



Workplace Health and Safety Queensland

# Harmonised work health and safety laws

*Work Health and Safety Act 2011*



# Background

- Intergovernmental agreement to harmonise WHS legislation in July 2008
- National model WHS Act endorsed December 2009
- Each jurisdiction laws to mirror model laws as far as possible
- National model laws to commence 1 January 2012.



# Benefits of harmonisation

- Greater clarity and simplicity for all parties
- Reduced costs for national businesses:
  - Lower compliance costs
  - Economies of scale
  - Greater certainty and understanding of OHS laws
- Nationally consistent safety standards and rights
- Reduced government expenditure in developing and administering WHS laws.



# Work Health and Safety Act 2011

- *Work Health and Safety Act 2011* passed by Parliament to commence 1 January 2012
- The new Act:
  - Repeals the *Workplace Health and Safety Act 1995*
  - Ensures the *Electrical Safety Act 2002* is consistent with the national model WHS Act; and
  - Regulates dangerous goods and major hazards facilities and repeals the *Dangerous Goods Safety Management Act 2001*.



# Transitional provisions

- Nationally agreed transitional principles were developed for transition to the new system
- No “grace period” after commencement
- Transitional provisions cover all matters from:
  - Prosecutions
  - appointment of health and safety representatives
  - notices issued before the repeal



# Understanding the WHS Act 2011

The WHS Act 2011 will be complemented by:

- Explanatory memorandum (available now)
- Interpretative guidelines
  - Reasonably practicable
  - Person conducting a business or undertaking
  - Officers and due diligence
  - Discriminatory conduct
- Fact sheets
- National compliance and enforcement policy



# National compliance and enforcement policy

- Nationally consistent approach to compliance and enforcement:
  - monitoring of compliance and enforcement (e.g. criteria for determining what incidents, complaints will be investigated)
  - use of compliance and enforcement tools
  - guide on enforcement decision making
- National, state wide and regional compliance and enforcement interventions – published on our website

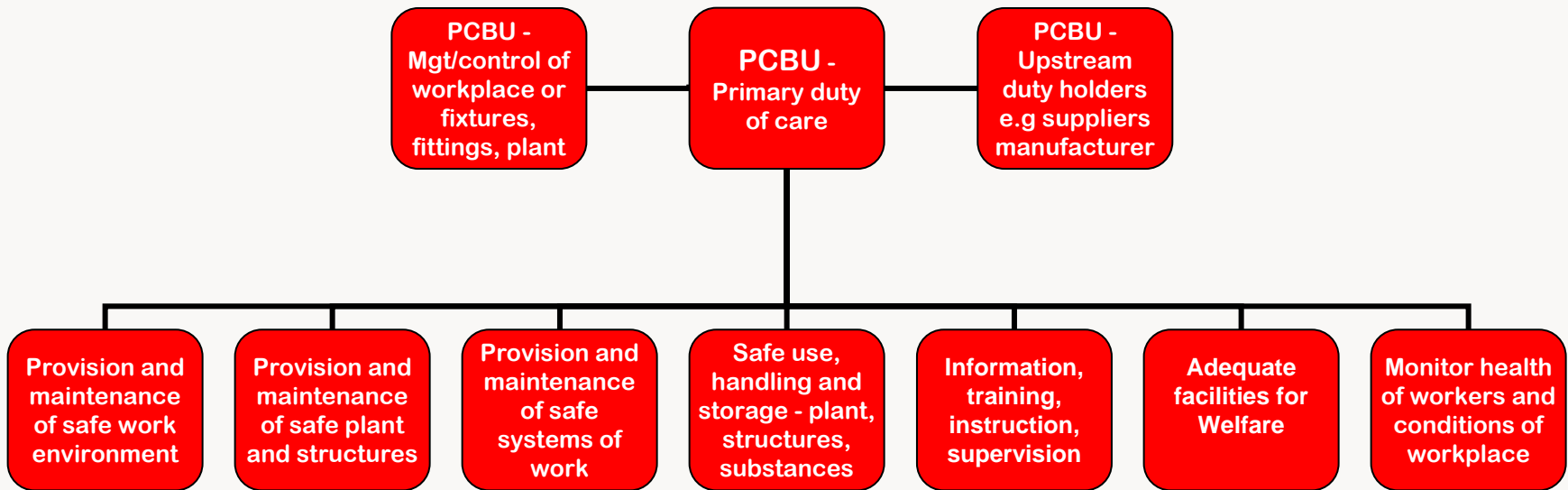


# Queensland – business as usual

- WHS Act 2011 will mean some changes in Queensland, however, it will be largely business as usual
- Duties imposed on the following are largely consistent:
  - Workers
  - persons conducting a business or undertaking (PCBUs)
  - people with management or control of a workplace
  - upstream parties such as manufacturers, suppliers, designers, importers and installers.



