

Health and Safety Reform Bill Introduced

The Government has recently introduced the Health and Safety Reform Bill as part of a suite of major health and safety reforms which has already seen the establishment of WorkSafe New Zealand. The reforms are an outcome of the Independent Taskforce on Workplace Health and Safety and the Royal Commission on the Pike River Coal Mine tragedy.

The main purpose of the Bill is to provide for a balanced framework to secure the health and safety of workers and workplaces and will replace the current Health and Safety in Employment Act 1992. The Bill will also amend several other related Acts. The changes are modelled on the Australian Model Work Health and Safety Act, with modifications to take account of differences in the New Zealand context.

New duties

The Bill extends duties to all people in the workplace, though the focus is on people conducting a business or undertaking ("**PCBUs**"). PCBUs will include company directors, managers and heads of department. Company officers, workers, volunteers and people employing others to do residential work are specifically excluded from being classified as PCBUs.

PCBUs will have a specific duty of care to ensure, so far as is reasonably practicable, the health and safety of:

- Workers employed or engaged by the PCBU; and
- Workers whose activities in carrying out work are influenced or directed by the PCBU.

PCBUs must additionally ensure, so far as is reasonably practicable, that the health and safety of other people is not put at risk as part of their business or undertaking.

Further duties will also apply to PCBUs depending on the types of workplaces they manage or control.

Company officers and managers will have a duty to exercise due diligence to ensure PCBUs comply with their obligations and manage safety appropriately. Part of that due diligence is a duty to acquire and keep an up to date knowledge of health and safety matters.

Workers will have a duty to take reasonable care to ensure both their own health and safety and the health and safety of others while in the workplace. Workers must also comply with any reasonable instruction, policy or procedure given by a PCBU.

Other persons in workplaces, such as visitors, will have similar duties to workers.

Enforcement and reporting

Stronger measures will be introduced to assist in the enforcement of duties and reporting of workplace incidents. Those measures include:

- Policies and procedures in places to enable workers to engage in improving health and safety;
- Enhanced powers for health and safety representatives and health and safety committees to prevent or minimise risks in the workplace;
- Obligations on PCBUs to report serious accidents such as death, injury or accidents to anyone in the workplace, and also to report exposure to risk, even when no harm eventuates; and
- New powers for WorkSafe New Zealand and other workplace regulators.

Offences and penalties

Several new offences and penalties will be introduced for people who breach their duties. The most serious offence is to recklessly engage in conduct that exposes a person to whom the duty is owed to a risk of death, serious injury, or illness.

If convicted, the maximum penalties are:

- A fine not exceeding \$300,000 and / or a term of imprisonment not exceeding 5 years, for individuals who are not a PCBU or a PCBU's officer;

- A fine not exceeding \$600,000 and / or a term of imprisonment not exceeding 5 years, for a PCBU or an officer of a PCBU; and
- A fine not exceeding \$3 million for any other person.

Next steps

The Bill will now be referred to a select committee which is likely to call for submissions on the Bill over the next few months.

It is expected that the Bill will be passed into law by the end of the year and come into force in April 2015. It will be supported by two phases of regulations which are expected to be released for consultation later this year.

How the reforms may affect you

The Bill will:

- Put more onus and legal requirements on managers and company directors to manage risks and keep their workers safe;
- Require greater worker participation so workers are more involved in health and safety in their workplace; and
- Establish stronger offences, penalties, enforcement tools, and court powers.

To ensure compliance with the changes proposed by the Bill, it will be important for company directors and company officers to understand the impact the reforms will have on their workplace and workers.

Directors and company officers should also take time to review their Directors and Officers (D & O) Liability, Statutory Liability and Management Liability policies to ensure that adequate insurance cover is in place in the event of prosecution or conviction under the new legislation.

If you wish to know more about how you might be affected by the upcoming reforms, or wish to make a submission on the Bill, please contact Anderson Lloyd's specialist litigation team. We have specialist commercial and litigation teams who can provide comprehensive governance and insurance advice from a number of perspectives.