



Questions and Answers

Where can I find out detailed information about the workplace health and safety reform?

The reform package is outlined in detail in the document *Working Safer* which can be downloaded here: www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform

What are the key parts of the workplace health and safety reform package?

- A new law - the Health and Safety at Work Act - will provide clear, consistent information for business, workers, and government about what they need to do to keep workers and others safe. It will be based on Australian law
- A clear and transparent government-led strategy will be developed to reduce workplace harm, with measurable targets
- Risk areas will be the target of the regulator WorkSafe New Zealand (expected to be operational from December 2013). WorkSafe will focus on the major areas of harm including high risk sectors (based on numbers of fatalities and serious injuries) and major hazard facilities which have the potential for one-off catastrophic events
- Stronger penalties, more enforcement tools, stronger court powers, new directors' duties
- Stronger focus on occupational harm
- Better coordination between government agencies that regulate workplace health and safety. For example ACC and WorkSafe will create a shared programme of workplace injury prevention
- Enhanced worker participation so workers are involved in and consulted on health and safety matters
- Stronger collaboration between government, business, workers and experts: There will be input from business, health and safety professionals and improved worker participation
- Capability and knowledge will be developed at all levels of the system – workers, managers, health and safety professionals, and WorkSafe, including through the establishment of a new Health and Safety professional body, and a workforce development plan.

When will the changes be implemented?

It is the intention that WorkSafe, the new health and safety regulator, will be up and running in December 2013. The health and safety regulator functions from the Ministry of Business, Innovation and Employment (MBIE) will transfer to WorkSafe at this point.

The Health and Safety at Work Bill will also be introduced into Parliament in December, and when it has gone through the legislative process it will replace the Health and Safety in Employment Act 1992.

The new law and key supporting regulations are expected to be in place by the end of 2014 and will start coming into effect from then.



How much will the reform cost?

The current level of funding for the regulator is \$53.7m a year. It will cost an extra \$17.7 million in 2013/14 rising by an extra \$25.3 million to \$79.3 million in 2017/18 and out years. This will be funded by an increase to the existing health and safety levy.

The health and safety levy will increase by an average 3c (currently 5c), to 8c, per \$100 of wages. This increase is in light of the expected ACC Work Account levy reductions for businesses that were signalled in Budget 2013.

What are the benefits for business?

An effective workplace health and safety system is an investment that not only protects staff and limits accident costs but also helps increase productivity, and staff engagement. It also helps protect and enhance an organisation's reputation in the community.

Both international and New Zealand research has also confirmed the link between health and safety and improved productivity. Benefits can include reduced disease and injury rates, reduced employee turnover and absenteeism, as well as increased productivity, improved company image, market position and customer satisfaction.

Who will be responsible in a workplace for health and safety under the new law?

A person conducting a business or undertaking (PCBU) is to ensure, so far as is "reasonably practicable", the health and safety of workers and others affected by the work.

Moving to the PCBU concept ensures that the duties lie with those people in the best position to control risks to health and safety, and that those duties are appropriate to their role in the workplace.

This means:

- **Small to Medium-sized Enterprises (SMEs):** There is very little change to their duties, because of the more direct influence they already have on health and safety as an employer of staff in a business of that size
- **Larger business:** The obligations of principals and companies that sub-contract out work are clearer and obligations cannot be contracted away
- **Workers** are covered no matter the working relationship (broader than employer-employee)
- **Upstream suppliers** of goods and services will also have obligations relating to the things that are within their sphere of influence e.g. designers, manufacturers, importers and suppliers of plant.

There may be multiple businesses or undertakings and therefore multiple PCBUs involved in work at the same location.

For example these people might all be PCBUs if they have people working to them:

- The owner of a multi-tenanted shopping centre, the manager of the shopping centre, each of the businesses operating from shops in the shopping centre and those carrying out ancillary activities such as cleaning, security and shopping trolley collection.
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- The principal contractor on a construction site, sub-contractors engaged by the principal contractor, sub-contractors engaged by the sub-contractors (including self-employed contractors), along with the client engaging the principal contractor.
- A service station owner, the service station operator (if different from the owner), the mechanic (if running a separate business), the PCBU carrying out the supply of gas cylinders to the public at the service station and the operator of an attached fast-food outlet.

