



Health & Safety

Originally presented to the NZFWDA delegates at National AGM on 22 May 2016

Disclaimer: This presentation/paper is intended to be general advice. You should seek your own specific legal advice on matters. No liability is accepted for any reliance on this paper



Background.....

- Why?
 - Risk of death
 - New Zealand workers 4 x more likely to die than UK
2 x more likely to die than Australia
- Cave Creek, Pike River, Forestry
- Four Wheel Drive and other Accidents
 - Muriwai
 - Poutu
 - Grey River
 - Competition Accidents
 - Mahia Hunt Safari
 - Towing – breaking ropes
 - Christchurch cyclists
 - Taranaki Farmer with the Army bridge

The Law

- 1 The new Act is intended to provide general principles with specific details in regulations. MBIE has a lot of useful information on its website, but much of that has not been updated for the new Act.
- 2 If in doubt get specific legal and other professional advice.
- 3 Tracks are often legal roads – if the public have access, it is probably a road. If the Health and Safety at Work Act does not apply a person may be prosecuted by the Police under the Land Transport Act.

PCBU



Persons Conducting a Business or Undertaking

- An undertaking can be done alone or with others and does not have to be for profit or gain
- You can not contract out of duties
- Duties are not transferrable
- More than one person and more than one PCBU can owe a duty for the same thing
- A person is not a PCBU if they are solely a worker or a Volunteer Association
- If charging or making money there is a risk of being classified as a business or undertaking

Workers



- Workers include:
 - Employees
 - Contractors
 - Sub-contractors
 - Volunteer Workers
 - Owe duties and are owed duties



Volunteers

- But....."Volunteer Workers" are "workers"
- A "volunteer worker" does not include a "volunteer" undertaking voluntary activities:
 - participating in a fund raising activity.
 - Assisting with a Sport or Recreation for a Club
 - Assisting with Activities with an Educational Institute
- "Volunteer Association" means a group of volunteers working for community purposes, who do not employ any person who carry out work for that Association

Health & Safety at Work (Adventure Activities) Regulations 2016



- Cover land based activities
- If they:
 - Involve a participant being guided, taught or assisted to participate in an activity
 - And the main purpose is recreation
 - And are designed to deliberately expose the participant to serious risk... that must be managed by the provider
 - And failure of the providers management systems is likely to result in serious risk. Regulation 4 (1)
 - An adventure activity **does not include**:
 - An activity for which instruction is given only in relation to the supply of equipment
 - A Sports Club activity provided to
 - A member of the Club
 - Or another Club
 - A person not a member to encourage (if provided to one person no more than 12 days in any 12 month period)
 - I – membership
 - II – interest in the Clubs activities
 - III – for Competition

PCBU Duties



If you are not a Volunteer then you maybe a PCBU, then you have PCBU duties

The PCBU must ensure so far as is reasonably practicable

- that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
- RISK is eliminated or minimised if it is not reasonably practicable to eliminate risks

The PCBU has the primary duty of care

- A worker can also be a PCBU
- More than one PCBU can owe a duty of care for the same thing
- There is a duty to manage risk
- The Act is risk based rather than based on identification of hazards
- Preserve a site after an accident
- Other key duties to ensure that activities are with out risk e.g. control of work places, duty to consult with workers and those best placed to manage risk and risk assessment.



RISKS – Risk Assessment and Risk Management

- Relevant matters for what is reasonably practicable may include
 - a) The likely hood of the risk or hazard occurring
 - b) The degree of harm that might result
 - c) What the person knows or **ought reasonably to know**
 - d) The availability and suitability to eliminate or minimise risk
 - e) **After** assessment the risk and the ways or eliminating or minimising
 - I. the cost associated
 - II. whether the cost is grossly disproportionate to the risk

- Tulley murders at the Ashburton WINZ office –how foreseeable before and after?
- Banks' way of dealing with risk
- Act does not define risk.
 - Hazard includes a persons behaviour, where behaviour has the potential to cause death, injury or illness.**
 - You cannot insure against prosecution. You might be able to insure for reparation.
 - The Association insurance as non-vehicle third party cover does not cover members.



Managing Hazards

- IDENTIFY all significant hazards
- If you can, ELIMINATE the hazards
- If you can't eliminate the hazards, ISOLATE them
- If you can't eliminate or isolate hazards, MINIMISE them
- MONITOR hazards regularly
- Record significant hazards, controls and monitoring in a HAZARD REGISTER



Knowledge is not required

- Lack of knowledge is not a defence
- Many of the offences are strict liability
- A prosecutor does not need to prove a person intended to take or not intended to take the action
- The prosecution only needs to prove one fault



Farms & Workplaces

- A Workplace includes where a worker goes while at work, this can include vehicles
- The duties of a Farmer/PCBU
 - a) only apply to farm buildings and any part of the farm necessary for the operation of the business or undertaking
 - b) Do not apply to any other part of the farm unless work is being carried out at that time (S37).
 - c) Is not owed to recreational users, unless they are in a working area of the farm



Officers

- Persons conducting a business
- There is a new positive duty of due diligence for officers in very senior Governance Roles
- For those who exercise significant influence
- An officer must exercise the care, due diligence and skill that a reasonable officer would exercise in the same circumstances including:
 - Taking reasonable steps to acquire and keep up to date knowledge
 - To understand the nature of the operations and risks
 - To ensure the PCBU has available appropriate resources and processes and information
- Officers have stand alone duties whether or not a PCBU is prosecuted

Easy Rider Invercargill Trawler – failure to observe licencing requirements resulted in drownings and prosecution of a director.



How to avoid

- Health and Safety needs to be put on the Agenda
- Farms – only working areas are work places.
- Adventure Activities – similar to old – can you fit within exclusions? (i.e. not included if a sports club meets conditions – see above)
- Koha
- Incorporate as clubs
- Record trips - On trips record members and day members
- Are drivers fit for trip and vehicles properly equipped? – the Max Factor rule (no jandals?)
- Doing the right thing
- P.S. – Drive to the conditions – Invercargill/Central Otago Waikaia Bush Road snow rescue



Doing the right thing

- Remain vigilant – mistakes happen, you can not always rely on people doing the right thing.
- Risk of creeping casualness and routine meaning you forget.
- Duty is on going
- Need to keep checking – can't just do once and forget
- **What this is all about is people getting home safe**, it is not just about check lists



What to do when things go wrong

- Get medical help
- Make the site safe, you should try to preserve it for inspection unless police/Work Safe agree otherwise.
- Report to senior Management
- Notify your Insurer and Lawyer
- Notify Work Safe – there is a duty to co-operate – follow the Inspector to make sure the right questions and info are asked
- It maybe appropriate to make notes – while memories are fresh
- For notifiable offences and serious matters, failing to report can be an offence
 - Near misses can be serious and need to be reported also.
- New Zealand is small and often things get out, Ambulance and Fire Services may have a duty to notify.
- Try not to blame the victim and focus on the positives
- Other Matters - are you insured – Police jurisdiction on roads



Summary

1. You need to take positive steps to understand the risks and evaluate
2. Hazards and associated risks need to be identified and plans for their control and monitoring in place
3. Reporting and responding processes need to be put in place
4. Management and safety capability must be built, workers must be engaged and involved
5. Shared duties with other PCBU's must be understood and managed.

Health and Safety needs to be on the Agenda at all times!

Remember the Sergeant in Hill Street Blues

Your questions



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