

Proposed H&S Legislation Reforms – Key Concepts

Harvey O'Sullivan

Presentation

- Purpose of presentation is to discuss some key aspects of the proposed H&S legislation and regulatory reforms.
 - Key concepts need to be understood and taken into account now as the emphasis and duties under the new legislation are more specific and detailed

Introduction

- Govt proposes major, system wide, changes to NZ workplace H&S framework
 - New law
 - Strategy for reduction in workplace harm
 - Focus on major areas of harm, including high risk sectors
 - Stronger penalties, enforcement etc
 - Focus on occupational health to address gradual impairment etc

Introduction ctd

- Better co-ordination between Govt agencies
- Enhanced worker participation
- Stronger collaboration between Govt, business, workers and experts
- Develop capability and knowledge at all levels
- Establishment of H&S professional body.

New Legislation

- Health and Safety at Work Act & regulations
- Replaces HSE Act
- Based on Australian Model Work Health and Safety Act
- Associated regulations and codes to come into force by Dec 2014.

Background

- Pike River explosion and worker fatalities resulted in Royal Commission inquiry.
 - Highlighted serious weaknesses in NZ's workplace H&S system
- Independent Taskforce established to review NZ H&S
 - Taskforce recommendations adopted by Govt (Decision on Corporate Manslaughter yet to be made)

Overview

- Number of key changes proposed in the approach to the new H&S legislation
- Principle is a presumption in favour of safety
- Detail of changes will be determined as legislation is developed
- Presentation covers expected approach to key topics

Key Changes ctd

- Topics
 - Persons conducting a business or undertaking (PCBU)
 - Workers
 - Risk based approach
 - Reasonably practicable
 - Duty holders
 - Due diligence duty

Key Changes ctd

- Enforcement and penalties
- Worker participation
- Management of hazardous substances

PCBU

- Is main duty holder under the Act
- Broad concept
- PCBU must supervise and monitor H&S performance of the parties beneath them in the chain.
- PCBU owes duty to other people affected by the work
- Person can be a PCBU and a worker

PCBU ctd

- Subsets of PCBU include;
 - Management or control of workplaces
 - Management or control of fixtures, fittings or plant
 - Designing, manufacturing, importing or supplying plant, substances or structures
 - Installing, constructing or commissioning plant or structures

Workers

- Act will refer to workers, rather than to employees
- A person is a **worker** if the person carries out work in any capacity for a PCBU

Risk-Based Approach

- Objective of the Act will be to 'secure' the health & safety of workers
- Risk based approach will be used rather than present 'significant hazards' based approach
 - Risk is likelihood of a specific consequence occurring
 - Acceptable level of risk not specifically defined

Risk Based Approach ctd

- Independent Taskforce recommended risk based approach to provide maximum certainty and a presumption in favour of the highest level of protecting against harm.

Reasonably Practicable

- What can reasonably be done to ensure health & safety, taking into account
 - Likelihood of the hazard or risk occurring
 - Degree of harm that may result
 - Knowledge
 - Availability and suitability of solutions
 - Cost (with conditions)
 - Objective standard

New Duty Holders

- New focus on corporate governance and those in senior positions
- Directors and officers should take active steps to manage H&S including;
 - Ensure appropriate H&S management plan
 - Ensure plan is satisfactory and reviewed
 - Provide adequate resources and time for implementation of the plan
 - Audit effectiveness of the plan

New Duty Holders ctd

- Directors and officers should familiarise themselves with what they will need to do under the new Act.
 - Refer to ‘Good Governance Practices Guideline for Managing Health and Safety Risks’

Due Diligence Duty

- Those in governance roles must proactively manage workplace H&S
- Officers required to understand the business risks and hazards and ensure adequate resources and information, compliance and verification processes are in place.

Penalties

- Significant maximum penalty level increases
- Courts may be able to impose alternative remedies such as adverse publicity orders, restoration orders, injunctions, training orders etc.

Worker Participation

- Additional measures to support worker participation, including
 - H&S Representatives
 - Protections for workers who raise H&S issues
 - Requirements for worker participation systems appropriate to employer size
 - Requirements for H&S Committees and its status, e.g. PCBU must consult it.

Hazardous Substances

- Regulation of hazardous substances used in workplaces to come under the new Act and be enforced by WorkSafe.
- HSNO Act remains to manage hazardous substance aspects such as approval, classification etc.

- Questions?