

What's changing in Victoria

On 1 January 2012, uniform work health and safety laws come into effect across all Australian states and territories.

July 2011

Nationally uniform work health and safety laws will ensure a consistently high level of protection for all Australians, and over time, reduce the compliance and regulatory burden for businesses which operate across state borders. The harmonised legislation will be similar to Victoria's *Occupational Health and Safety Act 2004*. So if your business is compliant with Victorian law, you are well placed to comply with the new legislation.

The new system of harmonised laws will include an Act, Regulations, Codes of Practice and a National Compliance and Enforcement Policy. This information sheet will help you start to understand the changes to terms, definitions, and duties proposed by the new legislation.

Terms and definitions

Person conducting a business or undertaking

A 'person conducting a business or undertaking' (PCBU) replaces the term 'employer' in Victoria. A PCBU includes all employers, sole traders, principal contractors, unincorporated associations, partnerships and franchisees. Volunteer organisations that also employ people will be PCBUs.

The definition of a PCBU is intended to cover a broader range of work relationships, so some persons not considered an 'employer' under the current laws may fall within the definition of a PCBU under the new legislation.

The key safety duties of PCBUs are broadly similar to the current obligations on employers. A PCBU's primary duty of care is to ensure the health and safety of everyone in the workplace, so far as is reasonably practicable. If you are an employer under Victoria's current laws you will be a PCBU from 1 January 2012.

Workers

'Worker' replaces the term 'employee' in Victoria. It is defined broadly to mean a person who carries out work in any capacity for a PCBU. This is similar to Victoria's current coverage for employees and 'deemed' employees.

A 'worker' covers employees, contractors, sub-contractors (and their employees), labour hire employees, outworkers, apprentices, trainees, work experience students and volunteers. If you are an employee under Victoria's current laws you will be a worker from 1 January 2012.

Duties

PCBUs

Like employers under Victoria's current laws, PCBUs will have a duty of care for the health and safety of workers. PCBUs will not be able to transfer their duties to another person or contract out their health and safety duties. PCBUs must also consult with other duty holders and workers.

Duties are applied to PCBUs that are involved in the management and control of workplaces, and to PCBUs who are designers, manufacturers, importers or suppliers of products.

Duties also apply to PCBUs that install, construct or commission plant or structures. Designers will have a duty to ensure that what they design can be safely built.

Officers

'Officers' of a PCBU will have a proactive duty to exercise 'due diligence' to ensure that the PCBU complies with work health and safety laws. The model work health and safety act which is available from safeworkaustralia.gov.au explains who is an officer.

Due diligence requires officers to have current knowledge of work health and safety matters. It also requires that appropriate resources and processes are in place to address work health and safety risks and verifying their provision and use.

Workers

Similar to now, workers and other persons at the workplace (eg visitors) will have duties to exercise reasonable care for their own health and safety, the safety of others and must comply with any reasonable instructions, policies and procedures of a PCBU to ensure compliance with health and safety duties.

Multiple duties

As is currently the case in Victoria, health and safety duties are underpinned by the principle that one person may have more than one duty, and more than one person may concurrently have the same duty.

A person may have more than one duty by virtue of being in more than one class of duty holder. For example, a person may be both a PCBU and a worker if they conduct a business or undertaking and work in that business or undertaking.

From 1 January 2012, if more than one person has the same duty, each person must so far as is reasonably practicable consult, co-operate and coordinate activities with all other persons who have a duty with respect to the same matter.

Work health and safety harmonisation update

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Inspector powers

The nationally harmonised laws provide similar compliance and enforcement powers to WorkSafe inspectors, who can enter any place that is or is suspected to be a workplace, request documents, inspect anything, take photographs or other recordings and take items away from the workplace for further examination.

Inspectors will be able to compel answers to questions, however answers to questions or information provided cannot be used as evidence against that person in a prosecution.

Penalties

As under Victoria's current legislation, penalties can involve fines or imprisonment. Penalties are applied in three categories for breaches of the general safety duties and depend on level of risk and culpability created by a breach of safety duty rather than the outcome of the breach.

Category 1 – Reckless conduct

A breach of a health and safety duty where there is a risk of death or serious injury involving recklessness by the duty holder.

Duty holder	Maximum fine
PCBU (body corporate)	\$3 million
Individual PCBUs or Officers	\$600,000 or 5 yrs imprisonment or both
Individual	\$300,000 or 5 yrs imprisonment or both

Category 2 – Failure to comply with health and safety duty

A breach of a health and safety duty where there is a risk of death or serious injury.

Duty holder	Maximum fine
PCBU (body corporate)	\$1.5 million
Individual PCBUs or Officers	\$300,000
Individual	\$150,000

Category 3 – Failure to comply with safety duty

Failure to comply with a health and safety duty.

Duty holder	Maximum fine
PCBU (body corporate)	\$500,000
Individual PCBUs or Officers	\$100,000
Individual	\$50,000

Some other key offences

Hindering or obstructing an Inspector.

Duty holder	Maximum fine
PCBU (body corporate)	\$50,000
Individual	\$10,000

Operating a workplace without a required authorisation.

Duty holder	Maximum fine
PCBU (body corporate)	\$250,000
Individual	\$50,000

Note: This guidance material has been prepared using the best information available to the Victorian WorkCover Authority and should be used for general use only. Any information about legislative obligations or responsibilities included in this material is only applicable to the circumstances described in the material. You should always check the legislation referred to in this material and make your own judgement about what action you may need to take to ensure you have complied with the law. Accordingly, the Victorian WorkCover Authority cannot be held responsible and extends no warranties as to the suitability of the information for your specific circumstances; or actions taken by third parties as a result of information contained in the guidance material.

Entry Permit Holders

Entry Permit Holders replace Authorised Representatives of Registered Employee Organisations, and have similar rights, including to inquire into suspected contraventions of the Act.

Health and Safety Representatives

The current Victorian system of workplace Health and Safety Representatives (HSRs) will continue to operate. HSRs elected on or after 1 January 2012 will need to undergo training before being able to issue a Provisional Improvement Notice or direct that work cease.

Workers can request that an HSR be elected with the assistance of a union or other person or organisation. Under the new laws a PCBU must provide resources, facilities and assistance to enable HSR election to be conducted.

A PCBU must allow elected HSRs to attend HSR training in work health and safety as soon as is practicable and within three months after receiving a request. An HSR's term will still be 3 years.

The transition

Transitional arrangements have been agreed nationally, to allow for some aspects of the harmonised laws to be phased-in over time.

WorkSafe will be providing more in-depth information on the transitional arrangements and any changing responsibilities for employers and workers.

Remember, if you comply with the current Victorian work health and safety laws, you are well placed to comply with the new laws from 1 January 2012.

Next steps

Over the coming months WorkSafe will provide further information on the harmonisation of work health and safety laws as it becomes available.

Further information

To find out how the laws will affect Victoria and to access up to date information on your responsibilities under the new laws visit worksafe.vic.gov.au/nationalreform or contact the WorkSafe Advisory Service on **1800 136 089**.

You may also wish to seek further information from your employer group, union or health and safety consultant to make sure you fully understand your responsibilities.