



Electricity Engineers'
Association

Health & Safety At Work Act, Repeals and Revocations, Consequential Amendments to Legislation and Regulations

Summary and Key Points for Information only from the HSAW Act

November 2015

This Summary outlines key points from the Health and Safety At Work Act 2015 (effective from 4/4/2016) and is for information only. The summary has been prepared by Harvey O'Sullivan Consulting Ltd and remains the property of Harvey O'Sullivan Consulting Ltd.

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HEALTH AND SAFETY AT WORK ACT, REPEALS AND REVOCATIONS, CONSEQUENTIAL AMENDMENTS TO LEGISLATION AND REGULATIONS

1. Except as identified in paragraph 2 below, the Health and Safety at Work Act (HSWA) comes into force on 4 April 2016. At that point, the legislation set out in Schedule 4 of the HSWA is repealed and revoked, and the consequential amendments to legislation set out in Schedule 3 of the HSWA take effect.
2. The only provisions of the HSWA which are effective prior to 4 April 2016 are those set out in Part 5 subpart 3, which are the regulation making powers, the power of the regulator to grant exemptions, the provisions allowing for the approval of codes of practice under the HSWA and those allowing for the approval of safe work instruments. Those provisions came into force on 5 September 2015.
3. Note that until the HSWA comes into effect in April 2016, the current Health and Safety in Employment Act 1992 remains in force.
4. There are also a number of Amendment Acts in place to provide consistency with the HSWA. They are the Accident Compensation Amendment Act, the Employment Relations Amendment Act, the WorkSafe New Zealand Amendment Act and the Hazardous Substances and New Organisms Amendment Act. The latter two are explained in more detail in section A below.
5. The HSWA repeals the Health and Safety in Employment Act and the Machinery Act.
6. The HSWA revokes the Health and Safety in Employment (Prescribed Matters) Regulations, the Machinery (Exclusion of Some Pressure Equipment, Cranes, and Passenger Ropeways) Order and the Noxious Substances Regulations.
7. Consequential amendments to legislation of relevance to the electricity industry and which are of note¹ are set out in section B below.
8. A synopsis of the HSWA is set out in Section C below.

SECTION A

WorkSafe New Zealand Amendment Act 2015 (WSAA)

The WorkSafe NZ Act establishes WorkSafe, its board and status as a crown entity, as well as setting out WorkSafe's objective and functions. The WorkSafe NZ Act also contains administrative and continuation of employment provisions relating to the transition of employees to WorkSafe.

The WSAA contains various amendments which are drawn from the amendments to the Health and Safety at Work Bill following the Select Committee report. Those amendments of note are those to:

- the main objective of WorkSafe, to provide an additional objective to "...promote and contribute to the safe supply and use of electricity and gas in New Zealand";
- the functions of WorkSafe, to publish information about its approach to enforcing compliance with the HSWA as well as its performance standards for investigations for enforcing compliance, development of safe work instruments, and fostering a co-operative and consultative relationship with the EPA in relation to hazardous substances.

¹ A large number of amendments are updating other legislation to be consistent with the definitions under the HSWA and reflect the new title of the HSWA

The amendments are self-explanatory and reflect matters that WorkSafe would reasonably be expected to carry out.

SECTION B

Electricity Act 1992 (EA)

