



Government of South Australia

SafeWork SA

Familiar principles, new approach

*Work Health and Safety Developments &
Public Sector Fleet Management*

safe, fair, productive working lives



Developments in work place health & safety - how might these impact fleet management in the future

- Why do we have national model laws for work health and safety
- What have been the key changes?
- What do these changes mean for fleet managers?
- Information sources



New laws

- The work health and safety legislation came into effect on 1 January 2013 in SA – earlier in some other states/territories Victoria and Western Australia yet to adopt these laws
- Consist of the *Work Health and Safety Act* and the *Work Health and Safety Regulations*, supported by Codes of Practice.
- WHS Acts are based on the ‘model’ Work Health and Safety Act developed by Safe Work Australia.
- Aim is to provide all workers in Australia with the same standard of health and safety protection regardless of the work they do or where they work
- Consistent compliance and enforcement arrangements across Australia (irrespective of the law)



New elements

- PCBU (Person Conducting a Business or Undertaking)
- Officer
- Multiple duty holders – required to consult
- Enforceable undertakings
- Review of inspector decisions
- Increased penalties



Person Conducting a Business or Undertaking (PCBU)

- The primary duty holder is the Person Conducting a Business or Undertaking (previously the primary duty holder was the employer)
 - A person may be an organisation or an individual
 - A business is usually an enterprise conducted with a view to making a profit and have a degree of organisation, system and continuity
 - Undertakings may have elements of organisation, systems and possibly continuity, but are usually not for profit or commercial in undertaking



PCBU

- The PCBU approach recognises the broad range of modern work relationships and business structures
- PCBU approach provides clarity by removing ambiguities around responsibilities of principal contractors and sub-contractors, labour hire companies, franchisors etc.
- Except in Victoria & WA all fleet management agencies are PCBU's as are their client agencies and the supplier of the vehicles, the service providers, fuel suppliers, vehicle detailers, crash repairers and anyone else in the ordering-supply-maintenance-disposal chain.



