



# New work health and safety legislation

Angus Mackenzie  
and  
Alex Rowe

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## Uniform WHS laws in each jurisdiction will provide:

- A consistent level of safety for all workers in Australia
- Reduced compliance and regulatory burdens for businesses operating across state and territory boundaries
- Enable workers who hold licences or permits issued by state work health and safety regulators to move easily between jurisdictions
- A larger store of health and safety information, which will help deliver clear and consistent information to all Australians

# WHS legislative framework

Act



Regulations



Codes of Practice

# Object of the WHS Act 2011

Secure the health and safety of workers and workplaces

Elimination or minimisation of risks

Fair and effective representation, consultation, co-operation, and issue resolution

Encouraging employers, workers and industry groups to play a constructive role

Provision of advice, information, education and training

Effective and appropriate compliance and enforcement measures

## Some key changes

- Primary duty expanded: imposed beyond ‘employers’ and is owed to all workers not only ‘employees’
- New positive duty of care for “Officers”, with due diligence defined
- Expanded consultation obligations between duty holders and Health and Safety Representatives (HSRs) for work groups
- Increased penalties and broader compliance options such as enforceable undertakings
- Changes to powers of union officials

## Duty Holders

**Employer**



**PCBU**

- Person conducting a business or undertaking (PCBU)
- Includes: corporations, associations, partnerships, labour hire businesses, franchisees

