



Government
of South Australia

SafeWork SA

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The New Australian Approach to Risk Management and Prevention

**Presented by
Michele Patterson
*IALI President &
Executive Director
SafeWork SA***





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Australia has 9 Work Health and Safety jurisdictions

- *South Australia*
- *New South Wales*
- *Victoria*
- *Queensland*
- *Tasmania*
- *Western Australia*
- *Northern Territory*
- *Australian Capital Territory*
- *Commonwealth*



The Aim: One Work Health and Safety Act for Australia

- ***one model law*** (Act) and model regulations and codes of practice
- Compliance and enforcement arrangements are ***consistent across jurisdictions***
- For business - ***a reduced regulatory burden***
- For workers – ***fairness*** - the same conditions for a healthy and safe workplace exist and are consistently administered



Events Leading to Australia's New Model WHS Act

- ***Intergovernmental Agreement 2008*** on WHS reform, committing all States, Territories and the Commonwealth to implementing model WHS laws.
- ***National Review into Model WHS Laws*** (completed in January 2009); and
- the establishment of ***Safe Work Australia***, which has responsibility to develop the model WHS legislation: *WHS Strategic Issues Group – Chaired by SA (Michele Patterson)*



Where are we up to?

- ***On 11 December 2009***, WRMC endorsed the draft of the Model WHS Act
- ***SWA*** (through OHS-Strategic Issues Group) has commenced work on the national model regs and codes
- ***The full set of draft regs and codes*** is due to be released for public comment from Oct 2010 to Feb 2011
- ***All jurisdictions*** need to adopt the Model Act including regs and codes by January 2012



Consistency in Implementation

Heads of Workplace Safety Authorities (HWSA)

- 'Regulators in Harmony' Project
- National Policies and Procedures
- Global Code of Integrity for Labour Inspection
- Professional development framework for Inspectors
- Coordinated intervention campaigns



Structure of the Model WHS Act

**The new Act will be called the
*Work Health & Safety Act***

- **Scope, objects, definitions**
- **Duties of care and other obligations**
- **Consultation, participation and representations**
- **Protection from discrimination**



Structure of Model Act cont

- **Workplace right of entry (for union officials)**
- **Functions and powers of the Regulator and Inspectors**
- **Legal proceedings; and**
- **Other administrative matters**



