

New 'Harmonised' Laws for Worker's Health and Safety

The introduction of a new WHS Act in each State and Territory across Australia which is based on model legislation developed by the Federal Government in consultation with the States and Territories will ensure that there is a high level of consistency in work health and safety legislation throughout Australia.

The harmonisation of work health and safety laws is part of the Council of Australian Governments' National Reform Agenda aiming to reduce regulatory burdens and create a seamless national economy.

In Australia each jurisdiction (State, Territory and the Commonwealth) is responsible for making and enforcing their own work health and safety laws. This means that in Australia there are currently 9 separate State/ Territory laws governing work health and safety. This causes frustrations and difficulties for the many Australian and International companies that work across State borders, setting up operations in various States and Territories, contracting staff to work in other jurisdictions or manufacturing and supplying plant and equipment to be used at workplaces in various states. Such arrangements have required the people who operate, control and manage these companies to be aware of the requirements that apply in each State and Territory in which they operate.

Objectives of Harmonisation

- to protect the health and safety of workers
- to improve safety outcomes in workplaces
- to reduce compliance costs for business
- to improve efficiency for regulator agencies

What are the benefits of harmonised WHS laws?

- A consistent level of safety for all workers in Australia with maintenance of our existing standards
- Reduced compliance and regulatory burdens for businesses operating across state and territory boundaries
- Easier to do business – no matter where you do business or work in Australia the same laws will apply
- A larger resource of health and safety information, which will help deliver clear and consistent information to all Australians

What will be different?

- A focus on cause and effect giving prominence to the duties of care, consultation and representation
- Moving away from the employment relationship as the basis of obligations to ensure all who are involved in work being done will have a duty of care – no loop-holes or gaps
- Enhanced protection against discrimination, coercion, inducement and misrepresentation that prevent a person from being involved WHS
- Broadened rights for representation and rights of representatives including preserving union right of entry to workplaces
- Provision for graduated enforcement, with alternative options for improvement in health and safety
- Significant increases in the maximum fines and the introduction of categories of offence

IMPLICATIONS FOR SMALL BUSINESS

WHAT CHANGES?

- A new Work Health & Safety Act will replace the current State OHS Acts
- A new set of Work Health & Safety Regulations will replace the current State OHS regulations

THE KEY CHANGES IN SUMMARY

- The concept of the employer with responsibility for WHS has been broadened by using the term person conducting a business or undertaking (PCBU)
- The concept of the worker also has been broadened to someone who carries out work for a PCBU in any capacity
- Small business owners or employers will have to consult more directly and widely with both workers and other PCBUs on related work activities
- Under the WHS Act the prosecution will have to prove the case thus abolishing the current reverse onus of proof situation
- Officers of a PCBU now have a duty to exercise due diligence to ensure compliance obligations are met

WHAT IS A PCBU?

- A PCBU is a person or duty holder such as a company or partnership that operates the business
- Examples of PCBUs would be companies, franchisees, self-employed, contractors and sub-contractors
- PCBUs are not persons employed solely as workers, or volunteer associations who do not employ anyone

WHO ARE PCBUs RESPONSIBLE FOR?

PCBUs are responsible for the health and safety of:

- Workers - but more than just employees. The new Act does not rely on the employment relationship
- Workers could be direct employees, labour hire workers, employees of contractors, apprentices or a student on work experience
- Others who could be affected by the business's activities such as visitors, customers or members of the public

WHO OWES DUTIES TO YOU?

Workers and Others

- Must take reasonable care of own health & safety
- Must take reasonable care that conduct does not adversely affect others
- Must comply, so far as he/she is reasonably able, with instructions

In addition workers must cooperate with reasonable notified policies and procedures

Other PCBUs need to ensure their operations do not create a risk for your workplace or workers

WHAT ARE PCBUs RESPONSIBLE FOR?

Ensuring the health and safety of workers (and others) so far as is reasonably practicable including all the common general duties such as a safe work environment, safe plant, adequate facilities, information, instruction and training and more specific responsibilities such as:

- Consultation with workers and other PCBUs
- Resolving WHS issues
- Ensuring the health and safety of others
- Complying with specific regulations that apply to the business
- Notifying incidents

WHAT IS MEANT BY REASONABLY PRACTICABLE?

Reasonably practicable represents what can reasonably be done in the circumstances. It takes into account:

- The likelihood of the hazard or risk occurring
- The degree of harm or possible consequences
- The state of knowledge about the risk and the availability and suitability of ways of eliminating or minimising it

Finally, only after consideration of the above points, reasonably practicable takes into account the cost of eliminating hazards or risks

Extracted from Workcover NSW website. For further information see: <http://www.workcover.nsw.gov.au/lawpolicy/Policiesresearchgrants/grants/Pages/default.aspx>