Health and Safety Reform Bill – key changes

The Select Committee considering the Health and Safety Reform Bill has reported back to Parliament with improvements to the Bill following public submissions. The Government also intends to further clarify some provisions in the Bill to provide certainty for businesses, particularly small businesses, about what they will be required to do to meet their duties.

THIS DOCUMENT SUMMARISES THE KEY CHANGES IN THE FOLLOWING AREAS:

> Worker engagement and participation
> Multiple Persons Conducting a Business or Undertaking (PCBUs)
> The duty of officers
> Volunteer workers
> Definition of workplace
> Duty of PCBUs who manage and control a workplace

The Health and Safety Reform Bill is now going through its remaining stages in Parliament before it is finalised and becomes law.

WorkSafe New Zealand will help people prepare by providing information and education before the law comes into force.

View the full Select Committee report back and revised Bill here
www.parliament.nz/resource/en-nz/S1DB5CH_SCR64556_1/137f3014a8984560b2852b1636617cc4402112b2

WORKER ENGAGEMENT AND PARTICIPATION

The Health and Safety Reform Bill strengthens existing requirements for worker engagement and participation in work health and safety matters.

Stronger worker participation underlines the expectation in the Bill that everyone in the workplace is responsible for workplace health and safety, and that workers are empowered to intervene when they see an unsafe situation.

The changes to the Bill improve the flexibility of these worker participation provisions so that innovation is not stifled. Other improvements clarify some provisions in the Bill as introduced.

Under the changes all PCBUs – whether they are small or large, low-risk or high-risk – will still be required to engage with their workers on matters of health and safety that affect them. They also have to have worker participation practices that give their workers reasonable opportunities to participate effectively in improving work health and safety. There are changes to the structure of the Bill to make it clearer that these are the two overarching worker engagement and participation duties for all PCBUs.
KEY SELECT COMMITTEE CHANGES:

Health and safety representatives

It is not mandatory to have health and safety representatives as part of the required worker participation practices – this is one way to support worker engagement on health and safety matters. But when one worker requests an elected health and safety representative, a PCBU must initiate the election of one or more health and safety representatives.

Select Committee change: Small businesses with fewer than 20 workers in low-risk sectors are excluded from the requirement to have a health and safety representative when requested by workers.

This change does not stop smaller low-risk businesses from voluntarily deciding to have health and safety representatives as a way of meeting their worker participation obligations under the Bill.

All other businesses, including small businesses in high-risk sectors, will still have to initiate an election for a health and safety representative when requested. New regulations will outline in detail which high risk sectors would be subject to this requirement for small businesses.

Health and safety committees

It is also not mandatory to have a health and safety committee – this is another way to support worker engagement on health and safety issues.

The Bill provides that a health and safety committee may be requested by workers or chosen by the PCBU as an effective way to involve workers in health and safety at the workplace.

Select Committee change: As above, small businesses with fewer than 20 workers in low-risk sectors are excluded from the requirement to have a health and safety committee when requested by workers. Again, this change does not stop smaller low-risk businesses from voluntarily deciding to have a health and safety committee as a way of having worker participation practices.

For all other businesses, including small businesses in high risk sectors, when a committee is requested by workers, or a health and safety representative, the PCBU must decide whether to establish one. It can decline this request if it is satisfied that its existing worker participation practices meet the requirements of the new law. It has to explain why, and advise workers that they may raise the matter under the issue resolution process in the new law. New regulations will outline in detail which high risk sectors would be subject to this requirement for small businesses.

Powers and training of health and safety representatives

Health and safety representatives will have the power to direct unsafe work to stop where there is a serious risk. Their powers are limited to the particular work group that they represent, and for health and safety purposes.

Select Committee change: making it clear that WorkSafe NZ must assist in resolving an issue in relation to the cessation of work as soon as practicable after it has agreed to a request for help.

The changes also carry over the existing training entitlement for health and safety representatives of two days’ paid leave a year (up to a capped amount which will be set out in regulations).
Transition of existing worker participation systems to new regime

Select Committee change: existing worker participation systems and health and safety representatives can transition to the new regime under the changes.

Existing health and safety representatives will need to do extra training in order to be able to carry out their powers under the new law (to issue a provisional improvement notice and direct unsafe work to cease).

MULTIPLE PCBUS

Under the Health and Safety Reform Bill, PCBUs have health and safety duties. These duties may overlap with the duties of other PCBUs, for example in shared workplaces or where workers work for more than one PCBU. In these situations, the Bill requires them to consult, cooperate and coordinate with each other, so far as is reasonably practicable.

The need for duty holders to work together to meet their duties is not new and is required under the current law. The Health and Safety Reform Bill (unlike the current law) makes it clear how this should happen.

The changes further clarify some provisions that relate to overlapping duties to make it clear how PCBUs must work together to discharge their overlapping duties.

Key Select Committee changes:

> PCBUs must discharge their overlapping duties to the extent they have the ability to influence and control the matter (the previous wording talked about “capacity” to influence or control).
> The changes to the Bill clarify that the duty to consult, cooperate and coordinate activities sits with the PCBU, not with all duty holders.

