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# Model Work, Health & Safety Reform

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## Information Session

Presented by

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# National WHS Reform

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## Background & Current Status



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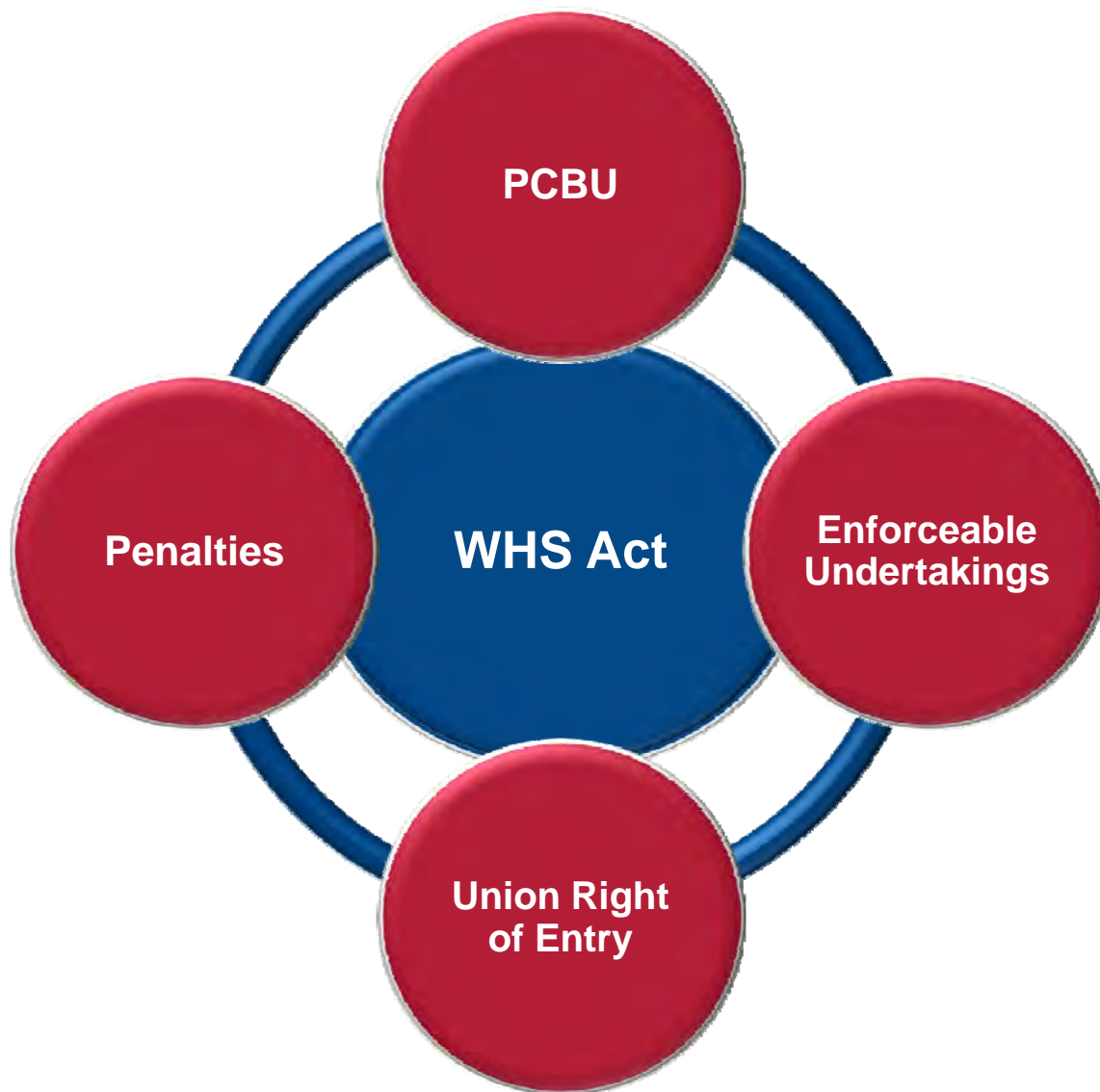
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# National WHS Reform

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Key changes for South Australia