1. The HSWA replaces a number of defined terms in the EA with those in the HSWA. The notable replacements are as follows
 - para (c) of the definition of serious harm, which is now “a notifiable injury or illness as defined in section 23 of the Health and Safety At Work Act 2015”. The replacement lists various injuries which would reasonably be contemplated as being serious, but also extends the scope of “serious harm” under the EA by:
 - including an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment, as well as an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance. Note that this provision contemplates exposure to a substance and so this would confine the application of the provision.
 - In addition, any serious infection to which the carrying out of work is a significant contributing factor, including any infection that is attributable to carrying out work. While the types of infections are set out, they are not necessarily exhaustive and so there may also be other infections arising out of work which are covered, but not expressly listed.
 - Note, too that the definition now includes any other injury or illness declared by regulations to be a notifiable injury or illness for the purposes of section 23.
 - Including a definition of “reasonably practicable”. The definition differs however from the HSWA definition by extending its scope to include the protection of property.
2. In relation to the notification of accidents and serious harm, the reference in section 16(6)(b) of the EA to s.25(3) of the Health and Safety in Employment Act 1992 (HSE) is changed to s.56 of the HSWA.
3. While there are a number of amendments to the provisions in the EA which cover Safety Management Systems, these essentially update terminology (and associated contextual matters) to align with the HSWA.
4. It is worth noting that “safe work instruments” have legal effect to the extent that any regulations under the HSWA refer to it. Although not defined, their purpose is set out in s.234 of the HSWA “to define terms, prescribe matters, or make other provision in relation to any activity or thing, including (without limitation) listing standards, control of substances, and competency requirements.”. This appears to mean that the documents which it may be desirable for the industry to comply with (which could include SM-EI) could be given legal effect if the provisions required to enable that were followed.

Gas Act 1992 (GA)

1. The HSWA replaces a number of defined terms in the GA with those in the HSWA. The notable replacement is para (d) of the definition of serious harm, which is now “a notifiable injury or illness as defined in section 23 of the Health and Safety At Work Act 2015”. The replacement lists various

injuries which would reasonably be contemplated as being serious, but also extends the scope of “serious harm” under the GA by:

- including an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment, as well as an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance. Note that this provision contemplates exposure to a substance and so this would confine the application of the provision.
 - In addition, any serious infection to which the carrying out of work is a significant contributing factor, including any infection that is attributable to carrying out work. While the types of infections are set out, they are not necessarily exhaustive and so there may also be other infections arising out of work which are covered, but not expressly listed.
 - Note, too that the definition now includes any other injury or illness declared by regulations to be a notifiable injury or illness for the purposes of section 23.
2. Including a definition of “reasonably practicable”. The definition differs however from the HSWA by extending its scope to include the protection of property.
 3. In relation to the notification of accidents and serious harm, the reference in section 17(6)(b) of the GA to s.25(3) of the Health and Safety in Employment Act 1992 (HSE) is changed to s.56 of the Health and Safety At Work Act 2015.
 4. While there are a number of amendments to the provisions in the GA which cover Safety Management Systems, these essentially update terminology (and associated contextual matters) to align with the HSWA.
 5. It is worth noting that “safe work instruments” have legal effect to the extent that any regulations under the HSWA refer to it. Although not defined, their purpose is set out in s.234 of the HSWA “to define terms, prescribe matters, or make other provision in relation to any activity or thing, including (without limitation) listing standards, control of substances, and competency requirements.”.

Plumbers, Gasfitters and Drainlayers Act

The definition of ‘serious harm’ is amended to include notifiable injury or illness.

Electricity (Safety) Regulations 2010 (ESR)

Again, a large number of amendments update terminology (and associated contextual matters) to align with the HSWA (for example, the replacement definition of safety management system is updated to reflect that the system has the purpose of ensuring the electricity supply system prevents the specified risks (which are unchanged) “so far as is reasonably practicable”).

Gas (Safety and Measurement) Regulations 2010 (SR 2010/76)

1. Again, a large number of amendments update terminology (and associated contextual matters) to align with the HSWA (for example, the replacement definition of safety management system is updated to reflect that the system has the purpose of ensuring the gas supply system prevents the specified risks (which are unchanged) “so far as is reasonably practicable”).
2. Regulation 75(1) (which contains the responsibilities of persons hiring or leasing out gas appliances etc) now includes those persons who **offer** to hire or lease out (emphasis added). This clearly broadens the

application of the provision to a wider range of persons. Further, the obligation to ensure the system is safe now applies **before** the offer, or the hire or lease, (emphasis added) rather than at the commencement of the hire or lease. This means that the obligation starts earlier than it currently does.

