



What all Businesses need to know about the new proposed Health and Safety Legislation

Topics Covered in Presentation

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Introduction

- ▶ Reasons for the change in H/S Legislation
 - ▶ The Government established the Royal Commission in November 2010 following an explosion at the Pike River coal mine resulting in the deaths of 29 men.
 - ▶ The Taskforce was set up by the Government in April 2012
 - ▶ The Taskforce was asked to research and critically evaluate the workplace health and safety system in New Zealand and recommend practical strategies for reducing the high rate of workplace fatalities and serious injuries by 25% by 2020.
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Introduction (Contd)

- ▶ **Working Safer** : is a blueprint for health and safety at work is the Government's response to the recommendations of the Taskforce.
 - ▶ Working Safer represents the most significant reform of New Zealand's workplace health and safety legislation in 22years .
 - ▶ **WorkSafe New Zealand**,is the newly created work health and safety regulator. It will have the role of enforcing the proposed new Act and supporting regulations, and developing a suite of codes of practice and supporting guidance material to help duty holders know how to comply.
 - ▶ The new legislation is based on Australia's NSW
 - ▶ As a result they have had a 16 percent reduction in work related deaths since 2012 and have just reported the lowest number of work related deaths in 11 years
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The PCBU (The person conducting a business or undertaking)

- ▶ The PCBU concept replaces all the duty holders under the existing legislation, such as employer, employee, principals, self employed, persons controlling the place of work and suppliers of plant.
- ▶ PCBUs have a primary duty of care to ensure the health and safety of workers and others affected by the work carried out by the PCBU

PCBUs can also be:

- ▶ Volunteer Association
- ▶ Householder
- ▶ Self employed person

PCBUs

The following are not PCBUs

- ▶ If a person is employed/engaged solely as a worker or an officer (eg company Director) of the business or undertaking.
 - ▶ If you are a householder where you employ or engage someone to residential work on or in your home.
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Primary Duty of Care

What is the primary duty of care?

- ▶ PCBUs must do what is reasonably practicable to meet their duties to ensure health and safety of their workers and others on their worksite.

This means:

- ▶ What is or was reasonably able to be done at a particular time to ensure health and safety is being managed, taking into account and weighing up all relevant matters.
- ▶ These matters include the likelihood of the hazard or risk occurring, the degree of harm that might result from the risk or hazard, and what is known or would be reasonably expected to be known about a risk or hazard and how to eliminate or minimise the risk.
- ▶ In doing this you should think about the extent of the risk and the available ways of eliminating or minimising the risk and finally, weigh up the cost of this and whether the cost is grossly disproportionate to the actual risk.

In practical terms what do you do?

Primary Duty of Care (Contd)

Have a robust Health and Safety Management System in place that covers:

- ▶ Employer Commitment
 - ▶ Planning Review & Evaluation
 - ▶ Hazard Management System
 - ▶ Training and Supervision
 - ▶ Incident , injury and near miss reporting, recording and investigation
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Primary Duty of Care

- ▶ Employee participation system
- ▶ Emergency planning and Management
- ▶ Contractor Management System
- ▶ Return to work program (Injury Management)

Ensure your systems are implemented, regularly reviewed and updated

Ensure what is in your policies and procedures is being practised in the actual workplace

Duties of Upstream PCBUs

WHO ARE THEY?

- ▶ Designers such as architects,
- ▶ Engineers,
- ▶ Manufacturers,,
- ▶ Suppliers or
- ▶ installers of plant, substances or structures

They all have a role to play in managing risks to health and safety at work.

- ▶ Specifically, they have a duty to ensure, so as far as reasonably practicable that the work they do or the things they provide to the workplace don't create health and safety risks.

Primary Duty of Care (contd)

These duties include ensuring the plant, substances or structures are without risk to people who:

- ▶ Use the plant, substance or structure
- ▶ Handle the substance at a workplace
- ▶ Store the plant or substance at a workplace
- ▶ Construct the structure at a workplace
- ▶ Carry out any reasonably foreseeable activity (inspection, cleaning, maintenance or repair) at a workplace.
- ▶ Or are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace.

Duties of Upstream PCBUs (Contd)

- ▶ Are at or in the vicinity of a workplace and who are exposed to the plant, substance or structure at the workplace.

For example:

- ▶ **Where a new heat pump is to be installed in a workplace** each PCBU in the chain must play its part to ensure the safety of workers and others who interact with the scaffolding throughout its use in the workplace.

