

## LEGAL &amp; COMPLIANCE BRIEFING

# Principal Contractor Liability:

## What the WHS Act Actually Requires on a Multi-Trade Construction Site

Prepared by GuardSync AI | WHS Compliance Series | 2025

Audience: Principal Contractors, HSE Managers, Construction Project Managers, Property Developers

Jurisdiction: Australia — Commonwealth WHS Act 2011 and State/Territory Equivalents

## EXECUTIVE SUMMARY

Construction sites operate under some of the most demanding WHS obligations in Australian commercial law. The Work Health and Safety Act 2011 (Cth) places a primary duty of care on principal contractors that extends beyond their own direct employees to encompass every worker on site — including subcontractors, labour hire workers, and day labourers who may never appear on a payroll.

The most common and costly compliance failure is not a lack of safety procedures. It is a lack of contemporaneous, retrievable incident records. When a serious incident occurs — or when a delayed claim arrives months or years after the event — the ability to produce a complete incident and near-miss log is the difference between a defensible position and full liability exposure.

This briefing examines the specific obligations principal contractors carry, the documentation failures that most commonly result in adverse findings, the legal mechanics of why evidence decay creates delayed liability, and how modern QR-based reporting infrastructure closes the gap that paper-based and verbal systems cannot.

### Key Findings

Principal contractors carry duty of care for all workers on site under s.19 WHS Act 2011 — regardless of employment relationship

Serious incidents and dangerous occurrences must be notified to the regulator immediately — and records retained for a minimum of five years

Paper-based hazard registers and verbal reporting chains fail to meet the 'reasonably practicable' documentation standard in a contested claim

Claims regularly arrive 12–36 months after the incident event — long after CCTV is overwritten, staff memories fade, and site conditions change

QR-based reporting systems are now widely available and affordable — their absence is increasingly cited in adverse findings as a failure to take reasonably practicable steps

## 1. The Legal Framework: What the WHS Act Requires

The Work Health and Safety Act 2011 (Cth) — adopted in substantially identical form across most Australian states and territories — establishes a comprehensive framework of obligations for persons conducting a business or undertaking (PCBUs) in the construction sector. Principal contractors occupy a unique and elevated position within this framework.

## 1.1 Primary Duty of Care

Section 19 of the WHS Act imposes a primary duty of care on PCBUs to ensure, so far as is reasonably practicable, the health and safety of workers engaged in work carried out as part of the PCBU's business or undertaking. Critically, this duty extends to workers who are not employees of the PCBU — including contractors, subcontractors, and their employees.

For a principal contractor on a construction site, this means the duty of care is not discharged by ensuring your own employees work safely. It extends to every person who sets foot on the site in a work capacity — from the project manager to the subcontractor's apprentice working their second week.

### Section 19 — Primary Duty of Care (WHS Act 2011)

A PCBU must ensure, so far as is reasonably practicable, the health and safety of: (a) workers engaged, or caused to be engaged, by the PCBU; and (b) workers whose activities in carrying out work are influenced or directed by the PCBU; while the workers are at work in the business or undertaking.

Source: Work Health and Safety Act 2011 (Cth), s.19(1)

## 1.2 Principal Contractor Specific Obligations

Beyond the general duty of care, the WHS Regulations impose specific obligations on principal contractors in the construction sector. A principal contractor must:

- Prepare, implement, and maintain a WHS management plan for the workplace before construction work commences
- Ensure the WHS management plan is reviewed and updated to reflect changes to work being carried out
- Ensure subcontractors' WHS management systems are compatible with and compliant with the site WHS management plan
- Consult, cooperate and coordinate with subcontractors on WHS matters
- Display the WHS management plan and make it accessible to all workers on site

The obligation to consult, cooperate and coordinate is not merely procedural. Courts have found that principal contractors who failed to maintain adequate communication infrastructure — including incident reporting systems accessible to all workers — have breached this obligation.