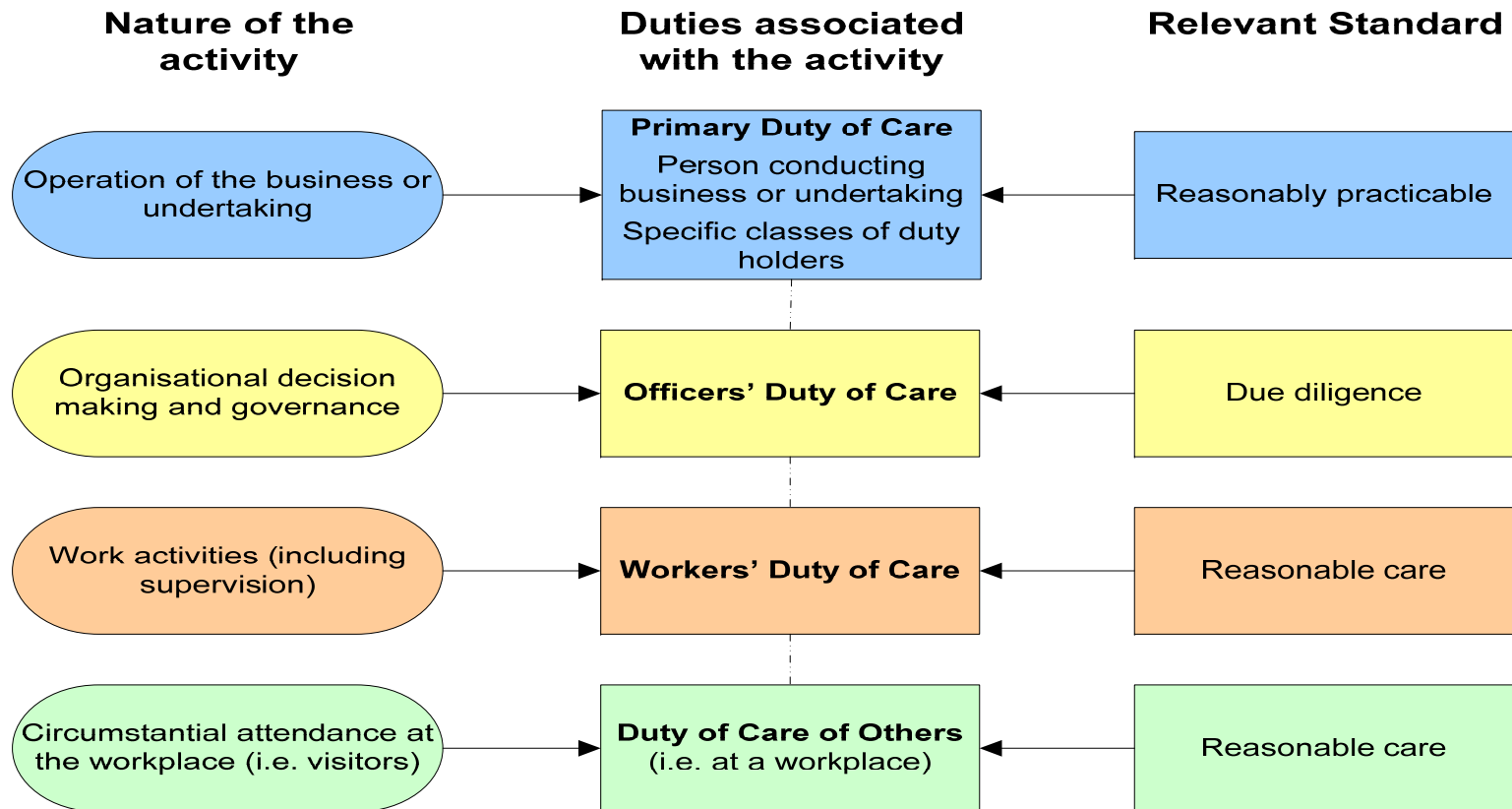
Scope and application

- **The Act binds the Crown (Government)**
- **Applies to all industries**
- **Requires protection of the health and safety of any person - including the public - from exposure to hazards and risks that arise from work**
- **Persons may have more than one duty and more than one person can have the same duty**



Duties of Care – Model Act

Relationship between recommended duties of care





Persons conducting a business or undertaking

- The primary duty holder under the Model is the PCBU
- The PCBU Duty Holder must ensure, so far as is reasonably practicable, the health and safety of workers while they are engaged at work in the business or undertaking, and that other persons are not put at risk from the conduct of the business or undertaking.



Who is a Person conducting a business or undertaking

- 'Person' includes a body corporate, unincorporated body or association and partnerships
- Applies to activities whether conducted alone or together with others, for profit or not for profit, with or without engaging workers
- Intended to capture the broad range of work relationships and business structures
- Does not extend to a person's private or domestic activities or to 'volunteer associations' (as defined)



What does this mean for Australia?

- The primary duty of care for the PCBU is equivalent to the previous concept of 'employer', but
- The PCBU concept provides greater certainty about workplace duties
 - Removes ambiguity re responsibility eg principal contractor/contractors
 - Clarifies duty
 - Confirms sharing of information
- the PCBU concept 'casts a wider net'



Consultation – WHS Act

- **Duty to consult with workers**
 - Qualified by ‘reasonably practicable’
 - defines consultation as well as how and when it should be undertaken

- **Health and Safety Representatives (HSRs)**
 - Must be established on request from a worker
 - Can direct unsafe work to cease and issue provisional improvement notices, but only if trained

- **Health and Safety Committees**
 - Must be established within 2 months where requested by HSR, or 5 or more workers



Managing Risks – WHS Act

New concept is:
‘Managing work health and safety risks’
rather than:
‘Risk management’

Management of risks

A duty imposed on a person to ensure health and safety requires the person:

- (a)** To eliminate risks to health and safety, so far as is reasonably practicable; and
- (b)** If it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.



