

WORK HEALTH AND SAFETY LAW

Facilitator Guide



Timings	Facilitator Notes	Resources
2 hours	EXPLAIN The significant impact of workplace injuries, illnesses and deaths on workers, communities and businesses. The total economic cost of work-related injuries and disease to the Australian economy estimated to be \$61.8 billion in 2012-13. The purpose of work health and safety (WHS) laws is to reduce the serious economic and social impact on individuals, businesses and the Australian community of work-related incidents. This is achieved by imposing requirements on employers and all other workplace parties to manage risks in the workplace and protect the health, safety and welfare of workers and others who might be at risk from the work.	Slide 1 Slide 2 Slide 3
	EXPLAIN WHS laws in Queensland consist of - the Work Health and Safety Act 2011 (WHS Act), - supported by the Work Health and Safety Regulation 2011 (WHS Regulation).	Slide 4
	EXPLAIN That Queensland's Health and Safety legislation took effect on 1 January 2012 and is based on the national model WHS legislation developed by Safe Work Australia in consultation with the states and territories. The nationally uniform laws are designed to provide greater certainty for employers (particularly those operating across state borders) and ensure workers in Australia have the same standard of health and safety protection, regardless of where they work.	Slide 5 Slide 6
	ASK Ask students if they know of any states or territories who have not adopted this nationally uniform legislation. Show slide - <i>Answer:</i> All Australian jurisdictions, except Victoria and Western Australia, have adopted the model laws.	Slide 7

	EXPLAIN <i>Refer WHS Act Schedule 1 Part 2</i> That the WHS Act applies in all Queensland workplaces, except mines, prescribed railway operations and aviation safety, and where the Electrical Safety Act 2002 applies.	Slide 8
	DISCUSS <i>Refer WHS Act 2011 s7</i> Section 7 of the WHS Act and meaning of a worker. EXPLAIN That individuals protected under the WHS Act include: • employees • contractors • subcontractors • outworkers • volunteers • apprentices and trainees • work experience students • employers who perform work.	Slide 9
	EXPLAIN <i>Refer WHS Act 2011 s3</i> That the WHS Act does not only apply to workers but also provides protection for the general public so that their health and safety is not placed at risk by work activities. ASK <i>Refer WHS Act 2011 s3</i> • Ask students to read WHS Act section 3. • Ask students 'What else the WHS Act aims to do?'	Slide 10

	EXPLAIN <i>Refer WHS Act 2011 s3</i> That the WHS Act aims to: • protect the health and safety of workers and other people by eliminating or reducing workplace risks • ensure effective representation, consultation and cooperation to address health and safety issues in the workplace • encourage unions and employers to take a constructive role in improving health and safety practices • promote information, education and training on health and safety • provide effective compliance and enforcement measures • deliver continuous improvement and progressively higher standards of health and safety. EXPLAIN Some specific sections of the WH&S Act are important to note. ASK • Ask students to read S19 Primary duty of care of a person conducting a business or undertaking • Ask the students to name some of the primary duties of care for a person conducting a business or undertaking	Slide 11
	ASK <i>Refer WHS Act 2011 s19</i> Ask the students to find within the WHS Act the definition of a Person conducting a business or undertaking (<i>WHS Act s5</i>)	Slide 12
	EXPLAIN <i>Refer WHS Act 2011 s27-29</i> The legislation also recognises that responsibility does not lay solely on the PCBU.	Slide 13

	As well as persons conducting a business or undertaking, the following persons have a duty; • officers • workers • other persons at the workplace A person may have more than 1 duty at the same time DISCUSS Discuss with the students examples of when someone could have more than one duty at the same time. ASK Ask students to read the following sections of the Act: • Section 27 Duty of Officers • Section 28 Duties of workers • Section 29 Duties of other persons at the workplace What do these duties require?	
	EXPLAIN <i>Refer WHS Act 2011 s27</i> An 'officer' of a company is <i>'a person who makes or participates in making decisions that affect the whole or a substantial part of the business or undertaking'</i> An Officer has a positive duty to exercise <i>due diligence</i> in ensuring the organisation complies with the law. DISCUSS Discuss the meaning in s27(5) of Due Diligence. In demonstrating due diligence, officers will need to show that they have taken reasonable steps to: • acquire knowledge of health and safety issues • understand the operations of the business or undertaking and the associated hazards and risks • ensure appropriate resources and processes are used to eliminate or minimise risks to health and safety • implement processes for receiving and responding to information about incidents, hazards and risks • establish and maintain compliance processes • verify the provision and use of the resources mentioned above.	Slide 14 Slide 15

