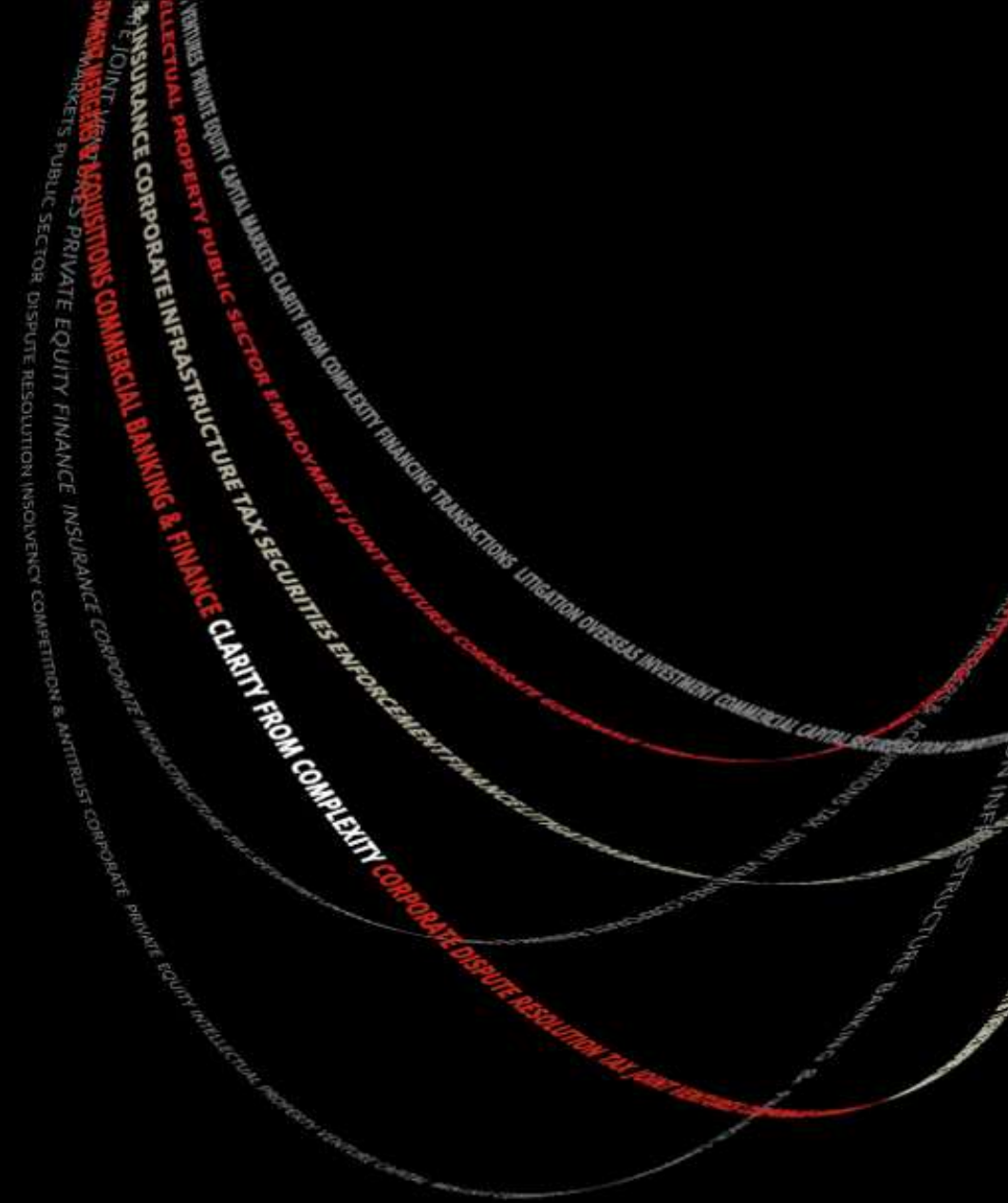


Health and Safety Reform Bill: Preparing for Change



Topics

- Learnings & Observations from 25 years of HSE
- Package of Change – why
- New Approach
- PCBU
- Officer
- Workers

