



WorkCover News Article
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Work Health and Safety Legislation What will change for NSW?

NSW is working towards national work health and safety laws which will take effect from 1 January 2012.

While the new legislation will introduce changes to the way work health and safety is currently administered in the workplace, the basics of keeping your workplace safe will remain. These basics include:

- making safety a priority
- everyone having a say
- identifying and controlling risks (if they cannot be eliminated), and
- giving workers the information, training and supervision they need

If your business / organisation complies with the current work health and safety laws then you are well on your way to meeting the requirements of the new laws.

So, what will change for NSW?

Work Health and Safety

'Work health and safety' replaces the term 'occupational health and safety'. The new legislation takes into account modern work practices and ensures that everyone is responsible for workplace safety.

Persons Conducting a Business or Undertaking

Under the new work health and safety legislation, a 'person conducting a business or undertaking' (PCBU) is the person with the primary duty of care for the health and safety of workers. A PCBU includes employers, sole traders, body corporate, unincorporated body, association and partnerships. You do not need to employ workers to be a PCBU. If you are a PCBU and you only have employees, your responsibilities will not change under the model work health and safety Act.

New Definition of Worker

To reflect the range of workplace arrangements in Australia today there is a change from employees as duty holders to 'workers'. Workers include employees, labour hire staff, volunteers, apprentices, sub-contractors and contractors. Effectively, if anyone is carrying out work for your business, they should be considered a worker. A contractor could be a worker to the person who engages them but can also be a PCBU to their own staff.

Reasonably Practicable

The model Work Health and Safety Act requires you to eliminate or control risks and this duty is qualified by the concept of reasonably practicable. This means that if you are a PCBU and you have a workplace issue, in resolving this issue, you need to take into account and weigh up all relevant matters including:

- the likelihood of the hazard or risk occurring

- the seriousness of the risk
- what the person knows, or ought reasonably to know, about the hazard or the risk, and ways of eliminating or minimising the risk (for example codes of practices, guidance material, etc), and
- the availability and suitability of ways to eliminate or minimise the risk

WorkCover NSW and the work health and safety regulators in other Australian jurisdictions will have an important role to play in providing information on determining what is reasonably practicable. Further guidance in the form of codes of practice will be developed.

Consultation

The new work health and safety legislation retains consultation as a key element in any effective workplace health and safety program. The concept of consultation is the same as under the current legislation. It is about sharing information with workers and providing them with an opportunity to respond and to contribute to health and safety issues in the workplace that affect them. Under the new Work Health and Safety Act, PCBUs are required to consult with 'workers' not just employees. Where there are overlapping duties PCBUs must consult, cooperate and coordinate activities with each other.

Health and Safety Representatives

The new Work Health and Safety Act introduces Health and Safety Representatives (HSRs) who will be the primary mode for workers for having their voices heard on health and safety matters. HSRs have a similar role to OHS representatives but HSRs (if they have received appropriate training) can issue Provisional Improvement Notices (PINs) and may direct unsafe work to cease. You only have to have an HSR in your workplace if a worker requests one. HSRs will need to be provided training if they request it. The training will be a prescribed five day course with a yearly one day refresher.

Health and Safety Representatives:

- represent work group members in relation to health and safety matters at work
- investigate complaints from work group members relating to work health and safety matters and inquire into anything that appears to be a risk to the health or safety of work group members, arising from the conduct of the PCBU
- may direct unsafe work to cease under certain circumstances
- may issue Provisional Improvement Notices but only after receiving appropriate training
- accompany an inspector during an inspection
- request that a health and safety committee be established

WorkCover NSW Inspectors are available to support HSRs in providing advice and if there is a dispute, an inspector can be called in to assist in resolving issues.

HSRs have been operating in most other Australian states and territories for many years.

Work Health and Safety Committees

Work health and safety committees remain under the model Act but their role has changed to a more general role, such as developing health and safety policies and procedures and supporting the work of the HSR. In general, committees must be established if requested by at least 5 workers or the HSR. At least half the members must be workers. There is no fixed term for a committee and therefore can be temporary, for example, they could be developed to specifically look at a health and safety issue then be dissolved when the issue has been resolved.

Work Health and Safety Entry Permit Holders

Union officials have always been able to enter a work site but under the model Work Health and Safety Act they must now apply for a WHS entry permit to enter workplaces in relation to safety matters such as to:

- Inspect a workplace
- Advise and/or consult with workers
- Assist HSRs
- Resolve issues as part of issue resolution
- Represent member/s

Entry permit holders must have completed prescribed training. If entering to investigate a suspected contravention of the legislation no prior notice is required. For other reasons related to safety they must give notice of entry during usual working hours to the workplace, at least 24 hours, but not more than 14 days, before the entry.

Model Work Health and Safety Regulations

The draft model Work Health and Safety Regulations, priority codes of practice and an issues paper were released by Safe Work Australia* for public comment on 7 December 2010.

This is a great opportunity for organisations and individuals to provide comment on work health and safety matters relating to their industry / work environment. Public comment can be made up until 4 April 2011 at www.safeworkaustralia.gov.au.

* Safe Work Australia is the Australian Government body responsible for developing the model work health and safety legislation.

WorkCover is currently working closely with Government agencies, unions and employer groups to ensure the effective and consistent implementation of the model legislation.

WorkCover is here to help you and will provide various communication channels and tools to assist and educate you on the new legislation so that you will be prepared for the new legislation on 1 January 2012.