

The pathway to harmonising work health and safety laws

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The Intergovernmental Agreement

- Establishment of a new independent national agency (**Safe Work Australia**) to drive reform of OHS and workers' compensation
- National Review into model OHS Laws
- Development and maintenance of model legislation, including compliance and enforcement policies
- All parties to complete **implementation by end of 2011**



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What is model legislation?

- A model *Work Health and Safety* (WHS) Bill, supported by model Regulations and Codes of Practice
- Drafting undertaken by Parliamentary Counsels' Committee, based on instruction by Safe Work Australia
- Jurisdictions 'mirror' the model provisions – local variation only where necessary to conform to the local legislative environment
- Model WHS Bill endorsed by Ministers in December 2009
- Model WHS Regulations, 11 Codes of Practice and National Compliance and Enforcement Policy agreed-in-principle in August 2011
- Explanatory memorandum, interpretative guidelines
- Transitional arrangements

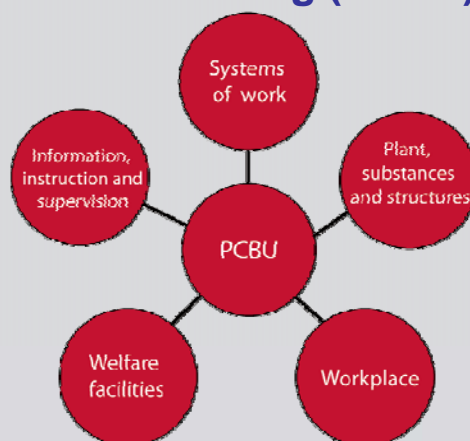
Key provisions of the model WHS Act

- Duties of care are not defined by the nature of employment relationship – captures new and evolving work arrangements
- Protects all types of 'workers'
- Positive duties for officers to exercise 'due diligence'
- Duty to consult with workers and other duty holders
- Protection against discrimination and coercion
- Unions have a right to enter workplaces
- Significant increase in penalties

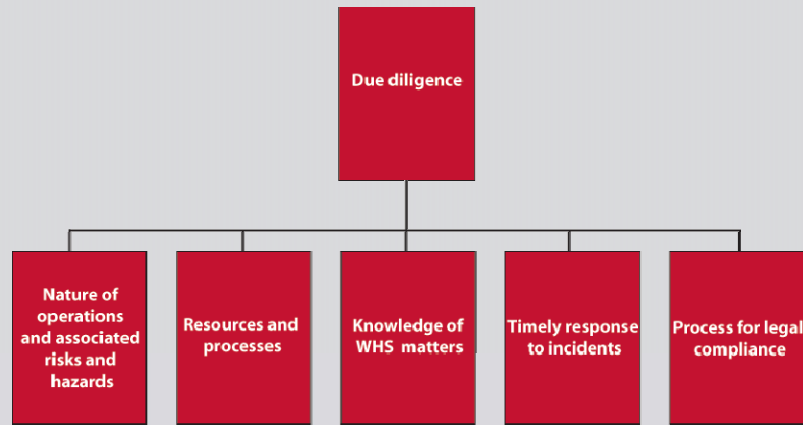
Duties of care

NATURE OF ACTIVITY	DUTIES ASSOCIATED WITH THE ACTIVITY	RELEVANT STANDARD
Operation of the business	Primary duty of care Persons conducting a business or specific classes of duty holders	Reasonably practicable
Organisational decision making and governance	Officers' duty of care	Due diligence
Work activities (including supervision)	Workers' duty of care	Reasonable care
Others e.g. visitors	Duty of care of others	Reasonable care

Duty of a person conducting a business or undertaking (PCBU)



Duty of officers



Duty of workers and others

- **Workers**
 - Must take *reasonable care* for themselves and others
 - Comply with any reasonable instruction
 - Co-operate with any reasonable policy or procedure
- **Other persons at the workplace**
 - Duty similar to workers

Who is a worker?

A person who carries out work for a person conducting a business or undertaking in any capacity, including as:

- Employee
- Contractor or subcontractor
- Employee of a contractor or subcontractor
- Employee of labour hire company
- Outworker
- Apprentice or trainee
- Student on work experience
- Volunteer

Penalties for breaches of duty of care

Categories based on degree of 'culpability' and risk/degree of harm

Category 1

Corporation: \$3m
Individual as a PCBU or an officer: \$600k / 5 years jail
Individual e.g. worker: \$300k / 5 years jail

Category 2

Corporation: \$1.5m
Individual as a PCBU or an officer: \$300k
Individual e.g. worker: \$150k

Category 3

Corporation: \$500k
Individual as a PCBU or an officer: \$100k
Individual e.g. worker: \$50k

