

Model Work Health and Safety (WHS) Laws

Safe Work Australia
Legal Policy Branch



safe work australia

Overview - Part I

- Development of model work health and safety laws
- Overview of model Work Health Safety Bill
- Health and Safety Duties:
 - Primary duty
 - PCBU's with management or control of workplace
 - Upstream duties of PCBU's
 - Officers' duty of due diligence
 - Workers and other persons at a workplace
- Categories of Offences

Overview - Part II

- Consultation obligations
- Process of determining worker representation
- Powers of HSRs, WHS entry permit holders and inspectors
- Prohibitions on discriminatory, coercive and misleading conduct
- WHS undertakings and other sentencing options
- Legal proceedings
- Where to next?

Development of model work health and safety laws

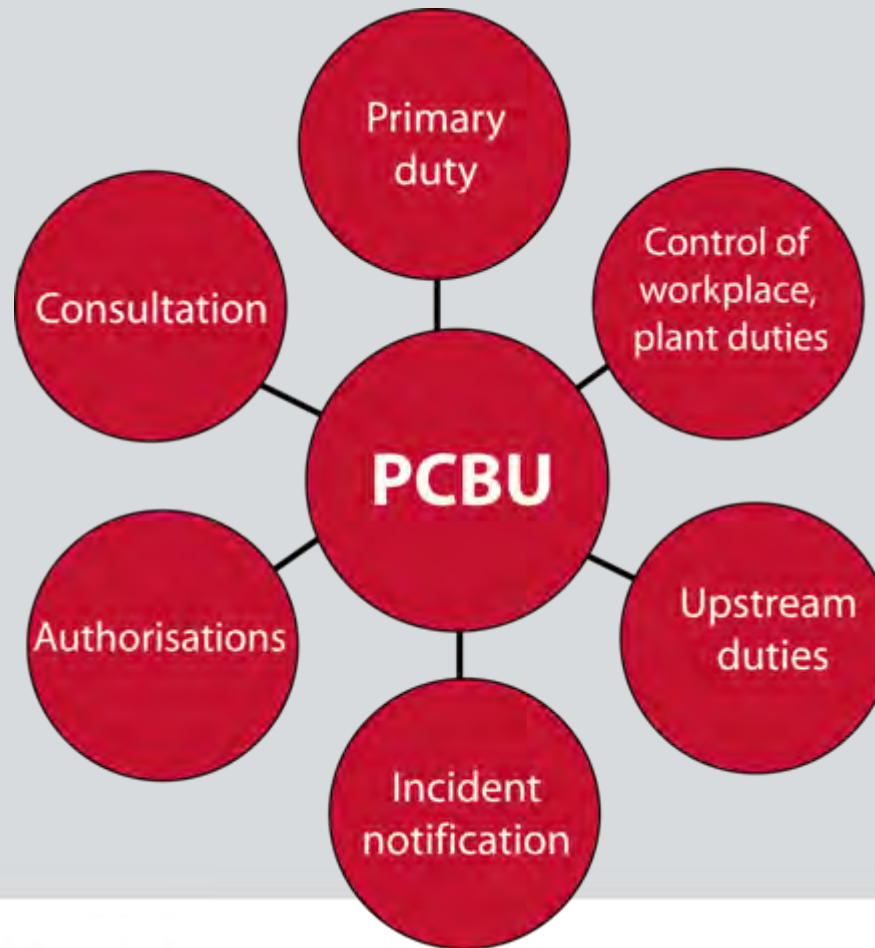
- Model WHS Bill
 - *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA)*
 - National Review into Model OHS Laws
 - WRMC Response to Recommendations
- Model WHS Regulations & Codes of Practice
 - Consultation with Technical Advisory Groups
 - Agreement of jurisdictions, industry and labour

Overview of model WHS Bill

Part 1	Preliminary
Part 2	Health and safety duties
Part 3	Incident notification
Part 4	Authorisations
Part 5	Consultation, representation & participation
Part 6	Discriminatory, coercive & misleading conduct
Part 7	Workplace entry by WHS entry permit holders
Part 8	The regulator
Part 9	Securing compliance
Part 10	Enforcement measures
Part 11	Enforceable undertakings
Part 12	Review of decisions
Part 13	Legal proceedings
Part 14	General



Person conducting a business or undertaking



PCBUs' primary health & safety duty (s19)

The PCBU must ensure, so far as is reasonably practicable:

- the health and safety of workers engaged, caused to be engaged or influenced / directed by the PCBU while at work in the business or undertaking; and
- that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.



