

Health and Safety changes: new obligations

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In March this year the Government introduced the Health and Safety Reform Bill to Parliament. Modelled closely on the Australian Model Work Health and Safety Act, the Bill will replace the Health and Safety in Employment Act 1992 and the Machinery Act 1950. With new duties, especially for company directors, and increased penalties, the Bill looks likely to significantly change the way health and safety obligations are dealt with in New Zealand workplaces.

Participation, leadership, accountability

The Bill's explanatory note and policy statement provides that the Government recognises that a well functioning health and safety system relies on participation, leadership, and accountability, by Government, business and workers. Key emphasis is placed on a number of issues, including:

- 1 Placing obligations on those in the work environment who create the risk and who are best able to manage it; and
- 2 A worker participation model which provides for better levels of participation and helps workers to have the knowledge and accountability to keep their colleagues safe.

Duty of care

The Bill creates a new duty-holder called a Person Conducting a Business or Undertaking (**PCBU**). A PCBU has the primary duty of care for health and

safety in the workplace. "*Workplace*" is defined to mean 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.

There are specific duties imposed on PCBUs who manage or control workplaces, on PCBUs who manage or control fixtures, fittings or plant, and on PCBUs who are designers, manufacturers, importers or suppliers of plant, substances or structures.

Due diligence

With new levels of accountability in mind the Bill imposes a duty on "*officers*" of businesses, the duty of due diligence. In companies, "*officers*" will include directors as well as any person occupying a position in the organisation that is comparable with that of a director. In any organisation, "*officers*" include any person who makes decisions that affect the whole, or a substantial part, of the business of the PCBU, such as the Chief Executive.

"*Officers*" will have due diligence duties to proactively manage workplace health and safety. The duty of due diligence is wide, and includes:

- a Acquiring and keeping up to date knowledge of work health and safety matters;
- b Gaining an understanding of the risks and hazards associated with the conduct of the business;
- c Ensuring that the PCBU has, and uses, appropriate resources and

processes to eliminate or minimise risks to health and safety;

- d Ensuring that the PCBU has appropriate resources and processes for responding to information regarding incidents, hazards and risks in a timely way; and
- e Ensuring the PCBU has, and implements, processes for complying with duties under the legislation.

Compliance monitoring

Therefore in a departure from the current legislation, the bill creates duties not just on the organisation itself, but on officers to monitor compliance. This new approach means that directors are liable where they fail to perform the due diligence duty. The Cabinet paper on the Bill states:

“Directors and senior management set the direction and provide leadership in health and safety for their organisation, including making resource decisions. The language of due diligence is familiar and consistent with their governance role, and their other duties as a director. It clarifies that health and safety of workers is part of governance.”

If you would like more information regarding the above, or have any questions, please contact us.

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This note gives a general overview of the topics covered and is not intended to be relied upon as legal advice.

In Australia, this change of emphasis has led to a hands-on approach to health and safety by company directors. In New Zealand the same will need to apply. Directors will also have to ensure that they have indemnities from their organisation where they act in accordance with reasonable standards, and appropriate insurance. Insurance cannot however be obtained for health and safety fines. Penalties are set to increase with fines up to \$600,000 or imprisonment for up to five years for PCBUs or officers of PCBUs and so it is crucial that organisations and their key people start to understand the new obligations now.

Select Committee report

Submissions on the Bill closed in May, and the Transport and Industrial Relations Select Committee is due to provide its report to Parliament by 13 September 2014. It will then be known whether any amendments to the Bill are recommended, with the Bill itself likely to be passed before the end of the year.