

FACT SHEET

PCBUs, WORKERS AND OFFICERS

Under the new work health and safety (WHS) laws, effective from 1 January 2012, the term 'employers' will be replaced by 'persons conducting a business or undertaking' (PCBU) and 'employees' will be replaced by 'workers'.

Who should read this?

This fact sheet should be read by PCBUs, officers and workers.

New definitions

A **PCBU** conducts a business or undertaking alone or with others. The business or undertaking can operate for profit or not-for-profit. The definition of a PCBU focuses on the work arrangements and the relationships to carry out the work. In addition to employers, a PCBU can be a corporation, an association, a partnership or sole trader. A volunteer organisation which employs any person to carry out work is considered a PCBU. Household where there is an employment relationship between the householder and the worker are also considered a PCBU.

You are not considered to be a PCBU if you:

- are engaged solely as a worker or an officer
- are an elected member of a local authority
- are a volunteer association
- are a strata title body corporate responsible for common areas used only for residential purposes

A **worker** is anyone who carries out work for a PCBU, such as:

- an employee
- a contractor or sub-contractor
- an employee of a contractor or sub-contractor
- an employee of a labour hire company
- an apprentice or trainee
- a student gaining work experience
- an outworker
- a volunteer.

You can also be a PCBU **and** a worker if you carry out work for another PCBU.

An officer is a person who makes decisions, or participates in making decisions, that affect the whole, or a substantial part, of a business or undertaking and has the capacity to significantly affect the financial standing of the business or undertaking. If a person is responsible only for implementing those decisions, they are not considered an officer. Partners of a partnership are not officers but are PCBUs. An **officer** of a PCBU must exercise due diligence to ensure that the PCBU complies with their duties under the WHS legislation.

You are considered to be an officer if you are:

- an officer within the meaning of section 9 of the *Corporations Act 2001*
- an officer of the Crown within the meaning of section 247 of the model *Work Health and Safety (WHS) Act*
- an officer of a public authority within the meaning of section 252 of the model WHS Act.

Further information

For more information about PCBUs, officers and workers, visit workcover.nsw.gov.au and go to 'New legislation 2012'.

To read the model WHS Act, draft model WHS Regulations, and draft priority codes of practice, visit safeworkaustralia.gov.au

Disclaimer

This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

Catalogue No. **WC03063** WorkCover Publications Hotline **1300 799 003**



WorkCover NSW 92-100 Donnison Street Gosford NSW 2250
Locked Bag 2906 Lisarow NSW 2252 WorkCover Assistance Service **13 10 50**
Website workcover.nsw.gov.au

ISBN 978 1 74218 805 8 © Copyright WorkCover NSW 0311

Training Conducted By Easy HR
Phone: 1300 667 331
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