

NSW Work Health & Safety Act



Module:
PCBUs, the Primary Duty of Care & Other Duties



Person Conducting a Business or Undertaking

The WHS Act applies the primary duty of care on **any person who conducts a business or undertaking**

WHY?

- They influence one or more elements that go to the performance of work and
- They may affect the health and safety of those doing the work or those affected by the work



What is a business or undertaking?

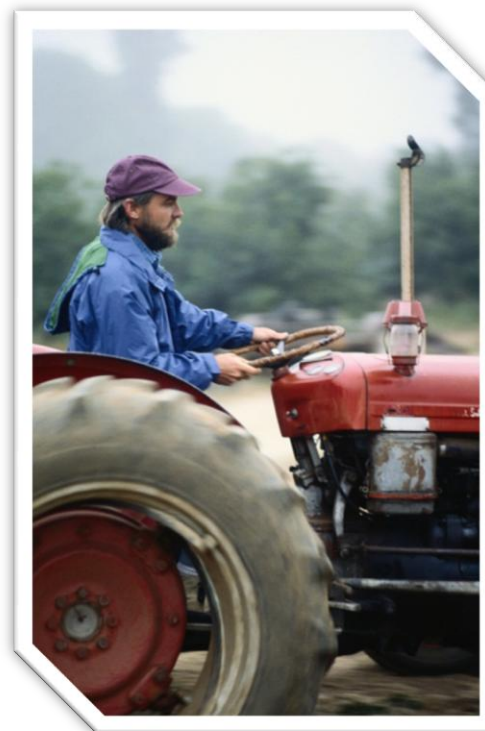


Activities carried out by, or under the control of, a person

- a) Whether alone or with others
- b) Whether or not for profit or gain

Including activities conducted by:

- a) A corporation, partnership,
- b) Unincorporated association
- c) Self employed person
- d) Government agency





Who will be a PCBU

The primary duty is owed by the **operator** of the business or undertaking; **Examples are:**

PCBU

- Employers, Self employed, Partner, Franchisees , Franchisor

PCBU

- Principal Contractors, Sub-Contractors

PCBU

- Businesses who design, manufacture, import, supply plant, substances and structures used at work

PCBU

- Businesses who control workplaces, fixtures , fittings, plant at workplaces

Some of these duty holders will also have specified “further duties”



Who will NOT be a PCBU

- a) A person engaged solely as a **worker or officer** of PCBU
- b) **A volunteer association** – provided no person is **employed** to carry out work for the organisation
- c) **A charitable, social or sporting organisation** – when carrying out **purely social activities**; but will be if activities are of a commercial nature
- d) **Persons who engage workers** solely for **private or domestic purposes** *on an ad hoc basis*
- e) **An elected member of a local authority**



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





What WHS Act says PCBUs must do:

Primary duty of Care:

A PCBU MUST so far as is reasonably practicable, ensure the health & safety of:



Workers engaged, or caused to be engaged by the PCBU



Workers whose activities are influenced or directed by the PCBU



Other persons who could be put at risk from work carried out by PCBU



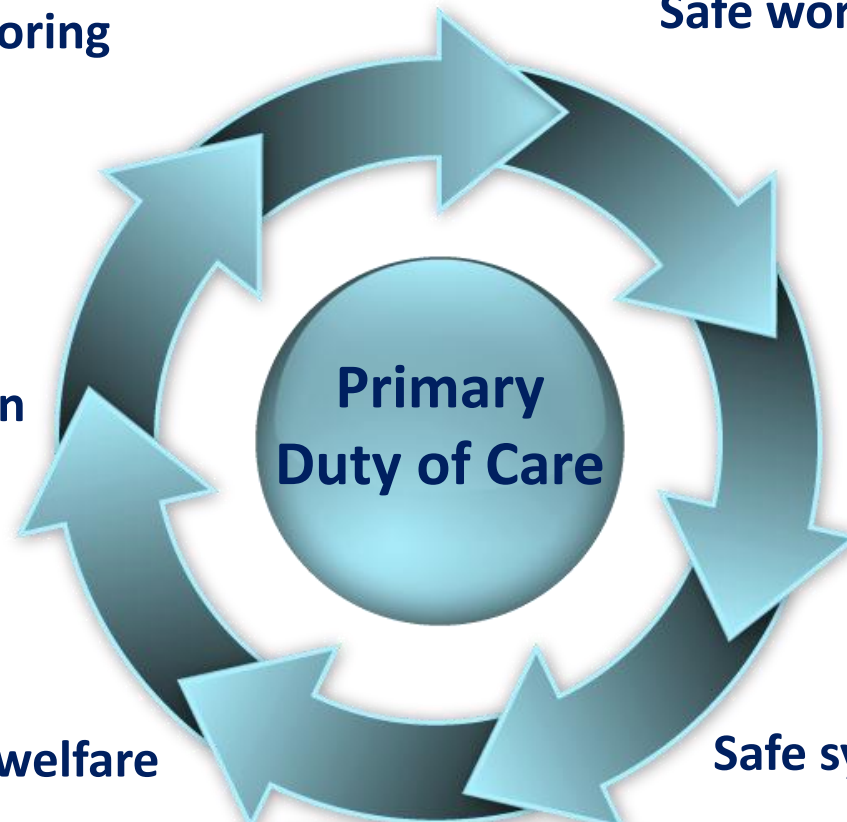
Specific obligations:

Workplace monitoring

Safe work environment

Information, training,
instruction, supervision

Safe plant &
structures



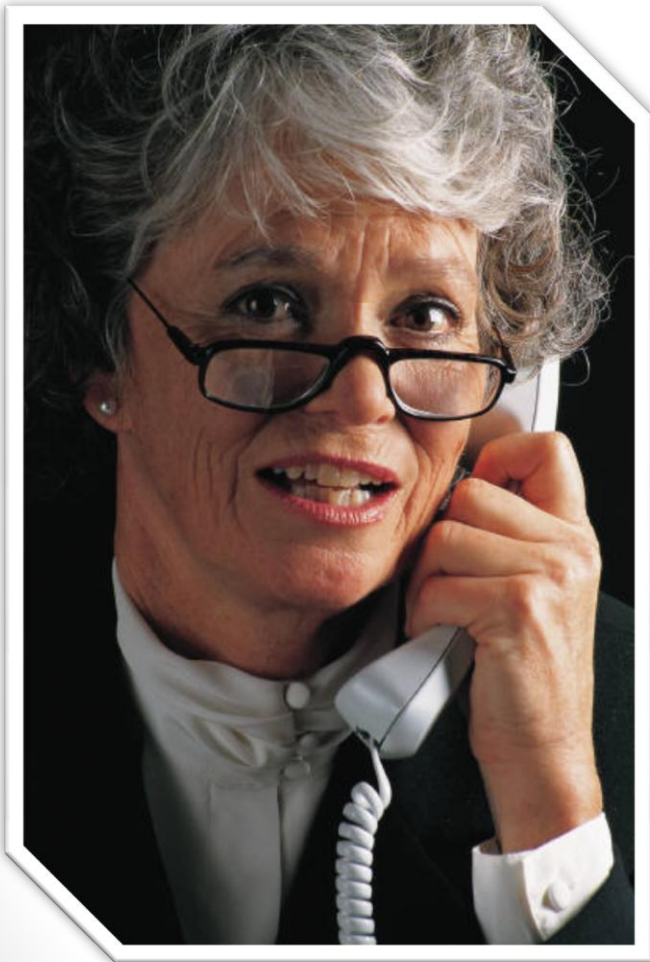
Facilities for workers' welfare

Safe systems of work

Safe use, handling & storage of plant,
structures & substances



Other PCBU Duties



PRIMARY DUTY OF CARE PLUS

1. Consultation

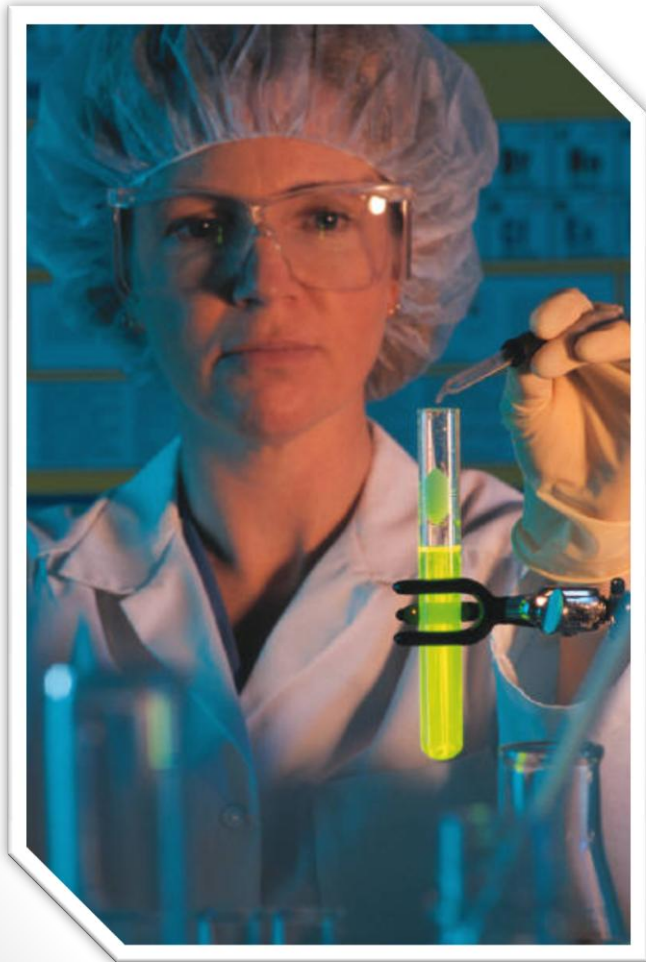
2. Issue Resolution

3. Incident Notification

4 Complying with Regulations



PCBU will have additional duties



IF IT:

Manages or controls a workplace

Controls the fixtures, fitting or plant at a workplace

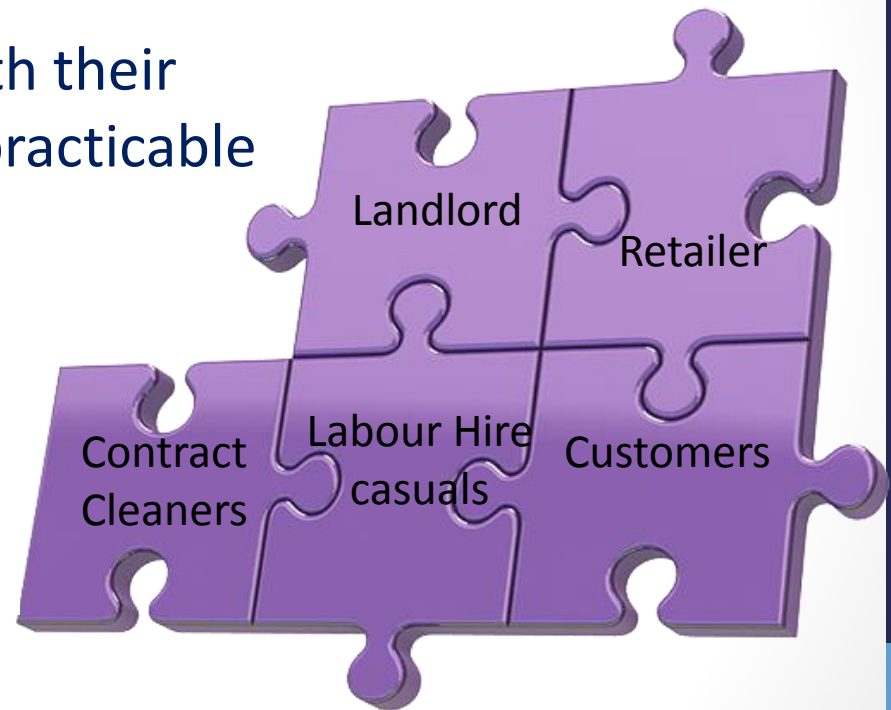
Designs, Manufactures, Imports, Supplies, Installs plant, substances, structures, dangerous goods for use at work



Multiple PCBUs in respect of same activities:

Several PCBUs may owe a duty of care to the same people concurrently :

- **Each PCBU MUST comply** with their duty, so far as is reasonably practicable
- **Each PCBU must discharge their duty** to the extent that they can influence or control the matter



All duties are concurrent and non-transferable



What are the major differences in the WHS Act?

Major difference is the application of the Primary Duty of Care

NOW the primary duty of care does NOT rely on the employment relationship

NOW the primary duty of care is OWED BY a PCBU. It is OWED TO workers carrying out work for PCBU

NOW the primary duty of care is also owed by the PCBU to OTHER people affected by the work



What are the major differences in the WHS Act?

Major difference is the application of the Primary Duty of Care

NOW the specific duties that the PCBU has are more explicit and include the duty to monitor workplace

NOW there is a greater chance that PCBUs will share duties for the same activities

NOW the duty of care is qualified by the standard of what is reasonably practicable.



What is the likely impact of these changes?



If you have existing arrangements for managing contractors and visitors the extension of the primary duty to workers and others may not be significant



If you don't have existing arrangements for managing contractors and visitors - you need to identify:

- what workers you have duties to
- what others you may owe the duty to
- what you need to do to extend a duty of care to them

The Goal



Improved safety outcomes because of better communication between PCBUs and more effective risk management, as a result of:

- Everyone who conducts a business or undertaking having a primary duty of care to anyone who can be affected by their operations
- Increased shared responsibility between PCBUs for the same activity
- The requirement to consult, cooperate and coordinate with other PCBUs