Hazardous Substances (Packaging) Regulations 2001

1. Again, the amendments update terminology to align with the HSWA.

Health and Safety in Employment (Pipelines) Regulations 1999

1. It is worth noting that regulation 19 is revoked. This regulation specified various regulations with which a failure to comply is an offence. It now appears that offences are either those specified in the HSWA or specified in regulations to be made under the HSWA.

Health and Safety in Employment (Pressure Equipment, Cranes, Passenger Ropeways) Regulations 1999

1. Again, the amendments update terminology to align with the HSWA.

Health and Safety in Employment Regulations 1995

1. Again, the amendments update terminology to align with the HSWA.
2. It is worth noting that Part 8 is revoked. This part specified various regulations with which a failure to comply is an offence. It now appears that offences are either those specified in the HSWA or specified in regulations to be made under the HSWA.

SECTION C

1. Focus/General

The focus of the HSWA is to protect workers and other people against harm to their health, safety and welfare by eliminating or minimising risks at work.

The HSWA places duties on various categories of people, and goes on to specify how worker participation should take place. It then covers how the new legislation will be enforced, and the penalties for breaching it.

Proceedings for offences under the Act may be brought by WorkSafe (or other designated authority) within 12 months of the date of the incident to which the offence relates, or within 6 months of a coronial report. However, private prosecutions brought by a person other than WorkSafe may be brought within 2 years after the incident to which the offence relates.

Note that where a duty is placed on a PCBU or any other person under the HSWA, the management of risks requires the elimination of risks to health and safety, so far as is reasonably practicable, and if it is not reasonably practicable to eliminate risks, to minimise those risks so far as is reasonably practicable. It is also worth noting that this is only to the extent to which the person has, or would reasonably be expected to have, the ability to influence and control the matter to which the risks relate.

2. Key Definitions

Some key terms used in the HSWA are defined, and it is worth noting some of these before considering obligations under the HSWA.

- “relevant health and safety legislation” means the HSWA and regulations, as well as any provisions of the following Acts (or any regulations made under those Acts) under which the regulator has functions: Electricity Act 1992; Gas Act 1992; Hazardous Substances and New Organisms Act 1996; WorkSafe New Zealand Act 2013.
- “reasonably practicable” (this replaces the current “all practicable steps” test) means “that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including:
 - the likelihood of the hazard or the risk concerned occurring
 - the degree of harm that might result from the hazard or risk
 - what the person concerned knows, or ought reasonably to know, about the hazard or risk and the ways of eliminating/minimising the risk
 - the availability and suitability of ways to eliminate/minimise the risk
 - cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.
- “workplace” is a place where work is being carried out or is “customarily” carried out for a business or undertaking. It includes any place a worker goes or is likely to be while at work. This reflects the fact that some areas are not a workplace all the time. This will preclude sites where works have been completed and are no longer being used as a workplace (for example, a power pole).
- “notifiable injury or illness” (which does not include any injury or illness declared by regulations not to be a notifiable injury or illness for the purposes of the HSWA) means injuries or illnesses that require the person to have immediate treatment (other than first aid). An extensive list is set out and includes the amputation of any part of a body, a serious head or eye injury, a serious burn, the separation of skin from an underlying tissue (such as de-gloving or scalping); an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment or medical treatment within 48 hours of exposure to a substance.
- “notifiable incident” (which does not include an incident declared by regulations not to be a notifiable incident for the purposes of the HSWA) means an unplanned or uncontrolled 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 incidents including an escape, a spillage, or a leakage of a substance, an implosion, explosion, or fire, escape of gas or steam, escape of a pressurised substance; an electric shock, fall or release from a height of any plant, substance, or thing, the collapse, overturning, failure, or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with regulations and the collapse or partial collapse of a structure.
- “notifiable event” means events that arise from work, and are listed as the death of a person, a notifiable injury or illness and a notifiable incident.

3. Management of Risks

The key principles relating to duties under the HSWA include the management of risks. The HSWA imposes a duty that requires the elimination of risks to health and safety, so far as is reasonably

practicable and, if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

However, this is qualified by compliance being “to the extent to which the person has, or would reasonably be expected to have, the ability to influence and control the matter to which the risks relate”.

