

FREQUENTLY ASKED QUESTIONS

WORK HEALTH AND SAFETY LEGISLATION

OVERVIEW OF THE MODEL WORK HEALTH AND SAFETY (WHS) ACT

When will the new legislation come into effect?

The model Work Health and Safety (WHS) Act, model work health and safety Regulations, and model codes of practice come into effect on 1 January 2012.

What does 'model' work health and safety (WHS) legislation mean?

'Model' refers to Safe Work Australia's model WHS framework, which includes an act, regulations and codes of practice, to be adopted by each jurisdiction. Each state and territory will enact their own laws to mirror these model laws.

Will there be transitional arrangements for NSW businesses to implement the changes?

WorkCover will create transitional arrangements to assist with the implementation of the new model WHS legislation in NSW.

How will WorkCover provide information on the legislation?

WorkCover will conduct seminars, forums and workshops for key stakeholders – employee representative body, employer associations and government agencies – to provide information about the WHS Act, regulations and codes of practice. Fact sheets, frequently asked questions and guidance material will be published on the WorkCover website (workcover.nsw.gov.au) and advice will be available from the WorkCover Assistance Service on **13 10 50**.

Why are new work health and safety laws being introduced?

Similar work health and safety laws in each jurisdiction will provide:

- a consistent level of safety for all workers in Australia
- reduced compliance and regulatory burdens for businesses operating across state and territory boundaries
- workers with licences or permits issued by state work health and safety regulators the ability to move easily between jurisdictions
- a larger resource of health and safety information, which will help deliver clear and consistent information to all Australians.

What is the difference between the act, regulations and codes of practice?

The model WHS Act sets out work health and safety responsibilities. The WHS Regulations expand on the requirements of the act, with details of how certain sections of the act are implemented, and specific direction on how to meet those obligations.

The codes of practice provide guidance on achieving the standard of health and safety that can apply to a profession, trade or industry. They provide detailed information on particular areas of an act or regulation, and outline activities, actions, technical requirements, responsibilities, and responses to events or conditions within a workplace.

What is new for NSW under the model WHS Act?

Under the model WHS Act, the changes in NSW include:

- An employer will become known as a 'person conducting a business or undertaking', or PCBU.
- Certain volunteers will be included as a worker.
- Health and safety representatives (HSRs) will replace occupational health and safety (OHS) representatives.
- An HSR, after completing training, will be able to issue provisional improvement notices (PINs) and direct that unsafe work cease.
- An employee representative body can apply to the relevant authority for a WHS entry permit, allowing the permit holder to enter a workplace under certain circumstances.

What is a person conducting a business or undertaking (PCBU)

A PCBU includes an employer, corporation, association, partnership, sole trader and certain volunteer organisations. For example, a volunteer organisation that employs a person to carry out work is a PCBU. But a volunteer organisation that operates with volunteers and does not employ anyone is not a PCBU.

A PCBU has the primary duty of care for workplace health and safety.

When is a person not a PCBU?

A person is not a PCBU if they are:

- engaged solely as a worker or an officer
- an elected member of a local authority
- a volunteer association where no-one is paid to carry out work for the association.

What are the duties of a PCBU?

The duties of a PCBU, as set out in the model WHS Act, are generally the same as those for an employer, as set out in the OHS Act – ie a PCBU must ensure the health and safety of workers, customers and visitors by eliminating or minimising risks at the workplace.

There are also additional duties for a PCBU who:

- manages or controls a workplace
- controls fixtures, fittings or plant at a workplace
- designs, manufactures, imports or supplies plant, substances or structures
- installs, constructs or commissions plant or structures for a workplace.

Who is a worker?

A worker is someone who carries out work for a PCBU. A worker includes an employee, labour hire staff, volunteer, apprentice, work experience student, subcontractor, and contractor.

A sole trader who is a PCBU and carries out work for another business (PCBU) is also a worker for that PCBU.

What are the duties of a worker?

The duties of a worker, as set out in the model WHS Act, are the same as those of an employee, as set out in the OHS Act. While at work, a worker must take reasonable care for their own safety and ensure that they do not adversely affect the health and safety of others. A worker must comply with any reasonable instruction and cooperate with the PCBU's WHS policy and procedures.

Who are 'others' at a workplace?

'Others' include clients, customers and visitors.

Do clients, customers and visitors at a workplace have WHS responsibilities?

Yes, they have responsibilities that are similar to a worker's WHS responsibilities, notably:

- caring for their own and others' health and safety
- taking reasonable care not to adversely affect the health and safety of others
- complying with any reasonable instruction given by the PCBU, 'so far as they are reasonably able'.

Does my workers compensation premium change now that volunteers, contractors and work experience students are covered under the WHS Act?

No. Volunteers and work experience students are not defined as a worker under the workers compensation legislation. Also, certain contractors may be deemed to be workers under the workers compensation legislation.

Can all workers who are injured at a workplace claim workers compensation under the WHS Act?

No. The definition of a worker under the workers compensation legislation does not include volunteers, contractors and work experience students. However, workers who are under a contract of service or a training contract with an employer are able to claim workers compensation.

The definition of a worker under the WHS Act is different from the definition of a worker under the current workers compensation legislation.

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