

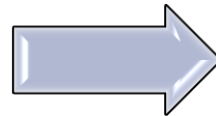
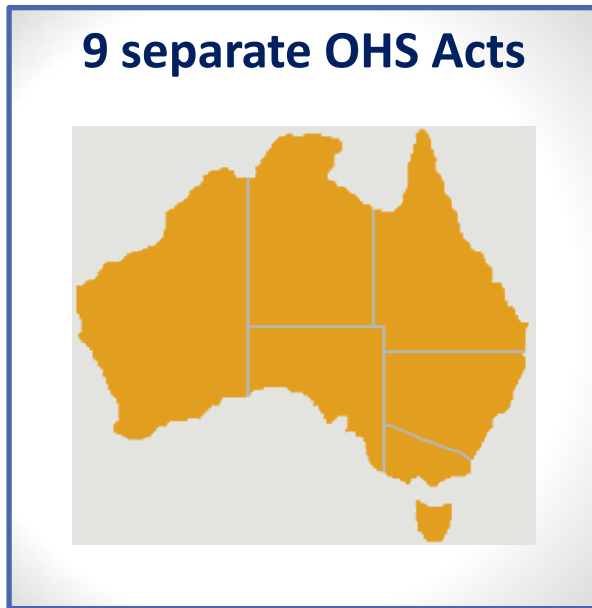
NSW Work Health & Safety Legislation



Module: Overview

Why Change?

The Federal Government is committed to developing a 'seamless economy'



OHS
identified as
regulatory
'hot spot'...



Regulatory burden,
costs for business &
wider economy
estimated at \$16B



Therefore...
OHS and industrial
relations the first
areas of major
reform



Objectives of Harmonisation

The objects of harmonising work health & safety laws through a model framework are:



- to protect the health and safety of workers



- to improve safety outcomes in workplaces

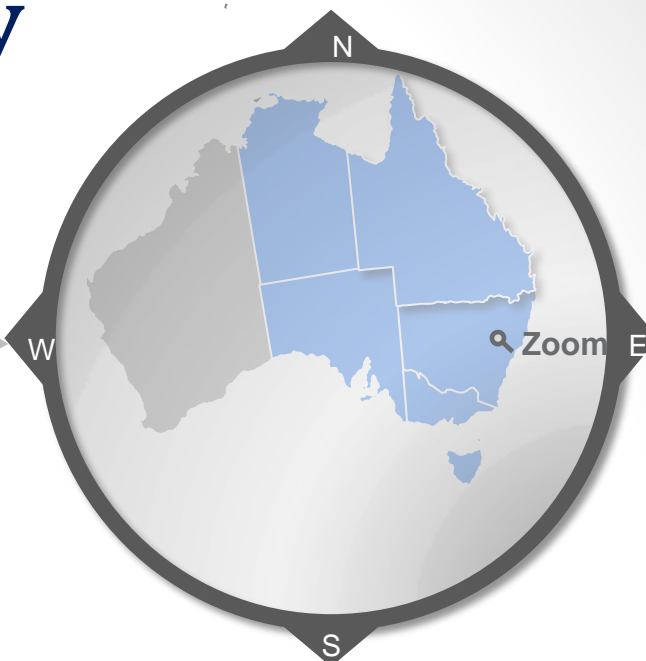


- to reduce compliance costs for business



- to improve efficiency for regulator agencies

Achieving Consistency



HARMONISED WORK HEALTH & SAFETY LAWS

The adoption and implementation of model OHS legislation requires each jurisdiction to enact . . . their own laws that mirror the model laws as far as possible having regard to the drafting protocols in each jurisdiction.”

