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KEY POINTS AND CHANGES UNDER THE NEW ACT

Key points and changes

OSH Act 1984	
Employer	Is a person that employs an employee under a contract of employment.

WHS Act 2020	
PCBU "Person Conducting a Business or Undertaking" OWNER	Includes, Corporation, Association, Partnership, Sole trader, Volunteer Organisation that employs people to carry out work, Local government council, Independent school, Government department or authorities.
Officer MANAGER	Includes a person that makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking. CEO, CFO etc.

Key points and changes

WHS Act 2020

Expansion of Duty of Care for PCBU and Officer

To ensure the health and safety of workers and other persons in the workplace are not put at risk, specifically provide:

- a work environment without risks to health and safety
- safe plant, structures, and substances
- safe systems of work
- adequate facilities for welfare at work
- information training, instruction, or supervision
- monitoring of the health of workers
- safe housing
- consultation on safety and health matters

Positive due diligence

WHS Act 2020

Take reasonable steps –

- Up-to-date knowledge of WHS matters
- Understand the operations of the business and associated hazards and risks
- Ensure resources are available and used to eliminate of minimize risks
- Ensure processes to receive and consider information form incidents hazards and risks and respond
- Ensure processes and implementation of those processes to comply with WHS duties
- Verify the use of resources and processes

Key points and changes

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OSH Act 1984

Employee	A person by whom work is done under a contract of employment

WHS Act 2020

Worker	A worker is a person who carries out work in any capacity for a person conducting a business or undertaking (PCBU) including work as a: • Employee • Contractor or subcontractor • Employee of a contractor or subcontractor • Labour hire worker • Apprentice or trainee • Work experience student • Volunteer • Outworker • A person of a prescribed class

Key points and changes

OSH Act 1984	
Insurance	Insurance can/ may cover your legal fees and even fines.

WHS Act 2020	
Insurance	Insurance can still cover legal fees however, insurance does not cover penalties or fines for companies, PCBU or Officers.

Prosecution

OSH Act 1984

Company must commit offence
Company must be prosecuted
Prove the offence happened with Officers consent, connivance or neglect

WHS Act 2020

New positive obligation of due diligence
If you have not met your obligations, you can be prosecuted

Key points and changes

Category 1

The PCBU or officer fails to comply with their health and safety duty and the failure causes death or serious harm

- Penalty: 5 years imprisonment and a fine of $680,000 for individual

Category 2

The PCBU or officer fails to comply with their health and safety duty and the failure exposes the worker to a risk of death or of injury or harm

- Penalty: fines between $170,000 and $1,800 000

Category 3

The PCBU or officer fails to comply with their health and safety duty

- Penalty: fines between $55,000 and $570,000

Key points and changes

Industrial Manslaughter – Crime

Industrial Manslaughter can apply if:

- A worker dies or is injured and later dies while carrying out work
- The PCBU or a senior officer's conduct causes the death of the worker, and,
- The conduct constitutes a failure to comply with the health and safety duty of care, and
- The PCBU or senior officer engages in the conduct knowing it is likely to cause death and disregards the likelihood.

Maximum penalty

- **imprisonment for 20 years and a fine of $5,000,000 for individual or fine of $10,000,000 for body corporate**

Case Study

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Imprisonment for Gross Negligence

An Esperance business owner is the first person in WA to receive a jail sentence for **gross negligence**.

Mr Withers, the sole director of a shed building company MT Sheds, was sentenced to **8 months imprisonment, with an additional 18 month's imprisonment suspended for 12 months.**

His **company was fined $605,000** and he was **personally fined $2,250** for the death of a worker and serious injuries of another in March 2020.

Case Study

Imprisonment for Gross Negligence - The Incident

- Two workers employed by MT Sheds were installing the roof of a shed on a farm in Beaumont, March 2020.
- The wind caused a sheet from the pack of roof sheets they were installing to lift, causing the workers to fall off the roof.
- Jake Williams, 25-year-old, was killed by the 9-meter fall from the apex of the shed. Fraser Pinchin, his 21-year-old co-worker, was injured from the 7-metre fall from the shed’s gutter and sustained multiple fractures.

Case Study

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Imprisonment for Gross Negligence

WorkSafe found that:

- Neither of the workers were wearing safety harnesses or held the necessary high-risk work licences.
- They also did not have the construction induction training certificate (white card) needed to perform construction work.

The court found that:

- Failure to implement safety management systems for an extended period of time, and the risk of this incident occurring was not low.
- There was a knowing acceptance of the danger, and this risk had not been eliminated or minimised as far as reasonably practicable.
- Mr. Withers had been working in the construction industry for 30 years, was reasonably expected to know the safety requirements.

Case Study

Imprisonment for Gross Negligence

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- This case highlights the importance of having safety management systems and safe work procedures.
- Not only to prevent incidents from occurring but also as evidence that as the business owner, you have done what was reasonably practicable to mitigate risk.
- In this case, Mr Withers lengthy experience in the construction industry suggests he would have been aware of the risks working at height but did not take necessary precautions to mitigate them.
- Experience in an industry does not supersede the need for a safety management system.