Learnings & Observations from HSE Incidents



Learnings & Observations

- The motivation
- NZ safety culture
 - No 8 wire
 - Cut corners
 - Small businesses without infrastructure
- Very few complicated incidents
- People just trying to help

Learnings & Observations

- If safety plans etc are not read and understood by the people on the job, the plan is useless
- Accidents don't happen on paper – they happen during the physical activity – doing the work
- You don't want workers on site who have signed bits of paper but have given no thought about the hazards of the tasks they are performing
- You need to motivate people

Case Histories



Package of Change - Why



- Pike River
 - Royal Commission
 - Must rigorously hold management to account
 - Pro-active
 - Verify
- Independent Task Force
 - Key findings and recommendations to Government
 - Adopt Aussie model law of 2011
 - They have less deaths
 - Very new so little history

- WorkSafe NZ
 - New regulator
 - Sole focus on Health and Safety
- Health and Safety Reform Bill
 - Overhaul of the law

New Approach



Introduction to new approach

- Duties of care and obligations not pigeon-holed
- HSE Act is a negligence code
- **All** involved in the conduct of work or contributing things for it to occur will have a duty of care and should be involved in elimination or minimisation
- Reflects modern business models
- Shift in focus:
 - away from employer to employee duties to workers and workplaces*
- Positive duty on officers
 - **All duties are concurrent and non-delegable**

Key changes

- PCBU
- Officers – due diligence & duties
- Worker – broad definition
- Graduated enforcement
- **Consultation – horizontal and vertical**
- Worker protections & engagement

Key changes

- Increased regulator powers
- Higher penalties
- Safety of the group rather than just yourself
- What's best for the group
- Peer pressure should help the group persuade others to act in a certain way

Reasonably practicable (clause 17)

- Relates to duties under the Bill
- Balancing Act
- That which is, or was, at a particular time, reasonably able to be done
 - Likelihood
 - Degree of harm
 - What know or reasonably ought to know
 - Eliminate or minimise
 - Cost – **grossly disproportionate**

PCBU

Person conducting a
business or undertaking



Meaning of PCBU (clause 13)

- Catch-all for work/business
- Move away from employer/employee centric focus
- Reflects new ways of doing business
- Excludes officers and workers
- Excludes volunteer associations and an occupier of a home
- Australian view: title and use of the word “person” is a distraction

PCBU – big shift

- **PCBU multiplies, not divides, the responsibility**
- The term ‘PCBU’ is like a fishing net – it catches as much as it can in work/business places
- Not just employers who hold responsibility anymore
 - an owner of land is responsible for that land as a PCBU (e.g. forestry land)
 - what is your business like – what level of interface with the public etc or other small businesses



Duties of PCBUs (clauses 30, 32, 33, 34, 35, 36, 37 & 38)

- Primary duty of care is to ensure so far as is reasonably practicable the health and safety of
 - workers employed or engaged **or caused** to be employed or engaged while the workers are at work
 - workers whose activities are **influenced or directed** by the PCBU
 - very wide requirements – control is relevant to what can be done and if it is reasonable to do it
 - other persons

Duty to consult with other duty holders (clause 27)

- Where more than 1 person is a duty holder
- Overlapping duties
- **So far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with all other persons who have a duty in relation to the same matter**
- Documentary evidence of having done this is critical as are audit procedures

PCBU: other obligations

So far as is **reasonably practicable**:

- entry and exit of the workplace and anything arising from the workplace
- fixtures, fittings, plant
 - Manages or controls
 - Manufactures/designs
 - Supplies/supply business
- provision and maintenance of work environment (as influencer)
- safe plant, substances and structures – are they using your plant?

Meaning of Notifiable Incident (clause 19)

- Notification of a “near miss” (near hit):
 - “notifiable incident” defined as an incident in relation to a workplace that exposes a worker or any other person to a **serious risk to that person's health or safety** arising from an immediate or imminent exposure to:
 - 13 incidents listed including:
 - an escape, spillage, or leakage of a substance; or
 - an implosion, explosion, or fire
- Why are they occurring?

