

Legal update - Workplace health and safety reform update

Peter Chemis, Hamish Kynaston, Sherridan Cook, David Thomson, Simon Jensen, Steve Nightingale, John Buchan

22 July 2013

In this update we summarise the recently released governance guideline for managing health and safety risks and the first legislative response to the Royal Commission on the Pike River Coal Mine Tragedy.

Health and safety governance guideline

The Ministry of Business, Innovation & Employment (MBIE), together with the Institute of Directors, has recently released a [Good Governance Practices Guideline for Managing Health and Safety Risks](#). This was in response to recommendations from the Royal Commission, which were reiterated by the Independent Taskforce on Workplace Health and Safety in April 2013, that directors should:

- Have more guidance on how good governance practices can be used to manage health and safety risks
- Rigorously review and monitor their organisation's compliance with health and safety law and best practice.

The Guideline is a 'must read' not only for directors but also for trustees, councillors and senior managers in any organisation. It is intended as a practical tool to assist directors in meeting their obligations regarding health and safety, which it summarises as "exercising due diligence", and recommends actions for best practice.

The Guideline promotes the benefits of following the recommended actions, such as reductions in lost-time injuries and ACC costs, and the impact that work related injuries have on individuals personally and businesses' reputations. Health and safety is not just about compliance. Clearly the Government's view is that the culture shift it wants to achieve to improve New Zealand's workplace health and safety should be led from the top down.

The Guideline is not a statutory document nor a policy statement but it will be taken into account by MBIE and the courts in any health and safety enforcement action against directors or officers.

It includes the following recommendations:

Policy and planning

- Create a charter setting out the board's role in leading health and safety performance in the organisation
- Set the health and safety strategy and establish health and safety targets for the organisation
- Publish a safety vision and beliefs statement
- Ensure there is an effective linkage between health and safety goals and the actions and priorities of senior management.

Delivery

- Know the "best practice" health and safety requirements for the organisation, including its specific hazards and ensure the effective implementation of a fit-for-purpose health and safety management system
- Ensure that management have staffed the organisation with sufficient personnel with the right capabilities
- Provide sufficient funding for effective implementation of systems and ensure that these are regularly reviewed and continuously improved.

Monitoring

- Review serious incidents including serious non-compliance and near misses, and be personally satisfied with the adequacy of management actions in response
- Specify clear requirements for the regular reporting and review of health and safety performance results.

Review

- Conduct a formal review of the organisation's health and safety performance on a periodic basis

- Ensure the review includes internal and external audits
- Ensure that actions identified in the review are communicated and effectively implemented.

Further changes to workplace health and safety

The Government's legislative response to the Royal Commission and the Independent Taskforce has commenced with the introduction of the Health and Safety (Pike River Implementation) Bill on 24 June 2013. The Bill establishes a new agency responsible for health and safety, called Worksafe New Zealand, which is expected to commence operating in December 2013. Worksafe New Zealand will be a Crown agent, and will assume the regulatory and other functions currently performed by MBIE's Health & Safety Group (formerly known as Occupational Safety and Health). The Bill also introduces significant reforms of health and safety in the mining sector.

Further legislative reform is expected to be introduced late this year. In relation to governance, reforms are anticipated to include the adoption of the model for director's liability used in Australia, including higher penalties for health and safety breaches and a greater focus on individual liability. While the current legislation allows for directors (or anyone else deemed to be in control of a workplace) to be prosecuted for breaches of the duty to take all practicable steps to ensure that the workplace is safe, such prosecutions have been rare. However, we expect them to increase given the Government's new focus on governance responsibility for workplace health and safety.

Auckland

**PwC Tower
188 Quay Street
Auckland 1010**

**PO Box 1433
Auckland 1140
New Zealand**

**P: +64 9 358 2555
F: +64 9 358 2055**

Wellington

**Aon Centre
1 Willis Street
Wellington 6011**

**PO Box 2694
Wellington 6140
New Zealand**

**P: +64 4 499 4242
F: +64 4 499 4141**

Christchurch

**83 Victoria Street
Christchurch 8013**

**PO Box 322
Christchurch 8140
New Zealand**

**P: +64 3 379 1747
F: +64 3 379 5659**