What will directors' duties be under the new law?

The proposed law will create a due diligence duty so that those in governance roles must proactively manage workplace health and safety. Directors and other officers of a PCBU will be required to exercise due diligence to ensure that the PCBU complies with its duties. A due diligence duty supports the new regime, because officers set the direction and provide leadership in health and safety for their organisation, including making resource decisions.

The due diligence duty will include directors and chief executives, but exclude anyone acting on a voluntary basis who receives only out-of-pocket expenses. As a result, members of a school board of trustees will not have a due diligence duty, nor would an unpaid director of a company.

The due diligence duty will be individual to the officer. If the officer exercises due diligence, they cannot be liable regardless of the conduct of the PCBU or other officers. The due diligence duty will be defined to match the governance role of the officers. It will include, for example, a requirement that the officer take reasonable steps to:

- gain an understanding of the nature of the operations of the PCBU and generally the hazards and risks associated with those operations, and
- ensure the PCBU has, and implements, processes for complying with its duties.

Failure to comply with a due diligence duty could result in prosecution and a fine, the maximum level of which would be determined by whether or not the officer's failure exposed a person to a risk of death or serious injury or illness. An officer would only face a term of imprisonment if he or she was also proven to have been reckless as to the risk – which means that there must be proof that the officer had foreseen dangerous consequences that could well happen, together with an intention to continue the course of conduct regardless).

In comparison to the current law, the new law will be fairer to officers and more consistent with their governance role. Currently, officers are automatically liable for the failure of a body corporate if they directed, authorised, assented to, acquiesced in, or participated in, the failure.

What will the penalties be under the new regime?

There will be a new tiered liability regime and overall, a significant increase in the maximum penalty levels over the current law to sanction and deter duty holders from breaching their workplace health and safety duties. The use of graduated categories of offences and penalties will provide better guidance to the Courts about appropriate fine levels.

The Australian tiered model which will be used as a basis of the new offences and penalty regime is as follows:

- **Category 1 Reckless conduct:** A person who has a health and safety duty without reasonable excuse engages in conduct that exposes an individual (to whom that duty is owed) to a risk of death or serious injury or illness, and the person is reckless as to the risk - maximum penalty for an individual is \$600,000 or five years' imprisonment, or both, and for a body corporate is \$3 million.

- **Category 2 Failure exposing to serious risk:** A person fails to comply with their health and safety duty, and the failure exposes an individual to a risk of death or serious injury or illness - maximum fine for an individual is \$300,000 and for a body corporate is \$1,500,000.
- **Category 3 Failure:** A person fails to comply with their health and safety duty – maximum fine for an individual is \$100,000 and for a body corporate is \$500,000.

This compares to current New Zealand law, where the offence broadly equivalent to category 1 carries a maximum fine of \$500,000 and 2 years imprisonment or both, while conduct that would contravene category 2 or 3 would carry a maximum fine of \$250,000.

What is the response to the Taskforce recommendation on corporate manslaughter?

This is being considered by the Minister of Justice.

What enforcement tools will there be?

The regulator's tools under the proposed new law include powers to:

- issue guidance, warnings and make information available
- enter workplaces for the purpose of informing and securing compliance and gathering information, supplemented by powers to obtain search warrants
- issue improvement notices, prohibition notices, non-disturbance notices, and to take remedial action and seek injunctions where they are not complied with
- accept enforceable undertakings from duty holders given in connection with a contravention or alleged contravention
- issue infringement notices without prior warning
- bring prosecutions.

The enforceable undertaking is new. The other tools are broadly the same as the tools available now. Currently, infringement notices can only be issued after a formal warning has been given, which has resulted in few being issued. This prior warning requirement will be removed.

What are the new powers of the courts under the new law?

It's proposed that the courts will have new powers relating to duty holders found by the court to have contravened their duties. The power will

- enable judges to make adverse publicity orders
- provide for compliance or restoration orders that resolve the consequences of a failure not just the cause.

What are the changes for worker participation?

The proposals will strengthen the legal framework for worker participation. This will not be overly onerous – it is about what is appropriate for the size of the firm and level of risk.

The worker participation system will include a general duty to involve and consult workers on health and safety matters. All duty holders will be required to have worker participation practices appropriate to the workplace.