# Key Changes



# Penalties

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

## Category 1

**CORPORATIONS**  
**\$3 million**

**OFFICERS**  
**\$600,000/  
5 years jail**

**WORKERS**  
**\$300,000/  
5 years jail**

## Category 2

**CORPORATIONS**  
**\$1.5 million**

**OFFICERS**  
**\$300,000**

**WORKERS**  
**\$150,000**

## Category 3

**CORPORATIONS**  
**\$500,000**

**OFFICERS**  
**\$100,000**

**WORKERS**  
**\$50,000**

## Key Elements of WHS Act

- WHS Act mostly **consistent** with SA Act
- Same tests apply re *reasonably practicable*
- Positive duty attributed to Officers with ***Due Diligence*** defined
- A person can have more than one duty or can have concurrent duties
- Emphasis on graduated enforcement and higher penalties
- ***Broadened Consultation*** obligations – vertical and horizontal
- Cannot ‘contract out’ duties
- WHS Act and Regulations supported by:
  - Approved Codes of Practice (evidentiary status)
  - Guidance Material (represents best practice)



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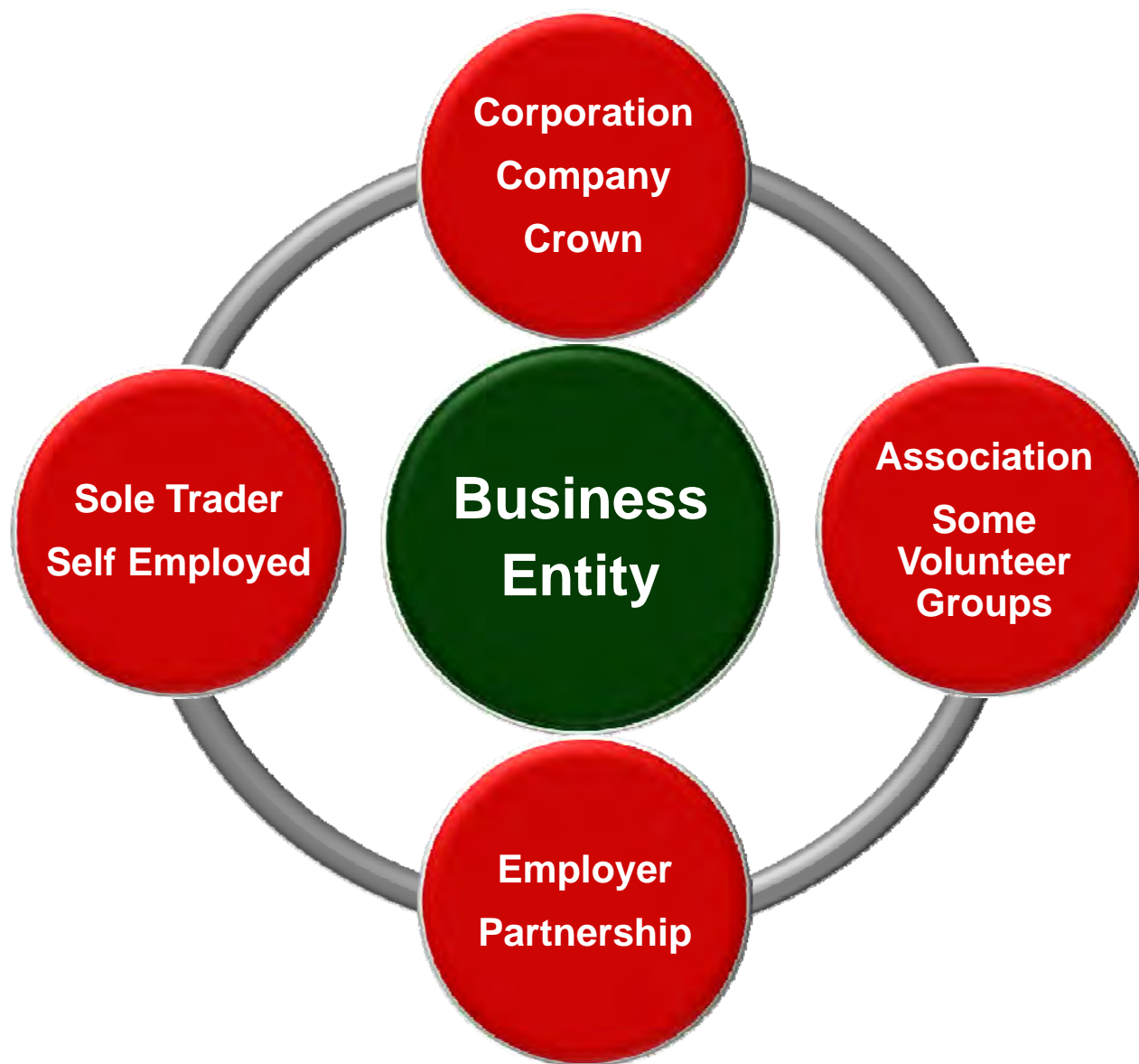
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Duty Holders

