Contractor Safety Engagement Revision – FAQs

Why was the Procedure and Handbook Chapter revised?

Revision of the Procedure and Handbook (HB) Chapter (the Revision) align the University's contractor engagement processes with the University's obligations under the WHS Act and Comcare guidance on managing contractors. The Revision has redefined contractor types due to diversity in WHS risk within the University workplace and the broad range of work undertaken by contractors for the University, in and outside of Australia. The Revision also refocused the need for all contractors to have control of their work, in so far as is reasonably practicable.

Control of work is a necessary element in the consideration of what is reasonably practicable. Control of work can be categorised as *general control* or *actual control*. The following table provides an example which defines these two (2) levels of control.

Contractor example	General control	Actual control
The University engages a qualified registered electrician to complete maintenance or repair work on electrical systems in a campus building.	The University may rely on the expertise of the electrician to perform the work in a safe and compliant manner. However, the University, through an agreement or contract, has general control of the work in being able to: - verify the electrician has the capability and capacity to complete the work in a safe manner, and - direct the electrician to stop work if required.	The electrician, in possessing the knowledge, skills and experience to complete the work in safe and compliant manner has actual control over the work being completed. The electrician retains influence over how the work is completed and control over who has access to the work site or area. The electrician must ensure their own safety, not put others at risk of harm due to their work and continue to consult, cooperate and coordinate on WHS matters with the University.

In summary, the more control and influence the University has over the work of contractors, the greater the steps the University must take to assure compliance with the WHS Act. The WHS duty to consult, cooperate and coordinate on WHS matters remains an obligation for both the University and its contractors regardless of the level of control.

The Procedure and HB Chapter remain living documents. We can amend or improve the way in which the University engages with its contractors, contact whs@anu.edu.au for advice or assistance.

What is the intent in revising the Procedure and HB Chapter?

The practical intent in revising the Procedure and HB Chapter include these points:

- Ensure the University and its contractors comply with their concurrent WHS obligations.
- Provide guidance for the University in relying on the expertise of contractors, to:
  - verify a contractor has the expertise and safety systems to complete the work safely
  - verify the contractor completes the work safely according to their safety systems
  - provide appropriate instruction to a contractor about health and safety
  - continue to consult, coordinate and cooperate with contractors on safety matters.
- A fundamental safety and legal principle to be applied to engaging contractors involves this issue: the more control the University has over a contractor's work, the more practical steps the University must take to ensure health and safety of all workers and others (includes students). The Revision helps guide a decision about controlling the work of contractors.

How do we transition to the revised Procedure and HB Chapter?

Transition steps for the Revision are summarised as:

- Review the procedure and chapter (and appendices as required).
- Assess how current processes can be improved to meet the intent of the Revision.
- Incrementally update local processes to align to the intent of the Procedure and HB Chapter.
- Seek advice on legal issues, procurement activities and technical WHS information from key contacts.

How much control should the University have over the work of contractors?

The more control and influence the University has over the work of contractors, the greater the steps the University must take to assure compliance with the WHS Act. The WHS duty to consult, cooperate and coordinate on WHS matters remains an obligation for both the University and its contractors regardless of the level of control. Seek advice from Safety and Wellbeing for technical WHS issues and University Legal Office for contractual issues.

The University should not consider being a Principal Contractor (PC) for any construction project. While the University possesses sufficient knowledge about construction work (the principle of *ought to know*), it should not accept the level of actual control associated with managing the WHS duties of a PC involved in construction project work.

How do we assess the level of control required by the University?

The level of control is categorised by Comcare as either ***general*** or ***actual*** control.

General control relates to the University engaging a contractor with specialised knowledge and skills and reminding the contractor of their WHS requirements under the WHS Act and Regulations (both Commonwealth and State/Territory).

Actual control relates to a contractor with specialised knowledge and skills performing the work in accordance with their safe systems of work and having influence over how the work is completed and who accesses the work area or site.

The following table provides examples of control, **the information not limited to this alone**. Seek advice from Safety and Wellbeing about control of contractors in relation to WHS technical information or University legal Office about control arrangements in contracts or agreements.

