Electricity Engineers Association
of New Zealand EEA)

WHS Legislative Challenges

An Australian Perspective

TransGrid

TransGrid at a glance

Operator and manager of the NSW transmission network, we supply:

- 3 million homes
- 30,000 businesses
- 12,900 km transmission lines
- 99 substations
- 2,300 km optical fibre

Keeping you and your way of life connected- 24/7

TransGrid

Innovative solutions for customers

> Leveraging our extensive communications network

> Providing diverse and independent services for our customers

> Focus on innovative, tailored customer solutions

> Long term build, own, operate and maintain contracts

More than a network

WHS Act and Regulations 2011

Harmonised jurisdictions

➢ Commonwealth

➢ Australian Capital Territory

➢ New South Wales

➢ Northern Territory

➢ Queensland

➢ South Australia

➢ Tasmania

Non-harmonised jurisdictions

➢ Victoria

➢ Western Australia

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Challenging aspects of the WHS Act and Regs

- Understanding and communicating what a PCBU is
- Due Diligence for Senior Officers and the Board
- Managing Mobile Plant consistent with the regulation
- Applying the concept of Principal Contractor
- Determining what is maintenance work and what is construction
- Construction work over $250k – what makes up the $250K?
- Safety in Design

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- Reasonably Practicable
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Concept of a PCBU

The WHS Legislation applies a primary duty of care on a PCBU – a person who conducts a business or undertaking

Confusion – can a PCBU be an entity instead of a person?

WHS Legislative challenges

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Who is a Worker?

employees

employees of contractor / sub-contractor

employee of labour hire company

contractors and sub-contractors

students gaining work experience

apprentice / trainee

Volunteers

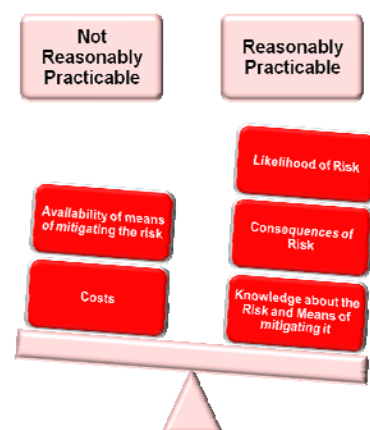Visitors

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Primary Duty of Care

A PCBU must, so far as is "*reasonably practicable*", ensure the health and safety of:

➢ workers engaged, or caused to be engaged by the PCBU;

➢ workers whose activities in carrying out work are influenced or directed by the PCBU,

➢ while the workers are at work in the business or undertaking

Primary duty of care also extends to not putting other persons at risk from work carried out by the PCBU to the extent reasonably practicable (for example, visitors, members of the public)

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What is "Reasonably Practicable"

"that which is, or was, at a particular time reasonably able to be done in relation to ensuring health or safety, taking into account and weighing up all relevant matters"

Not Reasonably Practicable

Reasonably Practicable

Likelihood of Risk

Availability of means of mitigating the risk

Consequences of Risk

Costs

Knowledge about the Risk and Means of mitigating it

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Who is an officer?

Corporations Act definition of "officer" applies and includes:

> a director or secretary

> a person who makes or participates in making decisions that affect the whole, or a substantial part of the business or undertaking or

> a person who has the capacity to affect significantly the business or undertaking's financial standing

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Who is an officer?

Safe Work Australia indicates an "Officer" can extend to:

> corporate counsel

> chief financial officers

> senior executives

> other senior "advisors" (if they are present and involved in making decisions that affect the company)

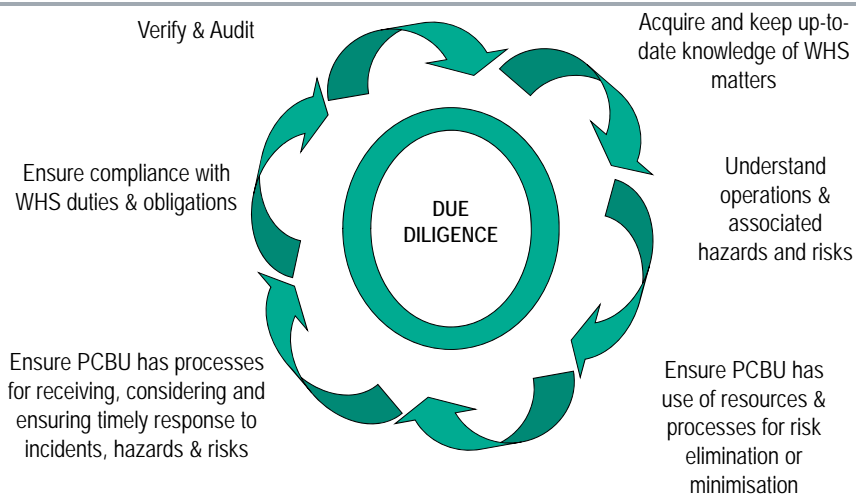12 / WHS Legislative challenges

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Due Diligence defined

"If a person conducting a business or undertaking has a duty or obligation under this Act, an officer of the person conducting the business or undertaking must exercise _due diligence_ to ensure that the person conducting the business or undertaking complies with that duty or obligation"

