

12TH NOVEMBER 2014

AN OVERVIEW OF THE HEALTH AND SAFETY REFORM BILL

The new Health and Safety Reform Bill, due to come into force from April 2015, will replace existing occupational health and safety legislation, including the Health and Safety in Employment Act 1992. The Bill will see Board Members, Chief Executives and those holding management positions having a more direct responsibility. This document provides readers with a snapshot of the main changes which may affect you and your organisation.

Following the Pike River Mine disaster in 2010, the New Zealand Government commissioned for an inquiry to be conducted by the Royal Commission. The recommendations from that inquiry around health and safety led the Government to introduce the Health and Safety Reform Bill.

Board Members, Chief Executives and those holding management positions will have a more direct responsibility ensuring that the organisation's facilities and activities are safe. If these duties are breached, these individuals can be held personally liable. The new penalties for individuals and organisations are potentially very significant.

In practice, organisations that already have strong health and safety practices in place will not need to make too many significant changes. However, it is important that organisations, and their leaders, take the opportunity to review their practices to ensure that they have good systems and structures in place, and that these are followed in practice, documented appropriately and reviewed regularly. As with all health and safety matters, the precise steps you will need to take very much depend on your organisation's specific circumstances.

As well as legislative change, the Government has established a new regulator, Work Safe New Zealand, whose objective is to promote and contribute to securing the health and safety of workers and workplaces in New Zealand. Visit Work Safe New Zealand's [website](#) where you will find helpful information and guidance on the new legislation, templates, forms, processes and training. General enquiries can also be directed to their helpline by phoning **0800 030 040**.

The main points to note around the new legislation are as follows:

OFFICERS

An officer is defined and includes Board Members (of companies, incorporated societies, trusts etc.), Chief Executives and other people who make decisions that affect the whole, or a substantial part of the business or undertaking. The new legislation will impose a positive duty on officers to exercise due diligence and to ensure that PCBU's (see definition below) to comply with their duties. This is a significant change from the current law. Whilst there is scope currently for personal liability, it is relatively rare. Individual officers will now be prosecuted and held personally liable when the legislation takes effect.

It is advised that all officers read the [Good Governance Practices Guideline for Managing Health and Safety Risks](#) published by the Ministry of Business, Innovation and Employment and the Institute of Directors. These guidelines apply now and should be implemented. All boards should have, as part of their board charter, a policy setting out the board's role in leading health and safety,

and appoint at least one person on the board or a sub-committee who takes the lead on health and safety.

Boards are responsible for determining high-level health and safety strategy and policy which managers are required to implement. This strategy and associated policies must take into consideration all those affected by the organisation's activities, not just workers. Board responsibilities, however, do not stop with the issuing of strategy and policies; they should also ensure that they are implemented effectively. They do this by holding management to account through processes of policy and planning, delivery, monitoring and review.

Under new legislation, anyone acting as an officer solely on a voluntary basis will have a due diligence duty the same as other officers, however cannot be held liable for failure to comply with health and safety duty. This is also the case for elected and appointed members of community boards, elected member of local authorities (i.e. councillors) and appointed and elected members of a school Board of Trustees.

If the Chair of the Board receives some sort of fixed regular sum of money (i.e. a stipend) that is not simply an allowance to cover expenses, and is the only person remunerated on the board, then the Chair will be personally liable, but the other board members will not.

PCBU

PCBU is a person conducting a business or undertaking. The reference to a person means the entity conducting the business or undertaking. Business and undertaking aren't yet defined, but all sports organisations will almost certainly be PCBUs, including clubs, National Sport Organisations (NSOs), Regional Sport Organisations (RSOs), Regional Sports Trusts (RSTs) and other organisations that operate events or facilities. PCBU **does not** include businesses or undertakings that have solely volunteer based organisations (where there are no employees and the organisation works for a community purpose).

The definitions of **work**, **worker** and **workplace**, and the duties that apply for each, will be amended in the legislation so that the duty to ensure health and safety covers all work that is being or has been undertaken, and all areas where people work or are working.