“Risk” is a key word used frequently under the HSWA although it is not defined.

WorkSafe Australia has a Code of Practice which contains information on the management of risks, and could reasonably be expected to be a guide in a New Zealand context. The Code specifies 4 steps which are involved in risk management. They are:

- identify hazards – find out what could cause harm
- assess risks if necessary – understand the nature of the harm that could be caused by the hazard, how serious the harm could be and the likelihood of it happening
- control risks – implement the most effective control measure that is reasonably practicable in the circumstances
- review control measures to ensure they are working as planned.

An assessment of risks involves:

- assessment of the severity of the harm – e.g. how many are exposed to it, whether one failure might lead to others
- assessment of the likelihood that someone will be harmed - the level of risk will increase as the likelihood of harm and its severity increases
- managing risks – which involves eliminating them so far as is reasonably practicable, or if that is not possible, minimising the risks so far as is reasonably practicable.
- deciding how to control risks. Consulting with workers and their representatives who will be directly affected by this decision is important. Because there are a lot of ways to control risks, various control options should be considered and the one that most effectively eliminates the hazard or minimises the risk in the circumstances chosen. This may involve a single control measure or a combination of different controls that together provide the highest level of protection that is reasonably practicable. The control option should provide people protection, be reliable, available for use and suitable for the circumstances in the particular workplace
- Procedures should then be developed, training on those held, and information provided
- Obviously it is important that controls are regularly reviewed to ensure they remain effective, and monitoring must be carried out so that the controls can be reviewed if they are no longer providing the level of protection required.

4. Duties

The HSWA places obligations on:

- a) a person (which includes an individual, a partnership, a company, and an association) conducting a business or undertaking (**PCBU**):
 - There is a primary duty on all PCBUs to ensure the health and safety of its workers and of other workers whose activities are influenced or directed by the PCBU. It must also ensure that the health and safety of any other person is not put at risk because of the work being carried out. This includes providing a safe work environment, with safe equipment, and suitable procedures in place. It also includes the provision of adequate facilities for workers' welfare in working, information, training and supervision where that is necessary to protect them, as well as monitoring workers' health and conditions at the workplace in order to prevent injury.

- It is worth noting that in the case of farms, the duty of farmers managing or controlling workplaces only extends 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 work is being carried out in that part of the farm at the time. These changes mean that the farmer's duty to manage and control the farm does not apply to those such as recreational users. The farmer's duties to electricity lines companies carrying out work on their assets located on farm land (unless farm work is being carried out in that part of the farm at the time) is not clear and requires specific clarification from WorkSafe (The clarification would also apply to lines company assets on land other than farms, e.g. forests, DOC land etc). If farm work is being carried out, the farmer will also have a duty of care to ensure, so far as is reasonably practicable, that the health and safety of other persons (such as the lines owner's workers) is not put at risk from the farm work carried out.
- There is also a duty on a PCBU to notify the regulator of a notifiable event by the fastest means – and, if in writing, it must be in a form approved by the regulator.
- There are then duties placed on PCBUs who conduct specified activities. These are:
 - management or control of a workplace. This covers the workplace, entries and exits and any other health and safety risks arising in the workplace
 - management or control of fixtures, fitting and plant
 - design of plant substances and structures
 - The duties of this PCBU (a designer) will be very relevant to the electricity industry and requires designers to ensure that the plant, substance or structure is designed to be without risks, including to those who inspect, clean, maintain or repair.
 - manufacture, importation and supply of plant
 - installation, construction or commissioning of plant or structures.
 - The duties of the PCBU who installs, constructs or commissions plant or a structure will be very relevant to the electricity industry and requires the plant or structure to be installed, constructed or commissioned to be without risks.

Management or control does not include occupying a residence unless that is for the purpose of, or part of, the business or undertaking.

None of the duties is to those at the workplace unlawfully.