THIS DUTY CANNOT BE DELEGATED

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Demonstrating Due Diligence - SafeWork Australia Guideline

Verify & Audit

Acquire and keep up-to-date knowledge of WHS matters

Ensure compliance with WHS duties & obligations

DUE DILIGENCE

Understand operations & associated hazards and risks

Ensure PCBU has processes for receiving, considering and ensuring timely response to incidents, hazards & risks

Ensure PCBU has use of resources & processes for risk elimination or minimisation

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Acquire and Keep Up-to-Date Safety Knowledge

➢ **Attend officer WHS Training – legal firms**

➢ **Regular receipt of developments (legislative & recent case law)**

➢ **Monitor & review information regarding safety matters & performance**

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Gain an Understanding of the Business Operation

➢ **Focus on high risk activities**
➢ **Focus on the nature of the business' operations**
➢ **Understand the operations so aware of major potential hazards**

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Provide Appropriate Resources

- ➤ **Commensurate with size & nature of business**
- ➤ **Adequate investment in safety infrastructure**
- ➤ **Appoint appropriate personnel with dedicated safety expertise**
- ➤ **Ensure WHS is considered when implementing cost-cutting measures & making financial decisions**
- ➤ **Proactively raise WHS issues**

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Appropriate Processes for Considering Information relating to Incidents, Hazards & Risks

- ➤ **Monitor hazards & risks as they arise**
- ➤ **Review incidents to identify deficiencies**
- ➤ **Respond in a timely way to information, ideally reporting of both lagging and lead indicators**

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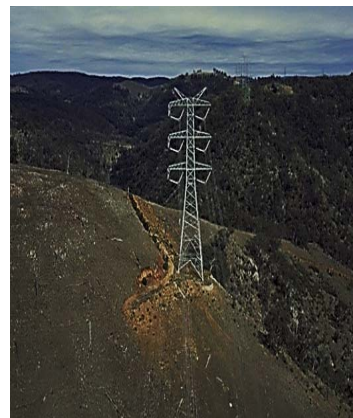
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Legal Compliance

- ➢ **Audit WHS policies, processes & practices regularly**
- ➢ **Ensure training & instruction in the new obligations is provided (and refresher training)**
- ➢ **Compliance with minimum standards verified**
- ➢ **Ensure key hazards are appropriately managed**
- ➢ **Clear line management & responsibilities - reinforced through terms of employment/KPIs**

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Verification

- ➢ **Systematic audit & review process**
- ➢ **Monitor and review compliance**
- ➢ **Ensure receipt of reports & participation in safety activities**
- ➢ **Document & record compliance & effectiveness of the business' WHS system**

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TransGrid's Board WHS Committee

Primary Function

➢ Sub-committee of the Board.

➢ To support the Board in fulfilling its obligations relating to WHS.

Committee Structure

➢ consists of a min. of 4 non-executive Directors & one, an independent Director;

➢ A quorum of 3 non-executive Directors;

➢ The CEO, the EGM/Field Services & the HSE Manager are standing invitees;

➢ Meet at least 4 times a year;

➢ Has the authority of the full Board; and

➢ Employees may be invited to attend meetings to present.

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TransGrid's Board H&S Committee

"Turn their mind to",

➢ **Legislative monitoring**

➢ **Performance monitoring**

➢ **Strategic oversight**

➢ **Compliance**

➢ **Risk management**

➢ **Governance**

➢ **Safety culture**

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TransGrid's Executive WHS responsibilities

- ➢ **Understand the WHS risks in the business – safety visits**
- ➢ **Establish & continuously improve WHS systems, practices and procedures**
- ➢ **Ensure the effective implementation of WHS risk management strategies**
- ➢ **Monitor industry trends and co-ordinate involvement in industry committees & working groups**
- ➢ **Promote initiatives for the improvement of WHS**
- ➢ **Facilitate the open sharing of WHS information**
- ➢ **Review incident investigations, recommendations % statistics**
- ➢ **Incident Review Board (IRB) – HCR review**
- ➢ **Review WHS audits & monitor progress on action plans**
- ➢ **Regularly communicate & meet with management & WHS**

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