

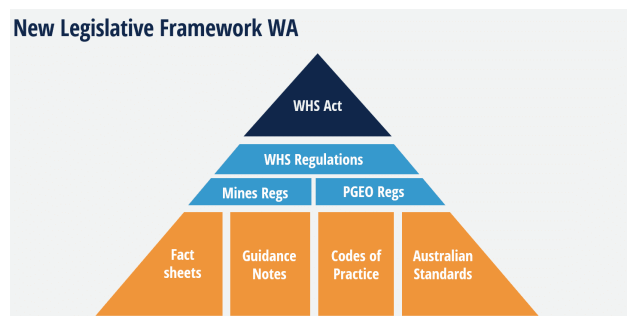
Information Sheet

Work Health and Safety Changes

June 2022

From the 31st of March 2022, Western Australia saw the implementation of a new health and safety legislation which aims at harmonising workplace health and safety and is currently in affect across the Commonwealth, state and territory governments (except for Victoria).

With the changes, a transition period of 12 months (from 31st of March 2022) was taken into consideration in regards to low-risk technical breaches to the WHS Regulations 2022. However, it should be noted that the WHS Act is in full affect as of the 31st March 2022.



Person conducting a business or undertaking (PCBU)

A person conducting a business or undertaking otherwise known as a PCBU is a new term which has been created to replace the existing term “employer” within WHS legislation. This new change in title also has new obligations which tie into it.

A PCBU is a person who has a primary duty of care to ensure the health and safety of the workplace. They should conduct all forms of working arrangements for the business or undertaking. It should also be noted that there can be more than one PCBU, and that the business or undertaking is not dependent on profit or gain.

A PCBU can include:

- A Sole trader (E.g., Self-employed)
- A partner within a partnership
- A company
- An Unincorporated association

- A government department of public authority (including a municipal council)
- Independent schools
- Universities
- Volunteer organisations

The role of a person conducting a business or undertaking and due diligence

The introduction of the PCBU has come with a new set of responsibilities and are much broader than that for the original term used (employer). The PCBU has a duty of care to ensure the health and safety of workers which could include employees, contractors and labour hire, so far as is reasonably practicable. This duty also extends out to the public whose health and safety may be affected by the work carried out by this business. This would include volunteers, clients, customers, pedestrians or anyone that would be present or around the area.

The PCBU is responsible for:

- The health and safety of workers considering any hazards or risks there may be with the work carried out. This can be directly related to the task or even something in the vicinity (environmental hazards and risks).
- Eliminate or reduce hazards and risks to **as low as reasonably practicable**
- Procedures in place to manage work-related injuries or illness
- Help injured workers return to work

In addition to these points if the PCBU is involved in any other specific activities, further obligations will be considered. These activities are and not limited to:

- Control of workplaces
- Management of equipment, tooling, machinery, appliances
- Constructing of structures and installations
- Monitoring workers health conditions at the workplace
- Maintenance of anything owned under their management

- Safe use, handling and storage of structures, plants and substances
- Provision of accessible and adequate facilities
- Provision of training, information, instruction at the workplace

It is important that the PCBU shows due diligence when considering health and safety as to minimise any liability that may be directed towards them. All reasonable steps would have to be documented and implemented to prevent harm, harassment, discrimination and other workplace events from occurring.

If a PCBU fails to comply with their duty of care, and it results in death or serious harm (endangers, or likely to endanger the individual's life resulting in permanent injury or harm) of an individual, they could face the potential for:

- 20 years imprisonment
- \$680,00 fine (for individual) or \$3.5 million penalty for a body corporate (dependent and may vary)

Officer's responsibilities under the new WHS Act

Officers of corporations and other organisations must manage corporate risks – including WHS risks

Under the WHS Act, an officer of a PCBU must exercise due diligence to ensure that PCBU complies with its health and safety duties. This duty relates to the strategic, structural, policy and key resourcing decisions – that is, how the place is run.

- Understanding the nature and operations of the work, and its associated hazards and risks
- Verify the provision and use of the relevant resources and processes
- Ensuring the PCBU is implementing the processes required to comply to their duties and obligations
- Ensuring the PCBU has, and uses, the appropriate resources and processes to eliminate or minimise risk to as low as reasonably practicable

It is also important to note that an officer may be charged with an offence under the WHS Act regardless of whether the PCBU has been convicted or found guilty of an offence under the act.

Worker's responsibilities under the new WHS Act

A worker, although not having as much responsibility as a PCBU or an officer, also has a duty of care to ensure the health and safety of themselves as well as the people around them. Being categorised as a worker would include:

- An Employee
- A Contractor or subcontractor
- An employee of a contractor or subcontractor
- An employee of a labour hire company
- An outworker e.g., clothing alterations
- An apprentice or trainee
- A student gaining work experience
- A volunteer

A level of due diligence should be actioned by a worker to ensure a reasonable level of general health and safety. This would include:

- A worker must take reasonable care of themselves
- A worker should not act in a way which would adversely affect the health and safety of the other person(s)
- Comply with WHS instructions
- Cooperate with reasonable policies and procedures

Enforceable undertaking

If a business operates in a way that would cause harm to employees, the business may agree to undergo an enforceable undertaking.

An enforceable undertaking is a legal binding agreement which may be written or agreed upon in which the business or trader has agreed to complete certain tasks or do certain things in order to comply with the law. Note that this is not an admission of guilt. Enforceable undertakings are a written statement by the business or trader to comply but must be accepted by the regulator on the notion that there are reasonable grounds for believing the business or trader seeks to rectify the issue(s) without the need for litigation.

If accepted, the business or trader must deliver substantial change and benefits to the business or trader as well as the wider community.

Insurance

The new changes to the WHS Act resulted in the inability for company officers and PCBUs to take out insurance to cover fines for breaches. Originally with the old OHS Act, PCBUs and company officers were able to take out insurance to pay for legal fees and penalties. The implementation of the new Act would mean that individuals are now having to pay for their own breaches and fines.

Industrial Manslaughter

Broadly understood as an offence in which a PCBU knew or should have known that any act or breach of proper procedure(s) and compliances would endanger a worker and has disregarded it. In doing so, it has resulted in the death of an individual.

Industrial manslaughter originally allowed for a corporation to be held liable for the death of a person within the scope of their workplace.

The change now sees that individuals can now be convicted of industrial manslaughter under the new Act regardless of whether the company they are working for is convicted or not. In addition to this, new penalties have now been enacted.

Further Information

Work Safe WA

<http://www.commerce.wa.gov.au/WorkSafe/>

Safe Work Australia

<https://www.safeworkaustralia.gov.au/>

Like to know more?

Our **e-learning** module **Getting Employment Right** is designed to provide you with information regarding

- What WA having two Industrial Relations systems means for you
- How to navigate an Award
- What you need to know to get things right
- Your record keeping obligations
- Practical case studies that can be applied to your business

For more information, [click here](#).

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