



THE NEW WORK HEALTH AND SAFETY (WHS) ACT

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Preparing for the New Work Health and Safety (WHS) Act

- Introduction
- WHS Act
 - Key Changes
 - The impact on Employers
 - How can you prepare?
- How can the Officers of your organisation demonstrate their compliance with their due diligence responsibilities?
- Questions?



Harmonisation & the WH&S Act

- The WH&S Act is not significantly different from previous South Australian occupational health, safety and welfare laws.
- Each jurisdiction was expected to enact the model provisions, subject to permitted minor variations that are needed to ensure the model provisions are workable in each jurisdiction and interact effectively with local laws.
- When the harmonised work health and safety laws are in place across Australia, it is expected that it will be easier for businesses and workers to comply with their work health and safety responsibilities because the requirements will be generally the same, regardless of how many states and territories they operate in.



What does the legislation look like?

- The WH&S Act 2012 (SA) sets out work health and safety responsibilities.
- The WH&S Regulations 2012 (SA) expand on the requirements of the WHS Act, with specific direction on how to meet certain obligations of the WHS Act.
- The Codes of Practice provide guidance on achieving the standard of health and safety that can apply to a profession, trade or industry. They provide detailed information on particular areas of the WHS Act or WHS Regulations, and outline activities, actions, technical requirements, responsibilities, and responses to events or conditions within a workplace.



Codes of Practice

1. How to manage work health and safety risks
2. Work health and safety consultation, Cooperation and Coordination
3. Managing the work environment and facilities
4. Hazardous manual tasks
5. Managing the Risk of Falls at Workplaces
6. Labelling of workplace hazardous chemicals
7. How to manage and control asbestos in the workplace
8. Facilities for construction sites
9. Managing the Risks of Plant in the Workplace
10. First Aid in the Workplace



Codes of Practice

1. Managing the Risks of Hazardous Chemicals in the workplace
2. Managing Electrical Risks at the Workplace
3. Preventing and Managing Fatigue in the Workplace
4. Responding to Workplace Bullying
5. Safe design of buildings and structures
6. Blood-borne pathogens



When will the WH&S Act come into effect across Australia?

- The legislation has been passed by the South Australian Parliament and came into effect January 1st 2013.
- For some States and Territories it was already in effect:
 - Queensland, N.S.W., N.T., A.C.T. and the Commonwealth
- The Work Health and Safety Act (model WHS Act), model Work Health and Safety Regulations (model WHS Regulations) and first stage Codes of Practices came into effect in Tasmania on the same date, however Victoria and W.A are yet to agree.



What is new for S.A. under the new WH&S Act?

- an employer will become known as a ‘person conducting a business or undertaking’ (PCBU); and Employees will become Workers;
- a volunteer association will have duties under the model WHS Act if it employs a worker;
- a health and safety representative, after completing training, will be able to issue provisional improvement notices and direct that unsafe work cease;
- a union can apply to the Industrial Relations Commission of South Australia for a Work Health Safety entry permit, allowing the permit holder to enter a workplace under certain circumstances;



What is new for S.A. under the new WHS Act?

- a capacity to enter into a WHS undertaking following a breach of the legislation instead of a prosecution;
- the removal of the Responsible Officer provision, and the widening of the responsibilities for Officers; and
- the capacity to ask for an internal review of certain reviewable decisions, meaning increased transparency and accountability of SafeWork SA's decisions as the Regulator.
- Greater Penalties for Offences up to \$3,000,000 for Body Corporate, and \$600,000 and 5 years Gaol for PCBU and Individuals.



What is the impact for Employers under the new Act?

- The CEO is no longer the lone responsible person (Responsible Officer) all “Officers” now share that responsibility.
- Senior managers and Board members have to be proactively demonstrating their Health & Safety duties.
- Employers (PCBU) have to consult with all workers and other PCBU.
- Greater scrutiny by other parties – Unions will have greater access to workers and the workplace.
- Consequences of failure to comply are much greater, Officers can be prosecuted for failure to comply with their duties irrespective of the PCBU’s safety performance.



Offences for Breaches of Health and Safety Duties

Table of Maximum Penalties:

Duty Holder	Category 1	Category 2	Category 3
Individual worker or other person at the workplace	\$300,000 or 5 years imprisonment	\$150,000	\$50,000
Individual PCBUs or Officers	\$600,000 or 5 years imprisonment	\$300,000	\$100,000
Body Corporate or Government body	\$3,000,000	\$1,500,000	\$500,000



Who is an Officer?

- An officer is a person who makes decisions, or participates in making decisions that affect the whole, or a substantial part, of a business or undertaking and has the capacity to significantly affect the financial standing of the business or undertaking. If a person is responsible only for implementing those decisions, they are not considered an officer.
- An officer of a PCBU must exercise ***due diligence*** to ensure that the PCBU complies with its duties under the new work health and safety legislation.
- You are considered to be an officer if you are:
 - an officer as per section 9 of the *Corporations Act 2001*
 - an officer of the Crown as per section 247 of WHS Act
 - an officer of a public authority as per section 252 of WHS Act.

What Is Due Diligence?