# The PCBU





## Obligations of a PCBU

- **Primary Duty of Care – qualified by ‘Reasonably Practicable’**
- **Primary duty consistent with current SA OHSW Act ie to ensure so far as is ‘reasonably practicable’ the duty to:**
  - Provide a safe working environment
  - Provide safe plant and structures
  - Provide safe systems of work
  - Ensure the safe handling, use, storage of plant, structure and substances
  - Provide adequate facilities to support the welfare of workers
  - Provide information, training, instruction or supervision
  - Monitor the health of workers and conditions at the workplace
- **Must be proactive in fulfilling the primary duty and cannot assume another has taken care of a WHS matter**

## Reasonably Practicable

- That which is, or was *reasonably able to be done* in the circumstances taking into account and weighing up all relevant matters including:
  - Likelihood of hazard or risk
  - Degree of harm
  - What the person knows or ought to know about hazard, risks and controls
  - Availability and suitability of controls
  - After assessing the risk and the available ways (of control), the cost of the available ways of control, including whether the cost is grossly disproportionate to the risk
- The level of *Control* over the safety outcome is also a determining factor

## Consultation

- **Must consult so far as reasonably practicable with workers who carry out work for the business or undertaking or who are likely to be directly affected by a WHS matter...regardless if they are directly employed**
- **Consultation must be proactive**
- **Consultation should be *proportionate* to the circumstances having a regard for:**
  - Size and structure of the business
  - Nature of the work
  - Urgency of the issue
  - Nature / severity of the hazard / risk
  - Work arrangements
  - Characteristics of workers
- **Must *Consult, Cooperate and Coordinate* with other duty holders that have a duty over the same matter**

# The Officer

## Determining an Officer

### **The Corporation's Act 2001** (Section 9)



**Decision Makers – effect the whole or significant part of business operations**



**Financial Influence – capacity to significantly affect financial standing**



**Those whose instructions or wishes the directors of the corporation are accustomed to act**

# The Officer



# The Officer

## Obligations of an Officer

- ***Fulfil obligations*** of the PCBU
- **Must exercise 'DUE DILIGENCE'** and take reasonable steps to:
  - Acquire and keep up-to-date knowledge on WHS matters
  - Gain an understanding of operations, hazards and risks
  - Use resources and processes to eliminate/minimise risks
  - Have regard for and respond to incident and hazard information
  - Ensure PCBU implements processes for complying with duties
  - Verify the provision and use of resources and procedures
- **Due Diligence is a *positive duty*** requiring proactive action
- **Does not typically go down to middle managers or supervisors – but officers will need to rely on them for information, advice and action**
- **No Responsible Officer provision**

# The Officer

## Keys to Due Diligence

- Consistent with other aspects of **corporate governance**
- **Policy** makers
- **Be actively engaged** in safety and lead from the top
- Defined **accountabilities** and responsibilities (charters, PDs, KPIs, etc)
- Safety management **systems**
- **Lead** and **Lag** indicators
- Annual and quarterly and 'trigger' **reporting**
- Auditing and other **verification** processes