	ASK Ask students to describe some of the specific actions an officer might take to exercise due diligence. <i>eg. Risk assessments, policies and procedures, notification of incidents etc</i>	
	EXPLAIN Refer WHS Act 2011 s28 Workers, including contractors and volunteers, have a duty to: • take reasonable care for their own health and safety and electrical safety • take reasonable care that their conduct, acts or omissions does not adversely affect the health and safety of others or adversely affect the electrical safety of other persons or property • comply, so far as they are reasonably able with instructions • co-operate with reasonable health and safety and electrical safety policies or procedures that have been notified to workers.	Slide 16
	EXPLAIN Refer WHS Act 2011 s27 In addition to the previous duties of care, the WHS Act identifies in Division 3 - Further duties of persons conducting a business or undertaking (PCBU). These further duties relate to: • persons with management or control of a workplace or in control of electrical equipment • persons with management or control of fixtures, fittings or plant at a workplace • designers of plant, substances, structures, electrical equipment or an electrical installation • manufacturers of plant, substances, structures or electrical equipment • importers of plant, substances, structures or electrical equipment • suppliers of plant, substances, structures or electrical equipment • persons who install, construct or commission plant or structures, or install electrical equipment or an electrical installation • repairers of electrical equipment or electrical Installation • persons conducting a recognised external certification scheme.	Slide 17

	DISCUSS Discuss with the group different duties of care a PCBU may have. ASK Ask the students what duties of care would a PCBU have if their role involved the management or control of workplaces? <i>This PCBU must undertake both the duties of section 19 and section 20.</i> Ask the students what duties of care would a PCBU have if their role involved imported plant, substances or structures? <i>This PCBU must undertake both duties of section 19 and section 24.</i>	
	EXPLAIN <i>Refer WHS Act 2011 s18</i> All duties under the WHS Act are qualified by the term 'reasonably practicable'. Deciding what is 'reasonably practicable' to protect people from harm requires taking into account and weighing up all relevant matters, including: • the likelihood of a hazard or risk occurring (i.e. the probability of a person being exposed to harm) • the degree of harm that would result if the hazard or risk occurred (i.e. the potential seriousness of injury or harm) • what the person concerned knows, or ought to reasonably know, about the hazard or risk and ways of eliminating or minimising it • the availability of suitable ways to eliminate or minimise the hazard or risk • the cost of eliminating or minimising the hazard or risk. Ordinarily, cost will not be the key factor in determining what it is reasonable for a duty holder to do unless it can be shown to be 'grossly disproportionate' to the risk. If the risk is particularly severe, a PCBU will need to demonstrate that costly safety measures are not reasonably practicable due to their expense and that other less costly measures could also effectively minimise the risk.	Slide 18

	DISCUSS Discuss when cost would and would not be a key factor in determining what is reasonably practicable	
	EXPLAIN The WHS Act sets out additional requirements for the following: • Risk management – The process by which Health and safety risks arising from the work are effectively managed by eliminating or minimising risks so far as is reasonably practicable. • Incident notification – The requirements in which the WHS regulator must be notified of serious injuries and incidents and before certain work activities take place. • Representation and consultation with workers - Covered in the Workplace Consultative module, this sets out the consultative requirements between PCBU's and workers. • Issue resolution – covered in the Workplace Consultative module, this sets out the requirements for workplaces to have an agreed issues resolution procedure	Slide 19
	REFER <i>Refer WHS Act 2011 s103A – 103I</i> <i>Refer WHSO Information Sheet</i> Refer to the Act and discuss the roles and functions of the WHSO.	Slide 20
	EXPLAIN <i>Refer WHS Act 2011 s160</i> Workplace Health and Safety Queensland (WHSQ) Inspectors have the following functions and powers under the WHS Act: • to provide information and advice about how to comply with the law • to help resolve work health and safety issues • to help resolve right of entry disputes • to review a disputed PIN or <i>Provisional Improvement Notice</i> • to issue notices to require compliance with the law • to investigate contraventions and assist to prosecute offences.	Slide 21

