

Schedule 1: Impact of health and safety reforms on racing clubs ONE

The Health and Safety at Work Act 2015 (the **HSW Act**), which has replaced the Health and Safety in Employment Act 1992 (the **HSE Act**), was passed into law on 4 September 2015. Parts of the HSW Act relating to regulations came into force on that day; however the majority of the HSW Act will come into force on 4 April 2016.

The key aspects of the HSW Act for racing clubs are set out below.

New concept of PCBUs

The HSW Act creates the concept of a “Person conducting a business or undertaking” (**PCBU**). This includes all businesses or undertakings regardless of whether they are for profit or gain.

Those racing clubs which are not classified as volunteer associations are PCBUs. The HSW Act states that “Volunteer associations” are groups of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

Duties on PCBUs

The HSW Act sets out a number of duties for PCBUs. These replace the duties that were on employers, principals and suppliers in Part 2 of the HSE Act.

The relevant duties for racing clubs include:

- A duty to ensure, so far as is reasonably practicable, the health and safety of workers who work for the racing club, while they are at work.
- A duty to ensure, so far as is reasonably practicable, the health and safety of workers whose activities in carrying out work are influenced or directed by the racing club, while the workers are carrying out the work.
- A duty to ensure, so far as is reasonably practicable, that the health and safety of other people is not put at risk from work carried out by the racing club.
- A duty to ensure, so far as is reasonably practicable, that the workplace (which includes all of the facilities of the racing club, including the race course), the means of entering and exiting the workplace, and anything arising from the workplace, is without risks to the health and safety of any person. This duty applies to all people who attend racecourses including members of the public.
- A duty to ensure, so far as is reasonably practicable, that fixtures, fittings or plant at the workplace are without risks to the health and safety of any person.

“Workers” is widely defined to include employees, contractors, trainees and volunteers. “Workplace” is also widely defined to include any place where a worker goes, or is likely to be, while at work.

A racing club must also ensure, so far as is reasonably practicable:

- the provision and maintenance of a work environment that is without risks to health and safety;
- the provision and maintenance of safe plant and structures;
- the provision and maintenance of safe systems of work;
- the safe use, handling, and storage of plant, substances and structures;

- the provision of adequate facilities for the welfare at work of workers in carrying out work for the business, including ensuring access to those facilities;
- the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business; and
- that the health of workers and the conditions at the workplace are monitored for the purpose of preventing injury or illness of workers arising from the conduct of the business.

The standard of care

Where a duty is imposed on a person under the HSW Act, a person is required to:

- eliminate 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 as far as is reasonably practicable.

What is “reasonably practicable” is determined by taking into account and weighing up all relevant matters including:

- the likelihood of the risk concerned occurring;
- the degree of harm that might result from the hazard or the risk;
- what the person concerned knows, or ought reasonably to know, about the hazard or the risk and the ways of eliminating or minimising the risk;
- the availability and suitability of ways to eliminate or minimise the risk; and
- after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating the risk, including whether the cost is grossly disproportionate to the risk.

Duty on officers

Officers of PCBUs are required to exercise due diligence to ensure that the PCBU complies with its duties. An “officer” is a person who occupies a position in relation to the business or undertaking that allows the person to exercise significant influence over the management of the business or undertaking.

The due diligence duty requires those people covered by it to:

- (a) acquire and keep up-to-date knowledge of work health and safety matters;
- (b) gain an understanding of the nature of the organisation’s operations and generally of the hazards and risks associated with those operations;
- (c) ensure that the organisation has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking;
- (d) ensure that the organisation has appropriate processes for receiving and considering information regarding incidents, hazards, and risks, and for responding in a timely way to that information;
- (e) ensure that the organisation has, and implements, processes for complying with any duty or obligation of the organisation; and

- (f) verify the provision and use of the resources referred to above.

The HSW Act provides that an officer can be convicted and found guilty of an offence in relation to the due diligence duty whether or not the PCBU has been convicted or found guilty of an offence under the HSW Act relating to the duty or obligations.

Relationship with other parties

Under the HSW Act, more than one person can have the same duty. The HSW Act provides that if more than one person has a duty for the same matter, each person:

- (a) retains responsibility for that person's duty in relation to the matter; and
- (b) must discharge that person's duty to the extent to which the person has the ability to influence or control the matter or would have had that ability but for an agreement or arrangement purporting to limit or remove that ability.

In all other situations, duties cannot be excluded, limited, modified or transferred by contract.

The HSW Act provides that there is a duty to, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with all other PCBUs who have a duty in relation to the same matter. This means that racing clubs must work with NZGRA trainers and any other relevant people to ensure that risks to health and safety in the thoroughbred racing industry are eliminated or minimised. A failure to work together in this way is an offence and can result in a fine of up to \$20,000 for an individual and up to \$100,000 for an organisation.

Higher penalties for offences

The penalties for offences under the HSW Act are considerably higher than under the HSE Act. There are three categories of offences:

- reckless conduct in respect of a health and safety duty for which the maximum penalties range from a fine of up to \$300,000 or a term of imprisonment of up to five years, or both for an individual who is not a PCBU or an officer of a PCBU; to a fine of up to \$600,000 or a term of imprisonment of up to five years or both for an individual who is a PCBU or an officer of a PCBU; and for any other person, a fine of up to \$3 million;
- failing to comply with a health and safety duty that exposes an individual to risk of death or serious illness for which the maximum penalties range from a fine of up to \$150,000 for an individual who is not a PCBU or an officer of a PCBU; to a fine of up to \$300,000 for an individual who is a PCBU or an officer of a PCBU; and for any other person, a fine of up to \$1.5 million; and
- failing to comply with a health and safety duty for which the maximum penalties range from a fine of up to \$50,000 for an individual who is not a PCBU or an officer of a PCBU; to a fine of up to \$100,000 for an individual who is a PCBU or an officer of a PCBU; and for any other person, a fine of up to \$500,000.

The HSW Act provides that it is not possible to take out insurance against fines or infringement fees under the HSW Act and to do so is a criminal offence. It is, however, possible to take out an insurance policy to indemnify against the costs of defending a prosecution under the HSW Act and for any liability to pay reparation to victims in a notifiable event.

Summary

The new legislation is intended to make a significant difference to the way in which health and safety issues are dealt with in New Zealand. In particular, health and safety issues are expected to be elevated so that anyone who is in a position of responsibility or able to have any influence over health

and safety issues is expected to take steps to ensure that risks to health and safety are eliminated or minimised. A failure to meet these obligations could result in imprisonment or a substantial fine.

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