



## Changes to Earthmoving Licences – 1st January 2012

For the first time and in response to industry calls for greater national consistency, the Commonwealth, States and Territories have all agreed to implement nationally harmonised WHS Legislation to commence from 1st January 2012.

Therefore, as of 1st January 2012, all of the earthmoving occupations **will not** require a licence to operate. This equipment includes backhoes, front end loaders, excavators, rollers, skid steer loaders, dozers, graders and scrapers.

Previously only 3 jurisdictions - New South Wales, the ACT and Queensland had licencing requirements for this type of equipment, therefore this change will bring all the States into alignment. It is felt at a National level that the safety of workers will not be compromised by the proposed cessation of this licencing regime.

In the old system, if someone already held a licence, it was just assumed that they were competent - checks on competency were rarely made.

Under this new system **all** the responsibility lies with the PCBU (employer) and their duty of care. Employers are going to have to put checks and training in place to make sure their employees are competent at all times.

Putting someone on a machine without verifying that they are competent could be dangerous and cost you your livelihood. It is potentially similar to letting someone drive your car with no licence or insurance.

Whilst it might feel that there is a lot of change, realistically there is not, it has simply been de-regulated. With all the courses that have been run over the last 10 years, WHSQ have never seen any of the trainees operate; the RTO has always undertaken the training and assessment against a unit of competency and issued the Statement of Attainment to say that a person is competent for that particular machine.

In the past, after competency was achieved, the paperwork was sent off to WHSQ (the regulators) for the issuance of a licence. This is the part that has changed. There will still be training and assessment against a unit of competency but the paperwork will not be sent off to WHSQ for a licence, as this is no longer a legal requirement.

The Statement of Attainment continues to be proof of competency as it always was. The only difference is that operators are going to end up with a RTO issued card as opposed to one issued by a regulator.

From 1st January 2012, Employers will still have an obligation to ensure that their workers are competent to use plant that no longer requires a licence to operate.

Section 19(3)(f) of the Workplace Health and Safety Act 2011 states the PCBU (person conducting a business or undertaking) must ensure as far as reasonably practicable

***“the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking;”***



The bottom line is that an employer would need to show that they met their duty of care obligations by doing everything “reasonably practicable” and proving that they had exercised “due diligence” to make sure the operator was properly trained, and had the right skills and knowledge to be performing that task at the time the incident occurred.

He/she/they have to be aware that they may have to stand up in court if necessary and defend the decisions and actions that they made.

What we do know from experience is that “Competency” is both theoretical and practical and **detailed records must be kept for future compliance** (i.e. someone has an accident, first thing investigators, lawyers, courts etc are going to ask for is the training records).

Below is a table to show the penalties for failure to meet the obligations.

Type of Offence	Maximum Penalty Points	Corporation	Individual as PCBU (employer) or officer	Individual as worker or other
<b>Category 1</b> A duty holder engages in conduct that recklessly exposes a person to a risk of death or serious injury or illness. This offence is a crime and will be prosecuted in the District Court.	6000	\$ 3 million	\$600,000 five years jail or both	\$300,00 five years jail or both
<b>Category 2</b> A duty holder fails to comply with a health and safety duty that exposes a person to risk of death or serious injury or illness.	3000	\$1.5 million	\$300,000	\$150,000
<b>Category 3</b> A duty holder fails to comply with a health and safety duty. Proceedings for Category 2 and 3 offences will be taken summarily in the Magistrates Court.	1000	\$500,000	\$100,000	\$50,000

### **So how does an employer prove competency for an employee?**

The best way to ensure compliance is to use a Registered Training Organisation, who are used to writing training plans, logbooks, know what needs to be covered and have the necessary training and assessment qualifications to do this for you. This takes the stress out of it so you can concentrate on your own core business. Put in context it can be likened to ‘employing a professional to fix the brakes on your car or doing it yourself’.

If Employers are going to undertake their own training, they would need to give consideration to a systematic approach that covered all aspects of the underpinning knowledge together with the actual operation of the machinery, all of which should be documented.

If you do decide to change things in relation to training your employees, one thing I would advise is to check with your insurance company first as to what is acceptable.