	EXPLAIN <i>Refer WHS Act 2011 Part 10-13</i> Failure to meet the requirements or your duties under the legislation can be classified as an offence. A breach of WHS Laws can result in the following consequences: • on-the-spot fines • improvement or prohibition notices • prosecutions • heavy fines • imprisonment • enforceable undertakings and other non-monetary sanctions.	Slide 21
	EXPLAIN <i>Refer WHS Act 2011 Part 2A</i> Industrial manslaughter is the highest offence under the WHS Act, Electrical Safety Act and Recreational Water Act. The Industrial Manslaughter provisions make it an offence for a PCBU, or a senior officer, to negligently cause the death of a worker. In particular, the offence applies if: • A worker dies, or is injured and later dies, in the course of carrying out work for the business or undertaking (including during a work break); and • The PCBU's, or senior officer's, conduct cause the death of the worker (i.e. the action or inaction of the PCBU, or senior officer, substantially contributes to the death); and • The PCBU, or senior officer, is negligent about causing the death of the worker (i.e. the person's action or inaction departs so far from the standard of care required). DISCUSS The penalty for Industrial Manslaughter. From the information in the Student notes, discuss the role of a senior officer.	Slide 22

	ASK Ask the students to provide examples of an individual who would hold the role of a senior officer.	
	EXPLAIN <i>Refer WHS Regulation 2011</i> The WHS Regulation supports the WHS Act by specifying the way in which a duty under the WHS Act must be performed and prescribing procedural or administrative matters required to be performed. If the Regulation prescribes a way of preventing or minimising a risk, or prohibits exposure to a risk, duty holders must comply with these Regulations. The WHS Regulation covers a wide range of matters including: • representation and participation (Chapter 2) • managing risks to health and safety and general workplace management (Chapter 3) • hazardous work involving noise, hazardous manual tasks, confined spaces, falls, demolition work, electrical safety and energised electrical work, diving work and licensing of high risk work and accreditation of assessors of competency (Chapter 4) • plant and structures (Chapter 5) • construction work (Chapter 6) • hazardous chemicals including lead (Chapter 7) • asbestos (Chapter 8) • major hazard facilities (Chapter 9); and • review of decisions, exemptions, and prescribed serious illnesses (Chapter 11).	Slide 23
	EXPLAIN Like regulations, codes of practice deal with particular issues and do not cover all hazards or risks which may arise. The health and safety duties require duty holders to consider all risks associated with work, not only those for which regulations and codes of practice exist. A code of practice provides practical guidance for people who have work health and safety duties. Codes give guidance on: • how to achieve the standards required under the Act • effective ways to identify and manage risks.	Slide 24

	The WHS Act and WHS Regulation are supported by 38 codes of practice. 20 of these are based on national model codes, and 18 are Queensland specific. DISCUSS Discuss the role Codes of Practice play in determining what is 'reasonably practicable' and practicing 'due diligence'.	
	EXPLAIN Australian and international standards are published documents that set out specifications, procedures and guidelines that aim to ensure products, services and systems are safe, consistent and reliable. A standard may also be considered information that a duty holder knows, or ought reasonably to know, about a hazard or risk and about the ways to eliminate or minimise the risk. DISCUSS Discuss the difference between a Standard, Law and Code of Practice. ASK When is it a requirement to comply with a standard? ANSWER: Standards are not laws, so there is no general requirement to conform to a standard. However, where the WHS laws require conformance with a standard, a failure to do so may result in a breach of the WHS laws.	Slide 25 Slide 26
	EXPLAIN Review infographic: Meeting your WHS Obligations requires the following: If the WHS Regulation prescribes a way of preventing or minimising the risk, then you must follow the prescribed way. If the WHS Regulation prohibits exposure to a risk, the person must ensure the prohibition is not contravened. If a code of practice states a way of managing exposure to the risk, a person must follow the method described in the code or manage the hazards and risks arising from the work in a way that provides an equivalent or higher standard of work health and	Slide 27

	safety than specified in the code. If there is no regulation or code of practice that states a way to manage the risk, then the person must take reasonable precautions and exercise proper diligence to ensure the obligation is discharged.	
	EXPLAIN Infographic The systems that should be developed to satisfy the guidelines of the WHS Act, WHS Regulation, codes of practice and relevant Australian Standards should include: • Workplace health and safety policy • Responsibility and accountability statements for personnel • Suppliers, sub-contractors, and purchasing controls • Health and safety consultation mechanisms • Risk management procedures • Training, i.e. Induction and ongoing training • Incident reporting and investigation procedures • Emergency planning • Manual handling and ergonomics • Hazardous substances management • Noise management • Specific workplace issues, i.e. Infection control • Electrical testing • Plant and equipment • Working at Height. EXPLAIN Infographic – Due Diligence	Slide 28 Slide 29
	DISCUSS The importance of remaining up to date with legislation. Reiterate the need to keep updated on any changes to legislation.	Slide 30

Version	Date	Author
1	30/06/2018	WHSQ