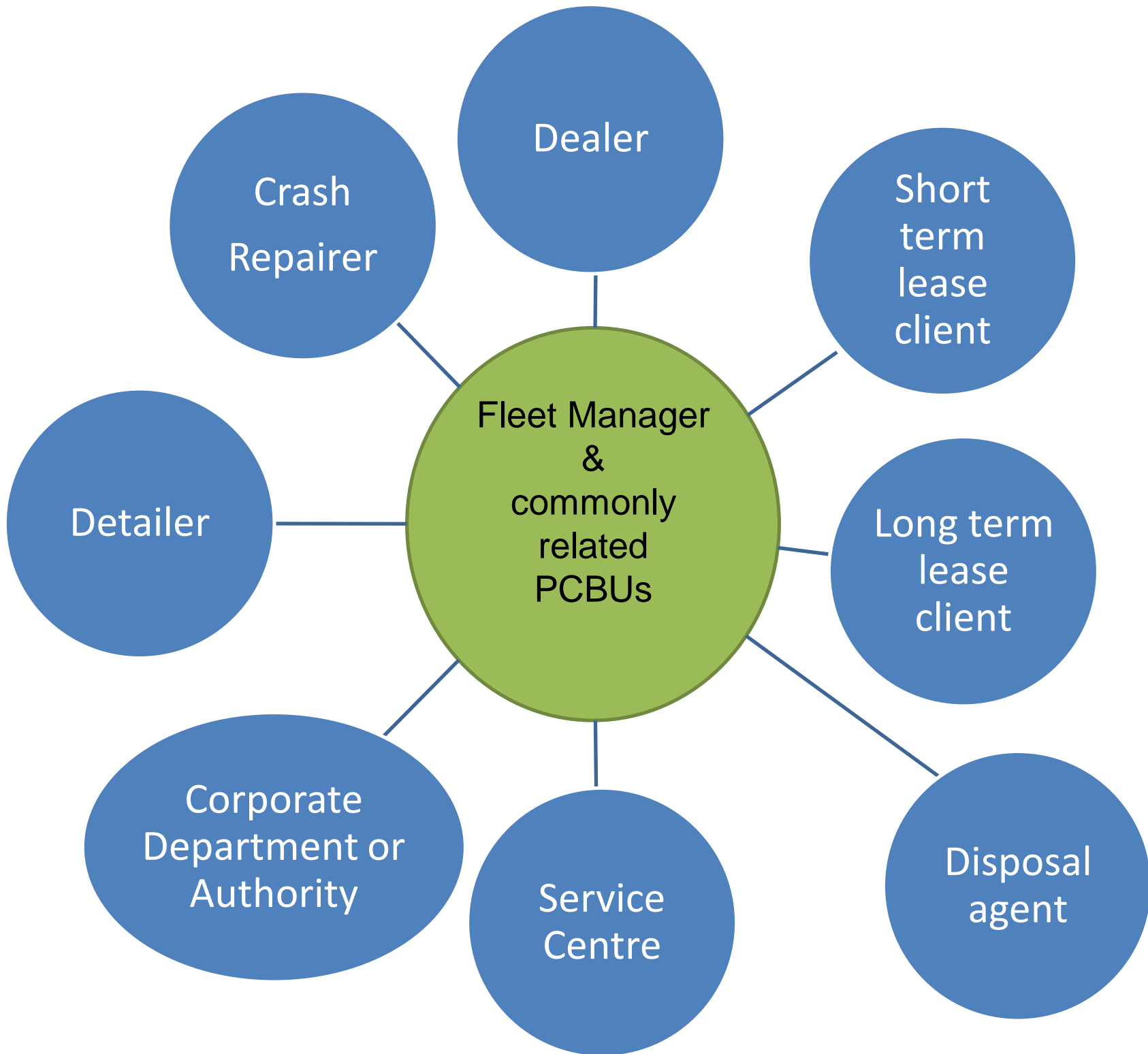
PCBU

- The PCBU must ensure, so far as is reasonably practicable, the health and safety of:
 - workers engaged or caused to be engaged by the PCBU;
and
 - workers whose work is influenced or directed by the PCBU
(while the workers are at work in the business or
undertaking)
 - other persons (like customers) as a result of work carried
out as part of the conduct of the PCBU



Fleet managers and control of workplaces

- Primary duty of care to provide (so far as is reasonably practicable)
 - a safe work environment
 - safe use, handling and storage of plant & substances
 - safe systems of work
 - adequate facilities for workers
 - information, instruction, training and supervision
- Generally very similar to duties of an 'employer' under former OHS laws





Fleet managers as PCBUs

- Identify their people who are officers and ensure they are able to undertake the statutory role
- Duties apply to all activities undertaken directly by the PCBU (e.g. administration, short term vehicle hire - possibly long term as well)
- Duty to identify other PCBU's which operate in conjunction e.g. lease administrators, insurers, disposal companies.
- PCBU must ensure that the other PCBU's have safety management systems in place for relevant hazards – but no need to constant oversight of 'third parties'.
- Given that more than one PCBU has a duty in respect of the use of the vehicles the PCBUs need to comply with the duty to consult, cooperate and coordinate activities in relation to the same matter (s46)



Reasonably practicable

- The PCBU's duty is qualified by the words '*so far as is reasonably practicable*'
- There are two elements to what is 'reasonably practicable'
- A duty holder must consider:
 - what can be done – that is, what is possible in the circumstances for ensuring health and safety
 - whether it is reasonable in the circumstances to do all that is possible



Reasonably practicable

- Factors that may determine whether something is ‘reasonably practicable’ include:
 - likelihood of the hazard or the risk concerned occurring
 - 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/risk and ways of eliminating the hazard/risk
 - availability and suitability of ways to eliminate or minimise the risk
 - cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk
 - the issue of influence and control is also considered in what is reasonably practicable



Who is a worker?

- A worker is anyone who works for a PCBU e.g.
 - employee
 - contractor
 - subcontractor
 - self-employed person
 - outworker
 - apprentice or trainee
 - work experience student
 - labour hire worker

- volunteer



Duty of Workers

- Workers must:
 - take reasonable care of their own health and safety
 - take reasonable care of the health and safety of other persons
 - comply with PCBU's instructions
 - cooperate with PCBU's policy and procedures



Officers

- Under the *Work Health and Safety Act 2012*, an officer is:
 - an officer within the meaning of the *Corporations Act 2001 (Cth)* (Section 9)
 - an officer of the Crown
 - an officer of a public authority
- An officer is usually a senior executive who makes, or participates in making, decisions affecting the whole, or a substantial part, of a business or undertaking
- HR and OHS managers, supervisors or WHS advisors are not generally officers for WHS purposes