## 1.3 Incident Notification Requirements

The WHS Act and Regulations impose mandatory notification requirements on principal contractors when a notifiable incident occurs. A notifiable incident includes:

- The death of a person
- A serious injury or illness — including any injury requiring immediate treatment as an inpatient in a hospital, or requiring immediate treatment for amputation, serious head injury, serious burns, or serious lacerations
- A dangerous incident — meaning an unplanned or uncontrolled incident that exposes a worker or any other person to a serious risk

Notification must be given immediately to the relevant regulator (Safe Work Australia or state equivalent). Records of notifiable incidents must be retained for five years from the date of notification.

Critically, the obligation to notify and record applies to the principal contractor — not only to the subcontractor whose worker was involved. Where the principal contractor does not have adequate systems to become aware of incidents in real time, notification obligations are routinely breached.

## 2. The Documentation Gap: Why Paper-Based Systems Fail

The most persistent and consequential compliance failure in the Australian construction sector is not a lack of safety procedures — it is a documentation gap. Principal contractors routinely have well-developed SWMS, site inductions, and toolbox talk programs, yet cannot produce contemporaneous incident records when they are required.

### 2.1 The Paper Hazard Register Problem

Most construction sites operate some form of paper-based hazard register or incident report form. These systems share a common set of structural failures:

- Physical accessibility — the register is in the site office or site shed, not at the location where incidents and near-misses occur
- Subcontractor access — workers employed by subcontractors rarely have access to or awareness of the principal contractor's reporting system
- Reporting friction — completing a paper form requires workers to stop work, locate the document, write legibly, and submit it to a person who may not be present
- Supervisor dependency — most verbal reporting chains require a worker to report to their immediate supervisor, who may be the person responsible for the unsafe condition
- No automatic escalation — a paper form submitted to a supervisor is not automatically seen by the principal contractor, the HSE manager, or anyone with authority to act

#### The Reporting Gap in Practice

A typical construction site on any given day has: 1 principal contractor site manager, 4–6 subcontractors, and 15–30 individual workers across trades. Of those 30+ people, typically 1–3 have access to the site's incident reporting system.

When a hazard is noticed by a labourer employed by a subcontractor — which is the most common scenario — the reporting path is: tell the subcontractor's foreman, who may tell the site manager, who may log it. In practice, this chain fails at the first step more than half the time.

### 2.2 The Subcontractor Reporting Void

The subcontractor relationship creates a structural reporting void that paper-based systems cannot bridge. Subcontractor workers:

- Are not employed by the principal contractor and have no obligation to use the PC's systems
- Often work on multiple sites and have no site-specific reporting familiarity
- May face employment disincentives for reporting — particularly labour hire and short-term workers
- Are frequently the first to observe hazards in their specific trade area that the PC's site manager would not naturally identify

The legal consequence is significant. Under the WHS Act, the principal contractor's duty of care applies to these workers. But the information flow required to discharge that duty — awareness of hazards and incidents — is routinely blocked by the absence of a reporting pathway these workers can use.

## 2.3 Near-Miss Non-Reporting

Safe Work Australia data consistently shows that near-miss incidents are dramatically under-reported on Australian construction sites. Near-misses are the single most predictive indicator of serious incident risk — they represent the same failure conditions as serious incidents, without the consequence that triggers mandatory reporting.

A principal contractor who cannot produce a near-miss register has two problems. First, they have missed the opportunity to address the underlying hazard before it produces a serious incident. Second, they have no evidence that they exercised systematic hazard management — which is directly relevant to the question of what was 'reasonably practicable' in a contested claim.

# 3. The Delayed Claim Problem: Why Evidence Disappears

Construction industry liability claims follow a well-documented pattern. The incident occurs. The immediate aftermath is managed. Site work continues or the project completes. Months or years later, a claim arrives — often after the claimant has received medical advice, engaged a lawyer, and conducted their own investigation.