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DEVELOPING A SAFETY MANAGEMENT SYSTEM

Developing a Safety Management System

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Flexibility

Developing processes that allow for some variation in real-world scenarios and limit “paper-work for paper-works’ sake”.

Simple

Not over-burdening personnel with information, not saying 10 words when 3 will do the job.

Personnel Involvement

Consulting with the people on the ground who will need to implement processes, so they feel involved, and the processes are based on real-world scenarios.

What types of documents could a safe system of work include?

Risk Register

Policy with objective

Processes

- New Staff
- Incident Management
- Contractor Management

Safe Work Procedures

What types of Safe Work Procedures?

- Children in the workplace
- Compressed Gasses
- Confined Spaces
- Electricity
- Firearms
- First Aid
- Grain Handling
- Hazardous Chemicals
- Hazardous Manual Tasks
- High Pressure Water Cleaner
- Hot Work
- Housekeeping
- Interface with Public Roads and Rail Safe
- Mobile Machinery
- Motorbike and All-Terrain Vehicles
- Outdoor
- PPE
- Portable Field Bin
- Slurry Store
- Working with Animals
- Powerlines
- Wildlife
- Vehicles and Driving
- Aircraft
- Workshop

But why is a Risk Register so important?

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- Business owners and managers cannot achieve everything over night.
- If there were unlimited time, money and knowledge there would be no risk because it would all be eliminated.
- The new Legislation includes the term ‘as far as reasonably practicable’
- Allows business owners and managers to balance risk management against other business pressures.
- Risk assessment allows business owners and managers to priorities hazards based on likelihood of harm and degree of harm.
- You might not always be able to eliminate all hazards but using a risk assessment we can know which are the most dangerous – and focus on them first.
- Risk assessments can be used by business owners and managers as a tool to prioritise their resources to the areas that need them the most.

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BUILDING A RISK REGISTER

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What is a hazard?

A hazard is something that can cause harm, for example:

- The UV rays from the sun are a hazard when working outside.
- Moving parts on machinery is another hazard when there is a possibility of staff coming into contact with them.

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What is a risk?

Not all hazards that are present will cause harm, but they could.

Risk is the probability that those hazards will cause harm and also the extent of harm that they could cause.

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What is a control measure?

Control measures are actions that can be taken to eliminate or minimise the risk.

BUILDING A RISK REGISTER

Step 1: Identifying the hazards

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Consult with personnel

Review previous incidents

Conduct a site inspection

BUILDING A RISK REGISTER

Step 1: Identify the Hazards

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RISK REGISTER

TASK/HAZARD	NEGATIVE OUTCOME	RISK	RECOMMENDATIONS	
			CONTROL MEASURES	HIERARCHY
UV exposure				
Excessive heat in summer				
Snakes and other poisonous animals				

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Step 2: Identify the Negative Outcome

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RISK REGISTER

TASK/HAZARD	NEGATIVE OUTCOME	RISK	RECOMMENDATIONS	
			CONTROL MEASURES	HIERARCHY
UV exposure	Sunburn			
Excessive heat in summer	Dehydration, heat stress			
Snakes and other poisonous animals	Anaphylactic shock			

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Step 3: Assess the Risk

Understanding Risk Methodology

Likelihood	
Unlikely	The event rarely or never occurs and would require significant system failures to occur.
Possible	The event seems reasonably possible to occur under the system failures.
Likely	The event is expected to occur under system failures.
Consequences	
Minor	First aid injury/illness, medically treated injury/illness, minor environmental impact, minor asset damage.
Serious	Restricted duties injury/illness, lost time injury/illness, serious environmental impact, serious asset damage.
Major	Disability or fatality, major environmental impact, major asset damage.

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Step 3: Assess the Risk

Understanding Risk Methodology

Risk Matrix				
		Consequence		
		Minor	Serious	Major
Likelihood	Likely	Moderate	High	High
	Possible	Low	Moderate	High
	Unlikely	Low	Moderate	High

Low	Continue the task you've been authorised for, apply standard risk control measures for the task.
Moderate	Continue the task you've been authorised for, additional risk control measures may be required.
High	The Manager needs to authorise this task and additional risk control measures may be required.

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Step 3: Assess the Risk

Calculating Risk

- Determine the likelihood of harm.
- Determine the potential consequence or severity of harm.
- Find the Risk Matrix cell where the two parameters meet - this is the risk score.
- Once you have determined the risk scores for all of your identified hazards, record these scores into the Risk Register.

