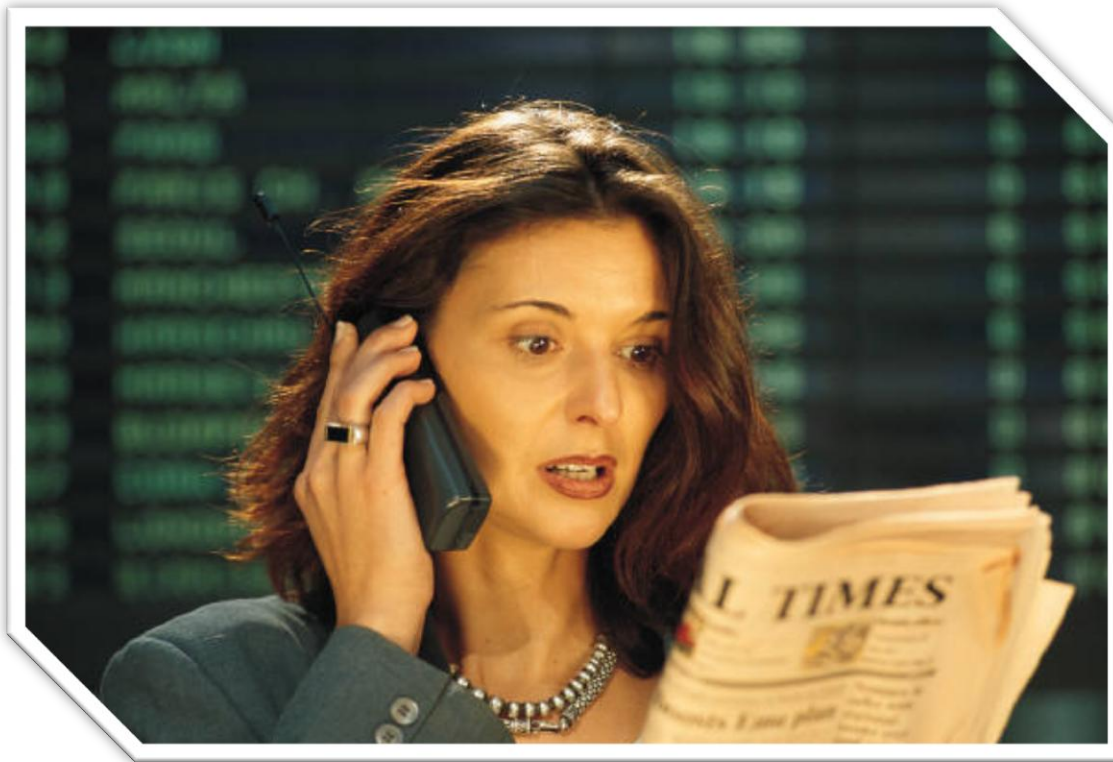


NSW Work Health & Safety Legislation



Module: Terminology

NEW TERMINOLOGY



Employer	Replaced by the term ‘person conducting a business or undertaking’ (PCBU)
Controllers, self employed etc.	Are also a PCBU with general duties of care
Employees	Replaced by the term worker which is broadly defined to include anyone who carries out work in any capacity,
General duties of Employers	Will be subject to qualifier ‘reasonably practicable’ and will apply to all PCBUs
Duty of workers	Workers have an expressed duty to take reasonable care of themselves at work



NEW TERMINOLOGY



**Directors and
Manager**

Replaced with the term “Officer” as defined in the Corporations Act 2001

Duty on Officers

Officers have positive duty of “**due diligence**” to ensure PCBU complies with duties

**OHS
Representatives**

Replaced by **health & safety representatives** (HSR) with increased functions and powers

OHS Committees

Will be referred to as **health and safety committees** with effectively the same functions

Union officials

Can apply for WHS entry permit and will be know as **WHS entry permit holders.**

NEW TERMINOLOGY

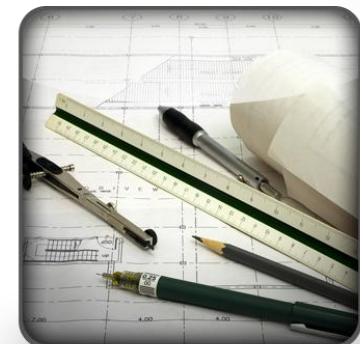


Workplace

Defined to include any place where a worker goes, or is likely to be, while at work.

