National WHS Reform

Background & Current Status
National WHS Reform

Key changes for South Australia
Australian Work Health and Safety Reform

Key Changes

- WHS Act
- Penalties
- PCBU
- Enforceable Undertakings
- Union Right of Entry
Australian Work Health and Safety Reform

Penalties

Categories based on degree of ‘culpability’ and risk/degree of harm

<table>
<thead>
<tr>
<th>Category</th>
<th>Corporations</th>
<th>Officers</th>
<th>Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>$3 million</td>
<td>$600,000/5 years jail</td>
<td>$300,000/5 years jail</td>
</tr>
<tr>
<td>Category 2</td>
<td>$1.5 million</td>
<td>$300,000</td>
<td>$150,000</td>
</tr>
<tr>
<td>Category 3</td>
<td>$500,000</td>
<td>$100,000</td>
<td>$50,000</td>
</tr>
</tbody>
</table>
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)
National WHS Reform

Duty Holders
The PCBU

Business Entity

- Corporation
- Company
- Crown
- Sole Trader
- Self Employed
- Employer
- Partnership
- Association
- Some Volunteer Groups

Australian Work Health and Safety Reform
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 \textit{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 \textit{cost} of the available ways of control, including whether the cost is grossly disproportionate to the risk

- The level of \textit{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
Determining an Officer

The Corporation’s Act 2001 (Section 9)

1. Decision Makers – effect the whole or significant part of business operations
2. Financial Influence – capacity to significantly affect financial standing
3. Those whose instructions or wishes the directors of the corporation are accustomed to act
Australian Work Health and Safety Reform

The Officer

- Director
- Chief Financial Officer
- Chief Executive Officer
- Company Secretary
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
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

- Employee
- Contractor
- Sub Contractor
- Volunteer
- Labour Hire Worker
- Outworker
- Apprentice
- Trainee
- Work Exp.
- Student

Australian Work Health and Safety Reform
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
National WHS Reform

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.
WHS Regulations
Overview and Key Changes
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
Overall Structure

Chapter 1  Preliminary

Chapter 2  Representation and Participation

Chapter 3  General Risk and Workplace Management

Chapter 4  Hazardous Work

Chapter 5  Plant and Structures

Chapter 6  Construction Work

Chapter 7  Hazardous Chemicals

Chapter 8  Asbestos

Chapter 9  Major Hazard Facilities

Chapter 10  Mining

Chapter 11  General

Schedules
Representation and Participation

Chapter 2: Overview
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
# Relevant Codes of Practice

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

¹ Guidance Material not yet available.
### Overview of Key Changes

<table>
<thead>
<tr>
<th>Issue</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Workgroups</td>
<td>Greater flexibility in determining <em>workgroups</em> – within and between PCBUs.</td>
</tr>
<tr>
<td>2. Health &amp; Safety Representatives (HSRs)</td>
<td>Power to issue PINs and <em>Cessation of Work Orders</em> conditioned upon training.</td>
</tr>
<tr>
<td>4. Union Right of Entry</td>
<td>Union officials may <em>enter</em> workplaces for WHS purposes.</td>
</tr>
<tr>
<td>5. Transitional Arrangements</td>
<td>HSRs will <em>transition</em> to new legislation.</td>
</tr>
</tbody>
</table>
General Risk & Workplace Management

Chapter 3: 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
# Relevant Codes of Practice

<table>
<thead>
<tr>
<th>Regulation Part / Division</th>
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<tbody>
<tr>
<td>Managing Risks to Health and Safety</td>
<td>¹ How to Manage Work Health and Safety Risks</td>
</tr>
<tr>
<td>General Working Environment Workplace Facilities Emergency Plans Remote or Isolated Work</td>
<td>¹ Managing the Work Environment and Facilities</td>
</tr>
<tr>
<td>First Aid</td>
<td>² First Aid in the Workplace</td>
</tr>
<tr>
<td>Airborne Contaminants Hazardous Atmospheres Storage and Handling of Combustible Substances</td>
<td>² Managing Risks of Hazardous Chemicals</td>
</tr>
</tbody>
</table>
Overview of Key Changes