PCBUs may be the following

- ▶ Designer of the heat pump
- ▶ Manufacturer of the heat pump
- ▶ The hire/supplier company of the heat pump/electrical equipment
- ▶ Installer of the heat pump/electrical equipment
- ▶ Commissioner of the heat pump/electrical equipment

PCBUs With Overlapping Duties

- ▶ This means that on one work site there could be multiple duty holders that have overlapping duties.
 - ▶ PCBUs will be required to consult, co operate and co –ordinate activities to meet their shared responsibilities.
 - ▶ PCBUs cannot contract out of their duty , they must do what is reasonably practicable to ensure they play their part in Health and Safety Management.
 - ▶ PCBUs should also monitor each other to ensure everyone is doing what the agreed to do.
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Duties of Workers & Others

Workers have specific health and safety duties when they are at work to:

- ▶ Other workers
- ▶ Other people at workplace
- ▶ To take **reasonable care** for his or her own health and safety
- ▶ To take **reasonable care** that his or her acts or omissions do not adversely affect the health and safety of other persons
- ▶ **Comply**, so far as reasonably able, with any reasonable instruction that is given to them by the PCBU to allow the PCBU to comply with the law
- ▶ **Cooperate** with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers

Due Diligence Duty

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What Is The Due Diligence Duty Of Officers?

- ▶ A new duty proposed by the Bill is that an officer of a PCBU (such as a director, board member or partner) must exercise due diligence to ensure that the PCBU complies with its duties.
- ▶ This places a positive duty on people at the governance level of an organisation to actively engage in health and safety matters, reinforcing that health and safety is everyone's responsibility.
- ▶ A business or undertaking is governed by individuals who, through their decision making, influence the specific activities that will in turn ensure the success or failure of health and safety initiatives and whether the PCBU is complying with its own duty.
- ▶ strongly influence the culture of the business or undertaking and accountabilities within it. For instance, they make important decisions on the resources that are available for work health and safety and the policies that support the PCBU to comply.

Due Diligence

Officers versus PCBUs – what's the difference in the duty?

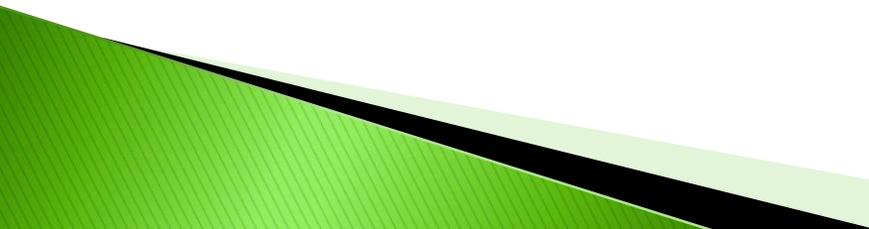
- ▶ The officers' duty is not the same as the PCBU duty. Officers do not have to ensure the health and safety of the PCBU's workers.
 - ▶ The test is whether the person has sufficient authority to make governance decisions that affect a substantial part of the business.
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Due Diligence (Cntd)

Definition of an officer

- ▶ Companies: For a PCBU that is a company, the officers are: **Its directors.**
- ▶ Partnerships: For a PCBU that is a partnership, the officers are its partners (but note in limited partnerships, **only general partners are officers**).
- ▶ Other types of undertakings: For other types of business structures or undertakings, people who hold a position comparable to a director of a company, such as board members, will be an officer.
- ▶ In addition to these specified positions, an officer is any person who 'makes decisions that affect the whole, or a substantial part, of the business of the PCBU'.
- ▶ Exactly who comes under this definition will depend on the individual structure and governance of the business or undertaking in question. It will almost certainly include the **chief executive**
- ▶ .
- ▶ The test is whether the person has sufficient authority to make governance decisions that affect a substantial part of the business.

What is Due Diligence?

- ▶ Due diligence means that officers must make sure they perform certain functions to ensure the PCBU complies with its duties. These include taking reasonable steps to:
 - ▶ Know about work health and safety matters and keep up-to-date
 - ▶ Gain an understanding of the operations of the organisation and the hazards and risks generally associated with those operations
 - ▶ Ensure the PCBU has appropriate resources and processes to eliminate or minimise those risks
 - ▶ Ensure the PCBU has appropriate processes for receiving information about incidents, hazards and risks, and for responding to that information
 - ▶ Ensure there are processes for complying with any duty, and that these are implemented
 - ▶ Verify that these resources and processes are in place and being used.
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What officers are exempt?

Certain officers are exempt from prosecution if they fail in their due diligence duty:

They are:

- ▶ Volunteers
- ▶ Community board members, whether appointed or Elected under the Local Electoral Act 2001
- ▶ Elected members of local authorities (councillors) under the Local Electoral Act 2001
- ▶ Members of school boards of trustees, whether appointed or elected under the Education Act 1989
- ▶ Elected members of local boards under the Local Electoral Act 2001.