There will be specific obligations for PCBUs to consult workers (including contractors and volunteers) about health and safety. PCBUs may, or may be required to, hold elections for health and safety representatives and establish health and safety committees.

Workers' rights to refuse to perform work likely to cause serious harm will also be strengthened through the new legislation.

WORKER

A worker is a person who carries out work for a PCBU i.e. employee, contractor or subcontractor, outworker (including homework) an apprentice or trainee, a person gaining work experience, a volunteer. For volunteers who volunteer at organisations where there is an employee(s) in the workplace (a.k.a the organisation is not exclusively a voluntary one) then volunteers will have the same rights as the employees. Current exemptions for sports or recreation clubs who use volunteers to undertake work will cease to apply. If you are a club running an event and have volunteers working as marshals, you will be responsible for their safety as if they were your employees (as well as for the safety of the athletes and public out on the road). In this case, the need for an authorised traffic management plan becomes essential, together with appropriate briefings and the use of appropriate equipment etc.

VOLUNTEER

Where a volunteer is not undertaking work for a PCBU (e.g. a volunteering organisation where there are no employees) the only duties that may arise are those that would apply to all other people not to be put at risk by work done by the PCBU and to take reasonable care of their own and others health and safety.

In short if the volunteer organisation employs an employee they are regarded as a PCBU and have duties to all employees including the volunteer(s). If not, the association is not a PCBU and the volunteer is not a worker.

CRIMINAL LIABILITY

A breach of the new legislation is a criminal offence. A person or organisation does not need to act intentionally or recklessly to be liable. It is sufficient that the person or organisation failed to meet their obligations. The penalties will increase substantially under the new legislation. The most serious offence will have a maximum penalty of \$3m for a body corporate, and \$600,000 and five years' imprisonment for individuals. Note that you cannot insure against fines, and it is illegal for an organisation to compensate individuals for any fine they have to pay. Insurance is available, however, to cover legal costs and reparation.

NEXT STEPS

Organisations and those in governing and managerial roles should start looking to do the following:

- Implement good health and safety documentation. Health and safety should not be reduced to a box-ticking exercise, but be clear policies, hazard and accident registers and task lists. These are all important tools and helpful in avoiding prosecution. Make these documents part of normal and expected practice, which people have to use and complete.
- Clearly identify all health and safety systems and policies and bring these together and make them visible.
- Take the opportunity to review and identify hazards, and to review your health and safety practices across all of your premises, facilities and operations. Document the reviews and the improvements made.
- You cannot contract out any of your health and safety duties, so it is important to assign responsibilities clearly. For instance, if you are running an event and liaising with local facilitators or event facilities you will need to agree the areas of the responsibility with the local facilitators and facility owners and document those. Ensure responsibilities are assigned and recorded in documents such as policies, job descriptions, employee performance agreements, event plans, race briefings etc.
- Ensure that health and safety is a regular and important agenda item at meetings, and that the discussion and outcomes are minuted and then followed up at the next meeting.
- Ensure that someone in the organisation is responsible for going through the detail in the new Act, regulations and guidelines to ensure that you comply.
- Undertake proper inductions for employees, contractors, members, volunteers, athletes and participants, and document those.
- Ensure that within the board charter is a policy setting out the board's role in leading health and safety, and that at least one person on the board or a sub-committee takes the lead on health and safety.
- Every officer should ask about and know the induction, information and assurance processes that the organisation has in place to ensure the officer is discharging his or her responsibilities.
- Investigate your insurance options.
- Keep records for 5 years (although legal recommendation is 6-7 years as 6 years is the civil liability cut off)

- Seek and take advice. Look to other organisations in the sector, in New Zealand and elsewhere. (Australian law is very similar, as the New Zealand reforms are based on Australian law). Take advantage for Work Safe New Zealand's tools and resources and speak to someone on the helpdesk.