- The obligation to comply with the duties is "so far as reasonably practicable", rather than being an unqualified obligation. This means that the PCBU is only required to do what at the time it is reasonably able to do to ensure health and safety by taking account of and weighing up a number of matters, including the likelihood of a risk occurring, degree of harm, what the relevant person knows about the risk and ways of eliminating or minimising it and the suitability of doing so and costs of doing so.

A PCBU who designs, manufactures, or is in any other way involved in the supply of any plant, substances or structures must ensure that not only is their own workplace safe, but also that those plant, substances or structures are without risk to the health and safety of the people who will be working with them.

- b) There are also more general obligations on PCBUs under the HSWA, including not to impose a levy or charge on a worker in relation to health and safety (which includes requiring an employee to provide their own personal protective equipment). The other general

obligations, while not expressly on the PCBU, nevertheless are predominantly likely to apply to PCBUs rather than workers. These include no contracting out of the HSWA, no insurance against fines and no transfer of duties under the HSWA. In a notifiable incident, event etc (which includes serious injuries or illness, death, explosions, electric shock, collapse of a structure) there is a duty to notify the regulator, to keep records of each notifiable event for at least 5 years following it and to preserve sites until authorised by an inspector. The latter does not include matters such as providing assistance to an injured person or removing a deceased person, what is essential to make the site safe or to minimise the risk of a further notifiable event or for which an inspector or the regulator has given permission.

c) Officers of a PCBU:

These are defined in the HSWA as meaning the directors of a company and partners of a partnership, and for other types of business, people in a similar role. It also includes any other person occupying a position that allows them to exercise significant influence over the management of the business, such as a chief executive, but does not include a person who merely advises or makes recommendations to the management team.

Officers must exercise due diligence to ensure that a PCBU complies with its obligations. This should be done by keeping up-to-date on health and safety matters, as well as understanding the business, its hazards and risks, ensuring that the PCBU has appropriate health and safety policies to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking, and which are adhered to.

In practice this will mean that directors and senior managers will need to (among other things) be actively informed of the business, its risks and hazards, the steps to manage those etc.

WorkSafe has released a guide in the form of FAQs which provides a useful explanation of WorkSafe's approach to the duties of officers under HSWA. The document can be viewed at: <http://www.business.govt.nz/worksafe/about/reform/questions-and-answers>

d) Workers:

This includes an employee, a contractor or subcontractor and their employees, an employee of a labour hire company who has been assigned to work in the business or undertaking, and an apprentice or a trainee. There may also be others prescribed. When at work, a worker has to take reasonable care for their own health and safety, as well as ensuring that their activities do not adversely affect the health and safety of others. They must also comply with reasonable instructions given by the PCBU to allow the PCBU to comply with the HSWA and regulations under it as well as co-operate with any reasonable policies and procedure of the PCBU relating to health or safety at the workplace that has been notified to them.

e) Other people at a workplace:

Any other person at a place of work must also look out for their own health and safety, comply with the PCBU's instructions and ensure that their acts or omissions do not affect the health and safety of others.

5. Worker participation

- a) Because duties are owed by workers as well as by PCBUs and officers, it is important that workers are involved in the health and safety policies of a business. To facilitate this, the HSWA sets out a number of requirements and duties on the PCBU for worker participation.

