

NEVER ALONE WHEN WORKING ALONE.

Employers have a responsibility to keep all their workers safe. But how does this extend to lone workers? In this white paper, Catherine Dunlop and Courtney Ford of law firm Maddocks define employer responsibilities for worker safety, including for lone workers, and explore possible solutions.

WHO ARE LONE WORKERS?

There are some key environments in which we imagine lone workers: mines, cattle stations or national parks to name a few. However, any business or undertaking with flexible work practices — for example, which allows workers to work from home — will likely engage with and have WHS obligations to lone workers.

Lone workers may not necessarily be working far from other people. A worker can be isolated even if other people are close by; for example, a community nurse carrying out clinical visits at night, or someone working in an office building after hours or on a public holiday.

Some other examples of 'lone workers' include:

- all-night convenience store and service station attendants;
- construction workers on remote or isolated sites;
- security guards;
- long-distance freight transport drivers;
- sales representatives, including real estate agents;
- Agricultural workers, scientists, park rangers and others carrying out field work alone.

WHO IS (LEGALLY) RESPONSIBLE FOR KEEPING WORKERS SAFE, AND WHAT ARE THEIR OBLIGATIONS?

All Australian businesses have a duty to ensure the health, safety and welfare of their workers. These may be employees, contractors (as far as they can be controlled or influenced) or any other person affected by the way they conduct their business.

Australian work, health and safety (WHS) laws across the states and territories are generally consistent in their approach, thanks to the Model WHS Act rolled out across the country from 2012.

These laws have been implemented in all jurisdictions except Victoria and Western Australia (although Western Australia may soon implement parts of the model laws).

As there are many workplace types in Australia, the law chooses not to define them all. Instead, it uses the term a 'person conducting a business or undertaking' (PCBU) to describe all forms of modern working arrangements. A person who performs work for a PCBU is called a worker. For the purposes of this paper, the terms 'PCBU' and 'worker' are used as if they were adopted in all states and territories in Australia. Victoria and Western Australia's laws are referred to as 'OHS laws'.

WHAT WHS OBLIGATIONS DO PCBUs AND WORKERS HAVE?

Under Australian WHS/OHS laws, the primary duties of PCBUs are to ensure, as much as possible:

- the health and safety of workers while at work in the business or undertaking; and

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- that the health and safety of other people is not put at risk by the way the PCBU conducts its business or undertaking.

In addition, workers in Australian PCBUs have WHS obligations to themselves and their workmates, including to:

- comply with instructions given for WHS; and
- not wilfully place others at risk.

ADDITIONAL OBLIGATIONS — AND HAZARDS — FOR 'LONE WORKERS'

In addition to the general WHS obligation to provide a safe system of work, the model WHS Regulations specifically require PCBUs in all states and territories other than Victoria and Western Australia to manage the health and safety of a 'worker associated with remote or isolated work' by providing a 'system of work that includes effective communication with the worker' (the 'effective communication obligation').

The term 'lone worker' is used to refer to a worker engaged in remote or isolated work, meaning work that is isolated from the help of other people (rescue, medical, emergency service assistance) because of the location, time or the nature of the work.

In a modern working environment there are a whole range of situations in which workers will be working away from others, either by themselves or in remote or isolated areas, and a PCBU's obligation to provide a safe system of work will extend beyond the 'traditional' workplace to wherever they work.

Lone workers may face additional WHS risks if nobody else is around to help with difficult tasks, alert them to hazards or

give a second opinion about how to safely do a task, or notice if they are fatigued or making mistakes. Occasionally, they may also face more grave risks, such as two Council building inspectors in Gippsland, Victoria, who were viciously attacked in 2015 by an aggrieved farmer on an isolated rural property. (The farmer was eventually imprisoned for 11 years for the attack.)

Under Western Australian law, employers are obliged to ensure communication is available for lone workers in the event of an emergency, and to have a procedure for regular contact with the lone worker (for which the worker is trained).

While Victoria does not have any specific laws relating to lone workers (other than in relation to mine workers), the reality is that Victorian businesses who engage lone workers should be ensuring that effective communication is in place as part of their general obligation to provide a safe system of work for these workers.

HOW CAN A PCBU MEET ITS EFFECTIVE COMMUNICATION OBLIGATION FOR LONE WORKERS?

In practice, the way in which a PCBU meets its effective communication obligation for lone workers should be determined by the degree of hazard of the particular work or work environment, based on a comprehensive risk assessment. Individuals within PCBUs — such as officers, supervisors and other managers — will often have a crucial role in regard to these matters.

However, two key parts of any safe system of work that meets a PCBU's effective communication obligation will be:

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- the PCBU's ability to monitor, communicate with and locate the lone worker, at any time while he/she is working (24/7); and
- the lone worker's ability to communicate with the PCBU, or to seek assistance from others, whenever necessary or desirable.

The types of mechanisms and strategies that PCBUs might consider to ensure effective communication with workers include:

- technology that allows the PCBU to geolocate the worker at all times, review the worker's schedule and communicate with the worker as required;
- a system — either through the use of technology or other 'reporting in arrangements' — allowing the PCBU to identify and follow up any unusual changes to the worker's routine. For example, if the worker stops moving unexpectedly or fails to contact the PCBU within an agreed time period, the PCBU should have the ability to 'check in' with the worker and confirm their safety;
- an ability for the worker to request help at any time, whether via their phone or another alerting device, and through multiple channels if necessary;
- a buddy system in occupations where violence can happen, and training workers to deal with potentially violent situations; and

- systems designed to reduce the likelihood of violence, including controlled access and monitored CCTV.

Finally, in meeting the effective communication obligation, PCBUs must ensure that they are not inadvertently encouraging workers to engage in unsafe or illegal behaviour. For example:

- Lone workers should not be required to 'check in' whilst driving if that process requires them to touch their phone or otherwise inappropriately distracts them.
- Workers should not be required to be 'on call' for lone workers 24/7, as this could put the health and safety of the non-lone workers at risk. While a lone worker should be able to effectively communicate and call for assistance at all times, this does not necessarily need to be someone within the PCBU itself.

It is clear that the majority of PCBUs who engage lone workers should be considering the technological solutions available to them, and which enable them to effectively communicate and otherwise meet their WHS obligations to lone workers.

If you'd like to know more about how to ensure cost-effective and easy communication is maintained with lone workers, please call TeLoRa on 02 8339 0207 or find out more here: www.telora.com.au.

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Jonti developed TeLoRa to protect his staff when working alone and quickly realised the life-saving potential of this app, which he hopes will go on to save many more lives.