# The Worker



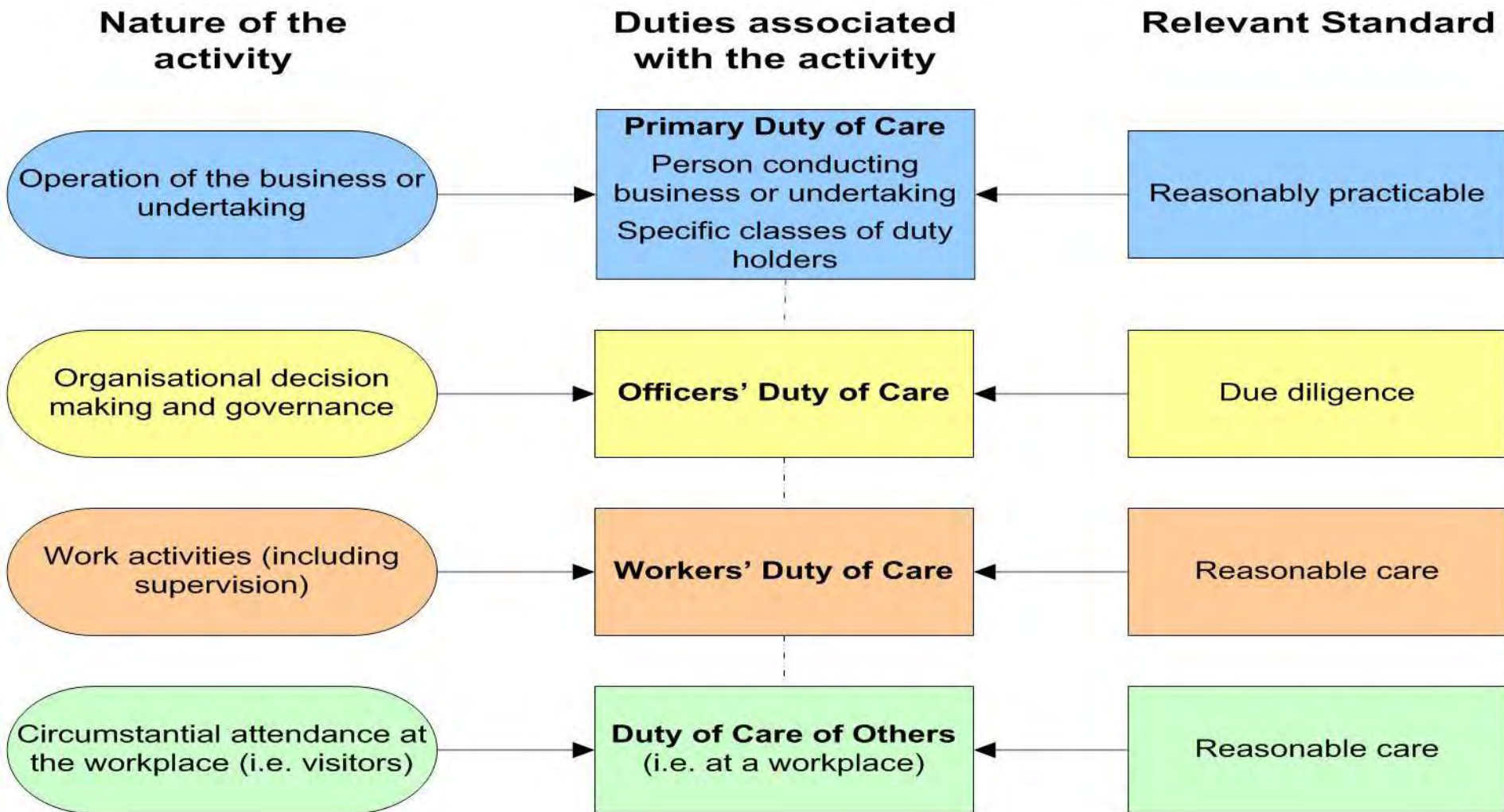


# The Worker

## Obligations of a Worker

- Similar to existing SA OHSW Act provisions
- Standard for workers obligations based on *reasonable care*
- Obligations of Workers are to:
  - Take care of their own health and safety
  - Take reasonable care that their acts or omissions don't adversely affect others
  - Comply with any reasonable WHS instruction by the PCBU
  - Comply with any reasonable WHS policy issued by the PCBU

# Relationship Between Recommended Duties Of Care





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## General Transitional Provisions

## Transitional Arrangements

### ■ Duties

- Duties related to ‘upstream activities’ associated with design, manufacture, construction, supply and importation of plant or structures will still apply where processes were commenced or not completed prior to 1 January 2012
- The following transitional provisions apply:
  - Duties under the OHSW Act for design, installation and construction will continue to apply for 2 years
  - Duties under the OHSW Act for manufacture, importation and supply will continue to apply for 1 year
  - After this period, the duties under the model WHS Act apply

### ■ Appointments

- Inspectors, HSRs, Deputy HSRs, OHS Committee members that were appointed under the OHSWS Act will continue under the WHS Act

## Transitional Arrangements

### ■ Training

- Current HSRs trained under the OHSW Act will be able to issue Provisional improvement Notices (PINs) and direct that unsafe work cease from 1 January 2012.
- HSRs will need to receive training under the WHS Act by 1 January 2013 to continue using these powers.

### ■ Authorisations

- A number of licenses, registrations and other forms of authorisation will be recognised for a period of time following the commencement of the WHS Act.
- The recognition of these authorisations will be provided for in the WHS Regulations once finalised.



