



OHS Harmonisation

Are you ready?

Patricia Ryan
Practice Manager, EI Legal

Adrian Di Mascio
OHS Consultant, EI Group

17 November 2011

About Us

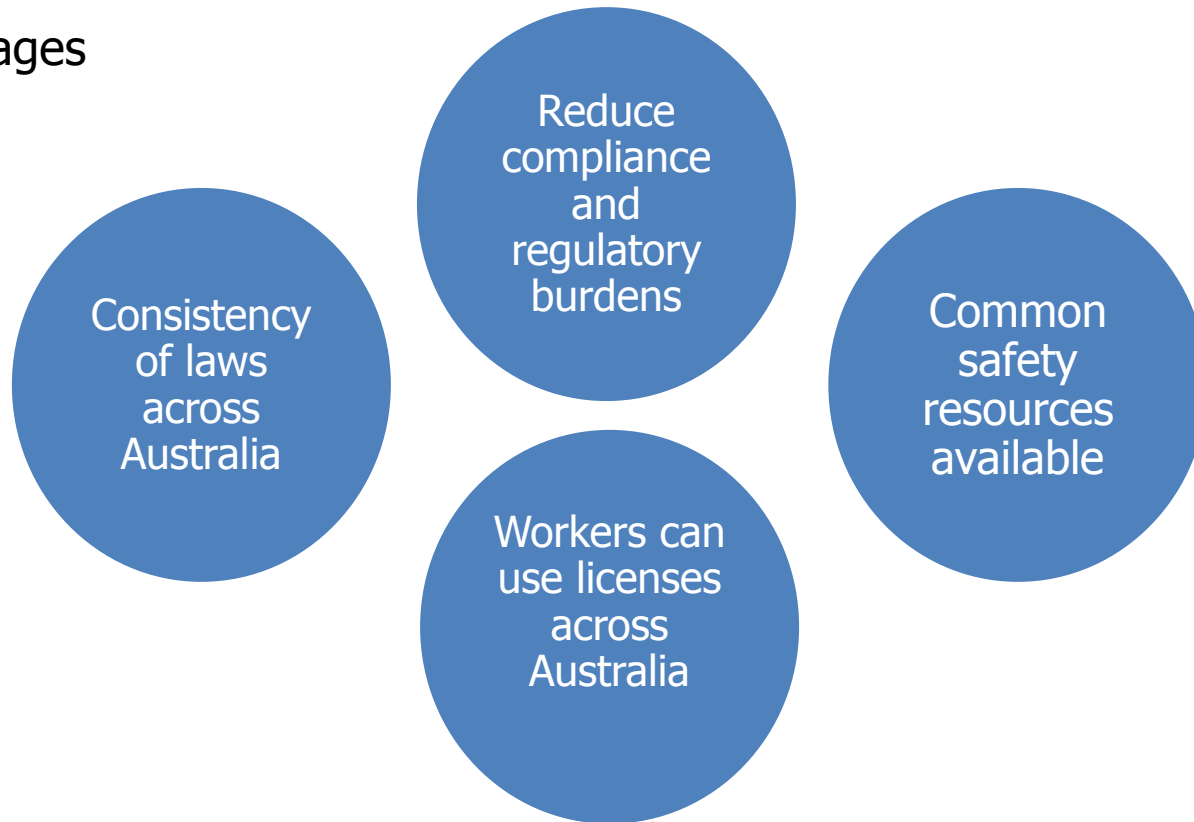
- Part of The EI Group
- An experienced team of workplace lawyers dedicated to providing workplace relations advice and legal representation in employment law and industrial law matters
- Our services include:
 - Industrial Relations
 - Enterprise Agreement Making
 - Equal Employment Opportunity and Anti Discrimination
 - Terminations and Adverse Action
 - Staying Compliant
 - Legal Advice and Representation

Topics Covered

- Harmonisation
- Duty holders
- Duty of Care
- Consultation (HSCs and HSRs)
- Right of Entry
- The Regulator
- Penalties
- Transitional provisions
- What to do next to prepare

