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Health and Safety at Work Act 2015

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Health and Safety at Work Act

- Duty framework: PCBU
- “Reasonably practicable steps”
- Impact on multiple duty holders
- Worker participation
- Due diligence role for those in governance
- Tiered liability regime



Health and Safety at Work Act: Duty framework: PCBUs (1)

- **PCBU** = “a person conducting a business or undertaking”

Client

Agency

**Production
Company**

**Heads of
Department
Crew**

**Stunt
Co-ordinators**

**Directors/
Producers**



Health and Safety at Work Act: Duty framework: PCBUs (2)

- PCBU must ensure, so far as is reasonably practicable the health and safety of:
 - workers who work for the PCBU
 - workers whose activities are influenced or directed by the PCBU
 - other persons as it relates to the work carried out by the PCBU



Health and Safety at Work Act: Duty framework: PCBUs (3)

- “**workplace**” = a place where work is being carried out, or is customarily carried out, for a business or undertaking



Health and Safety at Work Act: Duty framework: PCBUs (4)

- Other duties on PCBUs include:
 - duty of PCBU who manages or controls a workplace
 - duty of PCBU who manages or controls fixtures or fittings
 - duty of PCBU who supplies plant, substances or structures
 - duty of PCBU who installs, constructs or commissions plant or structures
- Duties are broad and extend up supply chain



Health and Safety at Work Act: Reasonably practicable steps (1)

- **“reasonably practicable steps”** = a step which is, or was, at a particular time, reasonably able to be done taking into account the following prescribed matters:
 - likelihood of the hazard or risk occurring
 - degree of harm that might result from the hazard or risk
 - what the PCBU knows or ought to reasonably to know about the hazard or risk and ways of eliminating or minimising the risk



Health and Safety at Work Act: Reasonably practicable steps (2)



- Cost factor
 - taken into account
 - weighed up with other relevant matters to identify what is a “reasonably practicable step”
- BUT
 - this must be done **after** assessing the extent of the risk and the ways of eliminating or minimising it
 - the more likely the hazard or risk, or greater the potential harm, less weight should be given to the cost of eliminating the hazard or harm



Health and Safety at Work Act: Impact on multiple duty holders (1)

- In some instances, a number of parties will have duties in relation to the same matter
- All duty holders
 - retain responsibility for the performance of that duty
 - must discharge the duty to the extent to which they have the ability to influence or control the matter



Health and Safety at Work Act: Impact on multiple duty holders (2)

- If more than one person has a duty in relation to the same matter, the duty holders must:
 - consult
 - co-operate
 - co-ordinate activities



Health and Safety at Work Act: Worker participation (1)

- General duty to involve and engage with workers on health and safety matters
- All duty holders are required to have worker participation practices appropriate to the workplace
- What is “appropriate” will depend on the size of the business and level of risk involved



Health and Safety at Work Act: Worker participation (2)

- Act also provides for health and safety representatives and committees
- Health and safety representatives will have extensive functions and powers, including the power to direct unsafe work to cease
- Health and safety committees also have a number of functions
- PCBU is not required to agree to have representatives where there are less than 20 workers
- PCBU is not required to establish committee if satisfied existing worker participation practices are sufficient



Health and Safety at Work Act: Due diligence role for those in governance

- Direct liability for officers under the new Act:
 - officers must exercise due diligence to ensure PCBU complies with its obligations
 - Officers must exercise the care, diligence and skill that a reasonable officer would exercise in the same circumstances, taking into account the nature of the business, officer's position and responsibilities



Health and Safety at Work Act: Tiered liability regime

- Significant penalty increase to a potential maximum of \$3m for corporates and \$600k for individuals
- Maximum terms of imprisonment increase from 2 to 5 years
- Small individualised fines for other specific offences
- Liability and duty to notify may arise even where no harm occurs



Scenario 1

An overseas Director is in New Zealand for a production. There is a location permit for a footpath camera. However, the Director wants the camera to be placed on the road. The Safety Officer on set tells the Director not to do it. The Director instructs for it to be done anyway and a pedestrian gets hit by a car due to his vision being blocked by the camera.



Scenario 2

A stunt performer and stunt rigger are engaged by a stunt co-ordinator for a mainline stunt involving an Air Ratchet (which allows the performer to fly through the air). The stunt goes wrong and the stunt performer is seriously injured due to the Air Ratchet not being secured properly.



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