

INTRODUCTION TO THE WORK HEALTH AND SAFETY ACT

IMPLICATIONS FOR SMALL BUSINESS



THE KEY CHANGES IN SUMMARY



- The concept of the **employer** with responsibility for WHS has been broadened by using the term **person conducting a business or undertaking (PCBU)**
- The concept of the **worker** also has been broadened to someone who carries out work for a PCBU **in any capacity**
- Small business owners or employers will have to **consult more directly and widely** with both workers and other PCBUs on related work activities

THE KEY CHANGES IN SUMMARY



- Under the WHS Act the **prosecution will have to prove the case** thus abolishing the current reverse onus of proof situation
- Officers of a PCBU now have a duty to exercise **due diligence** to ensure compliance obligations are met



This icon indicates more information can be found in a specific training module on this topic

WHAT IS A PCBU?



- A PCBU is a person or duty holder such as a company or partnership that operates the business
- Examples of PCBUs would be **companies, franchisees, self employed, contractors and sub contractors**
- PCBUs are **not** persons employed **solely as workers**, or **volunteer associations** who do not employ anyone



WHO ARE PCBU_s RESPONSIBLE FOR?



PCBU_s are responsible for the health and safety of:

- **Workers** - but more than just employees. The new Act does not rely on the **employment relationship**
- Workers could be **direct employees, labour hire workers, employees of contractors, apprentices or a student on work experience**
- Others who could be affected by the business's activities such as **visitors, customers or members of the public**



WHO OWES DUTIES TO YOU?



Workers and Others

- Must take **reasonable care** of own health & safety
- Must take **reasonable care** that conduct does not adversely affect others
- Must comply, so far as he/she is **reasonably** able, with instructions

In addition **workers** must cooperate with **reasonable** notified policies and procedures

Other PCBUs need to ensure their operations do not create a risk for your workplace or workers



WHAT ARE PCBU_s RESPONSIBLE FOR?



Ensuring the health and safety of workers (and others) **so far as is reasonably practicable** including all the common general duties such as a safe work environment, safe plant, adequate facilities, information, instruction and training and more specific responsibilities such as:

- **Consultation** with workers and other PCBU_s
- **Resolving** WHS issues
- Ensuring the **health and safety of others**
- Complying with **specific regulations** that apply to the business
- **Notifying incidents**



WHAT IS MEANT BY REASONABLY PRACTICABLE?



Reasonably practicable represents what can reasonably be done in the circumstances. It takes into account :

- The **likelihood** of the hazard or risk occurring
- The **degree of harm** or possible consequences
- The **state of knowledge** about the risk and the availability and suitability of ways of eliminating or minimising it
- Finally, only after consideration of the above points, reasonably practicable takes into account the **cost** of eliminating hazards or risks



RESPONSIBILITIES: CONSULTATION



You have to consult with all **workers** who carry out work or who may be directly affected by a WHS matter

- in accordance with the Act
- on **certain matters**
- with **HSR** – if workers represented by that HSR

And also **consult, cooperate & coordinate** activities with **other duty holders who share WHS responsibilities**



RESPONSIBILITIES: CONSULTATION



You have to consult **when:**

- **identifying** hazards, **assessing** risks and making **decisions about** how to **eliminate or minimise** risks
- **making decisions** about facilities for welfare of workers
- **proposing changes** that affect WHS of workers
- **making decisions** about the procedures for resolving WHS and other issues and monitoring of the work environment



RESPONSIBILITIES: ISSUE RESOLUTION



If you have made **reasonable efforts** to resolve an WHS issue but there is still no agreement you must:

- **Follow an agreed procedure** if there is one in place
- If no agreed procedure then follow the process set out in **regulations**
- Set out the agreed procedure in **writing and communicate** it to all workers
- You may call in **an inspector** to assist if issue cannot be resolved



RESPONSIBILITIES: INCIDENT NOTIFICATION



If you have a **notifiable incident** in your workplace you **must**:

- Notify WorkCover immediately after becoming aware of it (by phone or in writing- quickest means possible)
- Take reasonable steps to ensure that the incident **site is preserved** until an inspector arrives or until such earlier time as directed by an inspector.
- Keep a record of notifiable incidents for **5 years**



RESPONSIBILITIES: SAFETY OF OTHERS



You must also take into account the safety of **others** who may be **affected** by your business operations such as visitors, customers and members of the public

- More specific public safety responsibilities apply if you use or store **dangerous goods** or use **high risk plant regardless** of whether this takes place at your place of work
- **Workers** and even “**others**” also have similar duties not to put you or anyone else at risk





RESPONSIBILITIES: COMPLYING WITH REGULATIONS

- The new Act will be supported by **specific regulations covering similar hazards** (e.g. manual handling, noise, chemicals) to the current NSW regulations
- Employers will need to **comply** with these regulations
- The regulations in many cases use the term so far as is **reasonably practicable** to guide the use of prevention measures
- The regulations include many of the administrative aspects of **licences and permits**



RESPONSIBILITIES: OFFICER DUTIES



- The WHS Act states that if a PCBU has a duty or obligation under the Act, an **officer** of the PCBU must exercise **due diligence** to ensure that the PCBU complies with the duty or obligation
- An officer is primarily defined by the **Corporations Act**
- This is a **positive duty** imposed on officers to ensure the organisation is complying



RESPONSIBILITIES: OFFICER DUTIES



To exercise **due diligence** an officer must take **reasonable** steps to:

- Acquire **health and safety knowledge** relevant to the business and keep up to date
- **Understand** the health and safety risks in the business
- Provide **resources** to identify and control risks
- Receive and consider **information about hazards, risks and incidents**
- Ensure the PCBU has process to **comply** with the WHS Act
- **Verify** the provision and use of the above resources and processes





PREPARATION FOR CHANGES

- **Think** about the WHS issues you will need to **coordinate** with **other PCBUs** such as contractors and how to manage them
- Ensure you have **arrangements** to enable you to **consult** with workers and other PCBUs
- If you have no existing way of resolving issues establish a **simple process**
- Make sure you take into account the **public safety** aspect of **others** who might be put at risk by your operations



PREPARATION FOR CHANGES

- Make sure you are able to able to **show due diligence** for WHS in your organisation
- **Check** your current incident reporting system to make sure it will apply to the new Act
- **Check** any specific compliance requirements in the new regulations

