Implementation of the
Work Health & Safety (WHS) Act

Association of Independent Schools of SA (AISSA)
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Key Areas for Discussion today

- WHS Act
- PCBU
- Officers and their Duty of Care
- Workers (Contractors, Volunteers)
- Penalties
New WHS Legislation

- To commence 1 January 2013

- It now is about Workplaces – hence the “W”

- New Act, Regulations and Codes of Practice to commence
Key changes in terms

**Employer**

**Person Conducting a Business or Undertaking (PCBU)** - includes corporations, partnerships, labour hire businesses, associations, franchises.

A PCBU does not need to employ workers.

**Employee**

**Worker** - includes employees, contractors, volunteers, apprentices, outworkers, trainees and work experience persons.
Duties and Standard of Care

- Persons conducting a business or undertaking (PCBU) – *reasonably practicable*
- Officer – *due diligence*
- Workers – *reasonable care*
- Others (e.g. visitor) – *reasonable care*
Standard of Care – s 18 & 19 of the Act

• A PCBU 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.
“reasonably practicable”

- Means what is reasonably able to be done in relation to health and safety taking into account:
  - The **likelihood** of the hazard or risk occurring
  - The **degree of harm** that might result
  - Whether the **person** **knows** or **ought reasonably to have known** about the risk and ways to eliminate/minimise
  - The **availability and sustainability** of ways to eliminate/minimise
  - The **cost associated** and whether grossly disproportionate to the risk
Specific Obligations of a PCBU

- Workplace monitoring
- Information, training, instruction, supervision
- Facilities for workers’ welfare
- Safe work environment
- Safe plant & structures
- Safe systems of work
- Safe use, handling & storage of plant, structures & substances

Primary Duty of Care
“Officer”

- “Officer” replaces Responsible Officer

- An “officer” is a person who;
  - makes, or participates in, decisions affecting the whole or a substantial part of the business; or
  - is an employee on whose advice the directors (i.e. board members) rely; or
  - is someone who can significantly affect the company’s financial standing.

Definition - Section 9 of *the Corporations Act 2001 (Cth)*
“Officer”

- It is the role of the “officers” of the PCBU to make sure that the PCBU meets all of its duties under the Act.

- As a general guide the “officers” will be the members of a Board, any Board Sub-Committees, Principals, Business Managers.

- Others may be “officers” by virtue of their role within an organisation.

- An “officer” if they are a volunteer cannot be prosecuted for failure to meet “due diligence”
Officer - “due diligence” – s 27

• Must take **reasonable steps** -
  
  • To acquire and keep up to date **knowledge** of WHS matters
  
  • To gain an understanding of the operations and the associated **risks and hazards**
  
  • To ensure appropriate **resources and processes** to **identify** risks and then **minimise or eliminate** those risks
Officers - “due diligence”

- Must take **reasonable steps** -
  - To ensure the PCBU has **appropriate processes** for receiving and considering information regarding **incidents, hazards and risks** and **responding** in a timely way to that information
  - To ensure the PCBU **has and implements**, processes for complying with any duty or obligation under the Act, e.g. reporting a notifiable incident
Officers - “due diligence”

- Must take **reasonable steps** -
  - To verify the provision and use of the resources and processes
## Penalties

<table>
<thead>
<tr>
<th>Category</th>
<th>Corporation</th>
<th>Officer</th>
<th>Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>$3 million</td>
<td>$600,000 / 5 yrs</td>
<td>$300,000 / 5 yrs</td>
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<tr>
<td>Category 2</td>
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<td>$300,000</td>
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<tr>
<td>Category 3</td>
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<td>$50,000</td>
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</tbody>
</table>
Incident Management – s 35

- Required to report any notifiable incident to SafeWork SA
- Legal professional privilege
- A PCBU may give the Regulator an undertaking in response to a category 1 or 2 offence, as an alternative to a prosecution
- A Provisional Improvement Notice (PIN) may be issued in relation to a contravention
Consultation

• A person conducting a business or undertaking must, so far as is reasonably practicable, consult with workers who carry out work for their business or undertaking who are, or are likely to be, directly affected by a work health and safety matter.

• The duty is not limited to consulting with employees but includes contractors, subcontractors, labour hire workers, volunteers and any other people working in the business or undertaking who are, or could be, affected by the matter.
Union Right of Entry

- Union officials who hold both a WHS entry permit and a Fair Work Act permit can enter workplaces.
- This is a new feature of the SA Act.
What areas should a School give priority to?

- Policies and Procedures
- Contractor Management
- Risk Assessment for any manual handling tasks, or tasks involving ‘hazardous work’ or the use of hazardous substances
- Consultation arrangements
- Consider any resource implications
- Codes of Practice
Contractor Management

- An independent contractor when on your workplace needs to perform their work safely.

- You need to ensure that the contractor as one of ‘your’ workers is free from any risks to their health and safety when on your workplace.
Risk assessments

- Hazardous manual handling tasks
- Hazardous substances
- Tasks involving the use of plant or equipment
- Documented risk assessments are required to ensure the PCBU can demonstrate it has identified, assessed and controlled its risks
- The outcome of the Risk Assessment is now more crucial
Codes of Practice

- How to manage WHS risks
- Hazardous manual tasks
- Traffic management
- First Aid in the Workplace
- Workplace Bullying (Draft)
- Labelling of Workplace Hazardous Chemicals
Implementation of the WHS Act

Questions?

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