Managing WHS Risks – Code of Practice

- **Reasonably Practicable**
 - the likelihood of a hazard or risk occurring
 - the degree of harm that would result
 - what is known about the hazard or risk, and any ways of eliminating the hazard or reducing the risk; &
 - the availability, suitability and cost of ways to eliminate the hazard or reduce the risk

- **Consultation must occur throughout every step of managing risk**



Managing Risks Code of Practice – 4 Steps

- **Step 1: Identify hazards**
 - Know what hazards are present

- **Step 2: Assess risks**
 - Understand the nature of risks, the harm that could occur and the likelihood

- **Step 3: Control hazards and risks**
 - Determine options for eliminating or reducing risk, selecting the best and implementing

- **Step 4: Review**
 - Review the implemented controls to ensure they are working as planned and effective



When to Manage Risks Code of Practice

- **Starting or purchasing a business**
- **Changing work systems or the environment**
- **Purchasing new or used equipment or using new substances**
- **Planning to improve productivity or reduce costs**
- **New information about workplace risks becomes available**
- **Responding to workplace incidents**
- **Responding to concerns raised by workers or their representatives**



What is new about this approach?

- **Does not require elaborate systems or extensive documentation**
- **It is a way of thinking through a problem and taking action**
- **Each person with the duty must consult, co-operate and co-ordinate activities with all other persons who have the same duty**
- **Is not required where WHS laws require hazards or risks to be controlled in a specific way**



Enforceable Undertakings

- An enforceable undertaking is an agreement between an alleged offender and the regulator to implement specific actions
- It is considered to be an alternative to prosecution
- A breach of an undertaking can be referred to a court to have the undertaking enforced



Penalties – OHS Act

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

Category 1

Corporations: \$3m

Officers: \$600k / 5 years jail

Workers: \$300k / 5 years jail

Category 2

Corporations: \$1.5m

Officers: \$300k

Workers: \$150k

Category 3

Corporations: \$500k

Officers: \$100k

Workers: \$50k



Summary of key changes

- All of Australia will implement the same Act providing simpler rules for organisations working across borders and the same level of protection for all workers & the public
- The gaps created by the employer/employee concept are eliminated by the new concept of 'Person conducting a business or undertaking' and everyone who could be affected by the work is protected
- WHS duties must be co-ordinated among all those responsible



Summary of key changes (cont)

- The approach to 'managing risks' is a much simpler concept than the previous formal 'risk management' process and is designed to reduce 'red tape'
- There is a much greater emphasis on consultation with everyone in the workplace as the key to good WHS practice
- Penalties are significantly increased, including jail terms for reckless behaviour leading to the potential for death or serious injury



劳动监察国际诚信准则

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A document designed to support the achievement of a high standard of professional and ethical conduct by all employees in labour inspection systems and services



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Document conçu pour permettre aux employés d'atteindre un haut niveau de normes de haute qualité dans le cadre de la conduite professionnelle et éthique





IALI's Global Code of Integrity for Labour Inspection

- Approved and adopted in June 2008 at IALI's triennial General Assembly
- Now available in 10 languages
- Being implemented by IALI's 100+ member countries
- Can you help? – translation? implementation plans? Sharing your experiences?



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Our International Opportunity

“An efficient and adequately resourced labour inspection system makes a significant contribution to economic development, social cohesion and good governance”

(ILO Governing Body Committee on Employment and Social Policy, November 2006))





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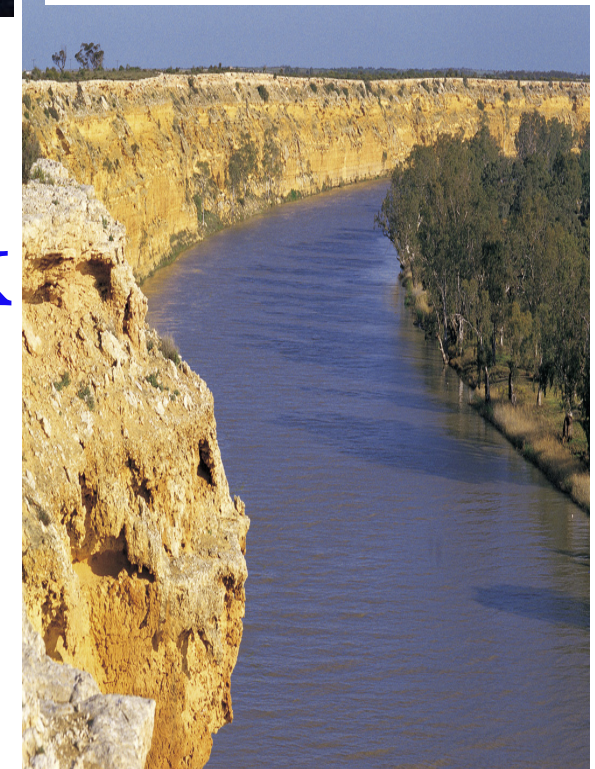
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Thank You



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