Example	Level of control	University key WHS duties *(but not limited to these)*
The University engages a qualified registered electrician to complete maintenance or repair work on electrical systems in a campus building.	**General** control	- Verify the contractor has the capability and capacity to perform the work in a safe and compliant manner. - Advise the contractor of the hazards and/or risks associated with working at the University campus. Completion of an induction addresses this and other WHS requirements. - Periodically verify the contractor is working or has worked safe. - Ensure continued consultation, cooperation and coordination on WHS matters.
The University engages a building company to construct a new facility, the project being valued at >$250K.	**General** control	- Verify the contractor has the capability and capacity to perform the work in a safe and compliant manner. - Ensure the contractor is assigned PC duties for the construction project. - Advise the contractor of the hazards and/or risks associated with working at the University campus. Completion of an induction addresses this and other WHS requirements. - Periodically verify the contractor is working or has worked safe. - Ensure continued consultation, cooperation and coordination on WHS matters.
The University engages a contractor to perform maintenance work on a facility which involves some work at height.	**General** control	- Verify the contractor has the capability and capacity to perform the work in a safe and compliant manner. - Ensure the contractor has safe work method statements in effect for the work at height activities. - Advise the contractor of the hazards and/or risks associated with working at the University campus. Completion of an induction of the facility addresses this and other WHS requirements. - Periodically verify the contractor is working or has worked safe. - Ensure continued consultation, cooperation and coordination on WHS matters.
The University engages a cleaning company to maintain the general tidiness and cleanliness of the interior of a facility.	**General** control	- Verify the contractor has the capability and capacity to perform the work in a safe and compliant manner. - Advise the contractor of the hazards and/or risks associated with working at the University campus. Completion of an induction of the facility addresses this and other WHS requirements. - Periodically verify the contractor is working or has worked safe. - Ensure continued consultation, cooperation and coordination on WHS matters.

In each example, note the University is **not** accepting **actual** control of the work by a contractor. The principle on which to decide the level of control by the University is: *the more control and influence the University has over the work of contractors, the greater the steps the University must take to assure compliance with the WHS Act.*

How do we ensure a contractor can or is working in a safe manner?

Ensuring a contractor has the capability and capacity (Knowledge and skills) to perform work in a safe manner is a proactive WHS duty of the University. This WHS duty is captured for example in the regulatory requirements to:

- ensure the workplace is free from the risk of harm from the work being undertaken, and
- consult, cooperate and coordinate with a contractor in relation to WHS matters.

Comcare provide clear regulatory advice in relation to this issue, stating:

It is important to consider work health and safety through all stages of the procurement and contract process:

- *During the initial procurement stages and before the contract commences all parties should engage WHS practitioners* (Safety and Wellbeing for example) *and subject matter experts to ensure contracts include essential WHS requirements.*
- *During the duration of the contract, the PCBU* (the University) *should ensure checkpoints are included in the contract. These checkpoints provide a PCBU with a review process to ensure adequate supervision and oversight of the contract agreements and work performed by the contractors — this includes work plans tailored to take into account changes in the work environment or activity.*
- *After completing the required work in the contract, the PCBU should assess the final product or work activity to ensure compliance under the WHS Act.*

Review the Procedure and HB Chapter related to specific contractor types for more information on verifying a contractor's capability and capacity (Knowledge and skills) to perform work in a safe and compliant manner.

How do I verify a contractor's capacity and capability to work in a safe manner, if I do not have the knowledge or experience related to the work?

If you do not have the knowledge or experience to verify the work of a contractor, seek advice from Safety and Wellbeing for technical WHS issues or the University Legal Office for legal or contractual matters.

The University has sufficient organisational knowledge and experience about the work of its contractors that it *ought to know* how to verify a contractor's capacity and capability to work in a safe manner. If the University does not have the knowledge or experience to verify the specialist work of a contractor, then the University must seek specialist WHS and/or legal advice to do so.

What do we do if a contractor is not working in a safe manner?

Action by the University is relatively simple in practical terms:

- Firstly, if the contractor's work is deemed **unsafe** or places University employees or students (including others) **at risk of harm**, give an immediate verbal direction to **STOP** the work. Followed by written direction to confirm the issue, investigation outcome and required resolution.
- A response by the University following a **STOP** work direction or report of an incident, should involve inspection of the work site, consultation with key stakeholders and review of the contractor's safe systems of work. This action would lead to a documented outcome requiring the contractor, where applicable, to correct and/or improve is WHS practices in line with University expectations, contractual obligations and/or regularity compliance.

Depending on the severity and/or frequency of occurrence of the WHS issue, the University should have in contract or agreement terms, corrective action options for non-compliance with WHS regulations or University instructions.

How often should we check a contractor's work in relation to WHS?

