

EMBRACING HEALTH & SAFETY ON FARMS

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Introduction

This session will cover:

1. An overview of the primary changes under the Health & Safety at Work Act 2015 (*HSWA*).
2. An overview of the obligations under the HSWA:
 - a. Training of staff – what is required to discharge an employer’s obligations?
 - b. Supervision of staff – what is required to discharge an employer’s obligations?
 - c. Contractor management – what should farmers do prior to engaging contractors to work on their property?
 - d. Duties owed to visitors to farm properties.
3. Penalties under the new regime.
4. The role of ‘officers’ in an organisation and their responsibilities.
5. What to do in the event of an accident:
 - a. obligations
 - b. dealing with Worksafe
 - c. investigation reports.
6. Case studies.

A few farm accidents will be reviewed, leading to a discussion on culture within the rural community.

Some basic advice for farmers in relation to the new legislation – owner liability.

Persons in Control of a Business or Undertaking (PCBU)

1. At the centre of the HSWA sits the PCBU (the person conducting a business or undertaking). The PCBU owes a primary duty to ensure, as far as is reasonably practicable, the health and safety of:

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- a. Workers employed or engaged (or caused to be employed or engaged) in the business/undertaking
 - b. Workers whose activities in carrying out work are influenced or directed by a PCBU, and
 - c. Other persons affected by the work (i.e. visitors).
2. All PCBUs have the primary duty of care. A PCBU cannot contract out of its duties, but can enter reasonable agreements with other PCBUs to meet its duties in situations where there are multiple PCBUs. PCBUs must discharge their duties to the extent possible, based on ability to influence.
3. Farmers will owe a duty to ensure that, so far as is reasonably practicable, the workplace, means of entering the workplace and anything arising from the workplace, is without risks to the health and safety of any person.
4. However, note that in relation to the duty of a PCBU under s 37 of the HSWA (duty of PCBU who manages or controls workplace), the workplace only relates to farm buildings and structures that are used for the business and does not apply to the main dwelling house unless work is being carried out in it.
5. Under the old legislation, responsibility was placed on people in control of the workplace (e.g. an owner) to take all practicable steps to ensure others in the workplace were not harmed. This included a duty to warn authorised visitors of any work-related, out-of-the-ordinary hazards that may cause serious harm. It is anticipated that these obligations will remain the same under the HSWA.
 - a. An owner was not required to warn visitors about hazards from normal every-day activities. This included natural hazards on the property such as bluffs, landslides, rivers, swamps or wasp nests that would ordinarily be expected.
 - b. An owner would not be responsible if an authorised visitor was injured, if the owner warned the visitor about any hazards caused by work on the land, which the owner knew could harm that person and a visitor would not normally expect to face (e.g. hazards from tree felling, blasting, earth moving machinery or pest control operations).
 - c. An owner had a duty to other people near where work was being done. An owner was only responsible for managing hazards within his or her control.
6. “Authorised visitors” included anyone who:
 - a. Visited a property with the owner’s permission
 - b. Came onto the property for recreation and/or leisure
 - c. Was legally allowed to be on the property, but only if they told the owner they were coming (e.g. employees of a power company, DOC and local authorities).

7. An owner was not liable if anyone came on to the land without permission and suffered harm, whether from a work-related hazard or for any other reason.
8. Visitors maintained certain responsibilities including:
 - a. Visitors should take care of themselves by not:
 - i. Interfering with plant or equipment, including electrical installations or fences
 - ii. Entering unauthorised areas or farm buildings
 - iii. Disturbing or unnecessarily approaching farm animals or work activities
 - iv. Letting children wander unsupervised
 - v. Ignoring instructions or warnings
 - vi. Leaving gates open or damaging fences.
9. Acceptable warnings and information for visitors included:
 - a. The land owner could use information, instructions or warning signs to alert visitors to known hazards
 - b. Visitors were to make sure they took notice of any warnings and stop if in doubt until they talked to the owner for advice
 - c. Visitors were not to enter unauthorised areas
 - d. If a visitor could not contact the owner then he or she was not to go ahead
 - e. If obvious hazards existed the visitor was to take suitable precautions.