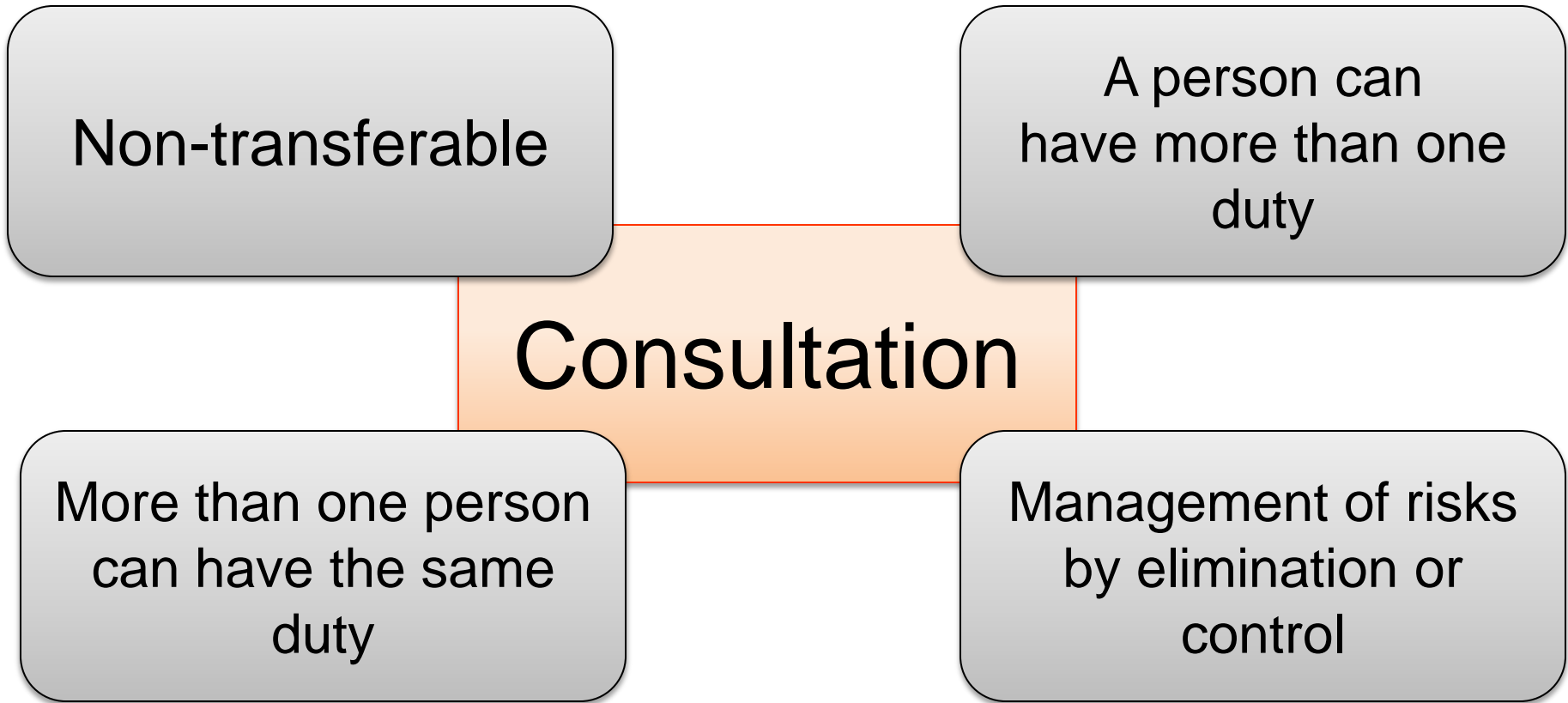
**Employee**



**Worker**

- Worker includes employees, independent contractors, apprentices, outworkers, trainees, work experience and volunteers.

# Principles of duties



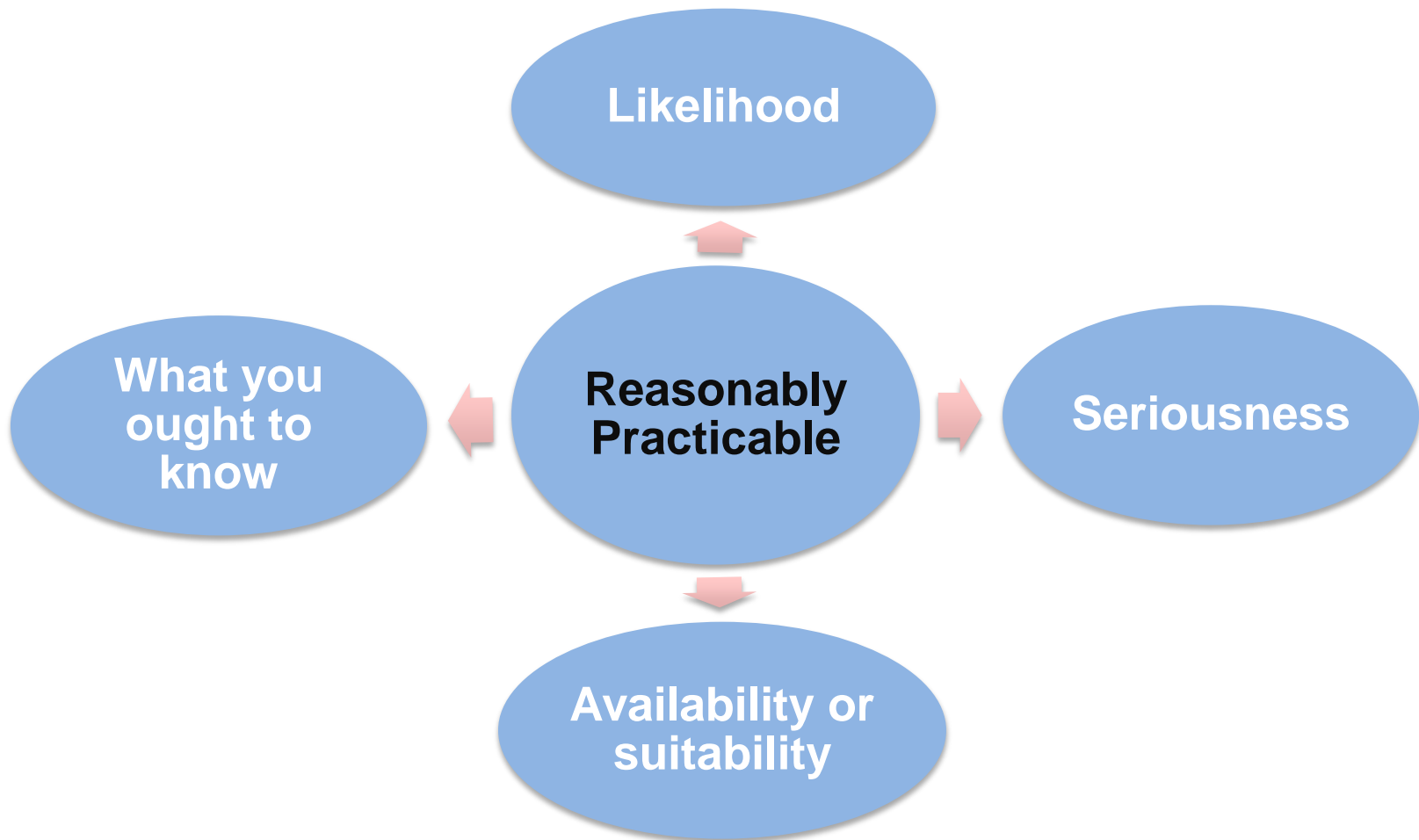
# Primary Duty

A PCBU must ensure, so far as **reasonably practicable**, the health and safety of:

