

May 2015

CIRCULAR NO 1354

To: The Secretary all Totalisator Clubs and Kindred Bodies
From: Edward Rennell, Chief Executive
Subject: **HEALTH AND SAFETY REFORM BILL – PROJECT UPDATE – MAY 2015**

CURRENT STATUS OF HEALTH AND SAFETY REFORM BILL

The Bill will come back into the House from the Select Committee on May 29th, the timetable having been set back to accommodate the large number of submissions received. Despite the delay in reporting back, the Government have confirmed that they will still endeavour to introduce the legislation this year and are still targeting a September 2015 commencement.

BACKGROUND

The Bill was initiated by Government after the Royal Commission's recommendations following Pike River and is based on the Australian legislation which has sharply reduced accident rates since its introduction.

Currently in New Zealand ...

- **75 people die at work each year**
- **1 in 10 are harmed**
- **600 - 900 die from work related diseases**
- **200,000 ACC claims for work related harm**
- **\$3.5 billion in cost (2 - 4% of GDP)**
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The Government is targeting a 25% reduction in deaths and injuries by 2020.

COMMENT

The key message continues to be that fundamental Health and Safety obligations will not be markedly different under the new law but duty of care will change. Some nervousness about the legislation is to be expected, given it seeks change that will reduce workplace fatality and serious injury by 25% within five years. It seeks to do this through a mix of stronger governance duties, greater worker participation, harsher penalties and more intense enforcement. WorkSafe is larger and much better resourced than the previous Department of Labour inspectorate. It already has a staff of more than 500, including 167 inspectors, and it is still recruiting. Non-compliance is more likely to be detected.

The strong advice from most quarters is to use the time before the Bill comes into force to ensure that operations comply with current law. That will mean minimal impact from the new legislation. There will be a grace period between the law coming into effect and the start of enforcement.

VOLUNTEERS

One question asked regularly is the question of volunteers, especially on the Board of a Racing Club. We asked the lawyer for their opinion, see below:

In summary, you are correct that volunteer officers of PCBUs cannot be prosecuted for failing to comply with their officer duties under the Proposed Act. However, volunteer officers can still be prosecuted in their capacity as workers or “other persons at workplaces”.

Position under the Proposed Act:

- 1. As you set out in your email, a racing club will be a PCBU under the Proposed Act.***
- 2. Officers of PCBUs, whether volunteers or not, must exercise due diligence to ensure that the PCBU complies with its duties under the Proposed Act (cl 39).***
- 3. However, volunteer officers are exempt under the Proposed Act from committing an offence for failing to comply with their health and safety duties, i.e. their due diligence duty (cl 46).***
- 4. A volunteer officer can, however, be prosecuted in their capacity as a worker (cl 46 and 40 – the definition of “worker” includes a volunteer) and in their capacity as “other persons at workplaces” (cl 46 and 421) if they do not take reasonable care in those capacities.***
- 5. Workers (including volunteers) have health and safety duties to (cl 40):***
 - a. take reasonable care for their own health and safety;***
 - b. take reasonable care to ensure their acts or omissions don’t adversely affect the health and safety of other people, for example, other workers/volunteers, members of the public or clients they may be assisting;***
 - c. comply, so far as they are reasonably able, with any reasonable instruction that is given to them by the organisation (i.e. the PCBU); and***
 - d. co-operate with any reasonable policy or procedure that the organisation has provided to them.***

As you can see, the situation is still not straightforward and I have been reliably informed that the question of volunteers involved in sport and racing has attracted a lot of submissions and that changes to the Bill around volunteers can be expected. Once the Bill has been finalised, we will identify the exact requirements and cover these off in the planned workshops.

PRACTICAL STEPS IN PREPARATION FOR THE CHANGES

At a Health and Safety conference last week, the key point made by speakers from WorkSafe, MBIE and other associated bodies is that everyone in the workforce needs to be concerned about and involved in Health and Safety, New Zealand’s attitude and workplace culture needs to change and adapt to reduce workplace risks.

Once the legislation has been finalised, we will be assisting all industry sector groups to reach compliance with the new Bill. However, in preparation here are some areas that you may want to think about over the next few months:

Good Documentation

Good record keeping will be essential and each PCBU will require a Health and Safety Plan, the complexity and size of this will be dependent on the size and nature of your operation and risks inherent in that operation.

Training and induction for all staff, contractors, volunteers and Board members will be critical and records must be kept and updated regularly.

Your Board or Committee should have a Health and Safety charter and assign responsibility for Health and Safety to a person or Sub-Committee.

Reporting

As well as reporting ALL injuries incurred at work, it is also important to record and follow up on near misses. A near miss today is tomorrow's accident if no action is taken. Record the near miss and the action taken to prevent it in future, encourage all staff to report any incidents that could impact on workplace health and safety.

All businesses, regardless of size or industry, need to investigate and record work place risks – regardless of whether the risk has caused injury or not.

It's your responsibility as an employer to manage workplace hazards, even if you think the risk has little chance of causing injury. The easier way to manage and control workplace risks is to use an accident register for accidents and 'near misses'. Accident registers can be kept in various ways provided they contain all the required details. You could record the details of all accidents and keep a copy of each completed form in an accident register file to meet your record-keeping obligations. It's your responsibility to keep your accident register up-to-date.

Review and Identify your Hazards

As an employer you need to regularly assess, record, and review hazards, i.e. any potential or actual source of harm whether it's a process, the location, a situation, equipment, or a person's behaviour. Getting staff input will enhance hazard management and help determine whether a hazard is significant, i.e. whether it could lead to serious harm. Your records should list any work injuries or illnesses that have occurred. If serious harm occurs on a worksite, your investigation will need to identify any significant hazard that may have caused the event. Your health and safety system must show employees existing hazards, and new hazards preferably before they arise.

Ensure Health and Safety is on the agenda at all meetings

Health and safety should be a topic at all Board, Management and Staff meetings.

Signage

Good signage is an integral part of Health and Safety, if you look around at building sites and many farms these days, you will see signs warning of hazards and other significant risks that evident on that particular site.

Understand Your Responsibilities with Regard to Health and Safety

Health and safety is an essential part of running a business and it's not just for big business. Whatever your line of work, or whatever your business structure, having a health and safety plan – and putting it into practice every day – will keep your team safe, reduce your risk, could reduce costs and show your customers they can trust you. *"As the business owner, manager or company director, it's your legal obligation to make health and safety part of the day to day running of your business."*

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