Harmonisation

- What is it?
- Advantages



Duty Holders and Duties

PCBU

Workers/Others

Officers

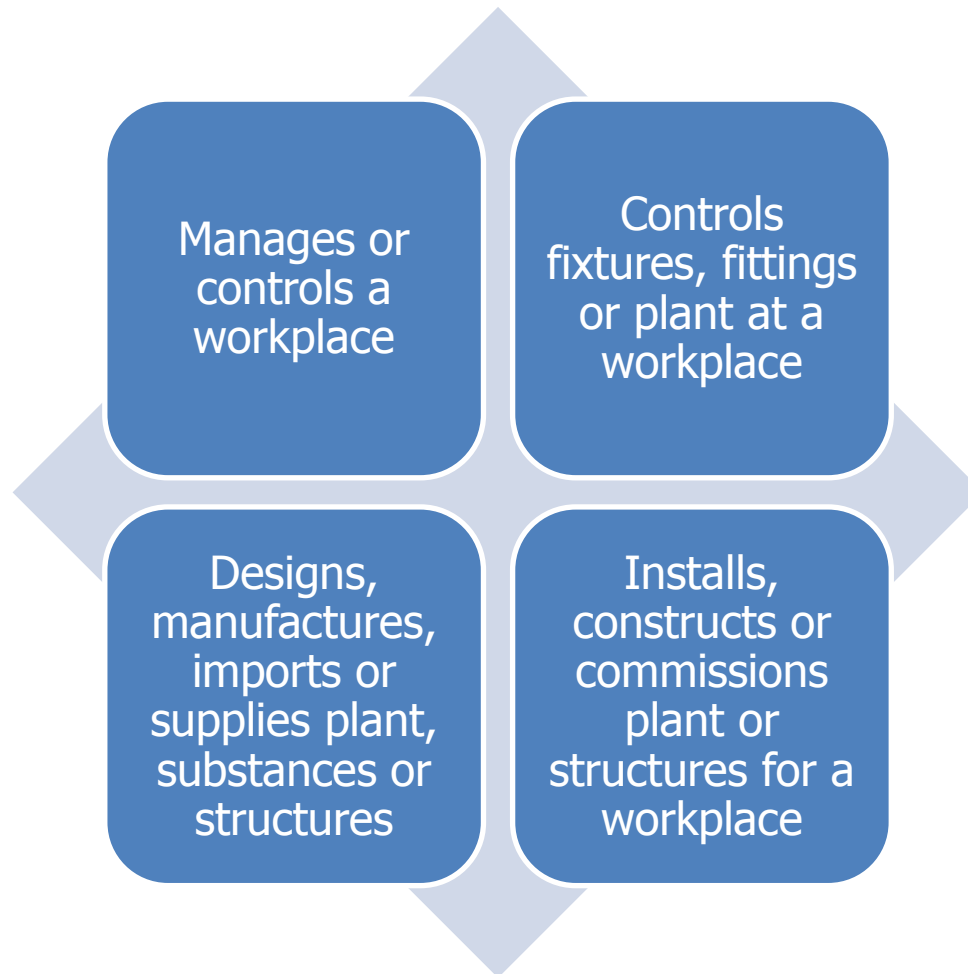
What is a PCBU?

- A new duty of care on any “person conducting a business or undertaking” – “PCBU” – replaces “employer” under old legislation.
- A PCBU conducts a business or undertaking alone or with others. The business or undertaking can operate for profit or not-for-profit. The definition focuses on the work arrangements and the relationships to carry out the work.
- A PCBU can be a corporation, an association, a partnership or sole trader.

Duties of PCBU

- The duty is to take all reasonably practicable steps to ensure health and safety of workers including workers whose activities in carrying out work are influenced by or directed by the PCBU, by eliminating or minimising risks in the workplace.

Additional duties for a PCBU who:



Who is a worker?

Anyone who carries out work for a PCBU, such as:

- an employee
- a contractor or sub-contractor
- an employee of a contractor or sub-contractor
- an employee of a labour hire company
- an apprentice or trainee
- a student gaining work experience
- an outworker and a volunteer

Others

- Clients, Customers, Visitors

Duties of Workers/Others

1. Care for their own and other's health and safety (new)
2. Comply with reasonable instructions from a PCBU so far as reasonably able
3. Co-operate with instructions of PCBU
4. Comply with Policies and Procedures (Workers Only)

Who is an Officer?