Guidance will be developed that gives clarity on what is required by firm size and level of risk.



SMEs will be able to use informal processes to consult and involve their workers, appropriate to their small size.

For all workplaces:

- if workers want to have health and safety representative/s, the duty-holder must consult the representative/s, allow them time off for training, pay for training, provide time and resources to perform their role, and give them information
- the legislation will specify powers and functions for representatives and committees, including the powers for trained health and safety representatives to direct unsafe work to cease (balanced by safeguards against improper use) and issue a provisional improvement notice to an employer requiring them to address a health and safety concern in the workplace, and
- if the workers and/or PCBU want to have a health and safety committee workers must make up at least half of the committee, the PCBU must consult the committee, the PCBU must allow the committee time to perform its role, and the PCBU must give the committee information.

What are the changes to occupational health and why are these changes needed?

An estimated 600-900 New Zealanders die prematurely from occupational illness every year, of which the large majority (between 400 and 670) stem from hazardous substances. Occupational health is as much, if not more, of a problem for workers' health and safety in New Zealand than physical hazards resulting in injury, and is also harder to quantify and track.

There will be an increased focus on, and resourcing of, major risk and reducing exposure throughout all of WorkSafe's functions. This will include improved resourcing and regulator capabilities for managing occupational health, increased linkages with other agencies to improve occupational health outcomes, and the development of programmes targeted at monitoring and analysing occupational health hazards, and the harm that results.

The focus will be on occupational health issues that lead to serious illness and death.

What are the changes for major hazard facilities?

There is currently no explicit regulation of facilities that store and process large quantities of dangerous substances and major hazard facilities are a key risk area for catastrophic events.

The regulations will set up a system to appropriately classify major hazard facilities. Once classified as a major hazard facility, the regulations will require the operator to:

- prepare a safety case
- prepare and implement an emergency response plan
- investigate any dangerous occurrence.

This is similar to the recently announced regulations that set out the requirements for petroleum activity in New Zealand, in line with international best practice.

What are the changes relating to hazardous substances?

Responsibility for regulation specific to the use of hazardous substances that affect human health and safety in the workplace will be transferred to the workplace health and safety regulatory framework and enforced by the new regulator WorkSafe.





Primary regulation of hazardous substances (i.e. approving their importation and manufacture, classification, and setting of basic controls that apply regardless of setting) will remain in the Hazardous Substances and New Organisms Act 1996 (HSNO Act).

Changes will also be made to simplify and improve the HSNO regime for hazardous substances, making it clearer and easier for business to comply. These include:

- hazardous substance controls will be simplified to better communicate safety requirements to users
- the quality assurance mechanism under HSNO will provide accurate safety requirements to users
- enforcement officers will be provided with an appropriate range of tools to incentivise compliance with safety requirements.

What are the HSNO changes that affect the Environmental Protection Authority (EPA)?

The Environmental Protection Authority will continue to have responsibility for substance approval and the setting of general base controls for use (packaging, labelling, safety data sheet), non-workplace controls and environment controls.

The EPA will have a new function of enforcing HSNO controls for substances being introduced into the market.

What does the joint approach to Injury prevention and incentive programmes between ACC and WorkSafe entail?

ACC and WorkSafe will agree a joint action plan of workplace injury prevention activities at least once every three years.

The already announced proposed Safety Star Rating scheme will continue to be developed, taking into account the legislative changes in the reform package. The scheme will deliver a credible standard to enable businesses' health and safety practices and outcomes to be compared.

What are the changes that will lift skills and qualifications?

A professional representative body will be created – the Health and Safety Professionals Alliance (HaSPA). MBIE will also explore setting up a registration or accreditation system; and there will be agreed professional standards for health and safety professionals.

A workforce development programme will involve all the regulators for workplace health and safety.

Has the Government accepted all the Taskforce recommendations?

The Government has broadly accepted the Taskforce recommendations and where it has not accepted the detail of the recommendation, it has addressed the issue in another way.

The Taskforce considered in detail a range of elements necessary to reform the workplace Health and Safety System. The government proposes to implement almost all of the Recommendations of the Taskforce – as listed in volume one of its report. There are some minor areas of detail, which the government intends to leave to the discretion of MBIE and WorkSafe.