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Step 3: Assess the Risk

Calculating Risk

RISK REGISTER

TASK/HAZARD	NEGATIVE OUTCOME	RISK	RECOMMENDATIONS	
			CONTROL MEASURES	HIERARCHY
UV exposure	Sunburn	Low		
Excessive heat in summer	Dehydration, heat stress	Moderate		
Snakes and other poisonous animals	Anaphylactic shock	Moderate		

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Step 4: Eliminate the risk using the hierarchy of controls as far as reasonably practicable

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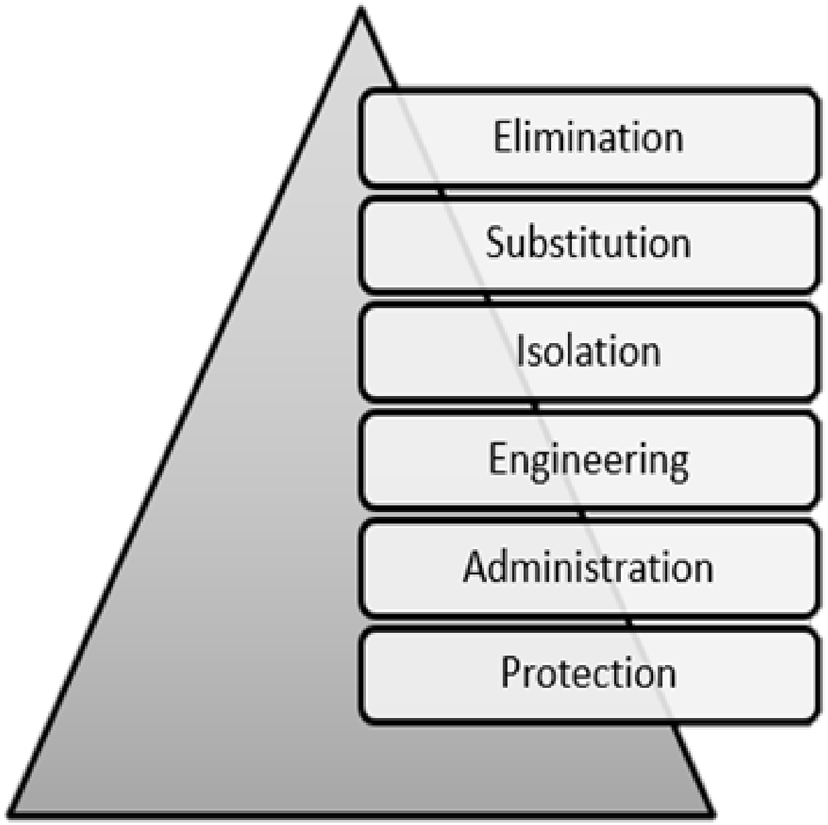

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Step 4: Eliminate the risk using the hierarchy of controls as far as reasonably practicable

Hierarchy of control	Examples
Elimination	Physically remove the hazard or cancel the task if it is not required.
Substitution	Use a less hazardous chemical that will do the same job.
Isolation	Place a barricade around a hazard.
Engineering	Improved equipment, guarding etc.
Administration	Checklist, sign, meeting, training.
Protection	Gloves, ear plugs, steel cap boots, masks, overalls.

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Reasonably Practicable

Means that which is, or was at a particular time, reasonably able to be done to ensure health and safety, taking into account and weighing up all relevant matters including:

- ✓ the likelihood of the hazard or the risk concerned occurring,
- ✓ the degree of harm that might result from the hazard or the risk,
- ✓ what the person concerned knows, or ought reasonably to know, about the hazard or risk, and ways of eliminating or minimising the risk,
- ✓ the availability and suitability of ways to eliminate or minimise the risk,
- ✓ after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

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Step 4:Planning Control Measures

RISK REGISTER

TASK/HAZARD	NEGATIVE OUTCOME	RISK	RECOMMENDATIONS	
			CONTROL MEASURES	HIERARCHY
UV exposure	Sunburn	Low	If possible, schedule the task to be completed indoors or under covers	Substitution
			Sunburn cream	Protective
			Wide-bream hats	Protective
			Long sleeves/pants	Protective
Excessive heat in summer	Dehydration, heat stress	Moderate	Air conditioners in vehicles, plant and crib room	Engineering
			Alternate high workload tasks	Engineering
			Portable water containers	Engineering
			Allow flexibility in schedule for days >35° (for increased break frequency)	Administration

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Implementing Control Measures

- What resources? (personnel, time, budget)
- Which hazards require action first?

Green	Highlight control measures green once they have been implemented - This indicates the progress that has been made so far.
Pink	Highlight control measures pink when they are to be implemented as a **first priority** - This will be a short-term to-do list.
Orange	Highlight control measures orange when they are to be implemented as a **second priority** - This will be a medium-term to-do list.
Yellow	Highlight control measures yellow when they are to be implemented as a **third priority** - This will be a long-term to-do list.

BUILDING A RISK REGISTER

Step 5: Evaluate

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Review the Risk Register:

- At least once a year,
- After significant changes to the organisaiton,
- After significant incidents/injuries/illnesses

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Step 5: Evaluate

The purpose of Risk Register reviews are to:

- ✓ Ensure accuracy and identify new hazards
- ✓ Ensure that control measures are working and the plan to implement control measures is still progressing
- ✓ Raise continual awareness about hazards and risk

The Risk Register should be treated as a live document that is continually subject to change as the organisation changes.

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Any Questions?