

INTRODUCTION TO THE WORK HEALTH AND SAFETY ACT

IMPLICATIONS FOR SENIOR MANAGERS/CEOS



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**
- PCBUs 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 PCBU's now have a duty to exercise **due diligence** to ensure compliance obligations are met

THE KEY CHANGES IN SUMMARY



- Elected Health and Safety Representatives (HSR) can issue **Provisional Improvement Notices** under certain conditions
- Unions can apply for a **WHS entry permit** that allows them to enter workplaces to inquire about suspected breaches and consult with workers

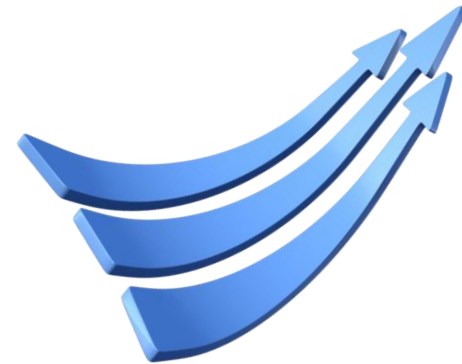


THE KEY CHANGES IN SUMMARY



Penalties for breach of WHS duties divided into 3 categories:

1. **reckless conduct**
2. failure to comply where **person exposed to risk of death or serious injury**
3. **failure to comply with a duty**



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 association** who do not employ anyone



WHO IS A WORKER?



A worker is a person who carries out work in any capacity for a PCBU, including work as:

- an employee
- a contractor or subcontractor
- an employee of a contractor or subcontractor
- an employee of a labour hire company assigned to work in the business or undertaking
- an outworker
- an apprentice or trainee
- a student on work experience
- a volunteer



WHO ARE PCBUs RESPONSIBLE FOR?



PCBUs 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**



WHAT WILL PCBU_s BE RESPONSIBLE FOR?



The health and safety of workers (and others) **so far as is reasonably practicable** including all the common general duties 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



WHO ELSE OWES DUTIES ?



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



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 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: 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 of 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 work **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
- Ensure the PCBU has processes to 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



CEOs and OFFICER DUTIES



The key decision makers such as **CEOs** and **Directors** will need to **demonstrate due diligence** by practices such as:

- Ensuring WHS practices and systems are **effective**
- **Acting** on unsafe practices/ workplaces/incidents
- Regular **reporting** on safety performance
- Ensuring suitable WHS **expertise** is retained



UNION WHS ENTRY PERMITS



Permit holders who have reason to enter the workplace can:

- **inspect** any thing relevant to the suspected contravention
- **consult** with relevant workers or the relevant PCBU about the suspected contravention
- inspect and **make copies** of any document that is directly relevant to the suspected contravention
- **warn** any person of a serious risk to his or health or safety



POWERS OF ELECTED HSRS



**Can only
act if**

- Completed **initial training**
- **Consulted** with the person to whom the notice is issued

**Then only
if**

- the representative reasonably believes that a person is **contravening** a provision of the Act, has contravened a provision of the Act in circumstances that make it likely that the contravention will continue or be repeated

And

- Must be in **writing** and may recommend measures to remedy issue
- PCBU can seek **review** within 7 days. Inspector may cancel, confirm or confirm with modification.

NO REVERSE ONUS OF PROOF



The burden of proof (beyond reasonable doubt) **rests entirely upon the prosecution** in matters relating to non-compliance with duties imposed by the Act

Except for civil proceeding related to discriminatory conduct and WHS entry permit holders



PENALTY STRUCTURE

Category 1 Reckless Conduct

- Corporations: \$3m
- Individuals as a PCBU or Officers of a PCBU: \$600k / 5 years jail
- Other Individuals : \$300k / 5 years jail



Category 2 Breach High Risk

- Corporations: \$1.5m
- Individuals as a PCBU or Officers of a PCBU: \$300k
- Other Individuals : \$150k



Category 3 Duty Breach

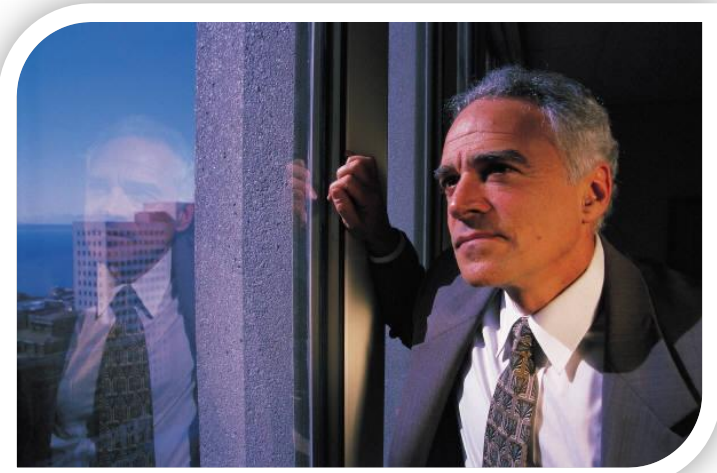
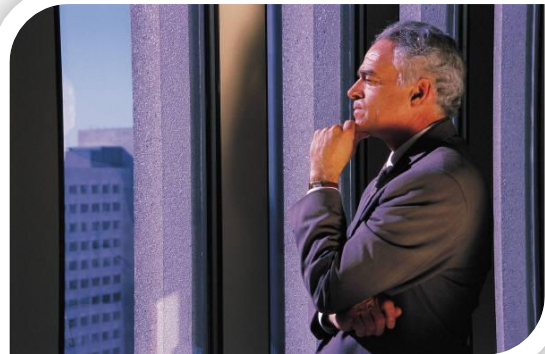
- Corporations: \$500k
- Individuals as a PCBU or Officers of a PCBU: \$100k
- Other Individuals : \$50k



PREPARATION FOR CHANGES



- Ensure you have **arrangements** to enable you to **consult** with workers and other PCBUs
- **Think** about the WHS issues you will need to **coordinate** with **other PCBUs**
- **Consider** any current OHS rep and Committee arrangements in light of new provisions



PREPARATION FOR CHANGES



- Make sure you are able to able to **show due diligence** for WHS by reviewing the governance standards in your organisation
- Make sure you take into account the **public safety** aspect of **others** in managing WHS
- **Check** any specific compliance requirements in the new regulations