The Government will also make the following changes to the Bill:

> A duty holder’s obligations to manage risk are limited to doing what is in their ability to control and manage, along with what is reasonably practicable for them to do to manage the risk.
> Courts must consider death or harm (both actual and potential) caused by a breach of duty in their sentencing.

THE DUTY OF OFFICERS

The Health and Safety Reform Bill has a new duty for an officer of a PCBU (such as a director, board member or partner) to 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.

The changes clarify how far down an organisation this duty applies and the extent of the duty.

Key Select Committee changes:

> Other than those named persons holding specific roles in an organisation (such as directors or partners), the officer duty will apply only to other persons who have a very senior governance role in the organisation that allows them to exercise significant influence over the management of the business or undertaking (for example a chief executive).
> To avoid doubt the Bill expressly recognises that this does not include a person who merely advises or makes recommendations to an officer of the organisation.
The Government will also make the following changes to the Bill:

> Making it clear that the extent of the officer’s duty takes into account the nature of the business or undertaking, the position of the officer and the nature of their responsibilities.
> Making it clear that officers must only do what is within their ability to influence and control when managing risks.

VOLUNTEER WORKERS

The changes to the Bill’s provisions on volunteers recognise that volunteers contribute greatly to New Zealand communities and will ensure the new law will not negatively affect volunteering.

Key Select Committee changes to the Bill:

> The changes mean coverage of volunteers remains as it is under the current law, which distinguishes between casual volunteers and volunteer workers.

The information below explains how the Bill applies to volunteers.

Is your organisation a Person Conducting a Business or Undertaking?

Under the Bill, a Person Conducting a Business or Undertaking (PCBU) has the primary duty to ensure the health and safety of its workers and others, so far as is reasonably practicable.

A purely volunteer organisation where volunteers work together for community purposes and which does not have any employees is known as a volunteer association under the Bill.

A volunteer association is not a PCBU so the Bill will not apply to it.

A volunteer organisation which has one or more employees is a PCBU and will have the same duties as a PCBU to ensure, so far as reasonably practicable, the health and safety of its workers and others.

If your organisation is a PCBU, does it have casual volunteers or volunteer workers?

Select Committee change: Where volunteers carry out work for a PCBU, the revised Bill now distinguishes between casual volunteers and volunteer workers. Volunteer workers are people who regularly work for a PCBU with its knowledge and consent on an ongoing basis and are integral to the PCBU’s operations. This distinction is based on the existing Health and Safety in Employment Act 1992.

PCBUs will owe a duty to ensure, so far as is reasonably practicable, the health and safety of volunteer workers as if they were any other worker. This ensures that these volunteers are afforded the protection of having the appropriate training, instruction or supervision need to undertake their work safely – just like any other worker.

For casual volunteers (those that do not fall under the definition of a volunteer worker) their health and safety will still be covered by the PCBU’s duty to other persons affected by the work of the business or undertaking.

Are your volunteers doing certain activities which means they are excluded from the “volunteer worker” definition under the new law?

People volunteering for the following activities will not be volunteer workers under the new law:

> Participation in a fundraising activity.
> Assistance with sports or recreation for an educational institute, sports or recreation club.
> Assistance with activities for an educational institution outside the premises of the educational institution.
> Providing care for another person in the volunteer’s home.

This approach follows the existing Health and Safety in Employment Act 1992. Like casual volunteers, the volunteers doing the activities above won’t be “volunteer workers” for the purposes of the Bill, but their health and safety will still be covered by the PCBU’s duty to other persons affected by the work of the business or undertaking.

**DEFINITION OF WORKPLACE**

The Bill defines a workplace as a place where work is carried out, including anywhere a worker goes or is likely to be while at work.

The changes further clarify the definition of workplace to address concerns raised in submissions that these areas might not be workplaces all the time.

**Key Select Committee changes:**

> The definition of workplace is changed to reflect the fact that some areas are not a workplace all the time.
> A workplace is now defined as a place where work is being carried out or is “customarily” carried out for a business or undertaking.
> It includes any place a worker goes or is likely to be while at work.
> This has been further clarified in the case of farms, where the duty of farmers managing or controlling workplaces will only extend to the farm buildings and structures necessary for the operation of the business and the areas immediately surrounding them.
> Other parts of the farm are not a workplace, apart from when farm work is being carried out in that part of the farm at the time.
> These changes mean that the farmer’s duty to manage and control the farm doesn’t apply to recreational users coming onto farm land (apart from when farm work is being carried out in that part of the farm at the time).

The Government will also make a change to the Bill through a Supplementary Order Paper to clarify that the family home is not part of the farm workplace.

**DUTY OF A PCBU WHO MANAGES OR CONTROLS A WORKPLACE**

**Key Select Committee changes:**

> The PCBUs who manage or control the workplace, fixtures, fittings or plant at workplaces do not owe a duty to people who are there for an unlawful purpose.
> For farming situations, the duty of the PCBU applies to a workplace which:
  - includes farm buildings (but excluding the farm house as the family home) and structures necessary for the operation of the business or undertaking and the areas immediately surrounding them.
  - but otherwise excludes parts of the farm when work for the business or undertaking is not being carried out.

The Government will also exclude the farm house as the family home from the duty that applies to a workplace.