Workplace Health and Safety Reform

Yesterday the Government released their response to the recommendations of the Independent Taskforce on Workplace Health and Safety (the taskforce) in a document titled ‘Working Safer – A blueprint for health and safety at work’.

The extensive document details the largest reform of health and safety in New Zealand in over 20 years. Much of what has been included was anticipated by the presenters at the recent IoD Health and Safety Governance events. The key areas that will have an impact on directors and those with governance responsibilities are:

- The introduction of a new law – Health and Safety at Work Act (based on the Australian Model Law) which includes:
  - the introduction of a positive due diligence duty on those in governance roles meaning they must actively manage workplace health and safety. If they fail to perform their duties in this area they will face the consequences.
  - a more severe penalty regime that increases the maximum penalty for the most serious offences to up to five years imprisonment.
  - changes to the definition of duty holder moving to a ‘person conducting a business or undertaking’ (PCBU). This will allocate duties to those in the best position to control health and safety risks.
  - clearer tests to identify what ‘reasonably practicable’ actions given the circumstances would be.
- Enhanced worker participation
- Stronger collaboration between government, business, workers and experts.
- The complete list of other reforms can be read in the full document.

The due diligence duty will include a requirement that the officer takes reasonable steps to:

- gain an understanding of the nature of the operations of the PCBU and generally the hazards and risks associated with those operations, and
- ensure the PCBU has, and implements, processes for complying with their duties.

The duty will be individual to the officer, meaning that as long as a director exercises due diligence they cannot be held liable for the conduct of other directors. Failure to comply could result in prosecution and a fine or imprisonment. A term of imprisonment will only be imposed if he or she has also been proven to be reckless as to the risk (proof being the consequences had been foreseen and there was an intention to continue the conduct regardless). This removes the automatic liability directors had under the current law if the ‘directed, authorised, assented to, acquiesced in, or participated in a failure’.
While there has been some public debate about the introduction of corporate manslaughter as an offence, no decision on this was made in the document. The possibility of extending manslaughter to corporations has been referred to the Minister of Justice for consideration.

Regulations, guidance and Approved Codes of Practice (ACOPs) will be developed to help provide PCBUs with certainty and an understanding of how to fulfil their responsibilities. The IoD believes that the recent publication ‘Good Governance Practice Guideline for Managing Health and Safety Risks’ that was jointly produced with the Ministry of Business, Innovation and Employment (MBIE) will likely be re-drafted as an ACOP. We have offered our assistance to the regulator.

The Health and Safety at Work Act and supporting regulations are expected to be in place by the end of 2014 and will come into effect shortly after that. In order to fund the additional money required for the regulator the health and safety levy will increase by an average of 3 cents (currently 5 cents) to 8 cents per $100 of wages.

The IoD is supportive of the reforms outlined in the report and will be doing everything we can to assist implementation. Following on from the events we have already run on health and safety governance, we will be running another series in 2014. These events will take a much more detailed look at all the changes in health and safety affecting directors before they come into force. In the meantime we will endeavour to keep members updated on the progress of the reforms.

As we did after the release of the Pike River report we have contacted the Minister and the regulator offering the full support and resources of the IoD to effectively implement the recommendations. We support the target of a 25% reduction in serious workplace injuries and fatalities by 2020 and the right of every New Zealander to expect that they will return home to their families after each and every work day. We will be playing our part.