PCBUs' with management or control of workplaces or fixtures, fittings or plant at a workplace (ss20-21)

To ensure, so far as is reasonably practicable, that:

- the workplace, fixtures, fittings and/or plant;
- the means of entry and exit to the workplace; and
- anything arising from the workplace,

are without risks to the health and safety of any person.



PCBUs' upstream health & safety duties (s22-26)

PCBUs that design, manufacture, import, supply or install:

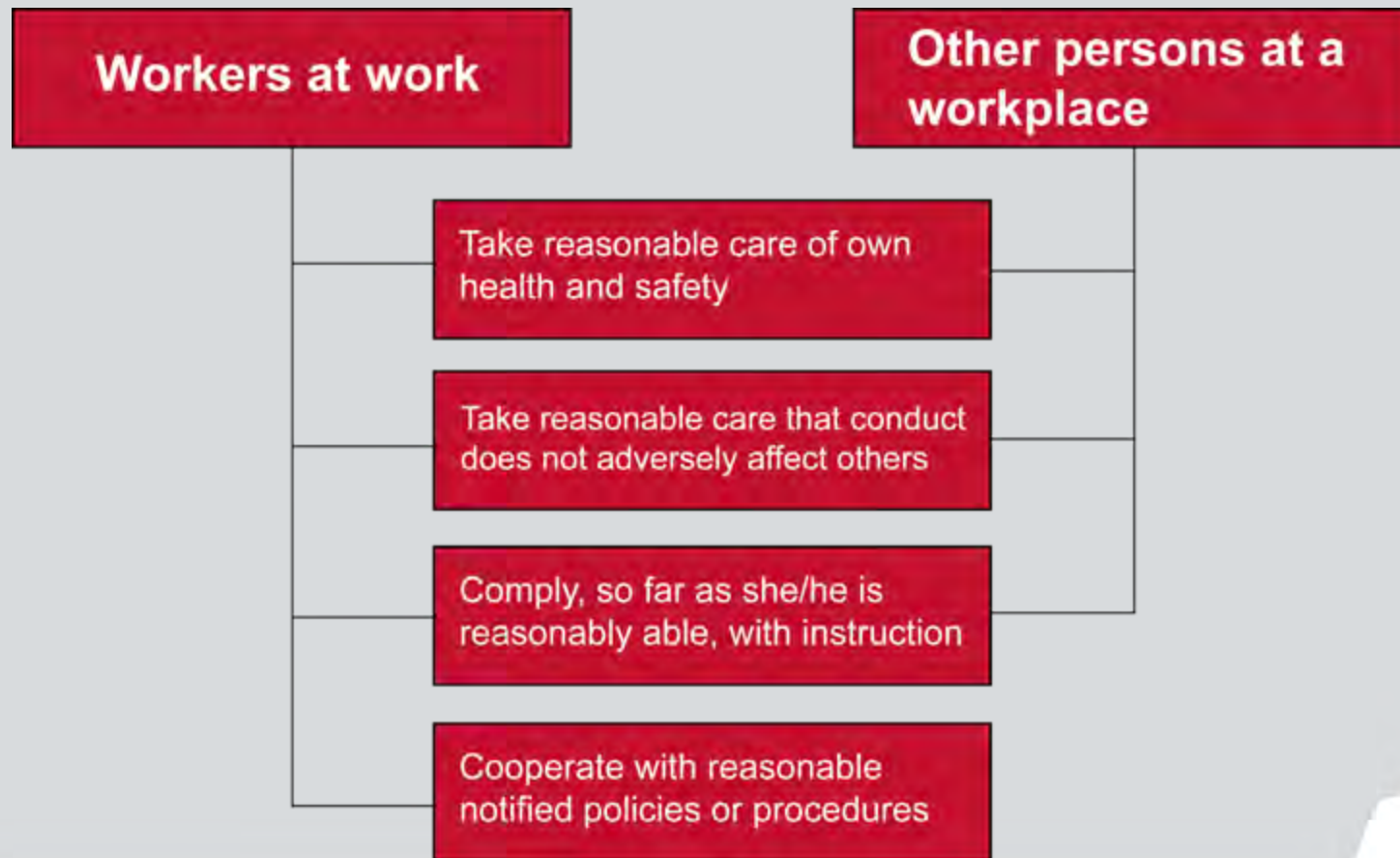
- plant, substances or structures for use as or at a workplace;
- dangerous goods; or
- high risk plant affecting public safety,
- must ensure, so far as is reasonably practicable, it can be used, stored, handled, constructed or otherwise treated in another reasonably foreseeable way without risks to health and safety of persons at or in vicinity of a workplace;
- must carry out or arrange the carrying out of necessary tests (or ensure carried out);
- give adequate information to persons provided with design/item;
- sfairp, give information to others on request.



