

What you need to know about current reforms in health and safety law

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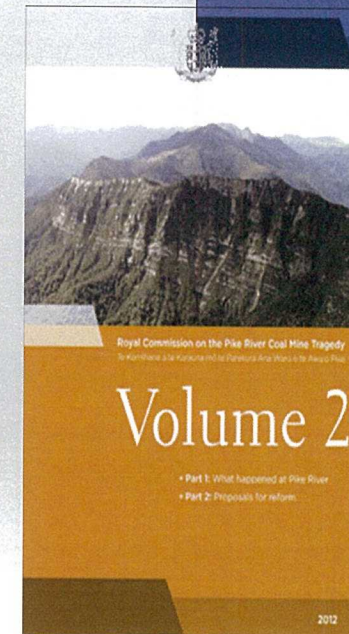
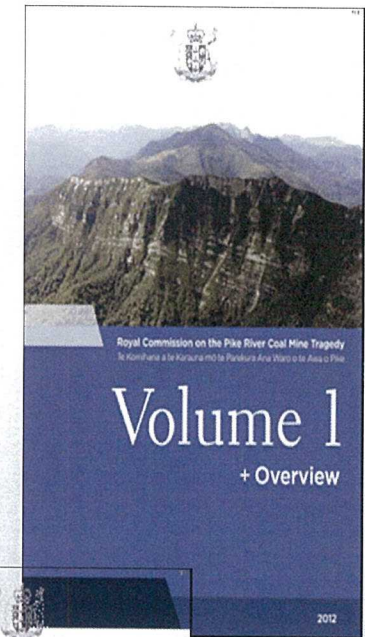
Agenda

1. Background to reform – what is changing and why?
2. The proposed new Health and Safety at Work Act
3. What will the new law mean for you?



Pike River Royal Commission

- Report released in October 2012
- 16 primary recommendations broken down into 3 key themes:
 - Increased Government regulation of health and safety generally, including a new regulator
 - Increased statutory responsibilities on directors
 - Significant changes to the regulatory framework for underground coal mining



Independent Taskforce on Workplace Health and Safety



- Looked at:
 - Changes to legislation, Regulations, Codes of Practice and guidelines
 - Culture change initiatives
 - How economic incentives can be changed to influence outcomes
 - How worker participation and engagement can be supported
 - Role of government agency collaboration, cooperation and data-sharing
- Report released on 30 April 2013

Taskforce recommendations

- Replace current NZ health and safety legislation with something similar to Australia's 'Model Law'
- Introduce more Regulations and Approved Codes of Practice for industry specific requirements
- Improve framework for worker participation
- Extend offence of manslaughter to companies
- Implement a new levy regime to reward good health and safety performance

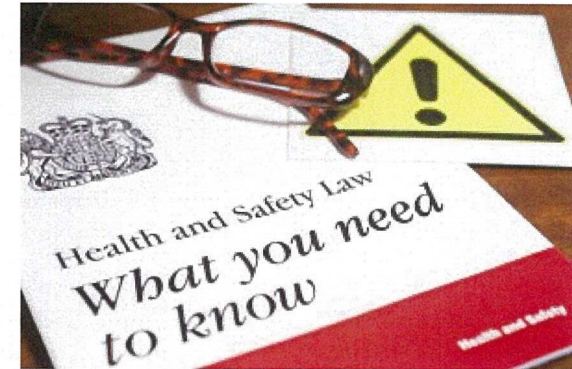


Proposed Health and Safety at Work Act

- Health and Safety in Employment Act 1992 is being repealed
- New law will be based on the Australian 'model law'
- Implementation planned for 1 April 2015
- Focus on workers and workplaces, not employers and employees
- Significantly higher penalties for offenders



Duty holders



- Person conducting a business or undertaking (PCBU)
- Officers
- Workers
- Other persons at workplaces

Clause 13: Person conducting a business or undertaking (PCBU)