- b) Note that existing worker participation systems and health and safety representatives can transition to the new regime. However, existing health and safety representatives will need to do extra training in order to be able to carry out their powers under the HSWA (such as to issue a provisional improvement notice and direct unsafe work to cease).
- c) A PCBU will need to communicate with their workers and, where there are specific procedures for engagement, comply with them. This means giving workers information about hazards in the workplace, as well as engaging with them in specified situations, including identifying hazards, making decisions about how to eliminate or minimise those hazards, developing procedures for anything to do with health and safety, and making decisions about facilities for worker welfare.
- d) The duty on PCBUs to engage with workers must be carried out particularly when:
 - identifying hazards and assessing risks to work health and safety arising from the work
 - making decisions about ways to eliminate or minimise those risks
 - making decisions about the adequacy of facilities for the welfare of workers
 - proposing changes that may affect the health or safety
 - when making decisions about the procedures for matters such as engaging with workers, monitoring their health, monitoring the conditions at any workplace under the management or control of the PCBU, providing information and training for workers, when making decisions about procedures for resolving work health or safety issues at the workplace and when developing worker participation practices.
- e) A PCBU must also have practices that provide reasonable opportunities for workers to participate in health and safety matters, and comply with them. In this context, reasonable means having regard to matters including the number of workers, number of different workplace sites, the nature of the work and associated risks and the willingness of workers to develop participation practices.
- f) A PCBU may decide that one or more health and safety representatives should be elected to represent the workers.
- g) A worker may notify the PCBU that they would like a health and safety representative to be elected. There is no obligation on the PCBU to do this unless there are 20 or more workers in the business or the business is high risk (the “exemption”).
- h) What constitutes a high-risk industry is to be specified in regulations. In the interim, the Government has released a list of high risk industries for the purposes of establishing whether a PCBU needs to allow elections for health and safety representatives and the creation of health and safety committees. These industries will be confirmed by Regulation, but at this stage include businesses that carry the risk of a catastrophic event causing multiple fatalities, any industry with a fatality rate greater than 25 per 100,000 workers or a serious injury rate of more than 25 per 1000 workers. These industries include the electricity industry.
- i) If a worker makes a request or the PCBU initiates the election of a health and safety representative the PCBU must determine 1 or more work groups which comprise all the workers unless it considers inappropriate, in which case the PCBU must ensure there is effective worker representation, the health and safety representative is accessible to the workers, and meets any other requirements prescribed.

- j) A PCBU may establish a health and safety committee, or the establishment of a committee may be requested by five or more workers or by a health and safety representative. A PCBU will have to comply with a request for a health and safety representative or committee if they have 20 or more workers or are in a high-risk industry (see paragraph (h) for what might constitute high risk).
- k) There are further requirements in schedule 2 covering functions and powers of health and safety representatives and health and safety committees.

In relation to representatives, the requirements of schedule 2 include to:

- receive additional health and safety training
- issue improvement notices against any person who they believe is contravening a provision of the legislation (note that the PCBU may ask WorkSafe to get an inspector to review the notice)
- direct a worker to cease work if they believe that the work would expose someone to a serious risk
- represent the workers in the work group in matters relating to health and safety and promote their interests
- investigate complaints from workers in the work group regarding health and safety
- inquire into health and safety risks
- inspection of workplace sites

In relation to committees, these include to:

- facilitate co-operation between the PCBU and workers in instigating, developing, and carrying out measures designed to ensure the workers' health and safety at work
- assist in developing any standards, rules, policies, or procedures

- l) The schedules also contain duties of PCBUs in relation to health and safety representatives and health and safety committees

In relation to representatives, the requirements of schedule 2 include that the PCBU must:

- consult, so far as is reasonably practicable, about health and safety
- allow a health and safety representative to spend as much time as is reasonably necessary to perform his or her functions or exercise his or her powers under the HSWA
- provide any information necessary to enable the health and safety representative to perform any resources, facilities, and assistance that are reasonably necessary or prescribed by regulations to enable the representative to perform his or her functions and exercise his or her powers under the HSWA
- allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided
- Any time that a health and safety representative spends for the purposes of performing their functions or powers must be with the pay that they would otherwise receive for performing normal duties.

If a health and safety representative makes a recommendation regarding work health and safety, the PCBU must, within a reasonable time adopt the recommendation or provide a written statement to the health and safety representative setting out the reasons for not adopting the recommendation.

In relation to committees, the requirements of schedule 2 include that the PCBU must:

- consult, so far as is reasonably practicable, about health and safety matters with a health and safety committee
- allow each member to spend as much time as is reasonably necessary to attend meetings of the committee or to carry out functions as a member
- provide information including information relating to hazards, and the health and safety of the workers at the workplace.
- Any time that a committee spends for the purposes of performing their functions or powers must be with the pay that they would otherwise receive for performing normal duties.