Duty to consult/overlapping duties of PCBUs

1. Overlapping PCBU duties arise where more than one PCBU has health and safety duties in relation to the same matter. Common examples include construction sites, farm properties, shopping centres and multi-tenanted buildings. PCBUs do not need to share a workplace to have overlapping duties such as in contracting chains (for example, forestry work).
2. PCBUs with overlapping duties must, so far as is reasonably practicable, work together to manage work risks. A PCBU cannot contract out of its duties, but can enter reasonable agreements with other PCBUs to meet duties.

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3. Section 34 of the HSWA states that PCBUs must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other PCBUs who have health and safety duties in relation to the same matter (overlapping duties). The s 34 duty of cooperation may also apply to other PCBUs, such as power companies, which may require access to farmland for work such as erection and maintenance of electricity transmission lines.
4. Consultation is to help:
 - a. Avoid unnecessary duplication of effort (i.e. when providing welfare or first aid facilities)
 - b. Any gaps in managing health and safety risks
 - c. PCBUs reach a common understanding and establish clear roles, responsibilities and actions
 - d. Ensure working arrangements on shared worksites and in contracting chains run smoothly and efficiently, which can lead to productivity gains
 - e. On a shared worksite or contracting chain, avoid (for example) a head contractor having to step in and sort out every problem on site or further down the contracting chain.
5. Consultation among all PCBUs should include:
 - a. Discussion on what work activities are being carried out
 - b. Agreement on the degree of influence and control each PCBU has
 - c. Agreement on who will manage what and how it will be managed
 - d. Agreement on the use of shared facilities
 - e. Monitoring and checking how things are going on an on-going basis.
6. Gaps can happen when:
 - a. There is a lack of understanding about how each PCBU's work activities may add to the health and safety risks in the workplace as a whole or in a chain of work activities
 - b. A PCBU assumes another PCBU is taking care of a particular health and safety issue
 - c. The PCBU who manages the risk is not the PCBU in the best position to do so
 - d. PCBUs do not know what other work is happening and when.
7. The extent of the duty to manage risk depends on what ability the PCBU has to influence and control the health and safety matter. Assessment of a PCBU's ability to influence and control comes from the PCBU's amount of:
 - a. Control over work activity
 - b. Control of the workplace
 - c. Control over workers.

8. A PCBU with a higher level of influence and control will usually be in the best position to manage the associated risks. A PCBU with less control or influence may fulfil its responsibilities by making arrangements with the PCBU with the higher level of influence and control. Note: the size of the PCBU or its financial resources does not equal a PCBU's ability to have control or influence over health and safety matters.

Duties to visitors

1. The Select Committee considered the issue of recreational visitors to properties (specifically farms) and any liability as a land owner when drafting the primary duty of care provision:

We note that some farmers deny access to recreational walkers because of concern about their liability for potential accidents. Our proposed amendment should encourage farmers to allow walkers on their land without being unduly concerned about their liability.

2. Therefore any compliance under the old legislation in terms of duties to authorised visitors should remain the same under the HSWA.

Duties of other persons at workplace

1. Similar duties apply to other persons at a workplace. Any person at a workplace, including customers and visitors, must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also comply, so far as they are reasonably able, with any reasonable instruction that is given by the PCBU to comply with health and safety laws.

Compliance with the HSWA

1. In practical terms, complying with HSWA should not represent a dramatic change for a PCBU that was compliant with its health and safety obligations under the previous regime.
2. Careful thought should be given to contractual relationships and, in particular, the duty to consult, co-operate and co-ordinate with other PCBUs on matters of health and safety where there are over-lapping duties. This would include the situation where visitors permitted

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access by a farmer are on-site for recreational activities in or near areas where work is being undertaken by any of the farmer's workers or contractors.