To do

- Duties capture workers not just employees - policies, procedures and way of working must reflect this
- **Identify the PCBUs in your network you will have a duty to consult with**
- Draft policy for managing horizontal consultation

Officer



Meaning of Officer (clause 12)

- (a) means, if the PCBU is-
 - (i) a company, any person occupying the position of a director of the company by whatever name called;
 - (ii) a partnership (other than a limited partnership), any partner;
 - (iii) a limited partnership, any general partner;
 - (iv) a body corporate or unincorporated body, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company:
- (b) includes any other person, who makes ~~or participates in making~~, decisions that affect the whole, or a substantial part, of the business of the PCBU (for example, the chief executive ~~or a chief financial officer~~); but
- (c) does not include a Minister of the Crown acting in that capacity.

Meaning of Officer (clause 12)

- Meaning of Officer now changed in Act:
 - *“includes any other person occupying a position in relation to the business or undertaking that allows the person to exercise significant influence over the management of the business or undertaking (for example a chief executive)”*
- Also included a further restriction:
 - *“to avoid doubt, does not include a person who merely advises or makes recommendations to a person referred to in paragraph (a) or (b)”*
- So Officer is now confined to people in very senior governance roles, i.e. directors and CEOs

Duties of officers (clause 39)

- Proactive duties imposed
- Exercise due diligence to ensure PCBU complies with duty or obligation
- Duty is personal & cannot be discharged to others
- Proactive – failure even if no incident
- Show leadership – own it – make it part of what you do on a daily basis
- The tone is set from the top

Due Diligence Obligations (clause 39)

1. Keep **up-to-date** with health and safety matters

2. Ensure the person running the business has **appropriate resources and processes** to manage risks to health and safety

3. **Understand** the nature of the business and its hazards and risks

4. Ensure there are appropriate **reporting and investigation** processes in place

5. Put in place **monitoring** regimes to ensure that the above matters are effective

6. Verify

Officers are liable

- An officer may be charged with an offence whether or not the PCBU has been convicted or found guilty of an offence under the Act
- Important to know if you are caught by the duties for officers and/or have to manage PCBU duties

Consequences of breaches of duties

Clause	Notes	Liability
42	Offence of reckless conduct – most serious Breach duty and exposes individual to risk of death or serious injury or illness & is reckless as to the risk	<u>Individual who is not a PCBU or officer</u> 5 years' imprisonment &/or fine not exceeding \$300,000 <u>PCBU or OFFICERS</u> 5 years' imprisonment &/or fine not exceeding \$600,000 <u>Corporation</u> Fine not exceeding \$3million
43	Failure to comply & exposes person to risk of death or serious injury or illness	<u>Individual who is not a PCBU or officer</u> Fine not exceeding \$150,000 <u>PCBU or OFFICERS</u> Fine not exceeding \$300,000 <u>Corporation</u> Fine not exceeding \$1.5million
44	Failing to comply with duty	<u>Individual who is not a PCBU or officer</u> Fine not exceeding \$50,000 <u>PCBU or OFFICERS</u> Fine not exceeding \$100,000 <u>Corporation</u> Fine not exceeding \$500,000

Management responsibilities



Workers



Meaning of Worker (clause 14)

In this Act, unless the context otherwise requires, a **worker** means, a person who carries out work in any capacity for a PCBU, including work as:

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor; or
- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
- (e) a ~~homeworker~~ outworker (including a homeworker); or
- (f) an apprentice or trainee; or
- (g) a person gaining work experience (~~for example,~~ or undertaking a work trial; or
- (h) a volunteer; or
- (i) a person of a prescribed class.