Consultation and engagement

- **PCBU must, so far as reasonably practicable:**
 - Consult with workers
 - Consult, co-operate with and co-ordinate activities with other persons who have a duty in relation to the same matter
- **Health and Safety Representatives (HSRs) for work groups**
 - Must be established on request from a worker
 - Can direct unsafe work to cease and issue provisional improvement notices, but only if trained
- **Health and Safety Committees**
 - Must be established within 2 months where requested by HSR, or 5 or more workers
- **Issue resolution procedures**

Right to refuse unsafe work



Role of Unions

- WHS entry permit holder can enter to inquire into suspected breaches, as well as to consult and advise workers
 - subject to permit and member eligibility requirements, protections and accountability
- Aligned with requirements in the *Fair Work Act 2009*.
- No notice for suspected breach
- 24 hours notice to consult, advise or obtain documents

Compliance and Enforcement

- Enforceable undertakings
- Inspectors
 - broad powers of entry to workplaces
 - can issue improvement, prohibition, non-disturbance and infringement notices
 - assist in issue resolution
- Review of decisions
 - Two stage process of internal review (of inspectors decisions) and external review

Model WHS Regulations – key issues

- Harmonisation of existing regulations
- Level of prescription
- Risk Management – model laws focussed on the outcome, not the process
- Australian Standards – referenced only where necessary
- Interaction with other safety related legislation

Model WHS Regulations

- **Chapter 1: Preliminary**
- **Chapter 2: Representation and participation**
 - Work groups, HSR training
 - Default procedures for issue resolution
 - WHS entry permits
- **Chapter 3: General Risk and Workplace Management**
 - Hierarchy of controls
 - Maintain, review and revise control measures
 - Information, training and instruction
 - Working environment
 - First aid, emergency plans
 - Personal Protective Equipment
 - Remote and isolated work
 - Airborne contaminants, hazardous atmospheres
 - Storage of flammable or combustible substances
 - Falling objects



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Model WHS Regulations

- **Chapter 4: Hazardous Work**
 - Noise
 - Hazardous manual tasks
 - Confined spaces
 - Falls
 - High risk work – licensing, accreditation of assessors
 - Demolition work
 - Electrical safety and energised electrical equipment
 - Diving work
- **Chapter 5: Plant & Structures**
 - Excludes manually powered, hand-held plant
 - Includes requirements for powered mobile plant, industrial lift trucks, plant that lifts or suspends loads, scaffolds, pressure equipment, industrial robots, lasers, amusement devices
 - Plant design and item registration



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Model WHS Regulations

- **Chapter 6: Construction Work**
 - Safe work method statements for 'high risk work'
 - Co-ordination duties for principal contractors
 - Induction training
- **Chapter 7: Hazardous Chemicals**
 - Globally Harmonised System of Classification and Labeling of Chemicals
 - Lead
- **Chapter 8: Asbestos**
 - Prohibition
 - Asbestos registers
 - Requirements for removal work
- **Chapter 9: Major Hazard Facilities**

Model WHS Regulations

- **Chapter 10: Mines** (under development)
- **Chapter 11: General**
 - Review of decisions
 - Exemptions
- **Transitional arrangements**
 - Current differences in jurisdictional requirements will mean different arrangements
 - Requirements for residual current devices will not apply until January 2013
 - GHS classification and labelling of hazardous chemicals not required until 5 years after commencement
 - Authorisations issued under current laws to continue until expiry

Model Codes of Practice

- How to manage work health and safety risks
- Consultation, co-operation and co-ordination
- Managing the work environment and facilities
- Hazardous manual tasks
- Noise
- Preventing falls
- Confined spaces
- Management and control of asbestos in the workplace
- Safe removal of asbestos
- Hazardous chemicals – safety data sheets and labelling

Draft model Codes of Practice released for public comment

Closing date: 18 November 2011

- First aid in the workplace
- Managing risks in construction work
- Managing risks of hazardous chemicals
- Managing electrical risks in the workplace
- Managing risks of plant in the workplace
- Preventing falls in housing construction

Closing date: 16 December 2011

- Demolition work
- Excavation work
- Safe design of buildings and structures
- Abrasive blasting
- Welding and allied processes
- Spray painting
- Safe access in tree trimming and arboriculture
- Bullying
- Fatigue

Status of implementation

- WHS Act passed in Queensland, NSW and ACT
- SA – Bill introduced in Parliament, debate in progress
- Commonwealth – Bill introduced in Parliament
- NT – Bill introduced in October 2011 sittings
- Tasmania – Bill introduced in Parliament on 27 October 2011
- WA – seeking delay to implementation
- Victoria – seeking a 12 month delay to implementation

Beyond 2012

- Implementation monitored by Council of Australian Governments' (COAG) Reform Council under *National Partnership Agreement to Deliver a Seamless National Economy*
- Proposed amendments to be decided by Workplace Relations Ministers' Council (WRMC) at the national level – if agreed, then all jurisdictions must adopt the amendment
- Evaluation
- Review every 5 years

Further Information

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