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changes to workplace health and safety legislation

In June this year the NSW Government passed a bill to enact the National Model Work Health and Safety Legislation (the Model Legislation).

Why change?

The Model Legislation is an attempt by the Commonwealth and each State and Territory government to standardise Workplace Health and Safety (WHS) Laws across Australia. Currently there are 9 different WHS Laws operating across the country.

According to Safe Work Australia, the Australian Government statutory authority established to improve WHS arrangements in Australia, the aim of the Model Legislation is to:

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

How does this affect NSW?

For NSW the main changes include:

- An employer will become known as a person conducting a business or undertaking (PCBU);
- Some volunteers will be included in the definition of "worker";
- Health and Safety Representatives (HSRs) will replace Occupational Health and Safety (OHS) representatives;
- A HSR, after completing training, will be able to issue Provisional Improvement Notices (PINs) and direct that unsafe work cease.

What is a PCBU?

A PCBU includes an employer, corporation, association, partnership, sole trader and some volunteer organisations. The test of whether a volunteer organisation is a PCBU is whether it employ's anyone. If it operates with volunteers only it is not a PCBU if it does employ workers then it is a PCBU.

The duties of a PCBU are similar to the duties of an employer under the current legislation, which are to ensure health and safety of everyone in the workplace including workers, customers and visitors.

Who is a worker?

A worker is anyone who carries out work for a PCBU such as an employee, a contractor, a sub-contractor, an apprentice and a volunteer.

The duties of a worker are the same as the duties of an employee under the current legislation. That is, is to take reasonable care for their own safety and a duty to the health and safety to others in the workplace.

What is a HSR?

The main differences between a HSR and an OHS representative are the training that they must undertake, the term they can hold the position, and their powers. For example a HSR can issue a PIN if they have reasonable

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grounds to believe that the WHS legislation is being contravened, or direct a worker to cease work, if they reasonably believe that there is a serious risk to health and safety if work continued.

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