# Person conducting a business or undertaking (PCBU)





# Duties of PCBUs - What's new

- Must ensure, so far as is reasonably practicable, the health and safety of workers and other persons
- Reasonably practicable means taking into account all relevant matters including:
  - likelihood of the hazard or the risk concerned occurring
  - degree of harm that might result from the hazard or the risk
  - what the person concerned knows, or ought reasonably to know about the hazard or the risk and ways of eliminating or minimising the risk
  - the availability and suitability of ways to eliminate or minimise the risk
- Only after considering all the above can a PCBU then consider the cost associated with available ways of eliminating or minimising the risk, including whether the cost is disproportionate to the risk.



# Duties of PCBUs - What's new

- New provisions for consultation, cooperation and coordination
  - Possible for multiple PCBU's to have concurrent duties of care in relation to an activity
  - All PCBU's involved in the activity have a duty to consult and cooperate with each other to ensure that the work is without risk to health and safety



# Duties of PCBUs - What's new

- Worker consultation
  - must consult with workers who carry out work for the PCBU and who are (or are likely to be) directly affected by a health and safety matter
- Issue resolution
  - health and safety issues to be resolved in accordance with an agreed procedure, or using the procedure in the Regulation
  - provides that a representative of a party to an issue may enter the workplace for the purpose of resolving the issue.
  - unresolved WHS issues can be referred to the regulator