Officers' duty of due diligence (s27)



Health & safety duties of workers and other persons (ss28 & 29)



Categories of Offences

CATY	ELEMENTS	PENALTIES
1	<ul style="list-style-type: none"> •health & safety duty •engages in conduct, without reasonable excuse, that exposes a person to whom duty is owed to risk of death or serious illness or injury •reckless as to risk to any individual 	Body corporate - \$3 million Officer or ind PCBU - \$600k, 5 yrs or both Individual - \$300k, 5 yrs or both
2	<ul style="list-style-type: none"> •has health & safety duty •fails to comply with duty •failure exposes any individual to risk of death or serious illness or injury 	\$1.5 million \$300, 000 \$150,000
3	<ul style="list-style-type: none"> •has health & safety duty •fails to comply with duty 	\$500,000 \$100,000 \$50,000



Overview - Part II

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Consultation Obligations

So far as is
reasonably practicable

s46

Person's duty to consult, cooperate and coordinate activities with all other persons with a duty with respect to the same matter

s47

PCBU's duty to consult with workers who carry out work for the business or undertaking and who are, or are likely to be directly affected by a WHS matter

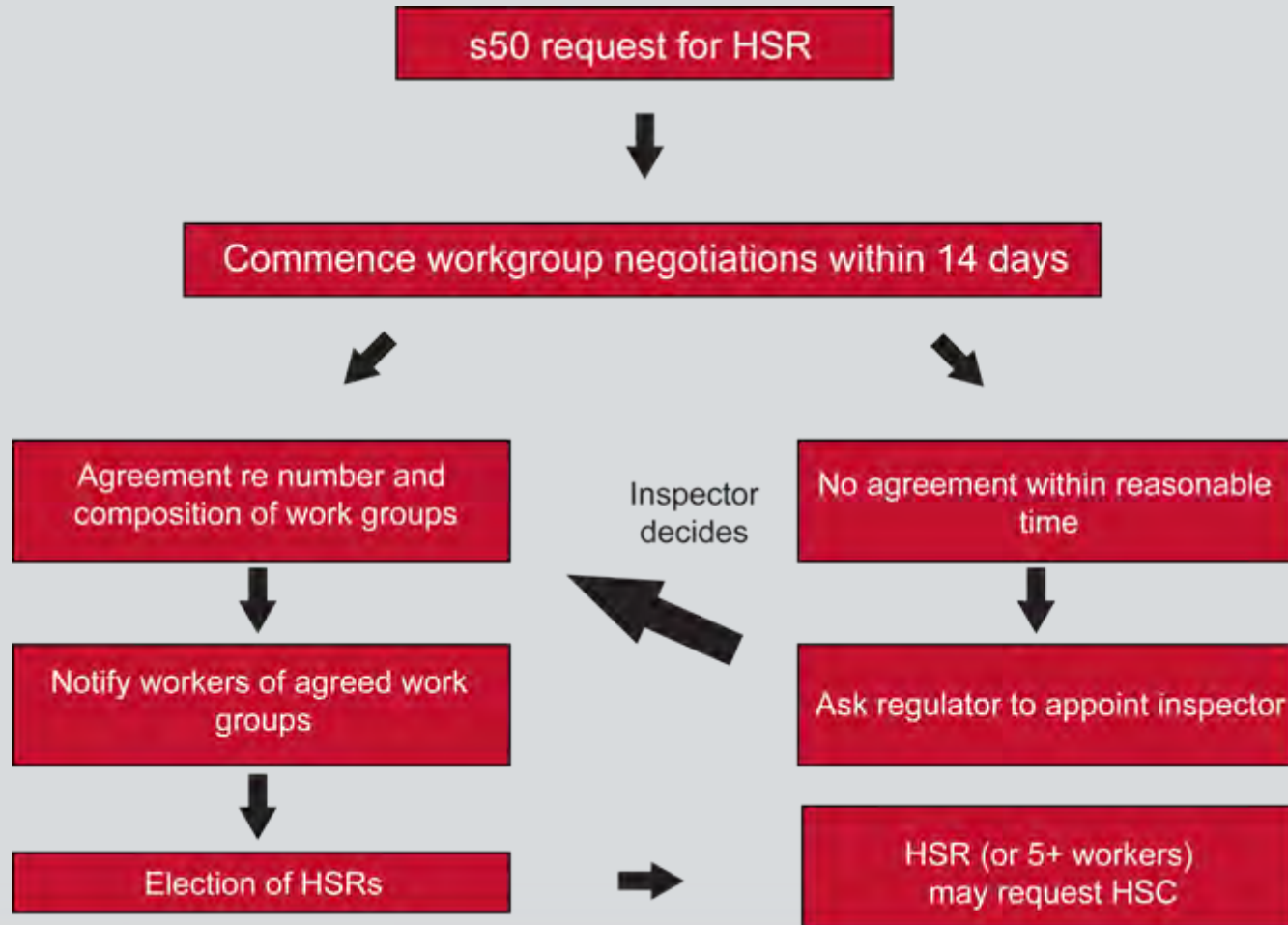


Nature of consultation with workers

- Accord with any agreed procedure
- Share relevant information
- Provide workers with reasonable opportunity to:
 - express views
 - raise issues
 - contribute to the decision making process
- Take workers' views into account
- Advise of outcome in a timely manner
- Involve any relevant HSRs



Process for determining worker representation



Powers of Health & Safety Representatives