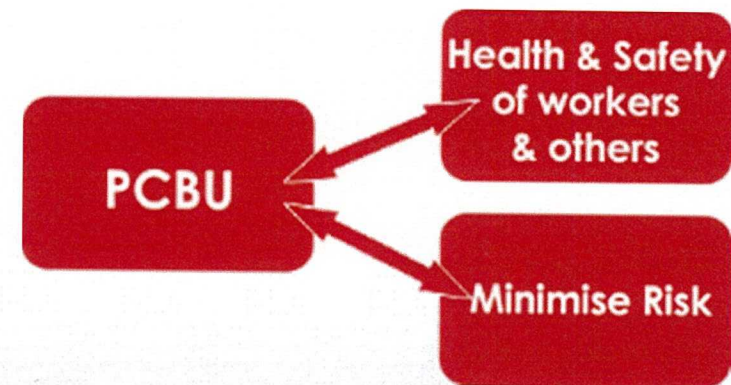
- The new primary duty holder
- A PCBU is a person or company conducting a business or undertaking:
 - Whether alone or with others
 - Whether or not the business or undertaking is conducted for profit or gain

Clause 13: Person conducting a business or undertaking (PCBU) (2)



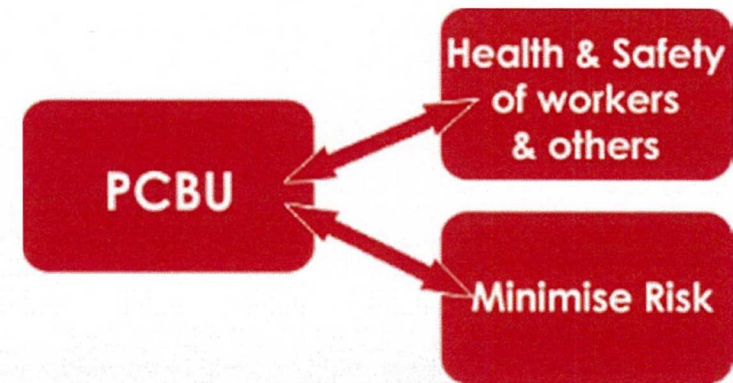
- A PCBU does not include:
 - People involved in a company as workers or officers (e.g. directors), a volunteer association, or an occupier of a home
 - Elected Ministers of the Crown, elected Council officials or school Board trustees

Obligations on PCBUs



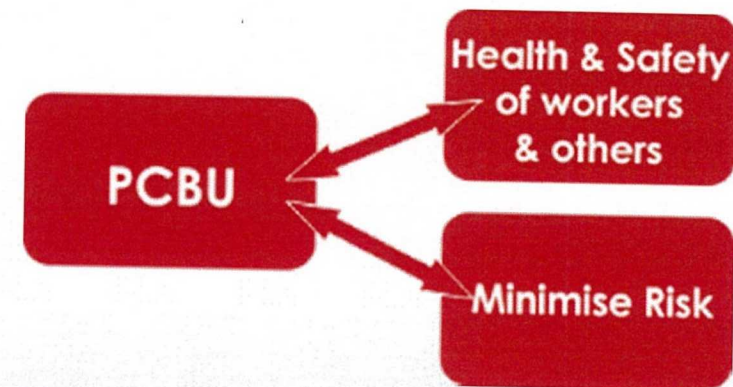
- Broad requirement on PCBUs to ensure the health and safety of workers (clause 22)
 - Eliminate risks, so far as is reasonably practicable
 - Minimise remaining risks, so far as is reasonably practicable

Obligations on PCBUs (2)



- Primary duty (clause 30) to:
 - Ensure health and safety of workers
 - Provide safe working environment
 - Provide safe plant and systems
 - Ensure the safe use, handling and storage of plant
 - Provide adequate facilities for welfare of workers
 - Monitor health and conditions in workplaces

Obligations on PCBUs (3)