Officer

Trustee

Director
or
Secretary

Person who makes, or participates in making, decisions that affect the whole, or a substantial part of the business of the corporation

Person who has the capacity to affect significantly the corporation's financial standing

Person in accordance with whose instructions Directors are accustomed to act

Receiver

Administrator

Liquidator



Officers – due diligence

- Officers of a PCBU must exercise due diligence to ensure that the PCBU complies with its duty or obligation
- Due diligence essentially means:
 - being proactive in keeping up to date with work health and safety issues and
 - being proactive in ensuring the PCBU meets its work health and safety obligations



Duties of Officers 1

- Officers of a PCBU must acquire and keep up-to-date knowledge of work health and safety matters.
- This may involve:
 - Being aware of changes to legislation
 - Reading and disseminating WHS publications and research
 - Attending available training sessions on WHS matters



Duties of Officers 2

- Officers of a PCBU must have an understanding of the nature of the operations of the business or undertaking, and generally the hazards and risks associated with those operations.
- This may involve:
 - Requiring regular briefings from managers about operational matters
 - Requesting practical indications of the hazards (in real situations)
 - Holding regular meetings with managers to highlight risks
 - Conducting surveys or focus groups with employees regarding hazards



Duties of Officers 3

- Officers of a PCBU must ensure the PCBU has available for use, and uses, appropriate resources to eliminate or minimise risks to health and safety as part of the conduct of the business or undertaking
- This may involve:
 - Reading and understanding internal WHS policies and procedures
 - Identifying a budget for WHS matters, including improvements to infrastructure and the working environment



Duties of Officers 4

- Officers of a PCBU must ensure the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information.

- This may involve:
 - Establishing formal reporting requirements for incidents, hazards and risks
 - Establishing response plans, including emergency responses



Duties of Officers 5

- Officers of a PCBU must ensure the PCBU has, and uses, processes for complying with any duty or obligation of the PCBU under the Act.
- This may involve:
 - Understanding the duties and obligations of a PCBU under the Act (e.g. reporting notifiable incidents, consulting with workers, ensuring workers are given training and instruction)
 - Examining existing policies and procedures to ensure they comply with the Act



Duties of Officers 6

- Officers of a PCBU have an overarching duty to verify that the processes and resources detailed on the previous slides are all provided and used by the PCBU.
- This may involve:
 - Regular drills, check-ups, meetings or other mechanisms to ensure WHS processes are in place and operate effectively
 - Ensuring WHS is maintained as a priority in organisational budgets and planning
 - Ensuring the organisation is in an ‘audit-ready’ position



Fleet managers as suppliers of plant

- Duty to ensure SFARP the vehicle is without risks to the health and safety of persons who use, store, or who carry out any reasonably foreseeable activity involving plant (s25)
- ‘Activity’ includes e.g. administration, inspection, storage, operation, cleaning, maintenance, repair and disposal
- Given that more than one PCBU has a duty in respect of the use of the vehicles the PCBUs need to comply with the duty to consult, cooperate and coordinate activities in relation to the same matter (s46)



Fleet managers as suppliers of plant

- Suppliers of second hand plant (to a buyer directly or via a disposal agent) must:
 - identify any faults (regulation 199)
 - give written notice to the buyer of the condition of the vehicle any faults identified and (depending on what the fault is) advice that the vehicle should not be used until the faults are rectified.



Other new elements:

- Internal review: all decisions by an inspector can be reviewed
 - Strict time lines for response from regulator to request for a review
 - If dissatisfied, you can seek an external review

- Enforceable undertakings – the safety regulator can contract with a PCBU to undertake safety related activities as an alternative to prosecution
 - very serious matters excluded
 - regulator monitors progress and outcomes



Information sources:

- Your home agency or authority
- Your local safety regulator
- Safe Work Australia
- Guidance material (fact sheets, information sheets)
- Approved Codes of practice such as
 - Managing health and safety risks (in place now) and
 - Traffic management (forthcoming)



Penalties

- Categories based on degree of 'culpability' and risk/degree of harm:

Category 1

corporations - \$3 million

officers - \$600 000 / 5 years jail

workers - \$300 000 / 5 years jail

Category 2

corporations - \$1.5 million

officers - \$300 000

workers - \$150 000

Category 3

corporations - \$500 000

officers - \$100 000

workers - \$50 000

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