- workers they engage, or cause to be engaged
- workers they influence or direct
- others

Includes: work environment, plant, systems of work, facilities, information, training supervision

# Reasonably Practicable



## Further PCBU duties

You have additional duties if you are a PCBU who:

- manages or controls workplaces or plant, fixtures and fittings at workplaces
- designs substances, structures or plant for use in workplaces
- imports, supplies or manufactures
- Installs, constructs or commissions plant and structures

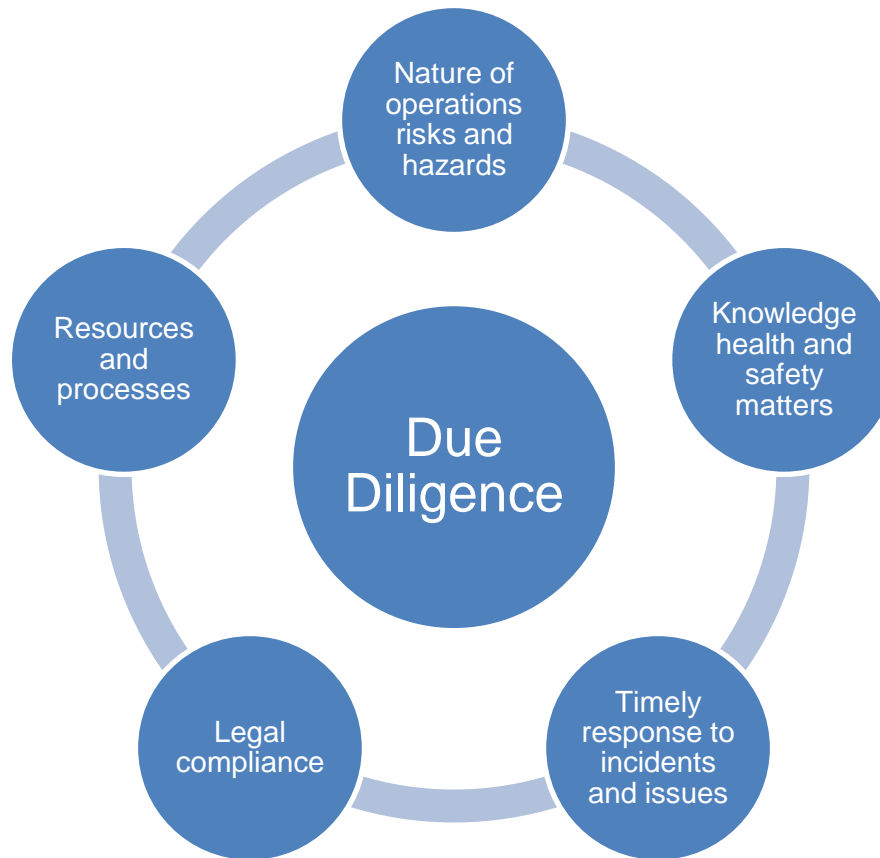
# Who is an officer of a PCBU?

- An officer within the meaning of s9 of the *Corporations Act 2001*,  
*‘a person who makes or participates in making decisions that affect the whole or substantial part of the organisation’*
- An Officer of the crown within the meaning of s 247 WHS Act
- An officer of a public authority within the meaning of s 252 WHS Act
- but will **exclude**:
  - Ministers of the Crown
  - Elected members of local authorities (Councillors)
  - Partners in a partnership

## Who is an officer?- continued

- Volunteer officers must comply but cannot be prosecuted
- “Volunteer” is a person who does work on a voluntary basis