(Clause 5.1.7)

While many features of the NSW OHS Act 2000 remain the same, there are some significant differences



The Path to Harmonisation



Development and agreement on Model WHS Legislation and priority Model Codes of Practice

Mirroring of Model Legislation by States and Territories

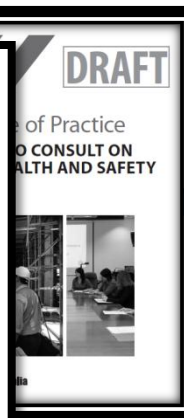
Commencement of harmonised Legislation across Australia



Model Work Health and Safety Bill

Contents

	Page
Part 1 Preliminary	1
Division 1 Introduction	1
1 Citation	1
2 Commencement	1
Division 2 Object	1
3 Object	1
Division 3 Interpretation	3
Subdivision 1 Definitions	3
4 Definitions	3
Subdivision 2 Other important terms	8
5 Meaning of person conducting a business or undertaking	8
6 Meaning of supply	9
7 Meaning of worker	10
8 Meaning of workplace	11
9 Examples and notes	11
Division 4 Application of Act	12
10 Act binds the Crown	12
11 Extraterritorial application	12
12 Scope	12



WHS Act



Terms of Reference for Review



Identify best practice, common practice, inconsistency

Consider relevant work already

Account for changing nature of work & employment arrangements

Consult broadly with stakeholders

Recommend optimal structure & content of Model legislation

The Result:

A Nationally Uniform WHS Legislative Framework



Nationally consistent Compliance & Enforcement Policy

Model Work Health & Safety Codes of Practice

Jurisdictional Work Health & Safety Regulation

Jurisdictional Work Health & Safety Act

Model Work Health & Safety Act & Regulation



The benefits of harmonised WHS laws?

The expected benefits of similar work health & safety laws in each jurisdiction are:



A consistent level of safety for all workers in Australia with maintenance of our existing standards



Reduced compliance and regulatory burdens for businesses operating across state and territory boundaries



Easier to do business – no matter where you do business or work in Australia the same laws will apply



A larger resource of health and safety information, which will help deliver clear and consistent information to all Australians



What will be different

The new laws introduce a number of significant changes:



A focus on cause and effect giving prominence to the duties of care, consultation and representation



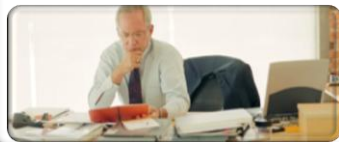
Moving away from the employment relationship as the basis of obligations to ensure all who are involved in work being done will have a duty of care – no loop-holes or gaps



Enhanced protection against discrimination, coercion, inducement and misrepresentation that prevent a person from being involved WHS



Broadened rights for representation and rights of representatives including preserving union right of entry to workplaces



Provision for graduated enforcement, with alternative options for improvement in health and safety



Significant increases in the maximum fines and the introduction of categories of offence

What is new for NSW under WHS Act?



SUMMARY

An employer	Is captured under the definition PCBU ‘ person conducting a business or undertaking ’
Controllers, self employed etc.	Are also a PCBU with general duties of care
General duties of Employers	Will be subject to qualifier ‘ reasonably practicable ’ and will apply to all PCBUs and extend to all who are involved in the conduct of work
Employees	Are captured under the definition of worker which is broadly define to include anyone who carries out work in any capacity, including volunteers

What is new for NSW under WHS Act?



SUMMARY

Duty of workers	Workers have an expressed duty to take reasonable care of themselves at work
Duty of others	Others are required to take reasonable care when at a place of work
Duty on Officers	Will change from having an attributed liability to a positive duty of “due diligence” to ensure PCBU complies with duties
Due diligence	Is specifically defined and includes knowledge of WHS and business risks , allocation of resources, WHS reporting, compliance and verification processes
Consultation	Broadened to include all workers affected and other PCBUs with shared responsibilities

What is new for NSW under WHS Act?

SUMMARY

OHS Representatives

Replaced by **health & safety representatives** (HSR) with increased functions and powers

HSR powers

After completing approved training HSRs will be able to **issue PINs** and **direct unsafe work to cease**

Management of Risk

Risk assessments are not mandated in the Act but are mandated in the Regulation for certain high risk work

Union officials

Can apply for **WHS entry permit** to enter a workplace to advise on WHS or when a breach is suspected



What is new for NSW under WHS Act?



SUMMARY

Protection against discrimination	Enhanced to protect workers and those in commercial arrangements from coercion, inducements or misrepresentation
Onus of Proof	Reverse onus removed with the prosecution having to prove a breach was committed
Penalty Options	Graduated enforcement options to include injunctions, remedial action and enforceable undertakings
Penalties	Maximum penalty for a corporation of \$3 million and for an individual \$300,000 & up to 5 years imprisonment for the most serious breaches