



Basic regulatory WHS compliance

DO SOMETHING!

- Formally initiated by COAG in 2008
- Draft released 2011 for further review and comment
- Revised and released into law 2012 as,

Work Health and Safety Act 2011

WHS harmonisation - main changes

- The **duties of care** are no longer defined by the nature of employment relationship.
- The term **'worker'** includes employees, volunteers, contractors, sub-contractors, apprentices, work experience students and outworkers.
- The term **'workplace'** in most jurisdictions will be broadened to include any place where a worker goes or is likely to go while at work.
- There are positive duties for **'officers'** to exercise **'due diligence'** to ensure the person conducting a business or undertaking complies with its duty of care.
- Under the new work health and safety laws there is no attributed liability.
- A new duty to consult, co-operate and co-ordinate activities with other **duty holders**

New Act – new terms/definitions

Persons Conducting Business or Undertaking (PCBU)

- A 'person' may be an organisation or an individual
- An individual can also be a 'person', but will only be a PCBU where that individual is conducting the business in their own right (as a sole trader or self-employed person). The WHS Act makes it clear that an individual is not a PCBU if they are involved in the business or undertaking only as a worker or officer of the business or undertaking.
- The WHS Act states that a person conducts a business or undertaking whether it is conducted alone or together with others, and whether or not it is conducted for profit or gain.

New Act – new terms/definitions

Officers:

The WHS Act adopts as the definition of an officer for a corporation. Under section 9 of the Corporations Act 2001 an “officer” of a corporation in summary means:

- A director or secretary of the corporation; or
- Someone who makes, or participates in making decisions that affect the whole or a substantial part, of the business of the corporation; or
- who has the capacity to affect significantly the corporation’s financial standing.

New Act – new terms/definitions

Duty Of Care:

A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of;

- workers engaged, or caused to be engaged by the person; and
- workers whose activities in carrying out work are influenced or directed by the person while the workers are at work in the business or undertaking.
- so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- The provision and maintenance of a work environment without risks to health and safety; and
- the provision and maintenance of safe plant and structures; and the provision and maintenance of safe systems of work; And
- the safe use, handling and storage of plant, structures and substances.

New Act – new terms/definitions

Reasonably Practicable:

This means that what can be done should be done unless it is reasonable in the circumstances for the duty-holder to do something less.

This approach is consistent with the objects of the WHS Act which include the aim of ensuring that workers and others are provided with the highest level of protection that is reasonably practicable.

How to determine what is “reasonably practicable”

- The likelihood of the hazard or the risk concerned occurring
- Degree of harm that may result if the hazard or risk eventuated
- What the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or minimising the risk
- Availability and suitability of ways to eliminate or minimise risks
- Cost of eliminating or minimising the risk

New Act – onus of proof

- Under the old OHS Act, employers had a duty to ensure health and safety in the workplace subject to a limited defence of reasonable practicability, a "reverse onus" duty.
- Under the new WHS Act, the onus moves to the prosecution to establish the employer did not take all reasonably practicable measures to prevent the risk to health and safety occurring. The prosecution will now be required to set out what the employer could “reasonably” have done to prevent the risk to health and safety.

New Act – onus for directors and officers

- Under the old OHS Act, a director or a person concerned in the management of the company is prima facie liable for any contravention of the Act unless due diligence was used to prevent the contravention.
- Under the new Act, section 26 has been amended to impose a duty on “officers of a corporation” to exercise due diligence to ensure that the corporation complies with its occupational health and safety duties.
 - to acquire and keep up-to-date knowledge of OH&S matters;
 - to understand the nature and operations of the trade, business or other undertaking of the corporation and the associated risks;
 - to ensure that appropriate resources to eliminate or minimise hazards from such operations are available and utilised by the corporation;
 - to ensure the corporation has processes for receiving and considering information about incidents and hazards and responding in a timely manner; and
 - to ensure the corporation has, and implements, appropriate processes for complying with its relevant duties and obligations under the legislation, for example, reporting, consultations, training.

So, What Now?

**“If you do nothing, you will never
prove you did anything”**

First – induction

Under all Australian WHS legislation, employers have a duty to provide adequate information, instruction, training and supervision to employees so that they can work in a way that is safe and without risks to health.

Second – is it adequate?

There is now a far greater onus placed back on to PCBU's and officers to ensure they have identified and controlled all hazards and risks associated with a workers role

Third – verify competencies

Just because they “said” they can doesn’t always
mean they “can”

Fourth – retain evidence

It is particularly important to have an adequate evidence trail should you ever be subjected to an audit

DO YOU HAVE A SYSTEM ?

DO YOU USE IT?

WOULD YOUR SYSTEM STAND LEGAL SCRUTINY?

**COULD YOU PROVE YOU DID
EVERYTHING YOU COULD TO
ENSURE YOUR WORKERS
SAFETY?**

Do you have questions?

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