

CLIENT BRIEFING

HEALTH AND SAFETY UPDATE

On 7 August 2013 the Government announced its response to the Independent Taskforce on Workplace Health and Safety in *The Working Safer: a new blueprint for health and safety at work in New Zealand*. Factored into the response were outcomes based on the Pike River Royal Commission into the disaster. The proposed reform reflects the Australian model and represents the most significant change to New Zealand's Workplace Health and Safety system in 20 years. This is intended to come into effect late 2014.

WE CAN EXPECT TO SEE THE FOLLOWING CHANGES

- WorkSafe, a new Government health and safety agency and regulator, to be operational by December this year. WorkSafe will assume the role of the Ministry of Business, Innovation and Employment
- The new Health and Safety at Work Act is to be enacted late 2014 and will be largely based on the Australian Model Law. Practical changes we can expect to see include: ¹
 - i. Movements in penalties to be in more line with the Australian Model Law, which advocates up to AUD600,000 fines for individuals and up to AUD3,000,000 fines for corporate entities
 - ii. The duty to take "all practicable steps" will be replaced with the Australian duty to take "reasonably practicable steps"
 - iii. Replacement of duties owed by employers and principals with broader duty owed by "persons conducting a business or undertaking"
 - iv. Promotion of continued improvement and best practice, benchmarked on international standards
 - v. A presumption in favour of the highest level of protecting workers from harm
 - vi. A greater regulatory and compliance focus on major hazard facilities
 - vii. An increased scope of enquiry to include acute, chronic and catastrophic harm

THE TASKFORCE PROPOSES THAT THE NEW REGULATOR

- Implement a series of regulations, approved codes of practice and guidance materials
- Focus on harm prevention with a greater emphasis on root-causes analyses in investigations
- Partner with ACC on funding initiatives (including levies)
- Establish an occupational health unit
- Create a health and safety professionals' alliance
- Develop a regime to regulate and register health and safety professionals

The Report of the Independent Taskforce on Workplace Health and Safety, April 2013, Independent Taskforce on Workplace Health and Safety; p47-108

In May 2013, the Ministry of Business, Innovation and Employment (MBIE), in conjunction with the Institute of Directors (IoD), released the *Good Governance Practices Guidelines for Managing Health and Safety Risks*. The document provides directors, trustees and councillors' guidance and advice on what steps to take to institute updated health and safety protocols in line with the proposed regulatory changes. Some aspects to consider are:

- An increased likelihood of aggressive regulatory investigations and prosecutions
- Personal liability of officers and directors where they direct, authorise, assent to, acquiesce in, or participate in breaches by the employer of duties it owes under the Health and Safety in Employment Act 1992 (HSEA) to employees, contractors and people visiting a place of work
- Employers may still be liable if they fail to take reasonably practicable steps to ensure that no action or inaction on their part causes harm or the likelihood of harm to any other person

WHAT THIS MEANS FOR YOU AND YOUR INSURANCE

Whilst it is (and is expected to remain) illegal for insurers to cover fines under NZ Health and Safety legislation, insurance can still provide valuable cover for legal costs of defence and sentences of reparation, subject always to the general principle that insurance does not cover wilful or reckless breaches of the law.

If corporate manslaughter becomes an offence, additional insurance cover may be required

The possibility of civil claims (e.g. for nervous shock damages) has likely increased

From an insurance coverage perspective, it is therefore likely to be time to review coverage and Limits of Indemnity available under your Directors & Officers Liability, Statutory Liability policies and/or Management Liability policies.

As yet insurers have not imposed any restrictions on cover but we predict, at a minimum, that within the next year underwriting will tighten and insurers will be looking for improved transparency of demonstrated risk management at an executive level, to filter through the business. Some ways to illustrate this may include:

- Be familiar with the Good Governance guidelines set out by the MBIE and IoD. This is available at <https://www.iod.org.nz/Publications/Healthandsafety.aspx>
- Include a 'Health and Safety' section in company annual reports
- Designate a dedicated Health and Safety manager or key personnel responsible for ensuring HSEA compliance at all levels of the business.

FOR FURTHER INFORMATION

If you have any questions about these changes and how it may impact your insurance cover, please call your Marsh Client Executive who will be happy to discuss this matter further.

0800 627 744.