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environment without risks to health and safety; and (b) the provision and maintenance of safe plant and structures; and (c) the provision and maintenance of safe systems of work; and (d) the safe use, handling, and storage of plant, structures, and substances; and (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and (f) the provision of any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

(4) A PCBU must, so far as is reasonably practicable, maintain any premises so that a worker occupying the premises is not exposed to risks to health and safety if— (a) a worker occupies accommodation that is owned by or under the management or control of the PCBU; and (b) the occupancy is necessary for the purposes of the worker’s engagement because other accommodation is not reasonably available.

Duty of PCBU who manages or controls workplace Sec 21

(1) A person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace are without risks to the health and safety of any person.

OTHER DUTIES TO CONSIDER

- Sec 22 Duty of PCBU who manages or controls fixtures, fittings, or plant at workplaces
- Sec 23 Duty of PCBU who designs plant, substances, or structures.
- Sec 24 Duty of PCBU who manufactures plant, substances, or structures.
- Sec 25 Duty of PCBU who imports plant, substances, or structures.
- Sec 26 Duty of PCBU who supplies plant, substances, or structures.
- Sec 27 Duty of PCBU who installs, constructs, or commissions plant or structures.
- Sec 28 Duty of self-employed persons.
- Sec 29 Duties of Officers
- Sec 30 Duties of workers.
- Sec 31 Duties of Other Persons at a workplace.



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**News & views from
Summit – March 2014**

THE HEALTH AND SAFETY REFORM ACT 2013 – DRAFT BILL

We wish to advise all clients that there are a number of subtle changes in the legislation that they need to be fully aware of. Firstly, the Act comes into force on 1 April 2015. It is therefore presumed that the existing Act will continue until 31 March 2015. It is however likely, that the Courts will take some consideration of the pending legislation between now and then. It is our opinion that the NZ Courts will in the interim increase the range of fines.

Meaning of PCBU Sec 5

- (1) In this Act, unless the context otherwise requires, a **person conducting a business or undertaking or PCBU**—
- (a) means a person who conducts a business or undertaking—
 - (i) whether the person conducts a business or undertaking alone or with others; and (ii) whether or not the business or undertaking is conducted for profit or gain; but
 - (b) does not include—
 - (i) a person who conducts a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, the business or undertaking;
 - (ii) a volunteer association;
 - (iii) an occupier of a home to the extent that the occupier engages or employs another person solely to do residential work in relation to the home;
 - (iv) a person, or class of persons, who is declared not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act by the regulations.

Meaning of worker Sec 6

- (1) In this Act, unless the context otherwise requires, a **worker** means a person who carries out work in any capacity for a PCBU, including work as—
- (a) an employee; or (b) a contractor or subcontractor; or (c) an employee of a contractor or subcontractor; or (d) an employee of a labour hire company who has been assigned to work in the person’s business or undertaking; or (e) a homemaker; or (f) an apprentice or trainee; or (g) a person gaining work experience (for example, undertaking a work trial); or (h) a volunteer; or (i) a person of a prescribed class

Meaning of reasonably practicable Sec 9

In this Act, unless the context otherwise requires, **reasonably practicable**, in relation to the duty to ensure health and safety, means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including—

(a) the likelihood of the hazard or the risk concerned occurring; and (b) the degree of harm that might result from the hazard or the risk; and (c) what the person concerned knows, or ought reasonably to know, about—(i) the hazard or the risk; and (ii) ways of eliminating or minimising the risk; and (d) the availability and suitability of ways to eliminate or minimise the risk; and (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.



Meaning of notifiable injury or illness Sec 10

(1) In this Act, unless the context otherwise requires, a **notifiable injury or illness** in relation to a person, means—

(a) any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work—

(i) with micro-organisms; or (ii) that involves providing treatment or care to a person; or (iii) that involves contact with human blood or bodily substances; or (iv) that involves handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products;

(b) the following occupational zoonoses contracted in the course of work involving handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products:

(i) leptospirosis: (ii) anthrax: (iii) brucellosis: (iv) avian influenza: (v) psittacosis:

(c) an injury or illness requiring the person to have immediate treatment—

(i) as an in-patient in a hospital; or (ii) for any of the following:

(A) the amputation of any part of his or her body; or (B) a serious head injury; or (C) a serious eye injury; or (D) a serious burn; or (E) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or (F) a spinal injury; or (G) the loss of a bodily function; or (H) serious lacerations; or (d) an injury or illness requiring the person to have medical treatment within 48 hours of exposure to a substance. **Notifiable illness or injury** includes any other injury or illness prescribed by the regulations.

Meaning of notifiable incident Sec 11

In this Act, unless the context otherwise requires, a **notifiable incident**—

(a) means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to that person's health or safety arising from an immediate or imminent exposure to—

(i) an uncontrolled escape, spillage, or leakage of a substance; or

(ii) an uncontrolled implosion, explosion, or fire; or

(iii) an uncontrolled escape of gas or steam; or

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- (iv) an uncontrolled escape of a pressurised substance; or (v) electric shock; or
- (vi) the fall or release from a height of any plant, substance, or thing; or
- (vii) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulations; or
- (viii) the collapse or partial collapse of a structure; or
- (ix) the collapse or failure of an excavation or any shoring supporting an excavation; or
- (x) the inrush of water, mud, or gas in workings in an underground excavation or tunnel; or
- (xi) the interruption of the main system of ventilation in an underground excavation or tunnel; and (b) includes any other incident prescribed by the regulations; but (c) does not include an incident of a prescribed kind.

Duty to manage risk Sec 13

A duty imposed on a person under this Act to ensure health and safety requires the person—

(a) to eliminate risks to health and safety, so far as is reasonably practicable; and

(b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.



Duty to consult other duty holders Sec 17

(1) If more than 1 person has a duty in relation to the same matter under this Act, each person with the duty must, so far as is reasonably practicable, consult, cooperate, and coordinate activities with all other persons who have a duty in relation to the same matter.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) for an individual, to a fine not exceeding \$20,000;

(b) for a body corporate, to a fine not exceeding \$100,000

No contracting out Sec 19

A term of any agreement or contract that purports to exclude, limit, or modify the operation of this Act, any duty owed under this Act, or to transfer to another person any duty owed under this Act—

(a) has no effect to the extent that it does so; but (b) is not an illegal contract under the Illegal Contracts Act 1970.

Primary duty of care Sec 20

(1) A PCBU must ensure, so far as is reasonably practicable, the health and safety of— (a) workers engaged, or caused to be engaged, by the PCBU while the workers are at work in the business or undertaking; and (b) workers whose activities in carrying out work are influenced or directed by the PCBU, while the workers are carrying out the work.

(2) A PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

(3) Without limiting subsection (1) or (2), a PCBU must ensure, so far as is reasonably practicable,— (a) the provision and maintenance of a work

