

New Health and Safety Regulations: discussion document open for submissions

In March 2014 the government introduced the Health and Safety Law Reform Bill, which will replace the current Health and Safety in Employment Act 1992 with the Health and Safety at Work Act 2015. I have outlined in previous articles the key aspects of the changes that are likely to be enacted. These include broadening the definition of employers and principals to “persons conducting a business or undertaking” (PCBU), strengthening the duties applicable to directors and officers, placing positive obligations on workers to participate in workplace health and safety management and planning, and strengthening and broadening the range of offences and penalties under the Act. Submissions on the Bill have now closed and are under consideration by the Transport and Industrial Relations Select Committee.

What many people may not realise, is that much of the detail of the new laws is set to be enacted in new Health and Safety Regulations underpinning the Act. While regulations would normally follow enactment of the primary legislation, the government has decided in this case that all new laws should be enacted and implemented at the same time. These were all due to take effect from April 2015. However, as the election is set to take place on September 20 this year, this will likely delay the enactment date of both the primary Act and the supporting regulations, although businesses should be prepared for the new laws to take effect from as early as July 2015.

The Ministry of Business, Innovation and Employment (MBIE) has now released a discussion document regarding the key set of regulations that are intended to be enacted to support the new Act, and feedback is being sought on the intended scope of the new regulations. Submissions are open until 18 July 2014. The new Regulations are intended to cover the requirements for:

- General risk and workplace management
- Worker participation, engagement and representation
- Work involving asbestos
- Work involving hazardous substances; and
- Major hazard facilities.

The first two proposed Regulations will affect all aviation businesses, and the fourth will have general application to agricultural operators in particular. I therefore briefly outline the intended application of these three Regulations, and issues that aviation businesses and industry organisations may wish to consider submitting on.

General risk and workplace management

These Regulations are intended to encapsulate existing legal requirements that apply to all businesses, such as those relating to provision of adequate workplace facilities for work, rest and meal breaks, to provide first aid facilities and supplies, to have emergency plans in place, to provide protective clothing and equipment suitable for particular types of work, to manage the risk of falling objects, and to continue present requirements relating to the employment of young people at work.

However, there are likely to be some changes and extension of some existing obligations. This includes more detailed requirements around protective clothing and equipment and emergency planning, and a proposal to have someone trained in first aid and accessible at all times. There will be some expanded conditions around employment of young people, and it is proposed to prohibit persons under a certain age from handling some hazardous substances.

It is also proposed to introduce a new requirement to manage risk to the health and safety of workers carrying out remote or isolated work; and in some cases, to develop a prescribed risk management process to manage health and safety risks associated with especially high risk situations or activities. There will also be some new general obligations to provide information, training and instruction to staff on health and safety issues. These changes may give rise to issues that participants may wish to consider submitting on.

Worker participation, engagement and representation

This will introduce a raft of new provisions around setting up health and safety work groups, and electing a Health and Safety Representative in the workplace. Once a Health and Safety Representative is elected, they must be given paid work time to attend health and safety training courses provided by an approved organisation. A workplace health and safety committee must also meet regularly and at least every three months, and more often if requested by at least half of the committee. These proposals acknowledge that in smaller work places, the need for workgroups and health and safety representatives might not exist. None the less, it appears that if an employee requests a health and safety representative, the PCBU would be obliged to set up a working group and elect a health and safety representative, with the consequential obligations that flow from that. The proposals are driven towards larger workplaces, and they seem somewhat unrealistic to impose on smaller work environments. I for one would be concerned if these obligations were to place unduly onerous and impracticable obligations on small businesses.

Work involving hazardous substances

The present system for classifying and approving hazardous substances, and setting controls for use and labelling of hazardous substances that affect human health or safety, or the environment, will continue to be managed by the Environmental Protection Agency pursuant to the Hazardous Substances and New Organisms Act 1966 (HSNO). However, new regulations enacted pursuant to the new Health and Safety at Work Act will have responsibility for regulating and enforcing the use of such substances in the workplace. This will include setting controls on the use, handling, generation and storage of hazardous substances; quality assurance mechanisms; and emergency management of hazardous substances.

These requirements may to some extent overlap on existing industry practices or requirements, for example those that would generally be recommended by industry certification standards such as "Growsafe" or as part of industry self-governing systems, but will become mandatory under the new regulations. These include requirements for preparing, maintaining and displaying an inventory of all hazardous substances used on site, and introducing a requirement for more specific controls relating to segregation and storage (including isolation distances) of class 6 and class 8, and other, hazardous substances. The PCBU will also be required to have on hand and readily available, the safety data sheet for any worker using, handling or storing such substances.

It will be mandatory for an emergency response plan relating to hazardous substances to form part of any general workplace emergency management plan. PCBUs will also be required to provide information, training and supervision to staff using or handling hazardous substances, and to monitor the health and safety of such workers exposed to such substances. Of note, it is proposed to abolish the approved handler position in favour of general supervision requirements on the PCBU.

There are also proposals to transfer some of the signage and design requirements, and other aspects of HSNO regulations and notices, for example those relating to the Tank Wagons and Transportable Containers Regulations, into the new health and safety regulations.

While it seems to me that many of the proposals around working with hazardous goods are sensible and may already represent widespread practice, there are a huge raft of changes proposed under this section, and as they say, the devil is in the detail. There are also further proposed regulations specific to workplaces that are considered to be 'major hazard facilities' that I have not covered within the scope of this article.

It would be advisable for aviation organisations that deal with hazardous substances, to carefully review and consider making submissions on these regulations.

Comment

Aviation businesses that consider they may be significantly affected by these changes should scrutinise and make submissions on the discussion document. Aviation industry representative organisations may also wish to consider making submissions in particular as to any adverse impact or compliance burden the proposed new regulations may create for smaller commercial aviation operators.

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