- An officer includes directors, senior managers and operational managers who make or participate in decision making that affects the business.

Duty of Officers

- Positive duty to exercise “due diligence”.
- An officer must take reasonable steps to:
 - acquire and keep up-to-date knowledge of work health and safety matters
 - gain an understanding of the hazards and risks associated with the nature of the operations
 - ensure that the business or undertaking has appropriate resources and processes to enable risks to health and safety arising from work carried out as part of the business or undertaking to be eliminated or minimised

Duty of Officers

- An officer must take reasonable steps to:
 - ensure that the business or undertaking has appropriate processes for receiving and considering information about incidents, hazards and risks and responding in a timely way, and
 - ensure that the business or undertaking implements processes for complying with its duties and obligations.

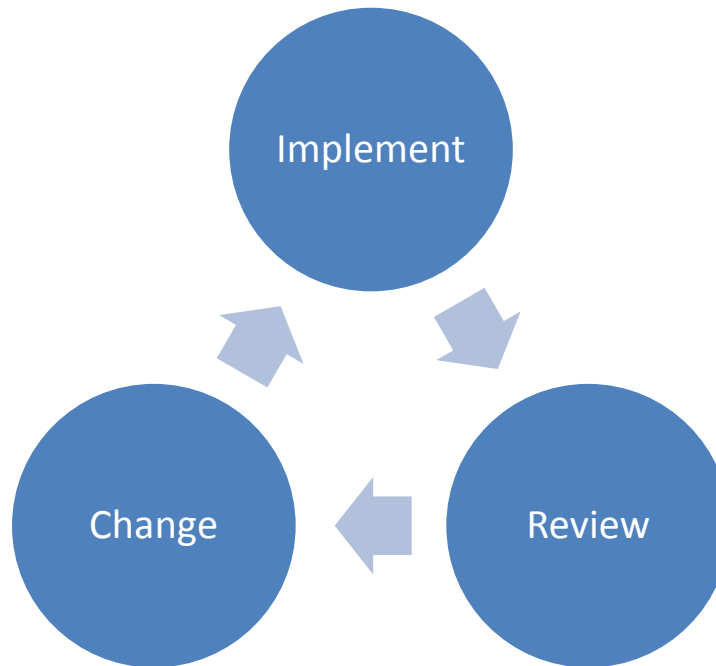
Action to take

- Identify officers in the business;
- Train officers regarding their obligations;
- Ensure that the business or undertaking has appropriate processes for receiving and considering information about incidents, hazards and risks and responding in a timely manner;
- Ensure that the business or undertaking implements processes for complying with its duties and obligations.

Self audit of due diligence

1. What is it that workers are required to do as part of the undertaking?
2. Do they know where they are doing it?
3. Do you know what inherent risks are associated with the undertaking?
4. What current measures are in place to control inherent risks?
5. Do you have a system for worker identification of hazards and risks?

Due Diligence Reviews



Never Set and Forget

Consultation

Extends consultation requirements between employer and employees to “consult, cooperate and co-ordinate” with all other businesses and people impacted by the employer’s undertaking, who also have a duty of care.



Consultation - Action to take

- Review existing consultation procedures;
- Assess that what is being done meets the “reasonably practicable” test;
- Assess who needs to be consulted with;
- Put in place procedures for consultation with all relevant persons.

Health and Safety Committees

- Under the Model Work Health and Safety (WHS) Act a Health and Safety Committee brings together workers and management to assist in the development and review of health and safety policies and procedures for the workplace.

Establishing a Health and Safety Committee

- A Health and Safety Representative (HSR) or five or more workers at a workplace may request the creation of a Health and Safety Committee (HSC). The person conducting a business or undertaking must establish the HSC within two months of the request.
- A person conducting a business or undertaking may establish a HSC at any time on their own initiative.

Who can be a Health and Safety Committee member?

