



Health and Safety Responsibilities for Agricultural Pilots

**“Pilots in focus”
NZAAA Leadership Summit. Wellington 2014**

Overview

Health and Safety in Employment Act 1992

- Key duties and applicability to Ag Pilots
- Recent prosecutions of workers for HSE breaches

Health and Safety Reform Bill

- Broad scope of reform and worker specific changes
- Penalties for breaches

Health and Safety Regulations

- Introduction of new Regulations
- How this may affect Ag Pilots

Oversight and Enforcement

- WorkSafe NZ
- Investigation of 'notifiable events'



Health and Safety in Employment Act 1992

Object: To promote the prevention of harm to all persons at work and other persons in, or in the vicinity of, a place of work

Duties of employers

Employers must take *“all practicable steps”*:

- To ensure the safety of employees, including to provide a safe work environment; ensure plant and equipment is safe for use; develop procedures for dealing with emergencies; and have systems to eliminate, isolate or minimise hazards
- That no action or inaction of any employee while at work harms any other person

Duty to provide adequate training and supervision of staff



Duties of principals

- s18: Principals must take “*all practicable steps*” to ensure that no contractor or subcontractor, or their employees, is harmed while working for the principal

Duties of persons controlling place of work

- s16: Person who **controls place of work** must take “*all practicable steps*” to ensure no hazard in workplace harms person lawfully working in the workplace;

Duties of employees

- s19: Employees must take “*all practicable steps*” to ensure their own safety at work; and that no action or inaction of the employee while at work causes harm to any other person



“All practicable steps”

- s2A(1): Must take all steps to achieve a safe result that it is **reasonably practicable** to take in the circumstances, having regard to
 - The nature and severity of any injury or harm that may occur
 - The degree of risk or probability of injury or harm occurring
 - How much is known about a hazard, and any means of eliminating, isolating or minimising the hazard
 - The availability and cost of safeguards (weighed against the potential consequences of failing to provide those safeguards)
- s2A(2): Person required to take all practicable steps – only required to take those steps in respect of circumstances that the person knows or ought reasonably to know about
- Judgment of what is “reasonably practicable” will take into account common practice and knowledge within an industry



Applicability to Agricultural Air Operations

Agricultural Air Operators: Obligations/duties may arise as:

- Employer
- Principal
- Person in control of a place of work

Pilots: Obligations / duties may arise as:

- Employee
- Chief Pilot
- Person in control of a place of work, eg Base pilot CAR 137.203

Penalties for breaches

Offences liable to conviction and fine of up to \$250,000 and/or reparation orders for harm / loss caused



March 2014: Construction workers fined over fall from scaffolding

- April 2013: Construction site worker fell 3 metres after alterations to scaffolding left a trap door in a mobile scaffold deck unsecured, suffering three leg fractures and dislocation

- Construction company site manager, and an employee of the scaffolding company prosecuted for failing to take all practicable steps to ensure that their actions or inactions at work did not cause harm to another person

- Construction company site manager:
 - Was in charge of managing the construction site, and employees and subcontractors working on the project
 - Gave approval for two construction workers to raise the scaffolding deck by 500 millimetres, but:
 - neither held a current Certificate of Competence to do the work; and
 - he failed to notify the scaffolding company of the alterations



- Scaffolding company employee responsible for conducting a regular weekly check on the scaffolding
- Checked scaffolding the day before the accident and signed the scaffolding tag indicating it was safe to use
- Noticed before leaving the site that the scaffold deck had been raised, but based on ground level observations he decided it was safe, and did not carry out further inspection
- Construction company site manager fined \$4,500 and ordered to pay reparation of \$7,844.25
- Scaffolding company employee fined \$4,000 and ordered to pay reparation of \$6,450.75



May 2014: Quad bike rider fined for not using helmet

- 2012 - 2013: WorkSafe NZ observed Herd Manager riding quad bike on a Marlborough farm on five separate occasions without a helmet, often while carrying children
- August 2013: His employer issued with a notice prohibiting the carrying of passengers on quad bikes while at work, and requiring the use of helmets
- Copy of Notice supplied to Herd Manager, and helmets were available on site
- Despite this, WorkSafe NZ inspector spotted him on October 3 onsite, carrying a child. Neither were wearing helmets
- Prosecuted for failing to take all practicable steps to ensure his own safety and that of his passenger while at work
- Fined \$15,000



Health and Safety Reform Bill

- Recommendations of Pike River Royal Commission, and work of Government Task Force on health and safety
- Bill introduced in March 2014, new Health and Safety at Work Act expected to be enacted in 2015
- New Act replaces concepts of employer and principal with a “person conducting a business or undertaking”
- Broadens scope of duties and responsibilities across all participants involved in, or working for, a business or undertaking
- *“all practicable steps”* test replaced with *“reasonably practicable”* test:
 - largely codifies or clarifies existing “all practicable steps” legal test but -
 - Australian Courts say it is narrower than “physically possible” or even “feasible”
 - remains to be seen how it will be applied by NZ Courts