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# WHS Regulations

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## Overview and Key Changes

# WHS Regulations

## Key Points

- **WHS Regulations reflect best practice regulatory principles**
  - Outcome / performance based
  - Greater guidance provided in Codes of Practice (COPs)
  - Removal of references to Standards including Australian Standards
- **Some OHSW Regulations omitted from WHS Regulations while others are now contained in COPs as follows:**
  - Synthetic Mineral Fibres (out...general duty)
  - Electroplating (out...general duty)
  - Foundry Work (out...general duty)
  - Petroleum (out...general duty)
  - Abrasive Blasting (Code)
  - Logging (Code to be entitled *Forest Safety*)
  - Spray Painting (Code to be entitled *Spray Painting and Powder Coating*)
  - Welding (Code to be entitled *Welding and Allied Processes*)
  - Traffic Management (Code)
- **New areas under new WHS Regulation include:**
  - Major Hazard Facilities
  - Workplace Entry of WHS Permit Holders

# WHS Regulations

## Overall Structure

Chapter 1	Preliminary
<b>Chapter 2</b>	<b>Representation and Participation</b>
<b>Chapter 3</b>	<b>General Risk and Workplace Management</b>
<b>Chapter 4</b>	<b>Hazardous Work</b>
<b>Chapter 5</b>	<b>Plant and Structures</b>
Chapter 6	Construction Work
<b>Chapter 7</b>	<b>Hazardous Chemicals</b>
Chapter 8	Asbestos
Chapter 9	Major Hazard Facilities
Chapter 10	Mining
Chapter 11	General
Schedules	





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# Representation and Participation

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## Chapter 2: Overview

# Representation and Participation

## Regulation Structure

### **Part 2.1 Representation**

Division 1: Work Groups

Division 2: Health and Safety Representatives

### **Part 2.2 Issue Resolution**

### **Part 2.3 Cessation of Unsafe Work**

### **Part 2.4 Workplace Entry by WHS Entry Permit Holder**

# Representation and Participation

## Relevant Codes of Practice

Regulation Part / Division	Relevant Code of Practice
Representation Issue Resolution Cessation of Unsafe Work	<sup>1</sup> Work Health and Safety Consultation, Cooperation and Coordination
Workplace Entry by WHS Entry Permit Holder	Guidance Material may be developed for this matter

# Representation and Participation

## Overview of Key Changes

Issue	Explanation
1. Workgroups	Greater flexibility in determining <b>workgroups</b> – within and between PCBUs.
2. Health & Safety Representatives (HSRs)	Power to issue <b>PINs</b> and <b>Cessation of Work Orders</b> conditioned upon training.
3. Resolution of WHS Issues	Requirement for an <b>agreed</b> procedure.
4. Union Right of Entry	Union officials may <b>enter</b> workplaces for WHS purposes.
5. Transitional Arrangements	HSRs will <b>transition</b> to new legislation.



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# General Risk & Workplace Management

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## Chapter 3: Overview

# General Risk & Workplace Management

## Regulation Chapter Overview

### **Part 3.1 Managing Risks to Health and Safety**

Divisions: Nil

### **Part 3.2 General Workplace Management**

Division 1: Training, information and instruction

Division 2: General working environment

Division 3: First aid

Division 4: Emergency plans

Division 5: Personal protective equipment

Division 6: Remote or isolated work

Division 7: Managing risks from airborne contaminants

Division 8: Hazardous atmospheres

Division 9: Storage of flammable or combustible substances

Division 10: Falling objects

# General Risk & Workplace Management

## Relevant Codes of Practice

Regulation Part / Division	Relevant Code of Practice
<b>Managing Risks to Health and Safety</b>	<sup>1</sup> How to Manage Work Health and Safety Risks
<b>General Working Environment Workplace Facilities Emergency Plans Remote or Isolated Work</b>	<sup>1</sup> Managing the Work Environment and Facilities
<b>First Aid</b>	<sup>2</sup> First Aid in the Workplace
<b>Airborne Contaminants Hazardous Atmospheres Storage and Handling of Combustible Substances</b>	<sup>2</sup> Managing Risks of Hazardous Chemicals

# General Risk & Workplace Management

## Overview of Key Changes

Issue	Explanation
1. Risk Assessment	<b>No general requirement</b> for risk assessment unless prescribed within a particular Regulation (eg. confined space, diving, etc). Risk assessment methodology contained in COPs.
2. Record Keeping	Reduced requirements for keeping <b>training records</b> and <b>accident/incident records</b> unless prescribed in Regulation. Detail contained in COPs.
3. Fire Prevention	Focus is now on reduction of <b>combustible materials</b> to as low as practicable. Previous focus was on minimising the accumulation of waste.
4. Temperature and Essential Services	Inclusion of safety of workers affected by <b>extreme heat/cold</b> as well as <b>working near essential services</b> .
5. Space per person	3m <sup>2</sup> requirement now gone. Factors for consideration in providing adequate <b>working space</b> covered in COP.
6. Emergency Plan	Requirement for an Emergency Plan along with <b>testing, training</b> and <b>implementing procedures</b> under the Plan.