Checking a contractor's work in a practical sense should be based on a combination of the duration of the work and the level of risk posed by the work with reference to what the University *ought to know* about the work and/or risks. This approach is suggested to meet the test of what is *reasonably practicable*.

The following table provides guidance on this matter. However note, the frequency and process of checking a contractor's work must be decided and/or established at the time of finalising a contract or agreement, so both parties agree on their respective obligations (this is an example of practical consultation, cooperation and collaboration).

Frequency of checks	Process and/or explanation
Contract or agreement signoff	This process verifies the contractor has the capacity and capability to perform the work in a safe and compliant manner. Each party agrees to fulfilment of their respective WHS duties.
Local area or site induction	An induction assures the contractor is informed of the hazards, risk and WHS requirements for working in the local area or on site.
Start of high-risk work	The University by way of its organisational knowledge and experience, ought to know the level of risk posed by a range of high-risk work or activities. It is reasonable for the University to practically check the contractor has safe systems of work in place to mitigate high-risk work, before or at the start of work and during the work if it extends for a known period.
Periodically	Contractor work, which involves multiple entry to the University workplace over time or the work extends over a reasonable time period, should be checked on multiple occasions. For practical purposes, work which is completed: - on one occasion should involve an induction and check at the completion of the work. - Over multiple entry or extended period of time may be checked at induction, start of high-risk work, mid-way through the contract period (or more than once for work which extends >6 months) and at the completion of the work.
Incident notification	A contractor's work must be checked and their safe systems of work verified in response to any report of a WHS incident. The focus of these checks is to identify the root cause(s) of the incident and to put measures in place to prevent a reoccurrence. This approach assures both the contractor and the University fulfil their concurrent WHS duties. University response to any incident will be based on the severity of the incident and level of risk released through the incident.
End of work/contract	Any work completed by a contractor should be checked to ensure there are no residual WHS issues which may put University employees or students (and others) at risk of harm. The process of checking the contractor's work is also a valuable lessons learnt exercise for both parties.

How do we ensure compliance with the WHS Regulations which apply outside of Australia?

The University should through consultation, cooperation and collaboration with foreign contractors:

- Understand how the contractor(s) will perform the work.
- Assess what the WHS risks are associated with the work.
- Seek contractor agreement on how to perform the work in a manner which does not put University employees, students and others present at risk of harm.
- Decide on what measures the University can implement, independent of the contractor's work, to further mitigate any risk of harm to employees, students and others present. Practical examples of this strategy may include: isolating employees from the work; completing safety briefings for employees about the work; pre-planning a response to any WHS risk event; and/or assessing any residual WHS issues when the work is completed.

Each circumstance involving contractor work outside of Australia will be unique in relation to location, WHS legislation and work standards. Suffice to know:

- specific Australian WHS Regulations (reg11A) apply to University workplaces overseas
- the University remains obligated to do what is ***reasonably practicable*** to ensure the health and safety of employees, students and others as a result of any risk associated with University business operations outside of Australia (including work completed by a contractor).

It is important to seek advice from Safety and Wellbeing and University Legal Office in relation to ensuring compliance with applicable WHS Regulations outside of Australia.

For University work in another country, how should the University balance compliance with local WHS laws and appliable Australian WHS Regulations?

The University should have processes in place to assure compliance with local WHS laws, the challenge being: *how to assure compliance with specific Australian WHS Regulations if these are in conflict or exceed the local WHS requirements*.

A basic guide to working through this type of challenge is the test of: ***what is reasonably practicable in the circumstance?*** Comcare's guidance on this test includes:

The test of reasonably practicable is an objective test. It simply means making a judgement call in light of all the facts, considering the state of knowledge about the risk of injury or harm (in question) and means of mitigating it. PCBU's (the University) *should consider all the following in determining what is reasonably practicable:*

- *likelihood of the hazard or risk occurring*
- *the consequences or degree of harm that might result*
- *what the duty holder* (the University) *ought to know and what the duty holder knows about the hazard (state of knowledge)*
- *what is available to eliminate or minimise the risk (on the open market or can be manufactured)*
- *its suitability*
- *the cost of mitigating the risk*
- *any other matters relevant such as other legislation or the capacity to control or influence relevant matters.*

The following table provides an example of what may be deemed reasonably practicable in relation to assuring the safety of University employees and students during a period of work undertaken by a contractor outside of Australia (the WHS Regulation appliable to this example is reg11A(1)(c) Part 3.1 – Managing risks to health and safety).

