

## Engaging competent health and safety practitioners

By Mike Cosman and Helen Parkes

**FOLLOWING THE PIKE RIVER ROYAL** Commission and the Independent Health and Safety Taskforce recommendations, New Zealand has woken up to its abysmal health and safety record. The Government now appears determined to make sweeping improvements. Health and safety in New Zealand is about to enter a new era.

A new Crown Entity, WorkSafe New Zealand, has been established to regulate health and safety. It is well funded to enforce proposed new legislation due to come into effect in April 2015.

WorkSafe NZ will have a significantly increased number of inspectors and a greater focus on driving compliance through a range of interventions including education, advice and increased compliance activity to hold to account those who fail in their health and safety duties. Fines of up to \$3 million and up to 5 years in jail await the unwise and unwary.

As Professor Coster, chair of the WorkSafe NZ Board, states: "We believe that most people want to do the right thing. At the same time, we will use the full force of our powers to deter those who intend to flout the law".

Change is coming – but are lawyers, their clients and those in the health and safety business ready for it?

### Working with health and safety professionals

As a consequence of the new health and safety landscape, the legal profession is likely to see an increased workload in this sector.

Clients will want to understand and anticipate the impact of the changes on their business, will seek advice on their personal liability under the new "due diligence" obligations for directors and officers, look for assurance around the performance of their current systems and need assistance when dealing with WorkSafe NZ (or other agencies such as Maritime New Zealand, Civil Aviation Authority, Police and Environmental Protection Authority) following an incident.

If legal action follows then there may be a need for a liability assessment in order to determine how to plead.

Given that health and safety is such a broad and seemingly complex area of law, with limited precedent or published standards, the need to seek expert advice from a health and safety professional is self-evident.

Unlike the legal profession (and health specialists such as occupational physicians and nurses), health and safety practitioners have no licensing, qualification or accreditation requirements. Accordingly the quality of advice can vary considerably. Many practitioners, even at senior level in large corporates, do not hold formal tertiary qualifications and anyone can put up their sign and trade as a consultant.

Unlike Europe and parts of Australia, the Independent Taskforce on Workplace Health and Safety did not recommend an explicit requirement for business to seek competent advice, or recommended the regulation of practitioners. They noted that the market for such advice in New Zealand was not sufficiently developed, and that while regulation could lift the quality of health and safety advice, the practitioners' industry was not currently mature enough to operate under an occupational regulation scheme.

So, with an increasingly demanding regulator, where do businesses and the legal profession turn to get competent advice?

### A competent practitioner

Health and safety crosses many diverse sectors, activities and tasks. There is no universally defined scope of activity for a generalist health and safety practitioner.

A competent practitioner, therefore, is one with the right blend of knowledge, skills and experience for the task they are being asked to perform. They should be able to demonstrate that they are continually developing so they are at the forefront of their profession, and act ethically – clearly understanding the boundaries of their own competence and capability. This is particularly important in selecting someone as an expert witness.

### Raising standards

New Zealand's representative bodies for generalist practitioners are in the process of rolling out voluntary accreditation schemes.

The New Zealand Institute of Safety Management (NZISM) most notably has a strong relationship with the Institute of Occupational Safety and Health (IOSH), the world's largest professional body for health and safety practitioners. IOSH holds a Royal Charter in the United Kingdom and has been successfully operating an accreditation programme for 20 years. It has over 39,000 members globally in over 100 countries, including over 100 in New Zealand.

The IOSH accreditation pathway (as mirrored by the NZISM), verifies practitioners' skills, experience, knowledge and professionalism against set criteria. There are three possible membership grades – Technical, Graduate and Chartered (Certified in New Zealand), each with progressively more stringent assessment criteria. CPD is mandatory and is subject to random audit and peer review. All professional members must abide by the code of ethics. This means that there is recourse to complain if there is any problem with the advice or conduct of the practitioner. Upheld complaints can lead to the practitioner's membership being terminated.

WorkSafe NZ is working towards a collaborative health and safety professionals' alliance (HaSPA) for allied professionals in the health and safety sector, but progress is slow and is unlikely in the short to medium term to improve levels of capability. Our advice is to be cautious in your choice of advisers. Check them out in terms of qualifications, relevant experience, memberships and "fit". They may look fine on paper but can they write a proper report, are they trained investigators, how will they stand up in court, do they know (and stick to) their limits?

The next few years will set the tone for our national commitment to improving safety in our workplaces. Lawyers and competent health and safety professionals working together can really make a difference. ■

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