- Specific duties (clauses 32-38) when a PCBU:
 - Manages or controls workplaces or plant
 - Designs, manufactures, imports or supplies plant, substances or structures
 - Installs, constructs or commissions plant or structures
- 'All reasonably practicable steps' is replaced with 'so far as is reasonably practicable' (clause 17)
 - Cost no longer an equal consideration
 - Presumption in favour of safety ahead of cost unless the cost is 'grossly disproportionate' to the risk

Workers



- Clause 14: A worker is a person who carries out work for a PCBU:
 - Employees
 - Contractors, subcontractors, and their employees
 - Apprentices, trainees, and persons gaining work experience
 - Volunteers
 - Employees of labour hire companies

What must workers do?



- Clause 47: While at work, workers must:
 - Take reasonable care for own health and safety
 - Take reasonable care own acts/omissions don't adversely affect the health and safety of others
 - Comply with reasonable instructions from PCBU
 - Co-operate with PCBU's reasonable health and safety policies and procedures

Worker engagement



- Health and safety representatives:
 - Elected by workers (clause 65)
 - Functions (clause 69):
 - Represent workers and promote their interests
 - Monitor actions taken by PCBU
 - No personal duty of care (clause 83)
 - Indemnified against civil or criminal liability if acting in good faith (clause 84)
 - Removal only by WorkSafe New Zealand (clause 85)

Worker engagement (2)



- Health and safety committee:
 - Mandatory if requested by at least five workers
 - Functions (clause 89):
 - Facilitate co-operation between the PCBU and workers
 - Assist in developing standards, rules, policies and procedures
- PCBUs must allow health and safety representatives and committees to spend the time reasonably necessary on role

Officers' due diligence



- Clause 8: Officers are:
 - Company directors
 - Partners in partnership
 - Any person occupying a position comparable to director of a company
 - Any *'other person who makes decisions that affect the whole, or a substantial part, of the business of the PCBU'*

Officers' due diligence (2)



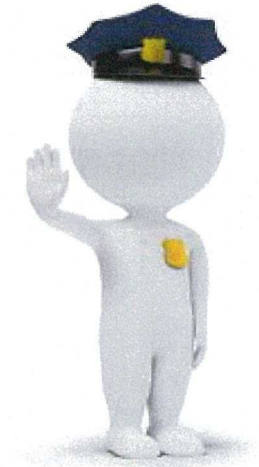
- Clause 39: Officers must do due diligence:
 - Acquiring knowledge of work health and safety matters
 - Understanding operations of the business and the associated hazards and risks
 - Ensuring PCBU has and uses resources and processes to eliminate/minimise risks
 - Ensuring PCBU has processes to receive and evaluate information on incidents, hazards and risks
 - Ensuring PCBU has and implements processes to comply with its duties
 - Verifying the provision and use of resources and processes by the PCBU

Investigative powers



- WorkSafe New Zealand's inspectors will have expanded powers:
 - Clause 185: Compel PCBUs to produce information about:
 - Work, the workplace and workers
 - Compliance with health and safety legislation
- Positive duty to assist inspectors:
 - Cannot intentionally hinder or obstruct an inspector (clause 196)
 - Must give all reasonable assistance to enable inspectors to exercise powers (clause 197)
 - Cannot knowingly provide false or misleading information (clause 219)

Enforcement



- Four categories of offences:
 1. Reckless conduct exposing an individual to risk of death or serious injury (clause 42)
 - Up to \$3m fine
 2. Failing to comply with a health and safety duty and exposing an individual to risk of death or serious injury (clause 43)
 - Up to \$1.5m fine
 3. Failing to comply with a health and safety duty (clause 44)
 - Up to \$500k fine
 4. Breaching other specific requirements
 - Various fines of lesser amounts (e.g. clause 52 requirement to maintain records of notifiable events - \$25k)
- Penalties for individuals up to \$600k and five years imprisonment

Enforcement (2)



- Two years to commence prosecution (clause 167)
- Other enforcement tools:
 - Improvement notices (clauses 123 – 126)
 - Prohibition notices (clauses 127 – 129)
 - Non-disturbance orders (clauses 130 – 133)
 - Enforceable undertakings (clauses 144 – 150)
 - Payment of WorkSafe New Zealand's costs of investigation and prosecution (clause 170)
 - Adverse publicity orders (clause 171)
 - Work health and safety project orders (clause 173)
 - Training orders (clause 176)

What will the future hold?