Example outside of Australia	Consultation, cooperation and collaboration	Action by the University
The University engages a contractor to complete maintenance or repair work on electrical circuits in a building occupied by University employees and students during normal business hours. The electrical standards and/or electrical trade qualifications applicable in the location are unknown or are below that applied in the Australian workplace.	The University should engage with the contractor to confirm: - what the work involves and likely interruption to business operation. - potential risks to health and safety. - flexibility by the contractor to perform the work outside of business hours. - what checks are made to confirm the electrical circuits are safe to use or operate?	The University could implement these practical control measures, and not limited to these by circumstance: - safety briefing for employees and students prior to the work commencing and at the start of each business period the work continues over. - isolate the employees and students from exposure to the work or hazards. - request updates from the contractor on work completion and status of any potential risks. - plan and implement a response to any WHS issue or risk event. - obtain conformation from the contractor the work is completed without any risk to health and safety. - operate an electrical appliance to test the electrical circuit using cautionary techniques, ie, plug in appliance, then turn on the electrical point switch, then touch the appliance with the back of hand (turn off the appliance if there is a concern or potential for electrical shock), then turn on the appliance to check its operation. - arrange an independent test of the electrical circuits if deemed necessary, prior to reuse.

Is a labour hire worker a contractor to the University?

If the University engages the services of a ***worker*** through another entity (business), for example a recruitment or employment agency, the entity is the contractor and the ***worker*** of the entity is also a ***worker*** of the University.

Both the entity and University have a concurrent WHS duty to ensure the health and safety of the ***worker***. The ***worker*** must complete all WHS training, inductions and other WHS related activities required of a University employee. Contact whs@anu.edu.au for advice or assistance with WHS matters.

For avoidance of doubt, this is an example of the contractor having ***general*** control of the work (by the worker) and the University having ***actual*** control of the work (by the worker).

What do we do about a permit to work for a contractor, when is this required and how is this process managed?

The University has a current procedure for *permit to work* processing, see ANU Policy Library - Procedure - Permit to Work. The procedure and process of permit to work relate to both the work of contractors and also University teaching/research activities.

The procedure notes the *permit to work* process is applicable only to construction and maintenance related activities managed by Campus Environment (CE). All contractor high-risk work requiring *permit to work* approval, which is not managed by CE, is the responsibility of local area management.

Contact Safety and Wellbeing for advice and assistance with *permit to work* processing for high-risk work. Note, a confined spare is determined by the hazards associated with the work performed and not just the work being performed in a small space. Consider these examples of activities requiring a *permit to work*, but not limited to these in total.

Note: The University does **NOT** issue *permit to work* nor review any risk assessment(s) for any diving activities.

Work or activity example	Comments
Research activities requiring *work at height*.	Examples include: climbing trees to observe/monitor flora and fauna habitat; abseiling or climbing natural structures; working on a level which poses a risk of a fall from one level to another either down to ground level or below ground level.
Experiments or activities involving an *ignition* source outside of a controlled laboratory environment.	Examples include: grinding and/or welding which produces swarf; use of naked flame or fire in open environments; use of propellant fuels.
Work in a *confined space*	Examples include entering: hazardous atmospheric or oxygen deficient environments; areas which pose a risk of entrapment, a fall and/or electrical hazard.
Repairs and maintenance work which poses a risk of a fall from one level to another.	Examples include: cleaning gutters and/or exterior of buildings; changing lecture room overhead lighting or audio fixtures; changing street or overhead pathway lighting; erecting banners and/or staging structures during orientation week.

What do we need to consider when engaging a foreign contractor to design and/or manufacture (or construct) a piece of equipment or an appliance (plant) for use in and outside of Australia?

If the University commissions a foreign contractor to design and/or build a piece of bespoke equipment or an appliance (plant), the University has an obligation to ensure the equipment meets specific WHS regulations related to design, manufacture and registration of design (where appliable).

These regulatory requirements are appliable if the equipment is used in Australia or outside Australia if the equipment is, or could reasonably be expected to be, used in Australia.

Consult with whs@anu.edu.au and University Legal Office prior to engaging a foreign contractor to design and/or manufacture plant (equipment or appliance) for use by the University in and outside of Australia.

Plant includes any machinery, equipment, appliance, container, implement and tool, and includes any component or anything fitted or connected to any of those things. Plant includes items as diverse as lifts, cranes, computers, machinery, conveyors, forklifts, vehicles, power tools and amusement devices. Tools used and powered by hand (ie, a screwdriver) are not deemed plant.