

New Work Health & Safety Laws

Getting Ready for 2012

This fact sheet is to assist NSW RFS members in preparing for new Work Health & Safety (WHS) Laws which will replace the current Occupational Health & Safety (OHS) laws in NSW.

The Work Health and Safety Legislation Amendment Bill 2011 was introduced in NSW Parliament on October 2011, with the NSW Government intending to have the WHS Act and Regulations commence in NSW on 1 January 2012.

The purpose of the WHS Act and Regulations is to introduce a nationally consistent set of laws covering Health and Safety at work. Currently, there are many variations between the laws of each State and territory, and this can lead to confusion for businesses and workers, as well as different safety standards depending on where the work is carried out.

Key Changes to Health & Safety Laws:

Topic or Entity	Description of Change
An employer	Is captured under the definition PCBU 'person conducting a business or undertaking'
Controllers, self employed etc.	Are also a PCBU with general duties of care
General duties of employers	Will be subject to qualifier 'reasonably practicable' and will apply to all PCBUs and extend to all PCBUs who are involved in the conduct of work
Employees	Are captured under the definition of worker which is broadly defined to include anyone who carries out work in any capacity, including volunteers
Volunteers	Are captured under the definition of worker
Duty of workers	Workers have a duty to take reasonable care for themselves and others in their workplace
Duty of Officers (defined as a person with control of the whole or a substantial part of the PCBU)	Will change from having an attributed liability to a positive duty of 'due diligence' to ensure PCBU complies with its duties. Volunteer NSW RFS 'officers' are unlikely to fall within this definition. But even if they do, volunteers are exempt from additional 'officer' liability.
Consultation	Broadened to include all workers affected and other PCBUs with shared responsibilities
OHS Representatives	Replaced by Health & Safety Representatives (HSR) with increased functions and powers
Health & Safety Representatives (HSR) powers	After completing approved training, HSRs will be able to issue PINs and direct unsafe work to cease
Management of risk	Risk assessments are not mandated in the Act but are mandated in the Regulations for certain high risk work
Onus of proof	Reverse onus removed with the prosecution having to prove a breach was committed



NSW RFS volunteers and WHS Laws

The main difference for NSW RFS volunteers is that they now fall within the definition of 'worker'. The new laws require volunteers to:

- ✓ take reasonable care for their own and other peoples' health and safety
- ✓ comply with any reasonable instructions, policies and procedures regarding health and safety given by the NSW RFS

The NSW RFS, as a 'person conducting a business or undertaking', must ensure the health and safety of its workers (including volunteers), consult with them on Health & Safety matters, and provide them with the necessary information, instruction and training.

NSW RFS employees and WHS Laws

For NSW RFS employees, little will change, as duties have existed under existing OHS legislation for employees and for the NSW RFS as the employer.

Employees fall within the definition of 'worker' in the new WHS laws and will have identical WHS Law duties as volunteers.

Who is an 'Officer' Under the new WHS Act?

'Officer' is defined as:

"a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of a public authority" (Section 252)

Group Captains, Captains and Deputy Captains are unlikely to fall within this definition and will therefore not be subject to the obligations of 'Officers' under the new WHS Act. However, even if a volunteer did fall within this definition volunteers are exempt from 'officer' liability.

Senior Salaried Officers (including the NSW RFS Commissioner and Directors) and others (e.g. Regional Managers and District Managers) of the NSW RFS will be responsible for 'officer' duties detailed in the new WHS Act (i.e. ensuring that the NSW RFS as a whole is meeting its WHS obligations) and will be liable to prosecution for breach of those duties.

What is the NSW RFS doing to prepare for the WHS Laws?

- ✓ A NSW RFS Working Group has been formed with representatives from Directorates, OHS Committee, volunteers and RFSA.
- ✓ The Working Group is assisting in WHS Laws preparation through:
 - Developing communication strategies
 - Defining training requirements
 - Reviewing Health & Safety Audit Reports
 - Identifying Health & Safety system changes
- ✓ A Health & Safety Audit has been conducted to determine any system gaps with the new WHS laws.
- ✓ More Information on the WHS Laws and NSW RFS preparations will be available via Health & Safety Fact Sheets, NSW RFS Intranet and MyRFS.

Further information

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Safe Work Australia:
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WorkCover NSW:
www.workcover.nsw.gov.au