If a health and safety committee makes a recommendation regarding work health and safety, the PCBU must, within a reasonable time adopt the recommendation or provide a written statement to the health and safety representative setting out the reasons for not adopting the recommendation.

6. Ceasing work

A worker may cease, or refuse to carry out, work if they believe on reasonable grounds that carrying out the work would expose them or another person, to a serious risk to health or safety arising from an immediate or imminent exposure to a hazard. They can continue to do so if the matter is not resolved by the PCBU. Note that this does not authorise a worker to refuse to do work that, because of its nature, inherently or usually carries an understood risk to the worker's health and safety, unless that risk has materially increased.

Reasonable grounds include if a health and safety representative has advised the worker that carrying out the work would expose the worker or another to a serious risk to the worker's or other person's health or safety arising from an immediate or imminent exposure to a hazard.

7. Enforcement

A WorkSafe inspector has a number of options under the HSWA to issue notices without an incident having taken place. The inspector can issue:

- an improvement notice, requiring a PCBU to take steps to prevent a breach of the legislation or to remedy a current breach, non-compliance with which can result in a fine of up to \$250,000 for a company or \$50,000 for an individual;
- a prohibition notice, prohibiting the carrying on of an activity that involves a serious risk to a person's health and safety, where non-compliance can result in a fine of up to \$500,000 for a company or \$100,000 for an individual; and
- a non-disturbance notice, requiring a site to be preserved, both where a notifiable event has occurred and in other circumstances, where a company can be fined up to \$250,000 and an individual up to \$50,000 for non-compliance.

For more serious breaches of the legislation, WorkSafe may prosecute a duty holder. Private prosecutions are also an option, although they can be commenced only once WorkSafe has advised that they are not intending to bring a prosecution, or with permission from the court.

If a prosecution for a breach is successful, the court can impose a range of penalties, including:

- fines, which can vary depending on the actual breach, up to a maximum of \$300,000 for an individual, \$600,000 for an officer, and \$3,000,000 for a PCBU;
- reparation payable to a person injured by a breach;
- costs payable to WorkSafe;
- adverse publicity orders;
- orders for restoration, to require an offender to take specified steps to fix a problem;
- project orders, requiring the offender to undertake a specified project to improve health and safety;
- injunctions, to either stop or require specific conduct of the offender; and
- training orders.

8. High Risk Plant

The HSWA will apply to high-risk plant. What is high-risk plant is to be determined in regulations, and is likely to include pressure equipment, cranes, EWPs etc

9. Offences

A number of offences are set out in relation to PCBUs duties specified in paragraph 4 of this section and those duties on officers and workers and others at a workplace :

- reckless conduct in respect of duties owed by the PCBU, worker or officer where without reasonable excuse, the relevant person engages in conduct that exposes any individual to whom that duty is owed to a risk of death or serious injury or serious illness and is reckless as to the risk to an individual of death or serious injury or serious illness.

Penalties are significant including, for an individual who is a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$600,000, or both and for any other person, to a fine not exceeding \$3 million.

- If a failure to comply with a duty exposes any individual to a risk of death or serious injury or serious illness penalties are, for an individual who is a PCBU or an officer of a PCBU, a fine not exceeding \$300,000 and for any other person, to a fine not exceeding \$1.5 million.
- A failure to comply with a duty exposes an individual who is a PCBU or an officer of a PCBU, to a fine not exceeding \$100,000 and for any other person, to a fine not exceeding \$500,000. Note however that where the PCBUs duties arise under the general duties outlined in 4b) of this section, the maximum penalty for this for an offence by an officer is the maximum penalty fixed under the provision creating the duty or obligation for an individual who fails to comply with the duty or obligation.
- Note that an officer of a PCBU may be convicted or found guilty of an offence in relation to its duties described in paragraph 4c) of this section whether or not the PCBU has been convicted or found guilty of an offence under this Act relating to the duty or obligation.