

### Election of Safety Representatives

We have continued to advocate for Safety Officers ahead of Safety Representatives. We believe that in most European Countries and USA the role of Safety Officer / Manager dominates that of Safety Representative. Sections 60 to 64 provide for the election of Safety Representatives. Section 65 provides for a Deputy Representative. Section 65 provides rules for the Regulator to remove a Safety Representative. Section 66 provides appeal procedures for the Safety Rep in event of removal.

### Roles for Safety Representative Sections 67 to 84

- To represent workers, to monitor safety, investigate complaints from workers.
- To request the formation of a Health and Safety Committee.
- To attend interviews of other workers or PCBU safety discussions.
- To enter and inspect a workplace subject to reasonable notice being given.
- To without notice inspect a workplace when an accident has occurred.
- To request such information required that is relevant to functions or powers.
- To request and require assistance (another person) in exercise of duties.
- To accompany an Inspector when s/he visits the site
- To attend interviews of Inspector – subject to some limitations
- To consult Regulator or an Inspector regarding safety issues
- To represent current work group – not others - unless approved.
- To receive information from PCBU as it is obligated to provide.
- To receive formal training course/s and have paid time off work.
- To apportion costs among work groups operated by PCBUs.
- To maintain a list of local and relevant appointed Safety Reps
- To enjoy protection from civil or criminal liability relating to role.
- To direct that any unsafe work must cease forthwith
- To issue provisional improvement notices (subject to consulting)



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## News & views from Summit – March / April 2014

### THE HEALTH AND SAFETY REFORM ACT 2013 – DRAFT BILL FURTHER DUTIES AND ROLE OF SAFETY REP

We think that it would be a good idea to consider the other duties that we did not cover in our Newsletter of March 2014. We will also include some opinions as to the impact and effect of each. Under the 1995 Regulations there have been sections relating to design, manufacture, sales and delivery of plant and equipment. The regulations had relatively modest fines. When the enforcement comes under the primary Act the fines will potentially be much greater.

Section 22 the duty of PCBU in managing a workplace. This implies strict obligations in relationship to the management and or control of fixtures, fittings or plant at workplaces. It might be a maintenance contract, a cleaning contract, an inspection contract, also IQP work or Body Corporate work for a Building.

Section 23 the duty of PCBU that designs plant, substances or structures. This includes all plant designers, modifiers, those who design hazardous or other substances used in a place of work, or the architects and engineers in relationship to Buildings plus Plant whether fixed or mobile. The design work now must include analysis, calculations, testing and other measures to ensure safe performance.

Section 24 the duty of PCBU who manufactures plant, substances or structures. In section 23 the emphasis is on the design role. Now it shifts to the manufacturing role. The manufacturer has an obligation to ensure that the designer has not passed on a flawed product.

Section 25 the duty of PCBU who imports plant, substances, or structures. This means that the importer cannot continue to bring to NZ unsafe plant that has no proper safety rules and has no protective structures and has single wheels where there should be dual wheels.

Section 26 the duty of PCBU who supplies plant, substances or structures. This means the warehouse, shop, distribution chain, the operator of internet import lines and goods. It also includes cosmetics and health products whether genuine or not. It includes all sorts of prams, clothing, goods and devices.

Section 27 the duty of PCBU who installs, constructs, or commissions plant or structures. This means that the firms who supply building machinery / tools, woodwork machinery / tools, and all sorts of plant will be obligated to ensure that it is safe and fit for the purpose. The duty of care cannot be ignored or avoided.

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## 2.

Section 28 the duty of Self-employed Persons. A self-employed person must, so far as is reasonably practicable, ensure his or her own health and safety while at work.

Section 29 Duties of Officers. If a PCBU has a duty or an obligation under this Act, an officer of the PCBU must exercise due diligence to ensure that the PCBU complies with that duty or obligation.

Section 30 Duties of Workers. All workers must take reasonable care for his or her own health and safety; And (b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and comply, as far as the worker is reasonably able, with any reasonable instruction that is given by the PCBU to allow the person to comply with this Act; and (d) cooperate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.

Section 31 Duties of Other Persons. This means that a member of the public whether that person has a duty under this part or not – must take practicable steps to comply with all reasonable safety procedures or instructions of the PCBU. This means that a heavy prosecution is possible for a visitor who flaunts safety regulations at the site.

### **Offences relating to health and safety duties**

Sections 32 to 34 specify fines for failure to observe health and safety duties. An offence is committed by any person who (a) without reasonable excuse, engages in conduct that exposes any individual to whom that duty is owed to a risk of death or serious injury or illness; and (c) is reckless as to the risk to an individual of death or serious injury or illness. Very heavy fines may be imposed for reckless conduct e.g. (a) for an individual who is not a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$300,000, or both; (b) for an individual who is a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$600,000, or both; (c) for a body corporate, to a fine not exceeding \$3 million.

For not reckless conduct (failure to comply with duty) a person who commits an offence is liable on conviction,— (a) for an individual who is not a PCBU or an officer of a PCBU, to a fine not exceeding \$150,000; (b) for an individual who is a PCBU or an officer of a PCBU, to a fine not exceeding \$300,000; (c) for a body corporate, to a fine not exceeding \$1.5 million.

### **Relating to Officers, Volunteers and Assns**

Sections 35 to 37 specify liabilities, duties and fines for the above roles. Officers can be fined regardless of whether the PCBU employer was fined. Officers have serious and strict obligations relating to safety. Volunteers do not have obligations under sections 32-34 but they do have obligations under sections 30-31. Unincorporated Associations have obligations under sections 30-31.



## 3.

### **Role of Safety Officers**

It is important to note that the Act specifically does not mention or obligate safety officers and therefore they are to be treated as other workers. They do not have the powers and obligations of Safety Representatives. It appears that Dept of Labour Officials have deliberately ignored the Safety Officer role, which has been well known and important USA and UK and developed countries for many years.

In our view the proposed NZ law is unlikely to produce significantly better results until Management and officers are fully involved. We are informed that one of the largest roading companies in Australasia has found it virtually impossible to get workers to accept the role of Safety Representative or to make nominations. We recommend to clients that they continue to promote and operate Safety Officers.

### **Other matters relating to offences**

Section 38 provides that any action to prevent harm that causes harm can be defended.

Section 39 provides the proof of intention by the Department is not required in the laying of charges.

Section 40 requires that a PCBU must notify the Department immediately after becoming aware of the event or harm. Notice must be given by the fastest means possible and the regulator may require a further written notification within 48 hours of a telephone advice.

Section 41 provides for the keeping of adequate records relating to safety and accidents or incidents.

Section 42 provides for the preservation of the accident site until an Inspector has arrived or otherwise has given clearance. A site may be disturbed for the rescue of a person or for the prevention of further harm.

Sections 43 to 48 cover the matters relating to authorisations.

### **Consultation, representation, participation**

Sections 49-59 are somewhat similar to the present legislation.

Section 49 discusses the duty to consult with workers. Section 50 states the nature of the consultation process. Section 51 covers when formal consultation is required. Section 52 discusses resolution of Health & Safety issues. Section 53 relates to worker participation practices. Section 54 details request for a Health & Safety Rep. Section 55 provides for PCBU to determine work groups. Section 56 – 59 covers the operation of work groups.