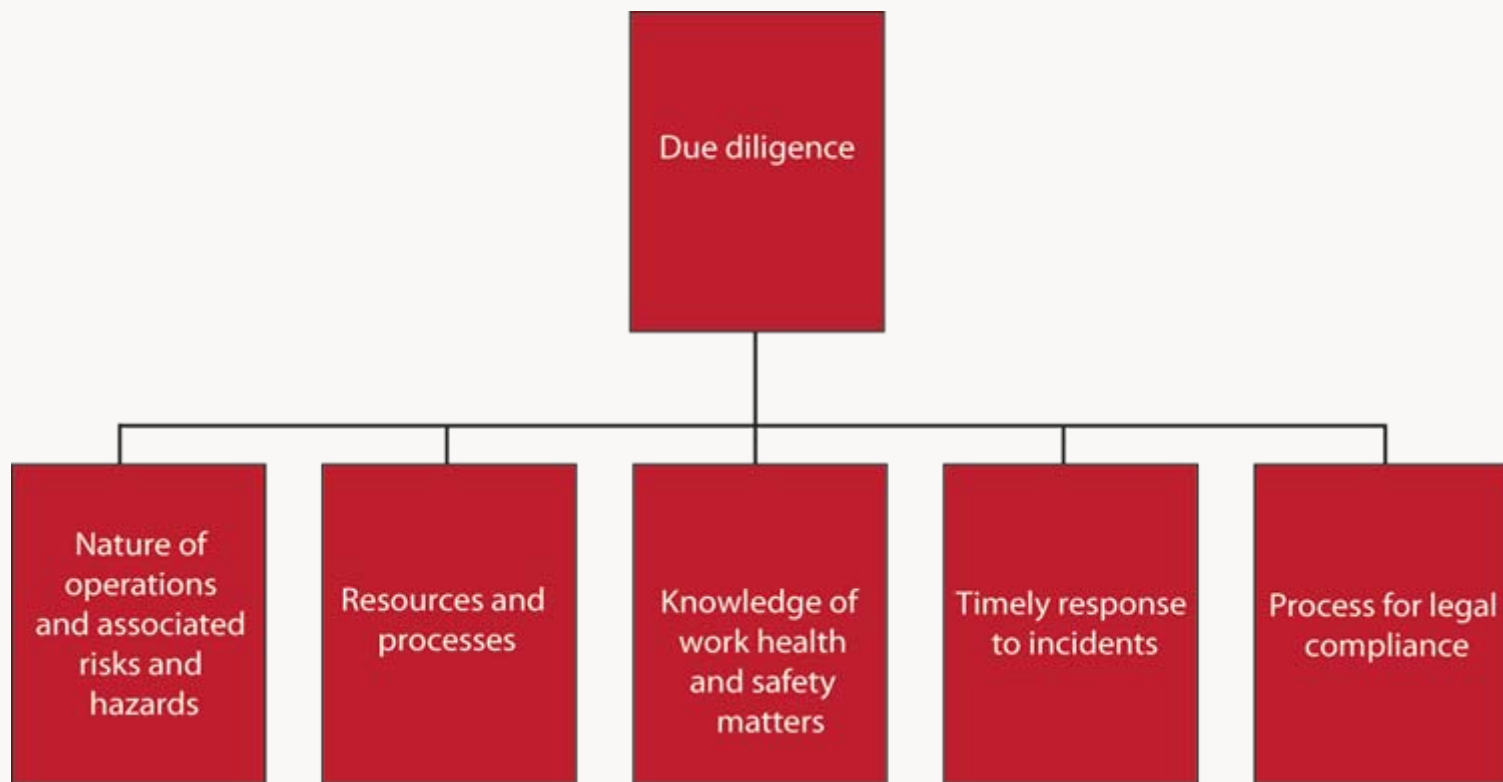


# Officers under the WHS Act 2011

- The WHS Act 2011 will impose a positive duty of care on ‘officers’ in public and private sectors
- The definition of ‘officer’ includes:
  - Directors, company secretary, partner, officeholder
  - Those involved in making decisions that affect the whole or a substantial part of the business or undertaking
  - Those with capacity to affect significantly the organisation’s financial standing
  - Those on whose instructions or wishes directors are accustomed to act
  - Receivers, administrators, liquidators



# Officers – Due Diligence





# Officers - What's new

- Represents a shift away from attributed liability (being held liable for contraventions by the company)
- The duty is proactive



# Workers and other persons





# Workers - What's new

- Workers include:
  - an employee
  - a contractor or subcontractor
  - an employee of a contractor or subcontractor
  - an employee of a labour hire company who has been assigned to work in the person's business or undertaking
  - an outworker
  - an apprentice or trainee
  - a student gaining work experience
  - a volunteer
- Similar effect to current scope of coverage but has implications for the consultative arrangements



# Workers - What's new

- Allows workers to cease work if exposed to serious risk
  - codifies existing common law rights
  - workers must notify management and can be redeployed to other suitable duties
- HSRs can direct workers to cease work
  - After consultation and attempt to resolve the issue
  - No need to consult if there is immediate or imminent hazard



# Workers - What's new

- Allow the formation of multiple work groups
  - Workers can request formation of work groups
  - Multiple work groups can be established based on the diversity of the work activities, or geography or time
  - Allow for election of Health and Safety Representative/s (HSR) for each work group:
- Creates a broader representation of workers within a workplace
  - Each work group can elect a HSR and a deputy HSR
  - HSR's and deputies are entitled to 5 days training within 3 months of election and 1 days training annually



# Penalties

## 3 categories of offences

- Category 1: recklessly exposes a person to risk of death or serious injury or illness
  - \$3 million corporations; \$600,000 individuals
  - 5 years imprisonment
  - Reckless = intentional, wilful or grossly negligent
- Category 2: serious risk of harm without recklessness
  - \$1.5 million corporations; \$300,000 individuals
- Category 3: fails to comply with WHS duty
  - \$0.5 million corporations; \$100,000 individuals



# Penalties

- Category 1 offence is a crime – District Court
- Category 2 and 3 – Magistrates Court
- Appeals up to the High Court of Australia
- Independent right of review when regulator does not prosecute for Category 1 or 2 offences – by the Director of Public Prosecutions



# Inspector powers – What's new

- Inspectors powers of entry and specific powers on entry (e.g. seizing of evidence, requiring answers to questions, requiring production of documents, issuing of notice) are consistent with current provisions
- Improvement and prohibition notices – consistent with current notices but can include directions and recommendations
- A person given a notice, must display a copy in a prominent place near the work to which the notice relates, while it is in force
- New notice – non-disturbance notice – necessary to preserve a site or prevent disturbance to a site for investigation



# Inspector powers – What's new

- Abrogation of privilege against self-incrimination
- Means - a person is not excused from answering a question or providing a document, record or information under the WHS Act 2011 on the ground that the answer, document, etc. may tend to incriminate the person
- Answer provided is not admissible as evidence against that person in civil or criminal proceedings, other than proceedings arising if the answer is misleading or false



# Codes of practice

- Admissible in a court as evidence
- Evidence of what is known about a particular hazard or risk, risk assessment or risk control
- Can be relied on in determining what is reasonably practicable
- Do not impose mandatory legal obligations; persons may comply in a manner that is different so long as it provides a standard of health and safety that is equivalent to or higher than the standard required in the code.

# Further information

- visit [www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au)
- phone Infoline 1300 369 915
- sign up for eNEWS (free email subscription service) at [www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au).