Work Health Safety
Harmonisation
Update
Background to new laws

- Prior to 2012 all states, territories and the Commonwealth were responsible for making and enforcing their own health and safety laws. This resulted in inconsistencies which could cause confusion, lead to inequitable safety standards, and cause duplication and inefficiencies.

- A call for greater consistency in work health and safety regulations began in the mid 1980s and in 2008, at the Workplace Relations Ministers’ Council (WRMC) it was agreed that model legislation was the most effective way to achieve harmonisation of work health and safety laws.
Background to new laws

- A National OHS Review was carried out by independent experts who consulted regulators, unions, employer organisations, legal professionals, industry representatives, academics and health and safety professionals.

- Safe Work Australia (the Federal Work Health & Safety Authority) developed ‘model’ legislation and regulation.

- Model legislation came into force on 1 January 2012.

- The Commonwealth, states and territories are still responsible for enacting their own legislation but it must be based on the ‘model’.

For more information Right Click and Open Hyperlink
The new legislation aims to:

- Have **Uniform Laws** which reflect equitable and effective safety standards and protections for all Australian workers.
- Provide a **consistent level of safety** wherever you work. It will address current compliance and regulatory burdens for employers with operations in more than one jurisdiction (e.g. state, territory)
- Create efficiencies for governments in the provision of OHS regulatory and support services. There will be a larger resource of consistent WHS information available nationally
- Achieve significant and continual reductions in the incidence of death, injury and disease in the workplace
What hasn’t changed?

- There is still a requirement that workplaces should be safe places in which to work, volunteer or visit.
- The Duty of Care principle still applies and consultation is still a key element of good risk management practice.
- There is still a Hierarchy of Controls,Codes of Practice, and there are still penalties for non compliance.

The basic principles of safety remain. Organisations still have obligations to control risk and to keep workers and others safe from harm.

The new legislation reflects current work practices and requires that everyone be responsible for workplace safety.
Some things that you will need to know
There are some new names

**Employer = PCBU***

*Person Conducting a Business or Undertaking.*

- This includes corporations, associations, partnerships, franchises, sole traders or other self-employed people, labour hire business.

- The PCBU replaces “employer” as the person who has the primary Duty of Care for health and safety

*For more information on PCBU right click here and open hyperlink*

**Employee = Worker**

- This includes employees, labour hire staff, volunteers, apprentices, subcontractors and contractors.

- Everyone carrying out work in a business is considered a worker.

**Officers**

- Officers are people who make or participate in making decisions that affect the whole or a substantial part of the business or undertaking.

- If the PCBU has a duty under the Act, officers of that PCBU must exercise “DUE DILLIGENCE” to ensure that the PCBU complies with that duty.
What does “Due Diligence” mean?

Understand the nature of operations, risks and hazards

Have an up to date knowledge of health and safety matters and compliance requirements

Ensure verification of the provision and use of the resources and processes implemented for the purposes of audit and review

Ensure proper process for receiving information and a timely response to incidents and issues

Ensure appropriate resources and process to identify, eliminate and control risk (including consultation)
Duties of the PCBU

As far as “reasonably practical”, PCBU’s are required to ensure the health and safety of workers. This duty extends to other people who may be at risk from the work or activity like customers, clients and visitors.

If it is not “reasonably practicable” to eliminate risks then the duty is to, as far as “reasonably practicable”, is to minimise those risks.
What does “reasonably practicable” mean?

- It is a new qualifying term requiring that PCBU’s weigh up all relevant issues when resolving issues of risk like:-

  - The **likelihood** of the risk occurring
  - The **seriousness** of the risk
  - **Availability and suitability** of ways to eliminate or minimise risk
  - What you know or should know about the hazard or risk and ways of eliminating or minimising it

- After assessing these matters the PCBU may also take into account the **cost** of eliminating or minimising the risk and if it is grossly disproportionate, that can be taken into account too.