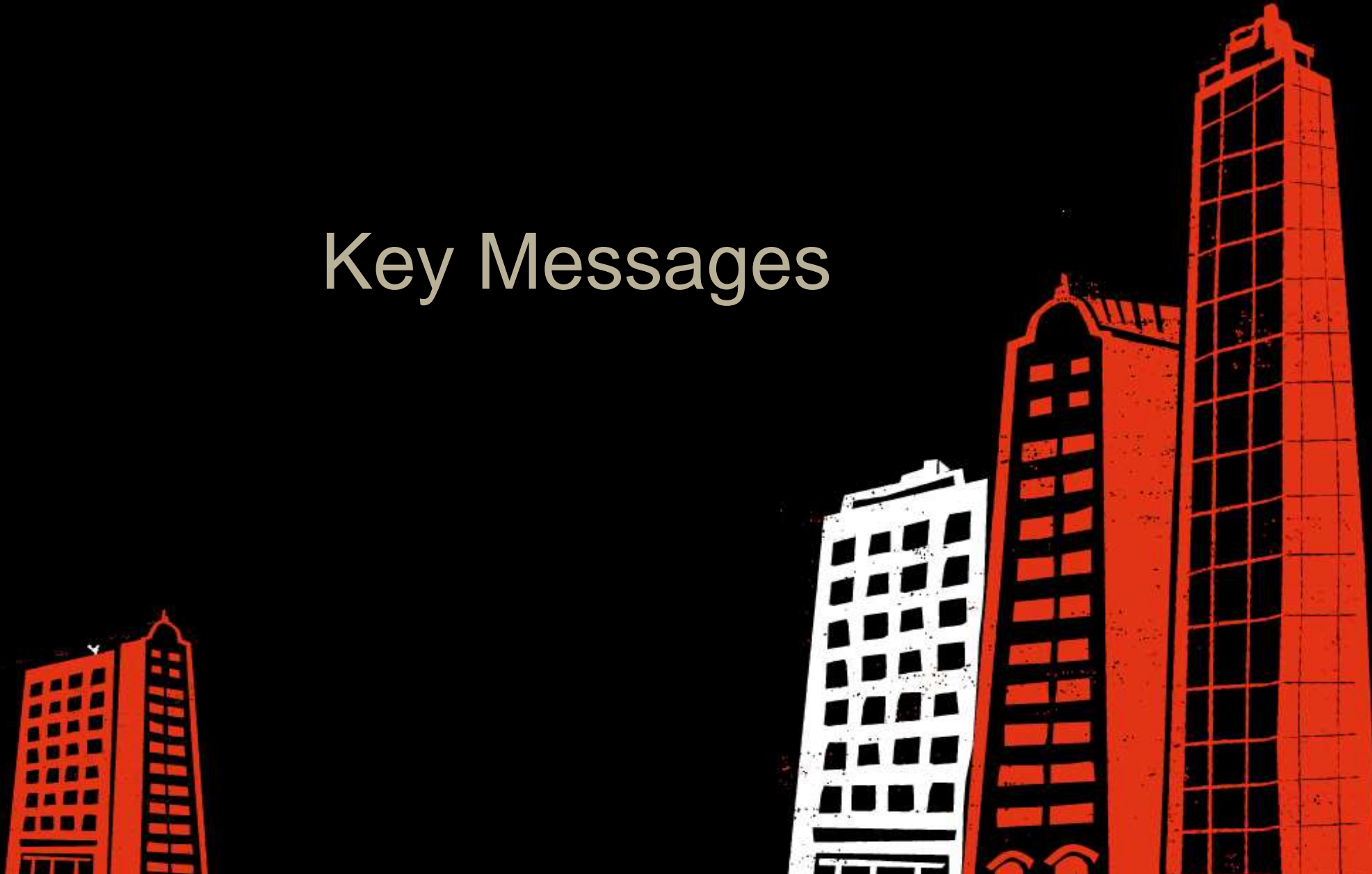
Duties of workers (clause 40)

- Only have to take reasonable care for their own safety and towards others
- Comply as far as reasonably able with instructions
- Co-operate with policies and procedures that have been notified

Worker Engagement

- PCBUs have a duty so far as is reasonably practicable to engage with workers (clause 61):
 - who carry out work for the PCBU; and
 - who are likely to be directly affected by the matter relating to their health and safety
- Nature of engagement outlined (clause 62) and includes:
 - relevant information shared with workers
 - reasonable opportunity afforded to workers to express their views and contribute to decision making

Key Messages



Key Messages

- Major overhaul
- Take time to understand the changes
- Be prepared
- Action needs to be taken