- To ensure genuine worker representation, at least half of the members of a HSC must be workers who are not nominated by the person conducting a business or undertaking. If there is a HSR at the workplace, they may choose to be a member.
- The remaining membership is agreed between the person conducting a business or undertaking and the workers at the workplace.

Meetings of Health and Safety Committee

- A HSC must meet at any reasonable time at the request of at least half of its members and at least once every three months.

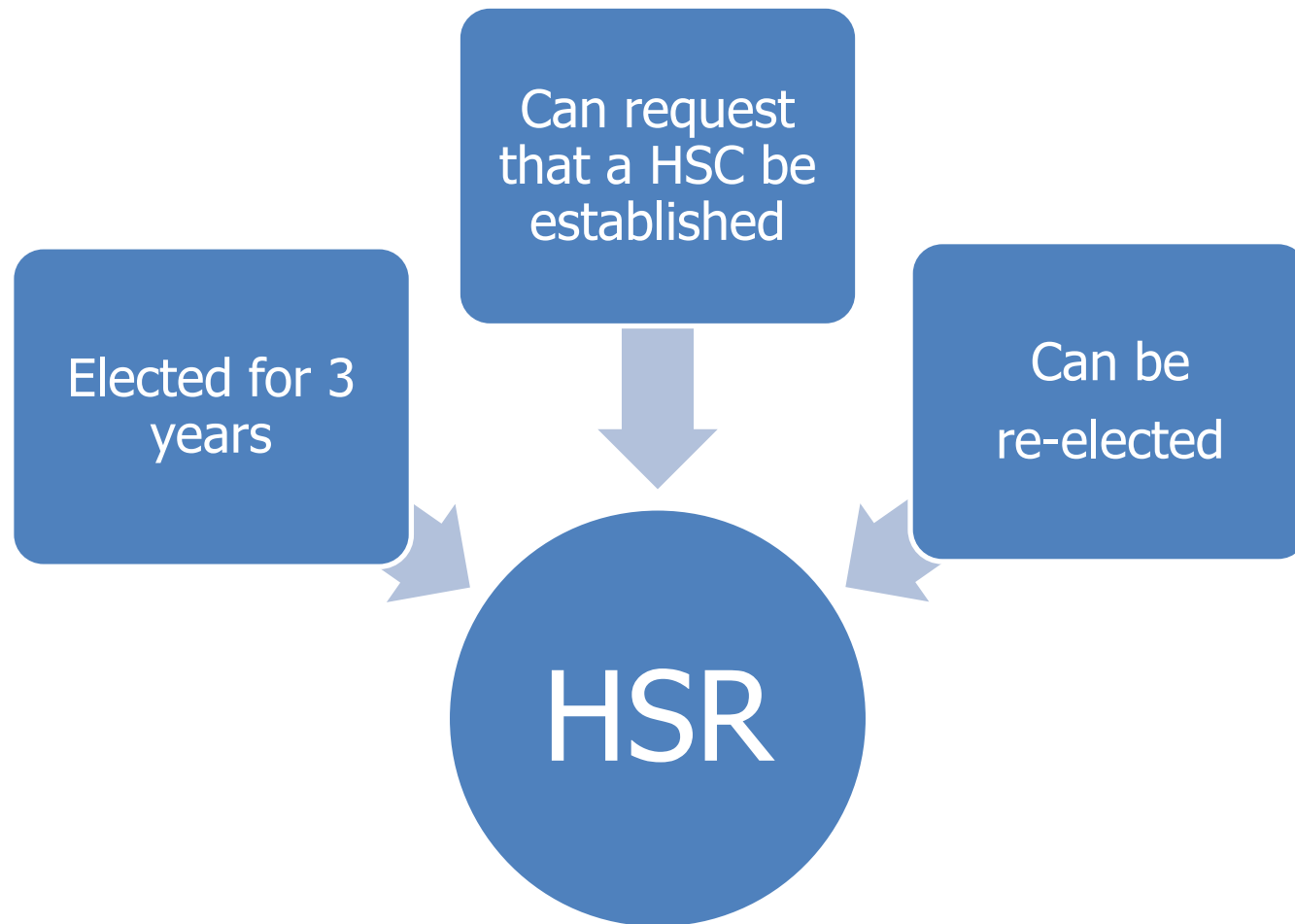
HSRs

- Must undertake a five-day HSR training course.
- They may direct a worker to cease work, if they have reasonable grounds to believe that the worker could be exposed to a serious risk to their health or safety by continuing that work