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# Hazardous Work

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## Chapter 4: Overview

# Hazardous Work

## Regulation Chapter Overview

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**Part 4.1    Noise**

**Part 4.2    Hazardous Manual Tasks**

**Part 4.3    Confined Spaces**

**Part 4.4    Falls**

**Part 4.5    High Risk Work**

**Part 4.6    Demolition Work**

**Part 4.7    Electrical Safety and Energised Electrical Work**

**Part 4.8    Diving Work**

# Hazardous Work

## Relevant Codes of Practice

Regulation Division / Part	Relevant Code of Practice
<b>Noise</b>	<sup>1</sup> Managing Noise and Preventing Hearing Loss at Work
<b>Hazardous Manual Tasks</b>	<sup>2</sup> Hazardous Manual Tasks
<b>Confined Spaces</b>	<sup>1</sup> Confined Spaces
<b>Falls</b>	<sup>1</sup> How to Prevent Falls at Workplaces
<b>High Risk Work</b>	<sup>3</sup> Industrial Lift Trucks <sup>3</sup> Cranes
<b>Demolition Work</b>	<sup>2</sup> Demolition Work
<b>Electrical Safety</b>	<sup>2</sup> Managing Electrical Risks at the Workplace <sup>3</sup> Working in the Vicinity of Overhead Electrical Lines and Underground Electrical Services (Draft)
<b>Diving Work</b>	<sup>3</sup> Managing Risks Associated with Diving Work

# Hazardous Work

## Overview of Key Changes

Issue	Explanation
1. Noise	<b>Audiometric testing</b> required <b>within 3 months</b> of commencing work and then <b>at least every 2 years</b> where there is a risk of hearing loss.
2. Hazardous Manual Tasks	Changed focus from Manual Handling to those tasks which present a risk to the <b>musculoskeletal system</b> . <b>Vibration</b> is now a consideration factor. <b>Risk assessment</b> methodology provided for in the relevant COP, not in Regulation.
3. Confined Spaces	<b>Definition</b> now excludes: <i>'may have restricted means of entry and exit'</i> . <b>'Standby Person'</b> is now a requirement. PCBU must have <b>emergency procedures</b> for rescue/evacuation. <b>Emergency Services</b> exemption. <b>Record keeping</b> requirements prescribed (ie risk assessment, training)
4. Falls	<b>Risk minimisation</b> framework included. Specific controls now provided in COP. PCBU to manage risks of falls from <b>one level to another</b> . <b>Emergency rescue</b> arrangements required.

# Hazardous Work



## Overview of Key Changes

Issue	Explanation
5. High Risk Work	<b>National licence</b> applies (29 classes). <b>Forklift</b> now requires a high risk work licence. <b>Reach Stacker</b> is now a new class of high risk work. Notice of satisfactory assessment for <b>operation of load shifting equipment</b> removed from Regulation...but must be competent.
6. Demolition	Captured in national <b>occupational licensing system</b> . <b>Notification</b> to SafeWork SA 5 days prior to commence of certain demolition work. High risk demolition <b>approvals</b> no longer required.
7. Electrical Safety and Energised Electrical Work	Electrical Supply Authority <b>exemption</b> . <b>Working LIVE</b> prohibited except under certain circumstances. <b>AS</b> now cited in relevant COP. <b>Record keeping</b> required for inspection and testing (last test), risk assessment and work method statements.
8. Diving	Most content is new. Requirements now relate to <b>all 'occupational' diving</b> ...not just construction diving. Scientific and incidental diving is included.



