

Workplace health and safety law reform in the pipeline

In this edition of *The Legal Lounge* I summarise pending changes to New Zealand workplace health and safety laws, arising from the post-Pike River environment.

Overview of key changes

As indicated in the last issue of *The Legal Lounge*, changes signalled by the government to New Zealand's workplace health and safety laws are intended to align with the federal Australian *Model Work Health and Safety Act 2011*, with some modifications to take account of the New Zealand statutory and operating environment.

Key changes will include:

- Widening the duty of care from employers to **'persons conducting a business or undertaking'**. Based on the Australian model, this phrase could extend to not for profit organisations, partnerships and joint ventures, schools, and local councils. However it is expected that a volunteer association, and volunteer officers who are not remunerated except for out of pocket reimbursements, will be excluded.
- Creation of a direct and enforceable duty of 'due diligence' for workplace health and safety obligations on directors and officers of companies (refer to previous articles in *The Legal Lounge* for a discussion of the existing law).
- Clearer statutory guidance as to what it means to take all steps 'reasonably practicable' to ensure workplace health and safety (refer previous articles).
- A three tiered hierarchy of offences, with substantially increased penalties for the most serious offences. The maximum offence category and penalty flagged at this stage is for reckless or intentional conduct exposing persons to serious harm, of \$600,000 or up to five years imprisonment (a recent prosecution in Australia for such offending is discussed in the October 2013 edition of *The Legal Lounge*). The Courts will also be able to make adverse publicity orders against companies and officers for serious breaches of these new laws.
- A shift from the current 'hazard-based' analysis to a 'risk-management' approach. This should resonate with aviation industry participants currently engaging in the CAA led initiative to adopt a Safety Management Systems ('SMS') approach to aviation safety, and participants would be well advised to attempt to integrate any wider obligations under the new workplace health and safety laws into any SMS model adopted.
- A range of initiatives to encourage greater worker participation in health and safety planning, and to require businesses to adopt worker participation strategies appropriate to the size and nature of the organisation.
- Introduction of approved codes of practice, regulations, and guidance to provide assistance to industry and sector organisations to comply with the new laws.
- Additional regulation of high-risk sectors (such as that already flagged for underground and open cast mining activities).

Although there has been some discussion about extending the most serious offence to one of corporate manslaughter, this proposal does not appear to be supported by the current government. However, if there is any slippage on the timeline for these proposed legislative changes, this may become a topical political issue during the 2014 general election campaign.

Timeline for legislative and other changes

New legislation is expected to be introduced into Parliament in December 2013 and enacted into law by December 2014, and whatever debate there may be around the fringes, it is likely to receive widespread support from across political boundaries.

The new health and safety law agency, Worksafe New Zealand, is expected to be operating by December 2013 and it is expected to take a much more rigorous approach to enforcing workplace health and safety laws. It will also be tasked with a greater education function, including developing and publishing health and safety guidelines, and the establishment of a joint industry-regulator health and safety professional body by the middle of 2014. A funding review of Worksafe New Zealand will also take place from around the end of 2015. Health and safety levies are expected to rise on average by about three cents per \$100 of wages.

Comment

Organisations should be actively starting to identify improvements and systems changes required to ensure it can come into compliance with the new laws in a timely and orderly manner. From my review of the materials recently circulated by the CAA on Safety Management Systems, this would be a logical place to start for commercial aviation participants, although it should not be assumed to be the complete package to ensure full compliance with all workplace health and safety obligations. In light of the increasing duties, offences and penalty levels to be enacted, these are legislative changes that no commercial aviation organisation can afford to ignore.

This ends my series of articles on workplace health and safety law obligations, all of which are now or will shortly be made available on my website. Next month, I will discuss something completely different!

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