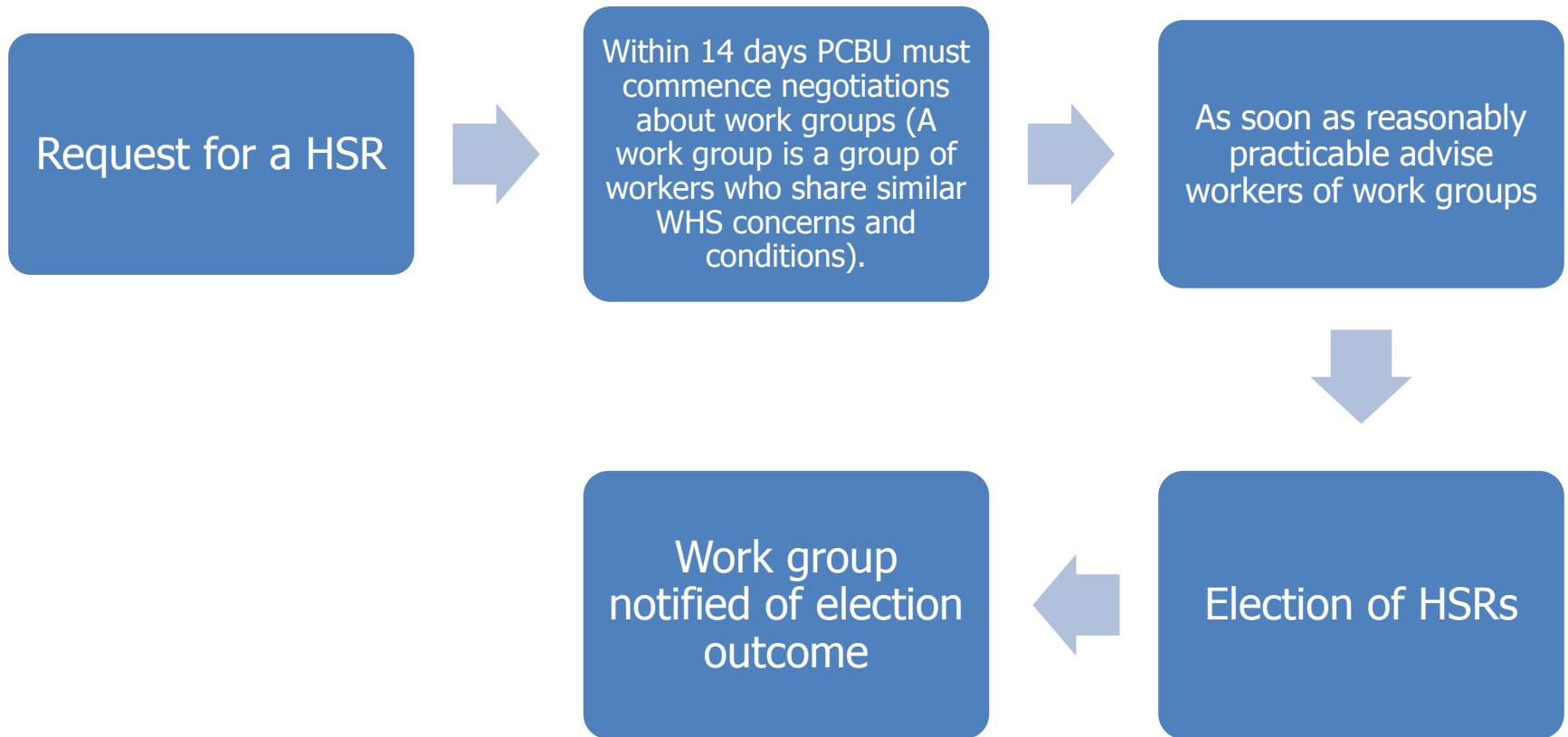
HSRs cont'd

- May issue a provisional improvement notice (PIN) to someone, if they have reasonable grounds to believe that the person is contravening the work health and safety (WHS) legislation.