  *For more information on reasonably practicable right click here and open hyperlink*
Duties of Workers and Others

- To take reasonable **CARE** for their own and others’ safety. Reasonable care is seen as being something a ‘reasonably prudent person’ would do under like circumstances.
- To **COMPLY** with any reasonable instruction “so far as reasonably able”
- To **COOPERATE** with the PCBU’s reasonable Work Health Safety policy or procedures and instructions

*Note: Previous legislations required employers to look after the health and safety of ‘others’ but ‘others’ (e.g. clients, customers and visitors) had no such responsibility themselves.*

**Now they do!!**
Health and Safety Representatives (HSR)

Workers can request a HSR to:
- Represent work groups in relation to health and safety matters
- Investigate complaints
- Inquire about anything that appears to be a risk to the health and safety of workgroups

HSR’s can:
- In some circumstances, direct unsafe work to cease.
- Issue Provisional Improvement Notices (PIN’s)
- Inspect the workplace (with notice or after an incident) and accompany inspectors during inspections
- Require that a Health and Safety Committee be established

HSR’s have a 3 year term, can be re-elected, are entitled to training and are broadly protected under the Act so that they are not held personally liable for things done in good faith

Work Groups

Health and Safety Representatives can be elected to represent work groups.

Work Groups comprise workers who carry out work for the PCBU. To elect a HSR, work groups need to be determined.

A work group is generally determined by negotiation and agreement between the PCBU and the workers who will form the work group or their representatives.

Work Groups may cover one or more workplaces
Hierarchy of Controls

- The Hierarchy of controls is still the accepted way to control risk.
- Where it is not *reasonably practicable* for the risk to be eliminated, the PCBU must minimise risks so far as is *reasonably practicable* by using the revised step approach in the hierarchy:
  
  - Eliminate
  - Substitute, isolate or introduce engineering controls
  - Administrative controls
  - Personal protective equipment PPE

- A combination of these control measures may be used if a single control is insufficient in minimising the risk
Consultation is still important!

It’s still important to share information and provide opportunities to respond and contribute to health and safety issues.

- PCBU’s are required to consult with workers when undertaking risk management activities, making decisions about WHS procedures or proposing changes that will affect workers.
- The level of consultation should be proportionate to the circumstances, including the significance of the work health or safety issue.
- All relevant factors must be considered in determining the scope of the duty in a particular case, the seriousness of the matter, the number of affected workers and how the matter affects individual workers.
- There is a duty to consult with other duty holders when the duty of care overlaps (as far as reasonably practicable).
Consultation is still important!

HSR’s

- PCBU’s can consult with Health and Safety Representatives

Committees

- The role of committees has changed to a more general role for example to support the HSR or to develop health and safety policies or procedures
- Committees are no longer compulsory but must be established if requested by at least 5 workers or the HSR. There is no fixed term and they can be formed on a temporary basis. At least ½ the members must be workers and no training is required.

Other informal arrangements

- Consultation can occur informally Egg team meetings, toolbox talks etc
Prosecution and Penalties

- In prosecution cases the person now is presumed ‘innocent’ of an offence with the burden of proof resting on the prosecution. This is a big change.

- From 1/1/12 all categories of offences under the WHS Act will be heard in either local Magistrate’s courts, District courts or the Supreme court. The setting is now in a full criminal mainstream judicial environment

- The penalties are greatly increased and a criminal record results if convicted
Codes of Practice still play a key role under the WHS legislation in providing guidance to assist duty holders to eliminate or control risks. While a duty holder is not required to comply with codes of practice, they may be used in court proceedings as evidence of what is known about particular risks and what is considered reasonably practicable to control them.

**Priority Codes of Practice include:**

- How to manage work health and safety risks
- Work health and safety consultation, coordination and cooperation
- Managing the work environment and facilities
- Managing noise and preventing hearing loss at work
- Hazardous manual tasks
- Confined spaces
- How to prevent falls at workplaces
- Labelling of workplace hazardous
- Preparation of safety data sheets for hazardous chemicals
- How to manage and control asbestos in the workplace
- How to safely remove asbestos.
Be ready!

Companies need to be ready for the new law. They should:

- Inform workers of law changes
- Accept heavier burden of duties on PCBU and Officers
- Determining who is an Officer within the organisation
- Undertake necessary training for managers and workers, particularly supervisory staff and elected HSR’s
- Be prepared to spend more time in consultation. Review methods of consulting particularly other PCBU’s and *Upstream parties* such as designers, manufacturers, importers, suppliers and installers
- Develop new documentation to reflect the WHS Act requirements and amend existing policies & procedures
- Reconsider how risk identification, assessments and control is carried out
- Review self auditing standards to ensure compliance
Want to know more?

Right Click here and Open Hyperlink