Worker Engagement

- ▶ The primary duty of care is only for workers who work for the business or undertaking.
 - ▶ All PCBUs must engage with workers in health and safety matters.
 - ▶ All PCBUs must have effective worker participation practices
 - ▶ **What does this mean ?**
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Worker Engagement (Contd)

- ▶ A PCBU may develop its own worker participation practices.
- ▶ Workers or PCBU may choose to have a Health and Safety committee.
- ▶ Workers or PCBU may choose to have a Health and Safety Representative
- ▶ The Bill continues the right for to refuse to do unsafe work and it expands protection for workers who raise w/place Health and Safety matters.
- ▶ The Bill gives HSRS stronger functions and powers

Enforcement Tools

In addition to prosecution, compliance and enforcement tools include:

Improvement Notices

- ▶ Where an inspector reasonably believes that a person is breaching (or is likely to breach) the Bill or regulations, they can issue that person with an **improvement notice** to remedy the breach.
- ▶ The improvement notice will stipulate a time by which the person must comply with the notice (compliance period). An inspector may extend the compliance period by written notice.

Prohibition Notices

- ▶ Where an inspector reasonably believes a workplace activity is occurring (or is likely to occur) involving a serious risk to health or safety of anyone arising from an immediate or imminent exposure to a hazard, they can issue a **prohibition notice** (including by verbal direction).
- ▶ The person given the notice must stop carrying out the activity, as directed, until the inspector is satisfied that the matter or activity giving rise to the risk has been remedied.
- ▶ Where reasonable steps are not taken the regulator may take **remedial action** to make the workplace or situation safe.

Enforcement Tools (Contd)

Infringement Notices

The regulator can issue a person with an infringement notice requiring payment of a fine for breach of an infringement offence.

- ▶ Infringement offences will be breaches of specific health and safety obligations in the Bill or in regulations. The amount of the fine for each infringement offence will be set out in regulations.

Non-Disturbance Notices

- ▶ An inspector may issue a non-disturbance notice to a person with management or control of a workplace requiring them to preserve the site at which a notifiable event has occurred (for a specified time) or prevent the disturbance of a particular site (including the operation of plant) for a specified time that is reasonable in the circumstances.

Penalties

The Bill provides for three offences in relation to breach of a health and safety duty. These offences (for example, breach of the PCBU's primary duty of care) are graduated based on the conduct of the duty holder and the outcome of the breach. The maximum fine and penalty levels are tiered based on who the duty holder is (an individual, an officer of a PCBU, or corporate entity).

Max. prison term Max. fine

Offence of reckless conduct in respect of a health and safety duty (clause 42)

person who has a health and safety duty, without reasonable excuse, engages in conduct that exposes a person to a risk of death or serious injury or illness, and the person is reckless as to the risk

▶ (eg a worker or a self-employed PCBU)	5 years and/or	\$300,000
▶ Officer of a PCBU	5 years and/or	\$600,000
▶ Body Corporate (eg a company)	-	\$3 million

Penalties

- ▶ **Offence of failing to comply with a health and safety duty that exposes individual to risk of death or serious injury or illness (clause 43)** **A person who has a health and safety duty fails to comply with the duty and that failure exposes a person to risk of death or serious injury or illness**

Individual (eg a worker or a self-employed PCBU)-\$150,000

Officer of a PCBU - \$300,000

Body Corporate (eg a company) \$1.5 million

Offence of failing to comply with a health and safety duty (clause 44)

A person that has a health and safety duty fails to comply with that duty

- ▶
- ▶ Individual (eg a worker or a self-employed PCBU) \$50,000
- ▶ Officer of a PCBU - \$100,000
- ▶ Body Corporate (eg a company) - \$500,000
- ▶

Where to from here for PCBUs

- ▶ Reviewing current safety management system policies & procedures in preparation for the new legislation.
 - ▶ Establishing due diligence arrangements for officers to ensure their compliance with the new legislation.
 - ▶ Providing training for workers on the requirements of the new Health and Safety Legislation and their obligations.
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Where to from here for PCBUs Continued?

- ▶ Expand the safety management system to capture worker opposed to employees (consider in particular consultation arrangements)
 - ▶ Review the Safety Management System in preparation of the broad scope of the PCBU duty of care- ensuring all risks arising from the business/undertaking are being managed.
 - ▶ Review existing policies against the requirements of the proposed new legislation and update where required (including risk management, consultation, and incident management policies)
 - ▶ Develop new policies and procedures for new duties/obligations under the new legislation (including policies for horizontal consultation, duties and discriminatory conduct)
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Where to from here for Officers

- ▶ Produce a documented Due Diligence Framework Policy
 - ▶ Produce an information management system and training program to update officers in developments of the new legislation
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 - ▶ Produce a safety inspection program
 - ▶ Involve Officers in identifying critical risks of the Organisation.
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For further information or if you need assistance

Contact:

Sharon McDonald

KIS Health and Safety Solutions

PO Box 5127, Port Nelson

Nelson

New Zealand

Mobile :0274 846 736

E-Mail sharon.ramon.mcdonald@windowslive.com

Url: www.kishealthandsafetysolutions.co.nz