In demonstrating due diligence, officers will need to show that they have taken reasonable steps to:

- acquire and update their knowledge of work health and safety matters
 - understand the operations being carried out by the PCBU in which they are employed, and the hazards and risks associated with the operations
 - ensure that the PCBU has, and uses, appropriate resources and processes to eliminate or minimise health and safety risks arising from work being done
 - ensure that the PCBU has appropriate processes in place to receive and respond promptly to information regarding incidents, hazards and risks
 - ensure that the PCBU has, and uses, processes for complying with duties or obligations under the model WHS Act.
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- This approach emphasises the corporate governance responsibilities of officers. It is critical to the achievement of positive safety outcomes for senior management to lead the corporate safety agenda.



How can we use the new Act to improve our safety management?

- Senior Management need to be involved, and understand the management system. Therefore they need to share the responsibility with the CEO.
- In order for Senior managers and Board members to demonstrate their Health & Safety duties consider the development of a Due Diligence Checklist that details the activities that they need to do. This can be aligned to the organisation action/implementation plan
- Employers (PCBU) have to consult with all workers and other PCBU, so there is an opportunity to get all parties involved including agency staff, suppliers and residents.
- Due to the consequences of failure Officers are likely to be more involved and accountable.



What should we be doing to get ready?

- **Policies and procedures** need to be reviewed and modified to reflect the new Act and the relevant terminology. It is probably a great opportunity to step back and critically review all management Systems, can you integrate some of the procedural requirements; What QA & Environmental procedures are impacted by this legislation?
- **Hazards and specific activities** covered by the Codes of practice need to be reviewed and procedures updated; Consider the development of Programs for the major hazards.
- **Senior Management need to be provided with information** on the Act and in particular the Due Diligence responsibilities of Officers.
- **Consider the development of a “Due Diligence Checklist”** that details the activities that they need to do.
- **Review the consultative arrangements**, do they provide for the consultation with other PCBU and worker groups.
- **Schedule a Legislative Audit & Review** against the new regulations in the first half of next year. Note as the introduction has been delayed there will be an expectation that all business will be fully compliant with the new Act immediately it is in place.



What should we be doing to get ready?

- **Union Right of Entry** – You need to develop your policies on how to handle the entry, informing receptionists and other staff on what to do when a Permit Holder requests access.
- **Sharing the responsibility** - Ensure the actions on the Due Diligence Statements and the Organisational Action Plan are included at Department Level action plans and individual KPI.
- Complete the **risk register** for your area of responsibility and ensure that risk assessments are carried out where required.
- Make sure all hazardous tasks are covered by a documented Safe Operating Procedure **SOP**.
- Review **the training requirements** for your Workers and make sure they receive their training.
- **Improved Safety Reporting** up to Board Level, more information, and expectation that there is critical review and discussion at Exec and Board Level.



Demonstrating Due Diligence?

Suggestions on how to meet the due diligence requirements

Acquiring knowledge of health and safety issues

This can be met by:

- acquiring up to date knowledge of the model Work Health and Safety Act, the model Work Health and Safety Regulations and Codes of Practice
- investigating current industry issues through conferences, seminars, information and awareness sessions, industry groups, newsletters
- acquiring up to date knowledge of work health and safety management principles and practices
- ensuring that work health and safety matters are considered at each corporation, club or association board meeting.



Demonstrating Due Diligence?

Suggestions on how to meet the due diligence requirements

Understanding operations and associated hazards and risks

This can be met by:

- developing a plan of the operation that identifies hazards in core activities
- ensuring that information is readily available to other officers and workers about procedures to ensure the safety of specific operations that pose health and safety risks in the workplace
- continuously improving the safety management system.



Demonstrating Due Diligence?

Suggestions on how to meet the due diligence requirements

Ensuring that appropriate resources and processes are used to eliminate or minimise risks to health and safety

This can be met by:

- establishing/maintaining safe methods of work
- implementing a safety management system
- recruiting personnel with appropriate skills, including safety personnel
- ensuring staffing levels are adequate for safety in operations
- giving safety personnel access to decision makers for urgent issues
- maintaining/upgrading infrastructure.



Demonstrating Due Diligence?

Suggestions on how to meet the due diligence requirements

Implementing processes for receiving and considering information about incidents, hazards and risks

This can be met by:

- employing a risk management process
- having efficient, timely reporting systems
- empowering workers to cease unsafe work and request better resources
- establishing processes for considering/ responding to information about incidents, hazards and risks in a timely fashion
- measuring against positive performance indicators to identify deficiencies (for example, percentage of issues actioned within agreed timeframe).

Establishing and maintaining compliance processes

This can be met by:

- undertaking a legal compliance audit of policies, procedures and practices
- testing policies, procedures and practices to verify compliance with safety management planning.



How can LRMS assist?

- **Information Sessions and Training** to key staff on the Act and in particular the Due Diligence responsibilities of Officers.
- **Audit & Review** against the new regulations either prior to the introduction or soon after.
- **Assistance with Policies & Procedures** - review and development of compliant procedures.
- **Risk Management Framework** based on the continuous improvement model to assist with safety compliance as well as accreditation.
- **Ongoing WHS & IM support and mentoring** of your Management, Quality and Systems staff.
- **Assistance with obtaining grants and funding.**



INFORMATION or ASSISTANCE? PLEASE CONTACT US

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