## 3.1 The Limitation Period Window

Under Australian personal injury law, the limitation period for most workplace injury claims is three years from the date of the injury, or from the date the claimant became aware of the injury and its connection to the workplace. In practice, this means:

- A claim arising from a construction site injury can arrive up to three years after the incident
- For latent injuries — those where symptoms develop gradually — the clock may not start until symptoms manifest, extending potential exposure significantly
- For minors or persons under a disability at the time of injury, limitation periods may be extended further

### The Three-Year Documentation Window

When a claim arrives 18 months after project completion, the following is typically true:

CCTV footage: overwritten after 30–90 days

Site photographs: retained only if project manager was diligent

Paper incident records: located in archived project files if they existed at all

Subcontractor records: held by a third party with no obligation to retain them for your benefit

Witness recollections: significantly degraded — research shows recall accuracy for workplace incidents drops by approximately 30% within six months

A digital, timestamped incident log is the only evidence type that survives this window intact.

## 3.2 What Courts Look For

When a construction liability claim is defended, the court or tribunal will assess whether the principal contractor took all steps that were reasonably practicable to prevent the incident. The central question is: what did you know, when did you know it, and what did you do about it?

A principal contractor who can produce:

- A complete incident and near-miss log for the relevant site and period
- Evidence that hazard reports were acted upon in a timely manner
- Records showing the claimant was inducted and the relevant risk was addressed in the SWMS
- Evidence that all workers — including subcontractor workers — had access to and used the reporting system

...is in a fundamentally different position to a principal contractor who can produce only a site induction register and a SWMS that was never operationalised through systematic reporting.

### 3.3 The Prior Knowledge Premium

Where a claimant can establish that the principal contractor was aware — or should have been aware — of the hazard that caused the injury, the liability exposure increases substantially. This is the 'prior knowledge premium': courts treat known, unaddressed hazards as evidence of negligence rather than reasonable risk management.

A near-miss that was reported, logged, and acted upon can be used to demonstrate that the PC identified and addressed the risk. The same near-miss, if unreported, becomes evidence that the PC was either unaware of a risk they should have detected, or aware and failed to act.

## 4. The Reasonably Practicable Standard and Modern Reporting Infrastructure

The WHS Act's standard of 'reasonably practicable' is not static. It evolves as technology and industry practice develop. What was reasonably practicable in 2010 — when paper-based systems were the only widely available option — is not the same as what is reasonably practicable in 2025.

### 4.1 How Reasonably Practicable is Assessed

Section 18 of the WHS Act provides that 'reasonably practicable' means that which is, or was at a particular time, reasonably able to be done to ensure health and safety, taking into account:

- The likelihood that the hazard or risk will occur
- The degree of harm that might result
- What the person knows, or ought reasonably to know, about the hazard or risk and ways of eliminating or minimising it
- The availability and suitability of ways to eliminate or minimise the risk
- The cost of eliminating or minimising the risk

The fourth and fifth factors are directly relevant to incident reporting infrastructure. QR-based reporting systems are now widely available, require no hardware investment, deploy in hours, and are accessible to any worker with a smartphone. Their cost is a fraction of the liability exposure they protect against.

#### The Availability Test in Practice

A WorkCover inspector or plaintiff's expert witness assessing whether a PC took reasonably practicable steps in 2025 will note that digital incident reporting systems are:

Available — multiple commercial platforms exist at accessible price points

Suitable — designed specifically for multi-contractor construction environments

Affordable — monthly costs in the range of \$150–\$400 per site

Deployable — operational within 24–48 hours without IT infrastructure

The absence of such a system, where paper-based reporting has demonstrably failed to capture incidents, is increasingly difficult to justify on cost or availability grounds.

## 4.2 QR-Based Reporting: Closing the Structural Gap

QR-based incident reporting systems address the specific structural failures of paper-based systems on multi-trade construction sites:

- Universal access — any worker with a smartphone can scan and report, regardless of who employs them or whether they have site system access
- Location-based reporting — QR codes placed at work zones, site entrance, and amenities capture reports at the point of the hazard
- Instant escalation — reports are automatically routed to the nominated site manager or HSE officer, bypassing the supervisor dependency problem
- Timestamped records — every report is time and date stamped at the moment of submission, creating contemporaneous evidence that survives the limitation period window
- Near-miss capture — the low-friction reporting path means near-misses that would previously go unlogged are captured as part of normal site operations
- Subcontractor inclusion — workers employed by any subcontractor can report on the same system without requiring enrolment, account creation, or training

## 5. Practical Implications for Principal Contractors

The obligations described in this briefing are not theoretical. They are assessed in the context of real incidents, real claims, and real regulatory investigations. The following practical steps represent the minimum that a principal contractor should implement to meet their WHS documentation obligations in 2025.