# Due Diligence



# Duties of workers

Take reasonable care for their own and others safety

Comply with any reasonable safety instruction

Cooperate with WHS policy or procedure

# “Other persons” at your workplace

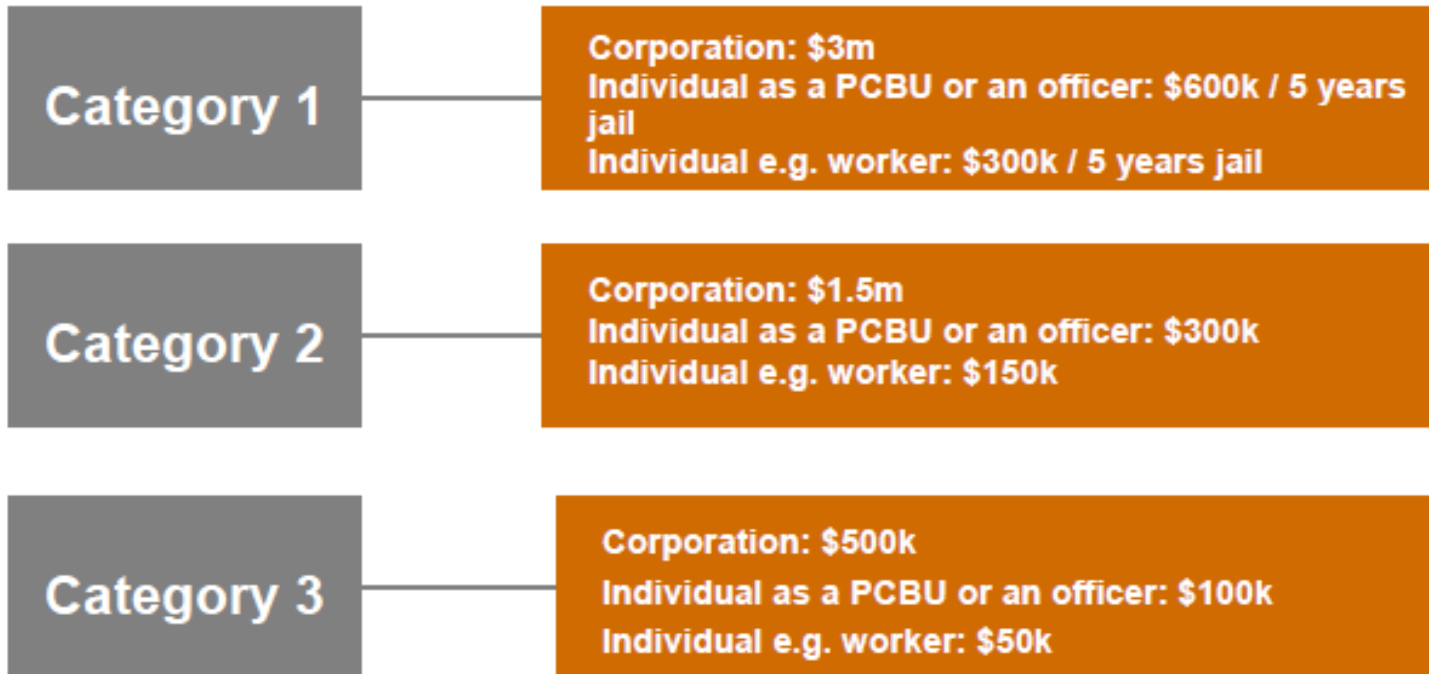
- ‘Other persons’ includes customers and visitors

What are their duties?

- Take reasonable care for their own and others safety
- Follow reasonable instructions to comply with the WHS Act

# Penalties for Breaches of Duties

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



# Discriminatory, coercive and misleading conduct

Provides broader protections against discrimination, coercion for a wider group of persons acting to achieve compliance with the WHS Act



Criminal offences for discriminatory conduct where it is established that the dominant reason was a prohibited reason



Civil proceedings for discriminatory conduct where the reason was substantially a prohibited reason

## Further Information

Website

[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

Info Centre

**13 10 50**

Email

[contact@workcover.nsw.gov.au](mailto:contact@workcover.nsw.gov.au)

Safe Work Aust

[www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au)



9/2/2011

# Incident notifications

PCBU must immediately notify WorkCover of:

