

## Tradies - turning houses into workplaces

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Health and safety risks are just as prevalent in the home as they are in many workplaces. However, it is not until a home becomes a workplace that health and safety obligations arise under the Health and Safety at Work Act 2015 (HSWA). Under the HSWA, home occupiers have no obligations to ensure that tradespeople (or 'tradies') working in their home are able to perform their tasks in a healthy and safe manner. By contrast, tradies must ensure their own health and safety during the performance of the work, but also the health and safety of people at the home, including the home occupier.

In many cases, tradies will never have seen the location where they will be performing the work or know the exact extent of the work before they arrive at the location. There are limited opportunities to prepare for or manage risks to health and safety in advance. In addition, there will often be no written contract between the parties setting out health and safety requirements and obligations. This article outlines legal requirements around residential work under the HSWA, and provides some practical guidance for people managing health and safety obligations while working in residential properties.

### Health and Safety at Work Act 2015

Section 17(b)(iii) of the HSWA provides that a 'person conducting a business or undertaking' (PCBU) does not include an occupier of a home to the extent that the occupier employs or engages another person solely to do 'residential work'. Residential work is defined in section 16 of the HSWA as "work done by a person employed or engaged by the occupier of a home of either or both of the following kinds:

- (a) domestic work done or to be done in the home; or
- (b) work done or to be done in respect of the home."

### Tradies

The definition of residential work above encompasses all manner of work that people may be engaged to do around the home. This would include cleaners, pool contractors, gardeners, and any other people engaged for everyday home maintenance. Work done 'in respect of the home' would also cover any tradespeople such as builders, electricians or plumbers.

Many tradies own their own businesses, and would be a PCBU under the HSWA. Under section 36 of the HSWA, when performing work in a residential property for a home occupier, they must ensure, so far as reasonably practicable, the health and safety of themselves, their workers and any other people who may be put at risk from work carried out by them. They must be appropriately trained, and have health and safety systems and policies in place to ensure they and their workers can perform the work in a healthy and safe manner.

Tradies doing residential work who are not PCBUs must also look after their own health and safety, and take reasonable care to ensure their acts or omissions do not adversely affect other people's health and safety (section 45 of the HSWA). This includes an obligation to comply with any policies and systems set by the PCBU around health and safety.

At a minimum, for tradies to comply with their obligations under HSWA, when preparing for and performing residential work, they must have and comply with health and safety policies and systems requiring them to:

- Assess the property and the work required so they can consider and prepare for any hazards they may face while performing the work
- Have the appropriate training and skills
- Have any safety equipment necessary
- Stop and reconsider how / whether to approach any work they do not believe they can achieve in a healthy and safe manner.

### Home occupiers

As indicated, home occupiers are not PCBUs, nor are they 'workers' or any other type of duty holder under the HSWA.

They are not obliged to ensure that tradies are able to safely perform the work they have been engaged to do, and should be able to rely on the tradies' skills and experience to ensure their own safety. The only exception is if the home occupier works from home, making it a workplace and creating health and safety obligations that would normally apply to them as a PCBU or a worker.

Despite there not being obligations under the HSWA, an occupier is still obliged to take reasonable care to ensure that "any visitor to their premises is reasonably safe in using the premises, for the purposes for which they are invited or permitted to be there". This obligation is enshrined in the (almost antique) Occupiers' Liability Act 1962, which recognises the right of visitors (including tradies) to claim for any damages suffered if the home occupier breaches its duties under this legislation.

Practically speaking, while home occupiers have no obligations under HSWA, when engaging tradies, they should:

- Engage tradies that are competent and appropriately qualified to do the work they are being asked to complete
- Follow any instructions given by the tradies during the performance of the work
- Remove or alert the tradies to any risks they are likely to face during the performance of the work (such as chemicals, trip and slip hazards, obstructions or large/aggressive dogs).

## Landlords and property managers

Under the HSWA, property managers and landlords are PCBUs with obligations to ensure the health and safety of everybody involved with or affected by work on properties they are responsible for. As a duty holder, they must ensure tradies they engage are competent and appropriately qualified to do that work. However, property managers and landlords are not expected to become an expert themselves or to try and manage everything for the tradies. As with other PCBUs, who may not have direct access to a workplace, they need to focus on what they can reasonably influence and control.

## Application

To put home occupiers' and tradies' obligations into context, picture the following scenario:

**Client:** *Hello, can I please book an electrician to come and do some jobs around my home?*

**Operator:** *Certainly, what jobs need doing?*

**Client:** *Well I need a pendant light hung and an aerial removed from the roof.*

**Operator:** *Not a problem...*

Upon arrival at the client's home, the electrician discovers that:

- The pendant is to be hung from a four metre high ceiling
- The aerial needing removal is on the second story of the house, on a steeply pitched roof
- The crawl space in the ceiling that the electrician will need to access has rat poison in numerous locations (luckily not asbestos!)
- The client also wants the electrician to change some light bulbs that have fused to their sockets and need to be shattered to be changed.

The home occupier in the above scenario is not obliged to ensure that the electrician can perform the requested tasks in a healthy and safe manner. However, they should warn the electrician about the rat poison before the electrician goes up into the roof space. It is up to the electrician to ensure that he/she can work safely at the heights required to complete the tasks, can avoid any potentially harmful chemicals, and can safely extract the light bulbs from their sockets without causing injury.

Electricians are usually prepared to work at heights, but the steep pitch of the roof and height of the ceilings in this scenario is likely to require specialised equipment. The HSWA requires controls to be put in place where there is any risk of a fall from any height. It also does not matter if the job will only take a short time. The electrician in this scenario should technically consider controls such as working platforms, edge protection or scaffolds, and if those are not reasonably practicable, whether using a safety harness or other 'work positioning system' will sufficiently isolate the risk of a fall.

If a tradie arrives at a home and discovers that they cannot perform the work in a healthy and safe manner, then they should not perform the work until they have the equipment or training necessary to do so. This would be the last thing busy tradies or their clients would want (particularly if two call-out fees are charged!). However, a small amount of due diligence could easily help to prevent this occurring. For example:

- If a tradie is being asked to provide a quote, they could take the opportunity to assess the property for health and safety, and ensure that they are prepared when they return to perform the work

- If the work is being organised by phone, the operator could take make some enquiries to ensure the tradie will be prepared for expected hazards when they arrive.

Using the scenario above once more, the operator could reasonably have made further enquiries about the job before sending the electrician out to perform the work. For example, they could have asked:

- How high are the ceilings the electrician will need to reach?
- Will the electrician need to get on the roof to remove the aerial? What is the roof made of and how steep is it?
- Will the electrician need to use the ceiling space, are there any hazards there that he/she will need to consider?
- Are there any other jobs that need doing?

For the cost of a few minutes on the phone, or some extra consideration when preparing a quote, tradies can be more prepared for risks to health and safety they may face on the job. This is important, because they are responsible to ensure all parties' health and safety during the performance of the work. As always, health and safety should be paramount, and no job is more important than ensuring that everyone affected remains safe.

*This article was written by Sherridan Cook and Alexandra Wallace (senior solicitor) for Industrial Safety News print and online media platforms (September-November 2016).*

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