obligations while making provision for regular in service
- documenting WHS policies and complementing these with strategies to ensure awareness and understanding by all affected
- engaging industry specific professionals to audit practices, inform the development of WHS policies and contribute to an ongoing review of this documentation
- monitoring of workplace operations and equipment regularly
- providing ongoing worker education regarding health and wellbeing
- facilitating worker surveys to glean feedback on the perceived quality of workplace practices and environment and
- utilising software resources that enable workers to undertake workplace assessments that complement formal monitoring by professionals.

Different industries have idiosyncratic workplace characteristics. The above insights collected from the operations of two proactive companies provide a useful frame of reference for others when developing a response to the challenges posed by the implementation of the harmonised WHS laws.

Marnie Douglas is the founder of Ergoworks, one of Australia's most respected providers of ergonomic advice to SME's and corporate organisations across the country. For further information visit www.ergoworks.com.au

Notes

1   For a legal analysis of the new regime, see Dewberry S and Stirling A, 2011, 'Key issues in OHS harmonisation', *Keeping good companies*, Vol 63 No 9, pp 558–561

2   *International Business Times*, 2011, 'Small business owners, employees embracing work from home', http://au.ibtimes.com/articles/138340/20110426/small-business-owners-employees-embracing-work-from-home.htm [3 February 2012] ∎