- More interactions with WorkSafe New Zealand
 - Pro-active workplace visits
 - Increased emphasis on enforcement
- Focus on personal responsibility of directors and senior management
- Corporate manslaughter?

What does this all mean for you?

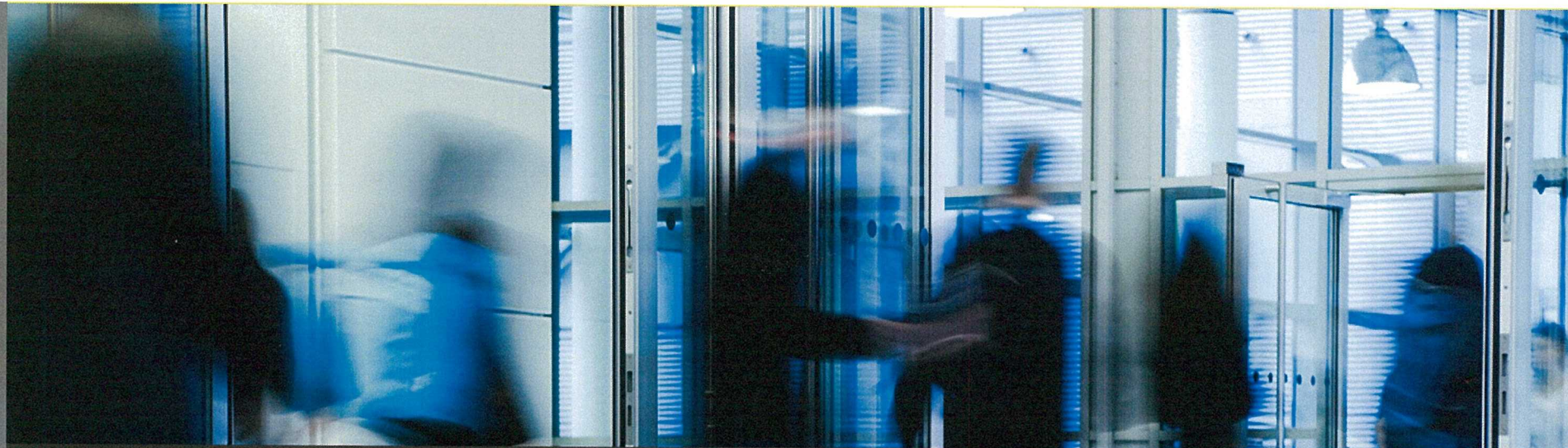
- Need to revisit:
 - Governance and management strategy in your organisation
 - Legal compliance with Health and Safety at Work Act
 - Will new duties be complied with?
 - Will existing controls meet the 'so far as is reasonably practicable' test?
 - Worker participation
- Be aware of:
 - Reporting on health and safety to stakeholders
 - Union attempts to exert greater influence
 - E.g. Council of Trade Unions in forestry sector



Practical tips to prepare for compliance

- Use the Health and Safety Reform Bill as a guide
- Don't wait, start now!
 - No 'grace period' for compliance after 1 April 2015
- If you are not sure, ask:
 - Lawyers can provide advice on the scope of your legal obligations under the Health and Safety at Work Act
 - Health and safety consultants can assess the practical systems of your business
- We are all in the same boat
 - Get involved in NZISM and other relevant industry groups to share knowledge about planning for compliance





Any questions?

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