

## **Health and Safety Reform Bill report back: Questions and Answers**

### **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.

### **How will the PCBU approach work?**

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.

### **Are small businesses exempt from engaging in worker participation processes?**

No. Small businesses with fewer than 20 workers will still be required to have worker participation, but they will be able to design a system to achieve this that is most appropriate for their small business.

### **Will small businesses still be required to have health and safety committees or health and safety representatives as part of their worker participation practices?**

Small businesses (fewer than 20 workers) in lower risk industries will be excluded from the specific requirement to have a health and safety representative or establish a health and safety committee on request.

Small businesses with fewer than 20 workers in high risk sectors will still have a requirement to have a health and safety representative or to consider establishing a committee when requested by 5 or more workers or by a health and safety representative.

### **Which sectors will be regarded as high risk?**

New regulations will outline in detail which sectors would be high risk and subject to this requirement. These will be based on data and evidence and are yet to be determined.

### **Will organisations that have volunteers be regarded as Persons Conducting Business or Undertaking (PCBUs)?**

Changes to the Bill by the Select Committee mean the coverage of volunteers will remain as it is under the current law which distinguishes between casual volunteers and volunteer workers, ensuring volunteering will not be affected.

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.

### **When is the farm a “workplace” under the Bill?**

A “workplace” means the area where work is being undertaken or usually takes place.

This has been further clarified in the case of farms, where the farmers’ duties will 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.

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 Government will propose to make another change to the Bill through an SOP to clarify that the family farmhouse is not part of the farm workplace.

### **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 persons.

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.

### **Will the Bill include a ‘causing death’ offence?**

No.

### **Why won’t the Bill include a ‘causing death’ offence?**

The Bill 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 make a change through an SOP to the sentencing guidance in the Bill to emphasise 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.