FACT SHEET NUMBER: 01

New work health and safety laws in 2012

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 are anticipated to come into effect within the next 12 months.

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.

Why are new work health and safety laws being introduced?

Similar WHS laws in each state will provide:

- a consistent level of WHS for all workers in Australia
- reduced compliance and regulatory burdens for businesses operating across state and territory boundaries
- workers who have licences or permits issued by state WHS regulators the ability to move easily between jurisdictions
- a larger resource of WHS 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 WHS 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.
- A code of practice is a practical guide to achieving the standards of WHS in the above laws. They provide detailed information on particular areas of the act or regulations, and may outline activities, actions, technical requirements, responsibilities, and responses to events or conditions within a workplace.

What is new for Tasmania under the model WHS Act?

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

- an employer will become known as a 'person conducting a business or undertaking' (PCBU)
- certain volunteers will be included as a worker
- health and safety representatives (HSRs) will replace employees' safety representatives.

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

A PCBU includes an employer, corporation, association, partners in a 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) and householders where there is an employment relationship between the housholder and the worker.

A PCBU has the primary duty of care for WHS.

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 similar to those for an employer, as set out in Tasmania's current workplace health and safety legislation. That is, a PCBU must ensure the health and safety of workers, customers and visitors by removing or reducing 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 similar to those of an employee, as set out in Tasmania's current workplace health and safety legislation. 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 co-operate with the PCBU's WHS policy and procedures.

Who are 'others' at a workplace?

'Others' include clients, customers and visitors.

Do they 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.

See also Fact Sheet 2: PCBUs, workers and officers.

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Important note:

This information is for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the draft model Work Health and Safety Act and the model Work Health and Safety Regulations and any other relevant legislation. Copies can be viewed at www.safeworkaustralia.gov.au

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