

Health & Safety at Work Act

The new Act has been passed and comes into effect in April 2016. Here is a summary of some of the main provisions likely to impact on most workplaces.

Duties

PCBU

The PCBU (Person conducting business or undertaking) has a duty to identify and then eliminate or minimise risks to ensure a safe workplace for themselves, employees and others in the workplace (e.g. visitors, customers, suppliers) as far as reasonably practicable.

A PCBU covers

- Whether alone or with others
- Whether for profit or not.

A PCBU does not include volunteer organisations (no employees) or occupier of a home (e.g. residential work).

Officers

An officer of a PCBU also has duties to ensure PCBU fulfils its duties.

Officers include directors, partners, people acting like a director (e.g. board of an incorporated or unincorporated society).

Also includes people exercising significant influence over the business e.g. Chief Executive.

Workers

Include

- employees
- contractors/subcontractors
- employees of contractors/subcontractors
- employees of labour hire firm
- outworkers (including at home)
- apprentices/trainees
- person on work experience/trial
- voluntary worker (works for PCBU with its knowledge on ongoing and regular basis and integral to the business)

Workplace

- anywhere where work is being carried out
- or is customarily carried out.
- any place a worker goes or is likely to go (exceptions for part of farms).

Reasonably Practicable

Assess

- the likelihood of the hazard/risk occurring
- the degree of harm that might result
- what you know or should know about the risk and how to eliminate/minimise
- available ways to eliminate/minimise
- cost of doing so (is it grossly disproportionate to the risk).

Notifiable Event

- death
- notifiable injury or illness
- notifiable incident (serious injury from certain events).

No Levy on workers re H&S – including cannot require them to provide own personal safety/protective equipment as a condition of employment.

No contracting out of the Act

No insurance against fines - If take out insurance or receive payment liable to a fine (\$50K for an individual, \$250K for a PCBU).

Duties not transferable to another person/body

May have more than one duty e.g. PCBU/worker/officer

More than one person may have the same duty – both liable

PCBUs must consult others with duties and cooperate and coordinate.

PCBU must ensure

- Health & Safety of workers
- Health & Safety of all others
- safe work environment
- safe plant & structures
- safe handling
- adequate facilities for people's welfare
- information, training and supervision
- monitoring of conditions to prevent illness or injury.

No duty owed to people unlawfully there.

Self employed must ensure own H&S as well as others.

Duties of Managers of plant, substances and fixtures

Also of Designers, Manufacturers, Importers, Suppliers and Installers

Duties of Officers

- exercise due diligence to ensure that the PCBU complies with its duties
- acquire up to date knowledge of health & safety
- understand the nature of its operations and hazards
- provide appropriate resources to eliminate or minimise risks
- provide appropriate resources to receive and consider information
- ensure PCBU has processes to comply with duties
- verify provision and use of resources

Duties of Workers

- take care of self
- take care not to harm others
- comply with instructions of PCBU

- cooperate with policies re H&S

Duties of Others

- take care of self
- take care not to harm others
- comply with instructions of PCBU

Penalties

Range of penalties for breaches of specific sections plus

Reckless exposure to death, serious injury or serious illness –

Individual \$300K + 5 years prison
Individual PCBU/Officer \$600K + 5 years prison
PCBU \$3million

Failure to comply with duty resulting in serious risk of death, injury

Individual \$150K
Individual PCBU/Officer \$300K
PCBU \$1.5million

Failure to comply with duties

Individual \$50K
Individual PCBU/Officer \$100K
PCBU \$500K

Officers are liable even if PCBU not convicted.

Volunteers only liable as workers or visitors.

Duty to preserve site of accident (notifiable event)

- can assist an injured person
- can remove a dead body
- can do essential safety work
- as directed by constable or inspector

Fines
- Individual \$10K
- PCBU \$50K

Notification of notifiable event

- as soon as possible
- can be by phone unless required in writing (48 hours)
- provide full details

Records by PCBU of notifiable event

- must be kept for 5 years

Engagement with workers

- share relevant information in a timely manner
- give opportunities to express views and contribute when identifying hazards, when eliminating or minimising hazards, when making decisions on engagement, monitoring, information and training, resolving of issues and worker participation practices (give reasonable opportunities)
- take views into account
- advise of outcomes.

H&S Reps and Committees

One worker can request H&S elections. PCBU must hold an election unless has less than 20 employees and not high risk.

Elections can be in work groups.

An H&S committee can be requested by H&S rep or five workers. Must establish a committee unless have less than 20 employees and not high risk.

Improvement Notice & Prohibition Notices

Inspector can issue notices.

Right to Cease Work

A worker exposed to a serious risk to H&S from an immediate or imminent exposure to a hazard can cease work (can be directed to alternative work).

This does not apply to inherently dangerous work unless there is an increased risk.

An H&S rep can order a cease work.

Unlawful to engage in adverse conduct e.g. to fire or disadvantage an H&S rep or people on H&S Committee.

Issue Resolution

A PCBU must make reasonable efforts to achieve a timely, final and effective resolution.

Inspectors

Can enter a workplace (not home) at any reasonable time.

As this is only a short summary of very detailed proposed legislation it is important to seek expert guidance on any issues and for planning how you will handle Health and Safety in your workplace.

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