	Power / function / right	Restrictions
s68(1)	<ul style="list-style-type: none"> •Represent workers •Monitor compliance •Investigate complaints •Inquire into risks 	WHS matters relating to workers in relevant work group (unless other HSR not available)
s68(2)	<ul style="list-style-type: none"> •Inspect workplace •Accompany inspector •Attend worker interview •Request HSC •Receive information re WHS of workers in work group •Request assistance 	<p>Of work group & after notice In workplace of work group With consent of rel worker(s)</p> <p>Other than personal or medical information where identity apparent Whenever necessary</p>
s85	Direct worker to cease work	<p>Reasonable concern of serious risk HSR must be trained After consult w/ PCBU and try IRP</p>

Powers of WHS Entry Permit Holders

Reason for entry	Pre-requisites addl to permit	Notice	Rights on entry
To inquire into suspected contravention (s117)	reasonable suspicion of contravention relating to relevant worker	asairp after entry (unless defeat purpose or cause unreasonable delay)	<ul style="list-style-type: none"> •Inspect any thing relevant to contravention •Consult relevant workers and PCBU •Inspect or copy any avail document directly relevant •Warn any person of risk
To inspect documents not kept at workplace or by PCBU (s120)	reasonable suspicion of contravention relating to relevant worker	24+ hours (but less than 14 days)	Inspect or copy any employee record or document held by 3 rd party that is directly relevant to suspected contravention
To consult or advise workers (s121)	n/a	24+ hours (but less than 14 days)	<ul style="list-style-type: none"> •Consult with or advise 1+ workers who wish to participate in discussions •Warn any person of risk

