



## **Health and Safety at Work Act passes**

The Health and Safety at Work Act (formerly part of the Health and Safety Reform Bill) passed into law with no substantial amendment from the version reported back from select committee. Unions have ended up [campaigning against](#) the legislation because the Government watered down the bill and mismanaged its passage through parliament.

## **Worker Participation**

Worker participation has been weakened by exempting employers in low risk industries with less than 20 staff from the requirement to have health and safety representatives and health and safety committees if asked by one of their workers. The Government compounded the problem by issuing a farcical list of high risk industries, which excluded beef, dairy and other potentially high risk industries, while including others such as mini-golf and worm farms.

There are other worrying changes to worker participation that strengthen the right of employers (PCBUs) to decide on workgroups and whether or not to have health and safety committees.

## **Other provisions**

Although the bad publicity and watering down have done much to discredit the new law, it is important to remember that there are substantial changes that should still lead to better health and safety outcomes and we need to be ready for when the new legislation takes effect on **4 April 2016**.

Positive aspects of the law include:

- Adoption of the concept of a person conducting a business or undertaking (PCBU) instead of 'employer'. PCBU is a broad concept that reflects modern working arrangements. It captures the current duty holders of employer, self-employed, principals to contracts, person controlling a place of work. PCBUs are in the best position to control risk to work health and safety as they are the ones carrying out the business or undertaking.
- Adoption of the term 'worker' instead of 'employee'. This is a similarly broad concept that will capture not only employees but also volunteers, contractors, apprentices and trainees, and a person gaining work experience.
- Introduction of new duties, beyond the primary duty of care on PCBUs. These include duties on those involved in 'upstream activities' in the supply chain such as those who import, manufacture or supply plant, substances or structures. They must ensure (so far as is reasonably practicable) that the plant, substance or structure does not carry risks to the health and safety of those who use it.
- The power for health and safety representatives to issue provisional improvement notices and cease work orders.
- Introduction of a new duty of 'due diligence' on 'officers' (mainly directors/board members and chief executives). This means that officers must keep up-to-date knowledge, must understand the PCBU's

operations and the hazards and risks associated with those operations, and ensure and verify that the PCBU has appropriate resources and processes to comply with its duties- ensuring that those in governance roles proactively manage work health and safety. Officers can also be held responsible for decisions they make that have negative health and safety outcomes.

- A substantially strengthened 'regulatory toolbox', which includes much stronger penalties along with innovative tools such as 'enforceable undertakings', which allow WorkSafe to accept a written undertaking by a PCBU that they will remedy a contravention of the Act or regulations on the basis that that undertaking can be enforced by WorkSafe should the PCBU contravene the undertaking they have made.

### **Next steps**

The PSA will be developing resources to assist health and safety representatives, delegates and organisers to get to grips with the new legislation. In the meantime the WorkSafe NZ website has information about [the new bill](#) and a summary of the [key changes made by the select committee](#).the Health and Safety at Work Act (formerly part of the Health and Safety Reform Bill) passed into law with no substantial amendment from the version reported back from select committee. Unions have ended up [campaigning against](#) the legislation because the Government watered down the bill and mismanaged its passage through parliament.