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# Plant and Structures

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## Chapter 5: Overview

# Plant and Structures

## Regulation Chapter Overview

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**Part 5.1     General Duties for Plant and Structures**

**Part 5.2     Additional Duties relating to Registered Plant and Plant Designs**

**Part 5.3     Registration of Plant Designs and Items of Plant**

### **Schedule 5**

**Part 1        Plant requiring registration of design**

**Part 2        Plant items requiring registration**

# Plant and Structures

## Relevant Codes of Practice

Regulation Part / Division	Relevant Code of Practice
<b>All parts</b>	<sup>1</sup> How to Manage Work Health and Safety Risks
	<sup>3</sup> Design, Manufacture, Import & Supply of Plant
	<sup>2</sup> Managing Risks of Plant in the Workplace
	<sup>2</sup> Welding and Allied Processes
	<sup>3</sup> Guarding Plant
	<sup>3</sup> Industrial Lift Trucks
	<sup>3</sup> Scaffolds
<b>Registered Plant (Part 5.2)</b>	<sup>3</sup> Rural Plant
	<sup>3</sup> Amusement Devices
	<sup>3</sup> Cranes



# Plant and Structures

## Overview of Key Changes

Issue	Explanation
1. Structure	The term ' <b>structure</b> ' is new and incorporates things with non moving parts such as buildings, towers & bridges. Structures must be installed in accordance with designer/manufacture instructions.
2. Design of Plant	<p><b>Design of any plant</b> can be based on 'any published technical standard', part of a standard, or any 'engineering principles' as long as they are recorded by a designer.</p> <p><b>Australian Standards removed</b> from Regulation and now guidance material in COP.</p> <p>Broad <b>third party duties</b> eg those who may be affected by the risk originating from design.</p>
3. Risk Management	General risk management requirements are in relevant COPs or Chapter 3.
4. Plant Inspection	<b>Major inspections</b> now required for registered mobile cranes and tower cranes.
5. Plant Registration	<b>Registration</b> now valid for 5 years (not annually), renewal after that and must be accompanied by declaration of compliance.

# Plant and Structures

## Overview of Key Changes

Issue	Explanation
6. ROPS for Tractors & Earth Moving Equipment (EME)	<b>ROPS</b> Now apply to <b>tractors</b> 560-15000kg. No cut off date (ie. 1981). No cut off date for <b>EME</b> for ROPS. Less than 1500kg weight exempted if no seated operator for EME.
7. Use of 'workbox'	<b>Tree lopping activities</b> exempted, with provisos.
8. Suppliers of Plant	Suppliers of plant are regarded as 'PCBUs who supply plant' regardless of whether the plant is <b>sold</b> or <b>leased</b> (this is distinguished in current OHSW Regulation).
9. Record Keeping	For plant subject to design or item registration must be kept for the <b>life of the plant or until relinquished</b> (no longer 5 years). Records relate to things such as <b>maintenance, inspection</b> and <b>testing</b> .
10. Logging Regulation	Has been <b>omitted</b> from WHS Regulation and will be a COP.



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# Hazardous Chemicals

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## Chapter 7: Overview

# Hazardous Chemicals

## Regulation Chapter Overview

### **Part 7.1 Hazardous Chemicals**

Division 1: Application

Division 2: Obligations relating to safety data sheets and other matters

Division 3: Register and manifest of hazardous chemicals

Division 4: Placards

Division 5: Control of risk – obligations of PCBU's

Division 6: Health monitoring

Division 7: Induction, information, training and supervision

Division 8: Prohibition, authorisation and restricted use

Division 9: Pipelines

### **Part 7.2 Lead**

Division 1: Lead process

Division 2: Control of risk

Division 3: Lead risk work

Division 4: Health monitoring

# Hazardous Chemicals

## Relevant Codes of Practice

Regulation Part / Division	Relevant Codes of Practice
<b>Hazardous Chemicals</b>	<sup>1</sup> Preparation of Safety Data Sheets for Hazardous Chemicals
	<sup>1</sup> Labelling of Workplace Hazardous Chemicals
	<sup>2</sup> Managing Risks of Hazardous Chemicals
	<sup>2</sup> Spray Painting and Powder Coating
	<sup>2</sup> Welding and Allied Processes
	<sup>2</sup> Abrasive Blasting
	Note: Information on Health Monitoring will be provided as guidance material

# Hazardous Chemicals

## Overview of Key Changes

Issue	Explanation
1. Globally Harmonised System (GHS)	All hazardous chemicals are to be <b>classified</b> in accordance with the <b>GHS</b> .
2. Dangerous Substances	<b>Storage and handling</b> of dangerous substances now covered under the Hazardous Chemicals Chapter. <b>Transport</b> of dangerous substances still captured within dangerous substances legislation.
3. Licensing to Notification	<b>Licensing</b> for the storage of Dangerous Substances will be replaced by a <b>notification</b> scheme.
4. Hazardous Chemicals Registers	Registers are still required but do not have to include <b>consumer products</b> used in quantities consistent with household use.
5. Health Surveillance, Authorisations & Prohibitions	Substances requiring <b>health surveillance</b> have increased in number (4 to 16). <b>Authorisations</b> are required for certain carcinogens. More hazardous chemicals are <b>restricted or prohibited</b> for use
6. Lead	Requirements for notification of <b>lead risk work</b> along with <b>health monitoring</b> requirements.
7. Spray Painting & Abrasive Blasting	Out of Regulation...into COPs.