HSRs cont'd



Election of HSRs



Questions?

www.theigroup.com.au

info@eilegal.com.au

02 8030 8888



The link to the presentation slides as well as the recording of today's session will be sent to all participants.

Right of Entry

- The Act provides authorised union officials with a right of entry, for specific reasons, to workplaces where there are 'relevant workers'.

A 'relevant worker' is a worker:

- who is a member, or eligible to be a member of the union which the permit holder represents;
- whose industrial interests the relevant union is entitled to represent, and
- who works at that workplace.

When must notice of entry be provided?

- A permit holder is **not required** to give prior notice when entering a workplace to enquire into a suspected contravention of the Act.
- However, as soon as reasonably practicable after entering the workplace a permit holder must give notice of the entry and the suspected contravention to the person conducting the business or undertaking, and the person with management or control of the workplace.

Notice of entry cont'd

- This notice is not required to be given if it would defeat the purpose of the entry to the workplace or it would unreasonably delay the WHS entry permit holder in an urgent case.
- When providing notice of the entry and the suspected contravention, the WHS Entry permit holder is not required to identify specific safety concerns, but they can only enter if they actually suspect a contravention.

Notice of Entry (cont'd)

- If entry for purposes other than a suspected contravention, written notice of entry must be given to the relevant PSBU at least 24 hours (but not more than 14 days) before entry

Protection from discrimination, coercion and misrepresentation

- The Act protects people engaged in work health and safety activities from being discriminated against. The Act prohibits discriminatory, coercive and misleading conduct in relation to work health and safety matters.

Role of the regulator in compliance and enforcement

- Existing state and territory regulators remain in place.
- Responsible for prosecutions for offences against the Act.
- Must respond to requests for information on prosecutions.
- Follow procedure for referrals to DPP.

Penalties

Category 1

Recklessly endangering a person to risk of death or serious injury

Corporation: \$3mill
PCBU: \$600,000 or 5 years jail
Worker: \$300,000 or 5 years jail

Category 2

Exposing a person to risk of death or serious injury

Corporation: \$1.5mill
PCBU: \$300,000
Worker: \$150,000

Category 3

Failing to comply with a health and safety duty

Corporation: \$500,000
PCBU: \$100,000
Worker: \$50,000

Transitional arrangements

- There will be appropriate transitional arrangements in each state and territory. There are an agreed set of principles for consistency but variations are inevitable as each jurisdiction will be transitioning from a different work health and safety system.

What to do now?

Identify

Internal

- Identify changes between the existing OHS Act and the new WHS Act
- Identify the stakeholders within your organisation
- Identify workgroups

External

- Identify external stakeholders such as suppliers

What to do now?

Review

Review

- Review your organisational structure to determine where responsibility for WHS lies
- Review policies, procedures and consultation processes

Review

- Review contracts with relevant third parties such as suppliers of plant equipment or labour.
- Ensure your directors and senior managers have sufficient oversight over safety matters to meet their due diligence obligations

What to do now?

Review

Review

- Review consultation arrangements to determine
 - You are consulting with all parties
 - If you need HSR's for identified workgroups
- Review procedures to ensure protection against engaging in discriminatory conduct against workers who raise a health and safety issue

Review

- Review the regulations and codes of practice to determine what changes will need to be made to your OHS management systems

What to do now?

Training

Officers

- Train on 'due diligence'

Site Managers

- Train on union rights of entry
- Train on what to do if they receive a visit by a safety inspector and are issued with a notice

Managers/ Workers

- Train on the changes to your OHS management systems; a result of harmonisation
- Train workforce on discrimination

Questions?

www.theigroup.com.au

info@eilegal.com.au

02 8030 8888



The link to the presentation slides as well as the recording of today's session will be sent to all participants.

Work Health Safety

If the EI Group can assist you with WHS services, please contact us:

info@eilegal.com.au

02 8030 8888

THANK
YOU!