

Major changes ahead

The Health and Safety Reform Bill brings a significant overhaul of health and safety obligations. Start thinking now about what it could mean for your business. Simpson Western Partner Candice Murphy explains what to expect.



The Health & Safety Reform Bill currently before Parliament is heralded as the greatest change to Health & Safety Law in New Zealand for more than 20 years. Once enacted it will replace the current Health & Safety in Employment Act 1992.

The Bill was introduced to parliament on 9 May 2014, is expected to be passed by the end of this year and to come into force on 1 April 2015. It has the support of both major parties and so is likely to be passed relatively unchanged regardless of the outcome of the 2014 elections.

The result is that there are major changes ahead – not only for business but also for business owners, senior management and directors. This article will focus on:

- Who holds the primary duties under the Bill.
- The new and wider duties of due diligence for directors and senior managers;

- The widening focus in relation to risks as well as hazards; and
- The substantial increase in penalties.

The next issue of FYI will contain a follow-up article addressing the worker engagement obligations contained in the Bill. These will form a critical focus and potentially significant obligations on businesses.

Border Duty Holders - PCBU's

Under the Health & Safety in Employment Act 1992 (HSEA) the primary health and safety duties fell on a person who controls a place of work.

Under the Bill, the primary duties fall on “persons conducting a business or undertaking” (which has been abbreviated to the rather cumbersome PCBU). This is a significant change and is much broader than an employer or person who manages or controls a workplace. A PCBU will also include:

- People who manage or control fixtures, fittings or plant at workplaces;
- Designers, manufacturers, importers and suppliers of plant e.g. equipment, substances or structure to other workplaces; and
- An installer, constructor or a person who commissions plant or structures.

All PCBU's have primary obligations under the Bill. There are also more specific obligations on PCBU's depending on which of the above categories they fall into.

Duties on directors and senior managers

The Bill requires that ‘officers’ assume a due diligence duty. An officer is a director of a company and any other person who makes decisions that affect the whole, or a substantial part, of the PCBU business.

Currently a director of a company can only be convicted if they direct, authorise, assent to or participate in a breach. The Bill goes substan-