- the death of a person
- a serious illness or injury
- or a dangerous incident

Must keep incident records for 5 years

## **Serious injury or illness**

In-patient in hospital

Amputation

Serious head, eye or burn injury

Degloving or scalping

Spinal injury

Loss of bodily function

Serious lacerations

Exposure to substance

## Dangerous incidents

Escape, spillage or leakage of a substance

Implosion, explosion or fire

Electric shock

Escape of gas, steam

Damage to plant (that requires authorisation)

Fall from a height of any plant, substance or thing

Structure collapse

Inrush of water, mud or gas

Interruption of ventilation underground

# Consultation, coordination and cooperation



# Consultation with workers

PCBUs must consult with workers on issues that directly affect the workers health and safety

For example:

- When identifying hazards and risks
- When developing and implementing new procedures
- When making decisions about how consultation will occur

# Consultation mechanisms

- Health and safety representatives (HSRs)
- Health and safety committees
- Other agreed arrangements

# Health & Safety Representatives (HSRs)

Represents workers

Investigates complaints

Inspects the workplace



3 year term

Can issue PINs

Training

Direct unsafe work to cease

# Benefits of HSRs

- Access knowledge and experience of the work group
- Way for workers to provide input
- Identify issues before they cause harm
- Single point of contact to raise and resolve WHS issues



Safety leaders

# Health and safety committees (HSCs)

Within 2 months of request by HSR or 5 or more workers

PCBU may establish under own initiative

At least half the members are workers

Constitution agreed between PCBU and workers

HSR member of committee if they consent

No fixed term for members

# WHS Entry Permits - What's changed?

## Current Legislation

One permit to enter to investigate both OHS and IR issues

No prior notice given to enter workplace

No prior notice given to copy/inspect workplace documents

## New Legislation

Separate permits for WHS and IR issues

24 hrs notice to be given unless a suspected contravention

24 hrs notice to be given unless a suspected contravention

# Compliance

- Notices
- WHS undertakings- two types
- Prosecution
- Sentencing options
  - Adverse publicity orders
  - Orders for restoration
  - WHS project orders
  - Injunctions
  - Training orders

# Case study 1

The University of Northern Suburbs has received a complaint from a tenant, “Chish and Phipps”, the contract caterer in the staff dining hall. The tenant has commented that the cleaning contractor responsible for the common areas in the vicinity of the Dining Hall, “Wota Kleener”, leaves excessive amounts of water in the corridor and the approaches to the hall, creating a slip risk.

The tenant has raised the issue with the cleaning contractor however, the issue has not been resolved.

One morning following the cleaning process, a visiting lecturer leaving the Dining Hall slips and falls suffering injuries.



## Case Study 2

Reedum & Lern Pty Ltd is contracted to provide library services for the University of Camford, in far-west NSW. They have two parking bays in the shared carpark adjacent to the main store delivery dock, controlled by the University. This area is extremely busy and critical to storeroom operations.

There have been a number of near miss incidents recently involving plant moving in and around the delivery dock. Workers of Reedum & Lern Pty Ltd have raised the issue with their management who have agreed it is a problem but state they are powerless to act as they only have control of their own workers.



## WorkCover can assist by:

- Keep you up to date on the WorkCover website under “New Legislation 2012”
- Provide fact sheets and FAQs
- Provide e-newsletters
- Conduct presentations and webinars
- Develop publications with other jurisdictions
- Can provide articles for bulletins/magazines

# WHS and OHS Amendment Bills

NSW Parliament passed two bills -1 June 2011



## OHS Amendment Act 2011

- Commenced 7 June 2011
- Brings key changes of the model WHS Act forward in NSW and aligns more closely with other jurisdictions

## WHS Act 2011

- Commences 1 January 2012
- Ensures NSW is ready to commence on 1 January 2012
- NSW has made changes made to Model WHS Act

# WHS Regulations

- Public comment closed 4 April 2011
- 1342 submissions were received
- SIG-OHS has been meeting extensively to work through the issues raised
- Safe Work Australia members approved the regulations and priority codes 29 July
- In-Principal Ministerial approval received at August meeting of WRMC
- Second stage COP late 2011

# Further Information



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Info Centre	<b>13 10 50</b>
Email	<a href="mailto:contact@workcover.nsw.gov.au">contact@workcover.nsw.gov.au</a>
Safe Work Aust	<a href="http://www.safeworkaustralia.gov.au">www.safeworkaustralia.gov.au</a>