

Health and safety culture change in New Zealand

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New Zealand has historically had a poor workplace accident and illness record compared to other OECD countries. This came to a head in November 2010 when 29 miners lost their lives at the Pike River Mine. Following a Royal Commission and an Independent Taskforce, New Zealand's government announced a comprehensive package of reforms in August 2013. These will completely overhaul New Zealand's health and safety regulatory regime. The vision of the reforms is a health and safety culture change led by the boards and senior managers of New Zealand's businesses.

A new regulator, WorkSafe New Zealand, took charge in December 2013 and the main legislative response came in March 2014 with the introduction of the Health and Safety Reform Bill. Despite New Zealand's recent election, the Bill has had significant cross-party support, and is expected to be in force by June 2015.

The Bill largely follows the Australian Model Law so will sound reassuringly familiar to Australian businesses. It will be supported by detailed regulations, codes of practice and guidelines, which should hopefully give New Zealand businesses the practical support and information they will need to comply. The significant changes proposed are:

- A single and more inclusive definition of the relevant duty holder, being "*a person conducting a business or undertaking*" (PCBU), rather than the current various duty holders such as employers, principals and "*people in control of a place of work*".
- The primary duty will change from taking "*all practicable steps*" to eliminate, isolate or minimise hazards to "*ensur[ing], so far as reasonably practicable, the health and safety*" of their own workers, any workers "*influenced or directed*" by the PCBU, as well as all other persons. The new test is thought to give duty holders a better sense of what is expected of them.
- If multiple PCBUs are involved in work at the same location, they must "*consult, cooperate and coordinate*" to meet their workplace health and safety obligations, as well as supervision and monitoring where a PCBU is not directly involved on site.
- The duty will now be owed to all "workers", which covers all employees, contractors, volunteers, apprentices and trainees.
- There will be new, specific health and safety duties for PCBUs that design, manufacture, import, supply, install, construct or commission plant, substances or structures. These PCBUs will need to consider all people who may come into contact with their plant, substances or structures in any capacity, and ensure their health and safety whilst doing so.
- "Officers" of organisations will be required to exercise due diligence to ensure that their PCBU complies with its health and safety obligations. "Officers" will include company directors, partners, comparable directors of body corporates or unincorporated bodies, and "*any other person who makes decisions that affect the whole, or a substantial part, of the business of the PCBU*". The definition will include chief executives and, most likely, other members of an organisation's senior management team, as well as receivers. They will be under a positive duty to proactively manage health and safety in the workplace, including taking reasonable steps to acquire and update their knowledge of health and safety matters and understand the operations of their business and the hazards and risks within it. If they fail in this duty, then they may be held personally liable.
- "Notifiable events", made up of workplace deaths, "notifiable incidents" and "notifiable injuries or illnesses" will replace serious harm incidents. These are more prescriptive than before, meaning what needs to be reported will be clearer.
- There will be greater emphasis on worker involvement and engagement. Health and safety representatives and committees will have clearer roles and greater powers and responsibilities.
- There will be considerably larger penalties for duty holders who fail in their obligations. The maximum penalty for body corporates will increase six fold to NZ\$3 million, with officers or other individuals who are PCBUs liable for a fine of up to NZ\$600,000 and/or five years' prison, and individuals who are not PCBUs liable for a fine of up to NZ\$300,000 and/or five years' prison. This is because increasing personal responsibility and liability is seen as the most effective way of improving New Zealand's health and safety culture and outcomes.

The message from WorkSafe New Zealand is that businesses that currently have good health and safety practices will likely

comply with their obligations under the new legislation. Nevertheless, we recommend that businesses prepare for the reforms by checking their current health and safety systems and processes, and ensuring that they comply with their existing health and safety obligations now. The key going forward will be to ensure that health and safety is not just a box-ticking exercise, but that people at all levels of the business become actively engaged in ensuring one another's health and safety at work.

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