<table>
<thead>
<tr>
<th>Issue</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Risk Assessment</td>
<td>No general requirement for risk assessment unless prescribed within a particular Regulation (eg. confined space, diving, etc). Risk assessment methodology contained in COPs.</td>
</tr>
<tr>
<td>2. Record Keeping</td>
<td>Reduced requirements for keeping training records and accident/incident records unless prescribed in Regulation. Detail contained in COPs.</td>
</tr>
<tr>
<td>3. Fire Prevention</td>
<td>Focus is now on reduction of combustible materials to as low as practicable. Previous focus was on minimising the accumulation of waste.</td>
</tr>
<tr>
<td>4. Temperature and Essential Services</td>
<td>Inclusion of safety of workers affected by extreme heat/cold as well as working near essential services.</td>
</tr>
<tr>
<td>5. Space per person</td>
<td>3m² requirement now gone. Factors for consideration in providing adequate working space covered in COP.</td>
</tr>
<tr>
<td>6. Emergency Plan</td>
<td>Requirement for an Emergency Plan along with testing, training and implementing procedures under the Plan.</td>
</tr>
</tbody>
</table>
Hazardous Work

Chapter 4: Overview
Regulation Chapter Overview

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
# Relevant Codes of Practice

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

#### Hazardous Work

## Overview of Key Changes

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

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

Chapter 5: Overview
Regulation Chapter Overview

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
## Relevant Codes of Practice

<table>
<thead>
<tr>
<th>Regulation Part / Division</th>
<th>Relevant Code of Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>All parts</td>
<td>1 How to Manage Work Health and Safety Risks</td>
</tr>
<tr>
<td></td>
<td>3 Design, Manufacture, Import &amp; Supply of Plant</td>
</tr>
<tr>
<td></td>
<td>2 Managing Risks of Plant in the Workplace</td>
</tr>
<tr>
<td></td>
<td>2 Welding and Allied Processes</td>
</tr>
<tr>
<td></td>
<td>3 Guarding Plant</td>
</tr>
<tr>
<td></td>
<td>3 Industrial Lift Trucks</td>
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<tr>
<td></td>
<td>3 Scaffolds</td>
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<td></td>
<td>3 Rural Plant</td>
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<tr>
<td>Registered Plant (Part 5.2)</td>
<td>3 Amusement Devices</td>
</tr>
<tr>
<td></td>
<td>3 Cranes</td>
</tr>
</tbody>
</table>
### Overview of Key Changes

<table>
<thead>
<tr>
<th>Issue</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Structure</td>
<td>The term ‘structure’ is new and incorporates things with non moving parts such as buildings, towers &amp; bridges. Structures must be installed in accordance with designer/manufacturer instructions.</td>
</tr>
<tr>
<td>2. Design of Plant</td>
<td>Design of any plant 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. Australian Standards removed from Regulation and now guidance material in COP. Broad third party duties eg those who may be affected by the risk originating from design.</td>
</tr>
<tr>
<td>3. Risk Management</td>
<td>General risk management requirements are in relevant COPs or Chapter 3.</td>
</tr>
<tr>
<td>4. Plant Inspection</td>
<td>Major inspections now required for registered mobile cranes and tower cranes.</td>
</tr>
<tr>
<td>5. Plant Registration</td>
<td>Registration now valid for 5 years (not annually), renewal after that and must be accompanied by declaration of compliance.</td>
</tr>
</tbody>
</table>
# Overview of Key Changes

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

Chapter 7: Overview
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 PCBUs
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
### Relevant Codes of Practice

<table>
<thead>
<tr>
<th>Regulation Part / Division</th>
<th>Relevant Codes of Practice</th>
</tr>
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<tbody>
<tr>
<td><strong>Hazardous Chemicals</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>¹ Preparation of Safety Data Sheets for Hazardous Chemicals</td>
</tr>
<tr>
<td></td>
<td>¹ Labelling of Workplace Hazardous Chemicals</td>
</tr>
<tr>
<td></td>
<td>² Managing Risks of Hazardous Chemicals</td>
</tr>
<tr>
<td></td>
<td>² Spray Painting and Powder Coating</td>
</tr>
<tr>
<td></td>
<td>² Welding and Allied Processes</td>
</tr>
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<td></td>
<td>² Abrasive Blasting</td>
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</tbody>
</table>

**Note:** Information on Health Monitoring will be provided as guidance material.
## Overview of Key Changes

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

Call to Action…
What you need to do

Inform yourself of new, relevant WHS requirements and identify your Officers

Review current systems, policies and practices

Ask for advice on any WHS matters from your relevant association or SafeWork SA

Visit the SafeWork SA Website for more information

Your Business

Inform

Review

Ask

Website

Call to Action
Work Health & Safety Laws are Changing for Good

Government of South Australia
SafeWork SA