Structure

The provision of safe structures included in general duties of PCBUs and upstream duties of designers





DEFINITIONS



‘Person conducting a business or undertaking’

A person conducts a business or undertaking:

- whether the person conducts the business or undertaking alone or with others; and
- whether or not the business or undertaking is conducted for profit or gain.

A PCBU may be a partnership, an unincorporated association a self-employed person, a government agency.

A person does not conduct a business or undertaking when:

- the person is engaged solely as a worker in, or as an officer of, that business or undertaking
- the person is acting in the capacity of an elected member of a local government authority
- If the Regulation prescribes

DEFINITIONS



‘Worker’

A person is a worker if the person carries out work in any capacity for a PCBU, including work as:

- an employee
- a contractor or subcontractor
- an employee of a contractor or subcontractor
- an employee of a labour hire company
- an outworker
- an apprentice or trainee
- a student on work experience
- a volunteer
- a person of a prescribed class.

The PCBU is also a worker if the PCBU is an individual who carries out work in the business or undertaking



DEFINITIONS



‘Others’

Is taken to mean visitors, customers, members of the public etc.

‘A workplace’

A workplace is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

'Place' includes:

- a vehicle, vessel, aircraft or other mobile structure, and
- any waters and any installation on land, on the bed of any waters or floating on any waters.



DEFINITIONS



‘Officer’

Means:

- an officer within the meaning of s.9 of the *Corporations Act 2001*; **other than a partner in a partnership**;
- an officer of the Crown within the meaning of s.247
- an officer of a public authority (including a local authority) within the meaning of s.252 **other than an elected member of a local authority acting in that capacity**



DEFINITIONS



'Officer'

An officer may be:

- A director or secretary of the corporation.
- A person who makes, or participates in making, decisions that affect the whole, or a substantial part of the corporation.
- A person who has the capacity to affect significantly the corporation's financial standing.



DEFINITIONS



‘Health and Safety Representative’

In relation to a worker, means the health and safety representative elected for the work group of which the worker is a member

‘Workgroup’

Means a group of workers as determined by negotiation between the PCBU and the workers who will form the workgroup.



DEFINITIONS



'Reasonably practicable'

Means what is reasonably able to be done 'at a particular time' to ensure health and safety. It takes into account and weighs up **all** relevant matters including

- The likelihood of the hazard or the risk occurring
- The degree of harm that might result from the hazard or risk.
- What the person concerned knows, or ought reasonably to know, about the hazard or the risk, and ways of eliminating or minimising the risk, and
- The availability and suitability of ways to eliminate or minimise the risk (s.18).



DEFINITIONS



'Due diligence'

Exercising due diligence includes taking reasonable steps:

- to acquire and keep up-to-date WHS knowledge
- to gain an understanding of the hazards and risks associated with business operations
- to ensure the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks
- to ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information
- to ensure the business or undertaking has, and implements, processes for complying with any duty or obligation of the PCBU under the Act, and
- to verify the provision and use of the above resources and processes

DEFINITIONS



Plant

Includes:

- any machinery, equipment, appliance, container, implement and tool; and
- any component of any of those things; and
- anything fitted or connected to any of those things.

Structure

Means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes:

- buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels); and
- any component of a structure; and
- part of a structure.

Substance

Means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour.

DEFINITIONS



'Designer'

Is a person who conducts a business or undertaking that designs:

- plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or
- a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
- a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace



DEFINITIONS



'Manufacturer'

Is a person who conducts a business or undertaking that manufactures:

- plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or
- a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
- a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace



DEFINITIONS



'Importer'

Is a person who conducts a business or undertaking that imports:

- plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or
- a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
- a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.



DEFINITIONS



'Supplier'

Is a person who conducts a business or undertaking that supplies:

- plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or
- a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
- a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace

