



MCA

MATHIESON CHARTERED ACCOUNTANTS LTD.



PROFIT



GROWTH



CASHFLOW



SUCCESSION



PROTECTION

Health and Safety Reform - FAQs

What are the key elements of the Health and Safety Reform Bill?

The Bill works to focus effort on what matters, based on business risk, control and size:

- It reinforces proportionality – what a business needs to do depends on its level of risk and what it can control
- It shifts from hazard spotting to managing critical risks – actions that reduce workplace harm rather than trivial hazards
- It introduces the “reasonably practicable” concept – focusing attention on what’s reasonable for a business to do
- It changes the focus from the physical workplace to the conduct of work – what the business actually does and so what it can control
- It supports more effective worker engagement and participation – promoting flexibility to suit business size and need.

When will the new law come into force?

The new law (which will be called the Health and Safety at Work Act) will come into force on 4 April 2016.

What is a Person Conducting a Business or Undertaking (PCBU)?

A Person Conducting a Business or Undertaking, known as a PCBU, are in the best position to control risks to work health and safety as they are the ones carrying out the business or undertaking. This is why the PCBU will have the primary duty under the new law. Despite its name, a PCBU will usually be a business entity, such as a company, rather than an individual person. A person might be a PCBU if they are a sole trader or a self-employed person. PCBUs will owe a primary duty of care to its workers and those that it influences and directs in carrying out their work. PCBUs will have duties to engage with workers and to have effective worker participation practices regarding health and safety.

How will PCBUs work together where there are several PCBUs?

Where there are multiple PCBUs, each PCBU must do what they can within their influence and control to keep workers safe. In discharging their duty, they also need to consult and collaborate with other PCBUs whose workers are affected by their work.

What does the requirement to manage risk mean?

Under the Bill a duty holder’s obligations to manage risk are limited to doing what is in their ability to control and manage, along with what is reasonably practicable for them to do to manage the risk.

Are any businesses exempt from the requirement to have worker participation and engagement processes?

No. All businesses will have to have work participation and engagement processes, regardless of their size or level of risk.

Which businesses will have to have a health and safety representative?

All large businesses (regardless of risk) and small businesses with fewer than 20 workers in high risk sectors will be required to have a health and safety representative – ONLY if a worker asks for one. They also have to consider establishing a health and safety committee – ONLY if requested by 5 or more workers or by a health and safety representative. Small businesses (fewer than 20 workers) in lower risk industries will be excluded from this requirement. However, if they decide not to have a health and safety representative or committee, they will still have to have some other form of worker participation and engagement process.



MCA

MATHIESON CHARTERED ACCOUNTANTS LTD.



PROFIT



GROWTH



CASHFLOW



SUCCESSION



PROTECTION

Health and Safety Reform - FAQs

Which types of small businesses would be high risk and therefore subject to the requirement to have a health and safety representative if a worker asks for one?

Proposed new worker participation, engagement and representation regulations will outline which sectors would be high risk. The Ministry of Business, Innovation and Employment (MBIE) will shortly undertake public consultation on an exposure draft of these regulations before they are finalised.

Will organisations that have volunteers be regarded under the new law as Persons Conducting Business or Undertaking (PCBUs)?

The coverage of volunteers will remain the same as the approach under the current law. This means a purely volunteer organisation where volunteers work together for community purposes and which does not have any employees is known as a volunteer association under the Bill. A volunteer association is not a PCBU and therefore, the Bill will not apply to it. See more information on the Bill and how it affects volunteer organisations [here](#).

Farmers have a duty to manage or control a “workplace”. Which parts of a farm are a “workplace” under the Bill and how does this affect recreational users of farm land?

The duty of farmers' to manage or control a workplace will only extend to the farm buildings and structures necessary for the operation of the business and the areas immediately surrounding them. Other parts of the farm are not a workplace, apart from when farm work is being carried out in that part of the farm at the time. The farm workplace does not include the family home. These changes mean that the farmer's duty to manage and control the farm doesn't apply to recreational users coming onto farm land, apart from when farm work is being carried out in that part of the farm at the time. A field where stock is grazing is only a workplace when the farm worker is working there. A cycleway running through the property will not be a workplace unless the farm worker is working there. The Bill also makes it clear that the duty to manage and control a workplace won't extend to people who are there for unlawful purposes.

Am I liable if other people come into my workplace lawfully and are injured?

A PCBU who manages or controls a workplace will have a duty so far as reasonably practicable to make sure the workplace is safe for workers and other people. If you breach that duty and someone hurts themselves you could be liable. If you have done everything reasonably practicable then you will not be liable. The duty to manage and control a workplace will not extend to people who are there for unlawful purposes so if someone enters the workplace for an unlawful purpose and hurts themselves, you will not be liable.

Why won't the new law include a ‘causing death’ offence?

The new law already contains a serious offence provision which means that both individuals and the corporate entity can be held accountable for reckless conduct that results in the death of a worker – with fines up to \$3 million for corporations and or up to 5 years imprisonment for individuals. The Government has decided it is not necessary to introduce a further offence of causing death under this health and safety legislation. Instead however, the Government will in the sentencing guidance in the Bill has emphasised the seriousness of incidents where death does result, by requiring that courts must consider the death or the harm (real or potential) caused by an offence in their sentencing.

**FOR ANY OTHER QUESTIONS, FEEL FREE TO CONTACT OUR SPECIALIST,
LYNDA MATHIESON, ON 027 55 44 747**