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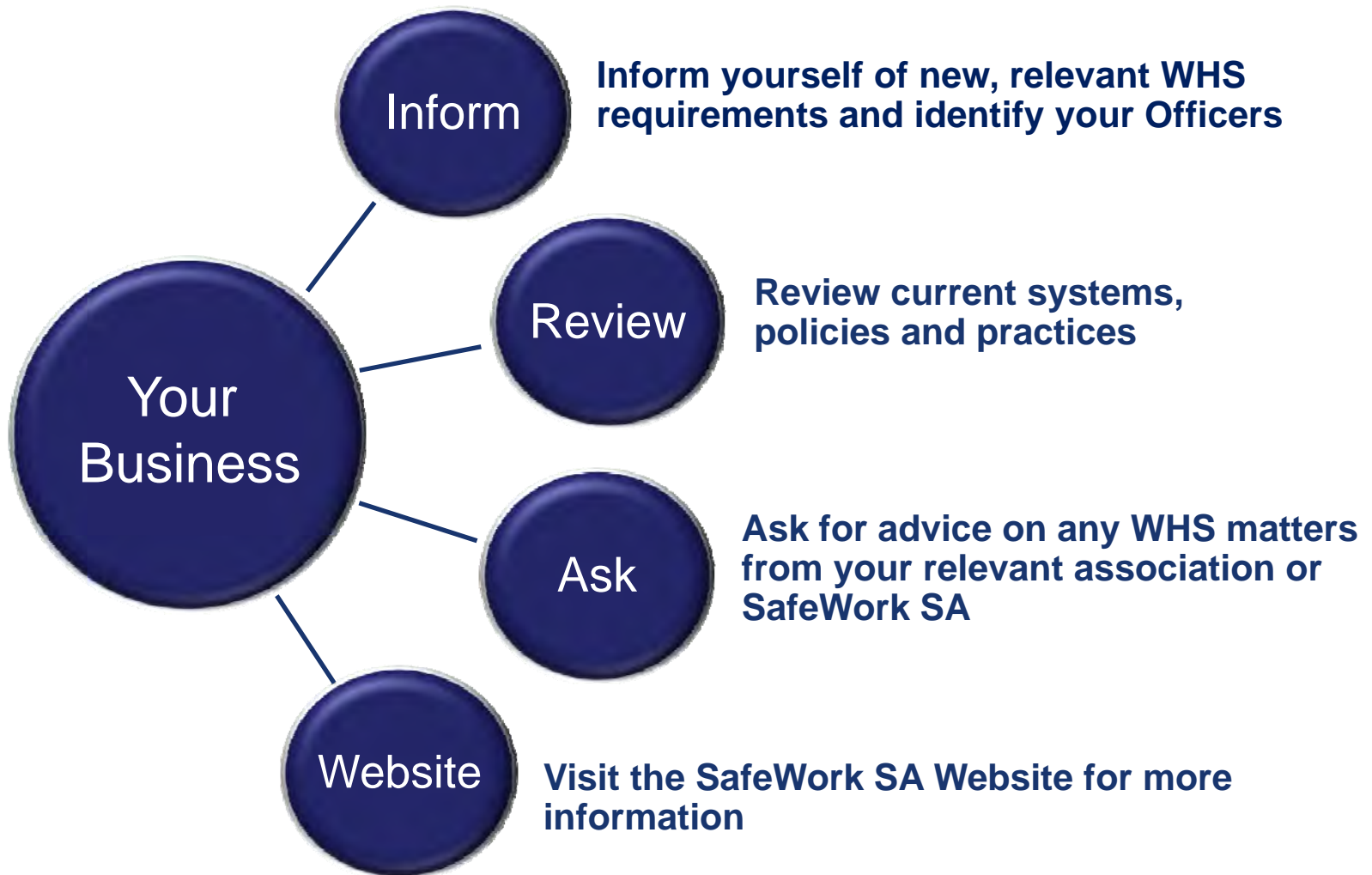
# National WHS Reform

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Call to Action...

# Call to Action

## What you need to do





# Work Health & Safety Laws are Changing for Good



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