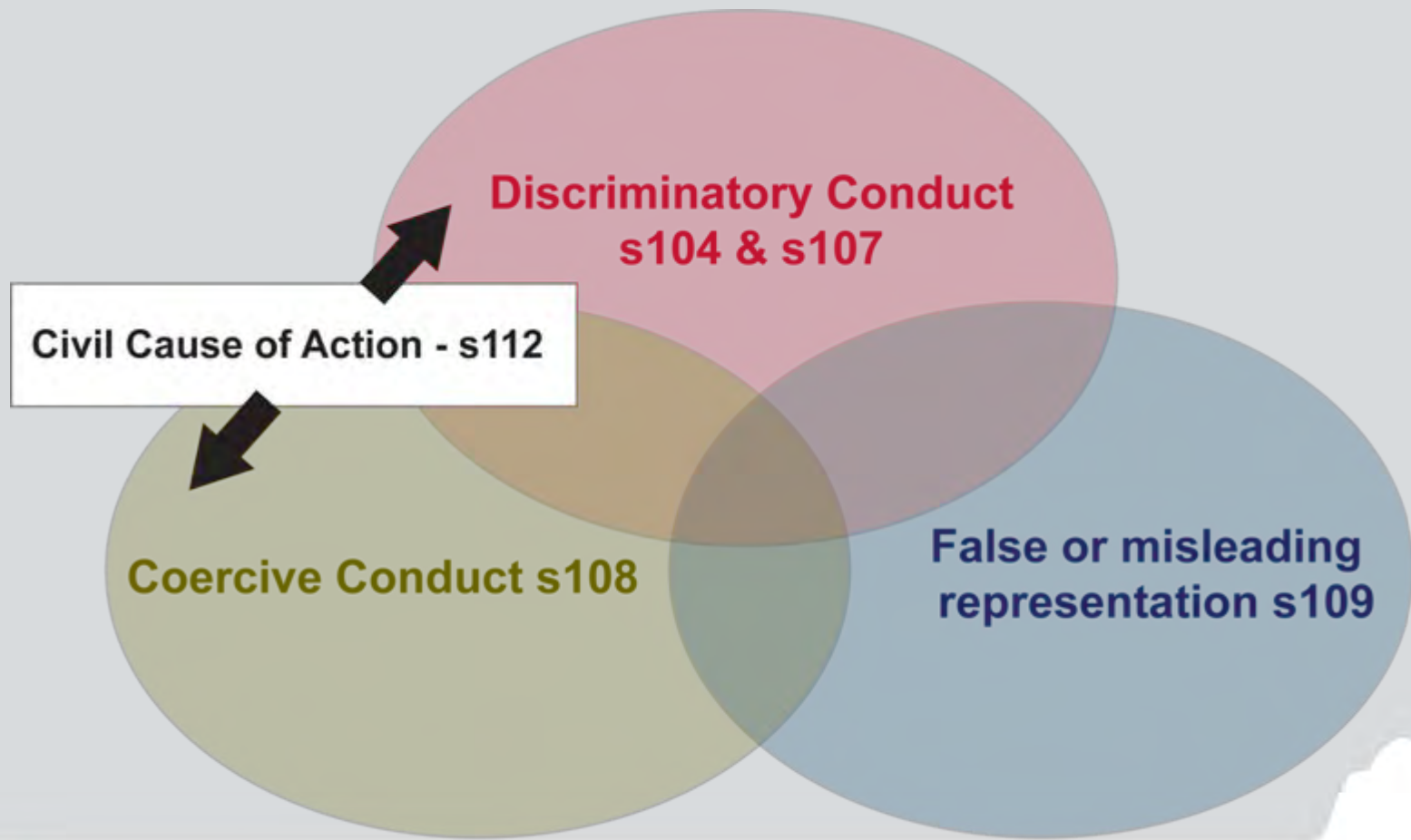


Powers of Inspectors

s163	Enter a workplace (or place reasonably suspect to be a workplace)	Give notice asairp after entry Restrictions around residential premises
s165	Inspect & examine any thing and inquire Take measurements & samples & conduct tests Require person to help Exercise compliance pwrs	To extent reasonably necessary
s167	Obtain search warrant	Reasonable grounds for suspecting relevant docs exist
s171	Require person to answer questions or provide docs	Prior warning of identity and consequences if refuse
ss174-177	Copy & retain docs, seize evidence / workplace / thing	Insp'r must minimise damage



Discriminatory, coercive and misleading conduct



WHS undertakings and other sentencing options



Limitation periods on legal proceedings

- Criminal proceedings:
 - 2 years after offence comes to notice of regulator
 - 1 year from outcome of coronial inquest or official inquiry
 - 6 months from contravention or withdrawal of a WHS undertaking
 - later date if fresh evidence of Cat 1 offence
- Civil penalty proceedings:
 - 2 years after offence comes to notice of regulator
- Civil proceedings:
 - 1 year after applicant becomes aware that COA accrued

Where to next?

Date	Milestone
Currently	Model WHS Regulations and Codes of Practice are being developed
Late 2010	Public comment period on the model WHS Regulations package
June 2011	WRMC to approve model WHS Regulations package
January 2012	Commencement of model WHS Act and model WHS Regulations.

Further Information

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