



Health & Safety at Work Act 2015 - Part 1 - Definitions

Introduction

The Health and Safety at Work Act 2015 came into force on 4 April 2016. Most employers will be broadly aware of the Act and some of the key terms. However, while we have yet to see any significant prosecutions under the Act, we consider it timely to provide a refresher on the legislative requirements.

Key Definitions

Section 17 – PCBU

The PCBU is a concept taken from the Australian Model Law. A PCBU means "a person conducting a business or undertaking" (whether alone or with others and therefore includes self-employed people) whether or not for profit or gain.

The PCBU is a broad concept which will encompass employers, principals and any person in control of a place of work.

The duties of a PCBU are all associated with the carrying out of work. Hence, three other key definitions to be aware of are that of "officer", "worker" and "workplace".

Section 18 – Officer

For a PCBU that is a company, the officers are its directors. A PCBU that is a partnership, the officers are its partners (but note in limited partnerships, only general partners are officers).

In other types of business structures and/or undertakings, people who hold a position comparable to a director of a company, such as board members, will be an officer.

Section 19 – Worker

"Worker" is a broad definition that means an individual who carries out work in any capacity for PCBU. The term includes employees; contractors/subcontractors; employees of labour hire company; apprentices; and work experience workers. There is no differentiation between employees and contractors.

The definition of worker also includes "volunteer workers". A volunteer worker is a volunteer who carries out work in any capacity for a PCBU, with the knowledge and consent of the PCBU, on an ongoing and regular basis, and that is an integral part of the PCBU. This does not include a volunteer who is participating in a

fundraising activity, assisting with sports or recreation, assisting with activities for an educational institute outside the premises of that institution, or providing care for another person in the volunteer's home.

Section 20 – Workplace

"Workplace" is also a broad definition as a place "where work is being carried out, or is customarily carried out, for a business or undertaking". The definition includes vehicles, vessels and aircraft and also includes any place a worker goes, or is likely to be, while at work. Additionally, a workplace may not remain a workplace indefinitely, once work has been carried out there.

Section 36 – Primary Duty of Care

The duty under the Act is to take "all reasonably practicable steps" – being steps that are, or were, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account prescribed matters.

The primary duty of care is summarised in sections 36(1) and 36(2). A PCBU must, as far as is reasonably practicable, ensure the health and safety of:

- (a) workers employed or engaged, or caused to be employed or engaged, by the PCBU who work for the PCBU, while the workers are at work in the business or undertaking;
- (b) workers whose activities in carrying out work are influenced or directed by the PCBU, while the workers are carrying out the work; and
- (c) other persons who may be at risk by the work carried out by the PCBU.

There are a number of other duties on PCBUs which spread right up the chain. These are designed to ensure that all aspects of the workplace, including plant, machinery, fixtures, fittings and structures are safe. Hence, there are duties on, for example, PCBUs who manage or control a workplace, PCBUs who manage or controls fixtures or fittings and PCBUs who supply plant, substances or structures.

Conclusion

In the next issue of the Advocate we will provide further commentary on the Act. In the meantime, please contact us if you need advice in this area.

Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
- Training
- Monthly newsletter

We Farewell the Legend !!

MGZ, on Friday 1 June 2018, celebrated the retirement of Neil McPhail in what was essentially a family function.

Neil has worked tirelessly on behalf of employer in Canterbury and beyond for the last 40 years.

Graduating from Canterbury University with B.Sc in Zoology he took the unpredictable step of joining the Canterbury Employers' Association in 1977 as an Advocate; negotiating local and national awards and generally representing employers in tumultuous industrial context of the 1980s. Neil was responsible for negotiating significant national awards, including the Clerical and Retail Awards and has been an influential figure throughout New Zealand in employment relations throughout his career.

When the Canterbury Employers' Association set up a commercial Advocacy Company, Employers' Consultants Ltd, in 1989 Neil was appointed the Managing Consultant.

In 1995 Neil, Raewyn Gibson and Peter Zwart set up MGZ continuing the focus on representation of employers in Canterbury and beyond.

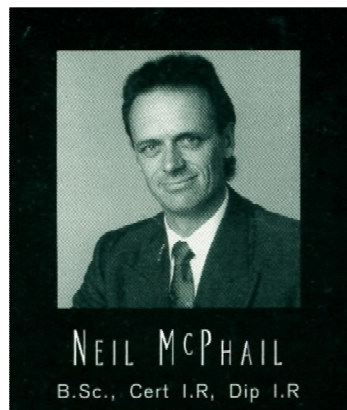
The last 23 years Neil has worked as part of the team to develop the client base of the company, and to help make MGZ one of the most recognizable faces of industrial relations in New Zealand. His hard work, dedication to clients and sense of fun have been instrumental in the growth of the firm.

The photos below are testaments to both the aging process and the move towards informality that have typified the last two decades.

The team at MGZ wish Neil, Julie and their family; Rory and Karen and Tim and Krista, all of the best for the future and thank them for their contribution to the firm.

Neil has been replaced as a Shareholder and Director by Dean Kilpatrick. As many of you will recall, Dean joined us from 2001 to 2006 and from then until his return this year has continued to work in the employment law area in Christchurch.

1995



2005



2011



2015



2018 – Finishing as he began with a glass in his hand



Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Neil McPhail, Raewyn Gibson,** or **Peter Zwart.**

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