Health and Safety Regulations

- New Regulations will accompany the Health and Safety at Work Act – MBIE currently consulting on discussion document
- Regulations intended to address practices and requirements for:
 - General risk and workplace management
 - Worker participation, engagement and representation
 - Work involving hazardous substances

How this may affect duties of Ag pilots

- More detailed requirements for protective clothing and equipment
- More extensive and detailed emergency planning requirements, including an emergency response plan for incidents involving dangerous goods or hazardous substances
- Requirement to have someone trained in first aid and accessible at all times, including at remote bases or locations



Duties on workers, while at work, to:

- Take reasonable care for own health and safety
- Take reasonable care not to adversely affect health and safety of others
- Comply with reasonable instructions, and notified policies or procedures of the PCBU to allow the PCBU to meet its health and safety obligations

Worker engagement and participation

- Workers expected to be more involved in health and safety management and development of policies and procedures
- Heightened obligations on PCBU to share information and involve workers in decisions, in particular when hazards are identified or when making decisions about how to eliminate or minimise risks
- PCBU may elect, or employees may request election, of a health and safety representative;



- PCBU has obligations to provide resources and paid time off for health and safety representatives to attend approved training programs
- Larger PCBU's may be obliged to set up health and safety committees
- PCBU must take seriously recommendations of health and safety representatives, committees, or specially constituted worker groups, and document steps taken to implement recommendations, or reasons why recommendations not followed
- Unclear to what extent this intended to apply to small businesses, could create onerous obligations for both employers and employees

Penalties for breaches

Substantial increase in range and level of penalties and sanctions:

- Reckless conduct resulting in risk of death or serious injury – worker maximum fine up to \$300,000; CEOs/senior officers up to \$600,000; imprisonment up to 5 years
- Other fines for workers range from \$50,000 up to \$150,000
- Can be subject to costs order; or mandatory compliance order



- Requirement to develop and implement procedures to manage risks to health and safety of workers carrying out remote or isolated work
- Detailed requirements relating to the use, handling, generation and storage of hazardous substances and dangerous goods, such as:
 - Preparing, maintaining and displaying an inventory of all hazardous substances used and stored on site;
 - More specific requirements for storage and segregation (including minimum separation distances) of class 6, 8 and other substances;
 - Having readily available and accessible, copies of the safety data sheet for persons handling or storing such substances
 - Requirement for workplace training and supervision of workers using hazardous substances
 - Requirement to monitor health and safety of workers exposed to hazardous substances
- Will be offence not to comply with obligations/requirements under the Regulations – eg, not to hold any required qualifications/approvals to deal with hazardous substances, or not following mandatory practices



Oversight & Enforcement

WorkSafe NZ

- New government agency set up in 2013 to manage existing health and safety laws, transition into new legislative regime, and ongoing oversight and enforcement
- Already taking more active and visible role in enforcement – refer the two worker prosecution cases above
- Says it wants to work collaboratively with industries; joint focus on education and guidance, and enforcement
- Is developing generic and industry specific guidelines eg has published guidance for large companies on governance responsibilities jointly with Institute of Directors, working on small business guidelines
- To be seen: how they strike the right balance; also how much transition period the government allows to come into compliance



Investigation of notifiable events

- Extended obligations on PCBUs to report “notifiable events” to WorkSafe NZ; these include notifiable injuries or illnesses, and notifiable incidents
- Notifiable injury or illness = injuries or illnesses requiring immediate treatment including serious head injuries, eye injuries, burns, amputations; or admittance to hospital within 48 hours
- Notifiable incidents = incident exposing a worker or any other person in the workplace to serious risk to health or safety arising from immediate or imminent exposure to certain specified events
 - Includes escape or spillage of substances, explosions, electric shocks
- WorkSafe NZ may carry out investigation, or require Duty Holder to complete ‘Duty Holder Review’ and file Review with WorkSafe NZ
- WorkSafe NZ may follow up investigation or review to ensure identified actions or remedial steps implemented or completed
- Remains to be seen – whether Duty Holder Reviews could lead to increased risk of enforcement action



Help

Need advice on health and safety laws, assistance with updating health and safety manual and policies, or help dealing with WorkSafe NZ?

- 33% discount on standard AMC Legal hourly rate to attendees of NZAAA Leadership Summit
- WorkSafe NZ, NZ CAA, NZAAA guidance and advice available, publications available online

