

NEW ZEALAND MODEL WORK HEALTH AND SAFETY LAWS



What are Model WHS Laws?

In August 2015, NZ Parliament passed the revised WHS Bill which will replace the Health and Safety in Employment Act 1992. By April 2016, the new laws will be introduced as part of 'Working Safer: A Blueprint for health and safety at work'.

The Health and Safety at Work Act and corresponding Bill and Regulations will ensure that NZ's safety system is 'fit for purpose'. It is in line with the new way of working, and will provide transparency in safety obligations and responsibilities and ultimately reduce workplace injury and fatalities.

The revised Act will largely be an adoption of the Australian Harmonisation framework.

Objectives of Change

The key objectives for the change are to:

- Establish a benchmark for safer workplaces
- Provide safer workplaces and reduce injury and fatalities
- Establish transparency and consistency for 'Persons Conducting Business or Undertaking' (PCBU's)
- Establish clearly understood roles and obligations that encompass and cater for contemporary working arrangements.

What's Different?

Key differences in the new laws are the change in terms, obligations and responsibilities. These include:

- 'Worker' – will replace 'employee' and better represents more contemporary working arrangements
- 'Employer' will be replaced with a 'Person Conducting a Business or Undertaking' (PCBU).
- 'All practicable steps' changing to 'reasonably practicable'
- Changes and clarification around Duties of Care
- Refined duties of 'Officers' to ensure the positive adoption of workplace health and safety
- Broader roles for multiple duty holders to reflect the changing workforce
- Changes to compliance and enforcements.

DUTY OF CARE

The Model WHS Laws identify various duty holders. The duty holder must undertake their duty as far as is 'reasonably practicable'. More than one person may have the same duty and a duty cannot be transferred to another person.

If more than one person has a duty, each person retains responsibility and must undertake their duty to their full capacity to which they can influence and control the matter – they cannot 'contract out' of their responsibility. Legislation sets out the following duties:

PCBU's	<ul style="list-style-type: none"> • Person Conducting a Business or Undertaking (alone or with others, whether or not for profit or gain) • Must ensure, so far as reasonably practicable, the health and safety of workers and other persons who could be at risk by PCBU's work.
Upstream Duty Holders	<ul style="list-style-type: none"> • May include designers, manufacturers, installers, constructors, importers and suppliers - people who can influence the way work is carried out and integrity of products. • Must ensure, as far as reasonably practicable, that products are made without risk to the health and safety of people who use them.
Officers	<ul style="list-style-type: none"> • Officers are persons who make, or participate in making decisions that affect the whole or a substantial part, of the business or the corporation; or who has the capacity to affect significantly the corporation's financial standing. They do not have to be the person making the decision but have contributed to the decision being made. • Must exercise "due diligence" (now defined by the WHS Act) to ensure that a PCBU complies with its duties.
Workers	<ul style="list-style-type: none"> • Includes employees, contractors, subcontractors, on-hire workers, apprentices, trainees, work experience students and volunteers. • Must take reasonable care to ensure acts/omissions do not adversely affect the health and safety of other persons, comply with reasonable instruction and co-operation with reasonable policy or procedure.
Others	<ul style="list-style-type: none"> • Any person at a workplace, e.g. visitors, customers, etc • Must take reasonable care for their own safety, ensure that their acts/omissions do not adversely affect the health and safety of others and comply with reasonable instruction.

CONSULT, COOPERATE AND COORDINATE

Model WHS Laws recognise that there are situations where more than one PCBU operates at a workplace and where people share responsibility for work health and safety to varying degrees, for example shopping centres, on-hire arrangements and multi-tenanted office buildings.

If there is more than one person that has a duty, the WHS Act requires that those involved consult, cooperate and coordinate activities (as far as reasonably practicable). To achieve safety obligations each person also retains responsibility for their duty and must undertake the duty to the extent to which the person can influence and control the matter.

An entity will not be classified as a PCBU if they are:

- A Volunteer organisation
- Employed or engaged solely as a worker or an Officer (for example a company director) of the business or undertaking

WHEN IS A PCBU NOT A PCBU?

ENFORCEMENT AND PENALTIES

Type of breach	Corporation (PCBU)	Individual as a PCBU or Officer	Individual as a worker or other	
Offence of reckless conduct in respect of a health and safety duty (clause 42)	A person who has a health and safety duty, without reasonable excuse, engages in conduct that exposes a person to a risk of death or serious injury or illness, and the person is reckless as to the risk.	\$3 million	\$600,000, five years in jail or both	\$300,000, five years jail or both
Offence of failing to comply with a health and safety duty that exposes individual to risk of death or serious injury or illness (clause 43)	A person who has a health and safety duty fails to comply with the duty and that failure exposes a person to risk of death or serious injury or illness	\$1.5 million	\$300,000	\$150,000
Offence of failing to comply with a health and safety duty (clause 44)	A person that has a health and safety duty fails to comply with that duty	\$500,000	\$100,000	\$50,000

The Act will also introduce a range of Regulations concerning Major Hazard Facilities, Asbestos, and Engagement, worker participation and representation.

WE HOPE YOU FOUND THIS FACT SHEET USEFUL. FOR FURTHER INFORMATION ABOUT HOW WORKPRO CAN HELP YOU MEET YOUR OBLIGATIONS PLEASE VISIT WORKPRO.NET.NZ OR CALL +61 1300 975 776.

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