### 5.1 Immediate Actions

- Audit current incident reporting infrastructure — specifically whether subcontractor workers have a practical path to report incidents and near-misses that does not depend on their own employer's systems
- Review the last 12 months of incident records and assess whether near-miss reporting rates are plausible given site activity levels — very low near-miss rates typically indicate under-reporting, not low risk
- Ensure incident records are stored digitally with timestamps and are retrievable for the full five-year retention period required by the WHS Regulations
- Confirm that the WHS management plan specifically addresses the reporting infrastructure available to all workers on site, including subcontractor personnel

## 5.2 Site Deployment Considerations

- QR codes should be placed at site entrance/exit, amenities, and each major work zone — not only in the site office
- New subcontractors should be inducted on the reporting system at site induction — the 60-second scan process requires no ongoing training
- The nominated recipient for incident notifications should be the site manager or HSE officer, not the relevant subcontractor's foreman
- Monthly review of incident and near-miss data should be included in the WHS management plan review cycle

## 5.3 Multi-Site Operators

For principal contractors and subcontractors operating across multiple concurrent sites, the documentation obligations multiply with each site. A centralised reporting system that consolidates incident data across all active sites provides both a compliance record and a pattern-recognition capability that single-site paper systems cannot replicate.

A subcontractor deploying a single reporting infrastructure across all sites on which their workers are engaged creates a defensible record of systematic hazard management — evidence that is directly relevant to both the reasonably practicable standard and to any investigation of a specific incident.

## 6. Conclusion

The obligations on principal contractors under the WHS Act 2011 are among the most demanding in Australian commercial law. They extend to workers the PC does not employ, in conditions the PC does not directly control, on sites where the reporting infrastructure is frequently inadequate to capture the incidents that the PC has a legal obligation to know about.

The documentation gap — the systematic failure to capture contemporaneous records of hazards, near-misses, and incidents — is not a technology problem. It is a structural problem created by reporting systems that were designed for a workforce model that no longer reflects how construction sites operate.

QR-based incident reporting addresses this structural gap directly. Any worker on site can report in under 60 seconds, without an account, without training, and without dependency on a supervisor who may be unavailable or incentivised to suppress the report. The record created is timestamped, tamper-evident, and retrievable for the full duration of the limitation period.

In 2025, the question for any principal contractor is not whether they can afford to implement modern reporting infrastructure. It is whether they can afford not to.

## References & Legislation

- Work Health and Safety Act 2011 (Cth), ss.17–20, 38–39
- Work Health and Safety Regulation 2017 (Cth), Part 6.4 — Construction Work
- Safe Work Australia, 'Managing the Work Environment and Facilities Code of Practice' (2022)
- Safe Work Australia, 'How to Manage Work Health and Safety Risks Code of Practice' (2022)
- Safe Work Australia, 'Work-Related Traumatic Injury Fatalities Australia 2022' — Construction Sector Analysis

- Comcare, 'Incident Notification — Guide for Employers and Workers' (2023)
- State Insurance Regulatory Authority (SIRA) NSW, 'Workers Compensation Claims Data 2022-23'
- WorkSafe Victoria, 'Construction Industry Improvement Plan 2022–2025'

### About GuardSync AI

GuardSync AI is a real-time incident reporting platform for high-traffic venues and construction sites. Any worker on site can scan a QR code and submit an incident or near-miss report in under 60 seconds — no app, no login, no training required. Every report is timestamped, automatically routed to the nominated site manager, and stored permanently as a retrievable audit record.

GuardSync deploys on construction sites in 48 hours with no hardware installation. For more information or to book a demonstration, visit [guardsync.ai](https://guardsync.ai) or contact the GuardSync team directly.

This briefing is prepared for general informational purposes and does not constitute legal advice. Specific obligations vary by jurisdiction and should be confirmed with a qualified WHS legal practitioner.