

# WHITE PAPER: HEALTH AND SAFETY REFORM

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## WHY IS THERE A REFORM TO WORKPLACE HEALTH AND SAFETY?

New Zealand is undergoing a reform of its workplace health and safety regime. This will mean:

- Increased duties on both businesses and individuals.
- Tougher penalties, both fines and jail-time.
- A more proactive, better funded regulator.

New Zealand's poor health and safety performance, the Pike River coal mine tragedy, and an independent review of New Zealand's health and safety regime collectively motivated the Government to start a reform of workplace health and safety. The new law is expected to come into force in late 2015, with further regulation and guidance being released in the following two years.

## SO WHO IS THE NEW REGULATOR?

WorkSafe has already been established as a new independent Crown entity to regulate workplace health and safety. It replaces the role formerly undertaken by OSH, the Department of Labour, and the Labour Group of the Ministry of Business Innovation and Employment. The Government has given WorkSafe the ambitious target of reducing workplace fatalities and serious injuries by at least 25% by 2020.

## HOW WILL THE REFORM IMPACT BUSINESSES THAT OWN VEHICLES?

As with most industries, health and safety law will continue to operate through broad, and sometimes vague, legal tests. There are no clearly prescribed duties that relate to vehicle safety under the reform. Despite this, you and your business will both have obligations that are worth unpacking as there are clear risks associated with vehicle use. Breaching these obligations can, and will continue to, result in prosecution by WorkSafe. We expect that WorkSafe will pay greater attention to vehicle safety compliance than in the past. The reform law will also be enforced with radically increased penalties as follows:

Enforcement action	Uninsurable costs	Criminal record	Additional Insurable costs
Business prosecution ("PCBU")	\$3 million max. fine	Yes	Yes, unlimited
Personal prosecution ("officer")	\$600,000 max. fine	Yes	Yes, unlimited
Personal prosecution ("worker")	\$300,000 max. fine	Yes	Yes, unlimited
Other enforcement actions	Variable	Variable	Yes, loss of income

Even under the existing health and safety regime, there are plenty of recent examples of vehicle related prosecutions (these cases involved offences with a maximum fines of only \$250,000):

- In 2014, a business was prosecuted when one of its vehicles did not have a fully functioning handbrake, which caused death. It received a \$139,040 penalty.
- In 2014, a business was prosecuted for a failure to maintain and service brakes, causing death. It received a \$99,000 penalty.
- In 2015, a business was prosecuted for having inadequate reversing systems, causing severe injury. It received a \$65,500 penalty.

## WHO WILL BE HELD ACCOUNTABLE FOR NON-COMPLIANT VEHICLES?

Almost all businesses and all individuals within those businesses will have criminal liabilities under the health and safety reform. There are a few minor exceptions relating to some volunteer groups and elected officials, but the vast majority of us will have duties and responsibilities.

The extent and likelihood of personal criminal liability depends on an individual's role. Liability increases for the most senior business leaders who will have explicit duties under the reform as "officers".

## HOW WILL THE REFORM IMPACT BUSINESSES THAT LEASE VEHICLES?

The reform's impact on vehicle safety will vary from case to case and will be partly informed by whatever future guidelines WorkSafe releases. The circumstances will include the type of activity being undertaken and who WorkSafe might see as being directly responsible for a particular activity. For instance, whether vehicles are owned, leased or the use of personal vehicles is subsidised.

Regardless of what steps are outlined in guidance material, the broader obligation will be underpinned by overarching legal tests to ensure that an adequate standard of health and safety is reached. Any number of steps may therefore be required to satisfy WorkSafe, depending on the activity being undertaken.

## SO HOW CAN BUSINESSES GET REFORM READY?

The reform will create new obligations that relate to all aspects of an organisation's business including, but not specific to, vehicle safety (ie new due diligence obligations on certain senior managers, or "officers", worker participation practices and obligations on organisations, or "PCBUs" to coordinate, cooperate and communicate with one another). Yoogo will release further information on these general obligations in due course.

In relation to vehicle safety, it would be a good time for any business that has a fleet (whether owned, leased or subsidised) to reassess the risks and hazards associated with the business's activities in light of the reform's increased risk profile. While you cannot outsource your health and safety responsibilities, seeking expert assistance can be particularly useful where expert services and technology are more efficient or where the necessary resources are not available in-house. Contracting expert services will not shield businesses from all potential health and safety liability, but can put in place processes for businesses to minimise their risks.

## WILL WORKSAFE EXPECT BUSINESSES TO TAKE ONGOING STEPS?

WorkSafe has an expectation of continuous improvement in terms of businesses' commitment to health and safety. At the very least, businesses should turn their mind to the following risk management steps as a failure to do so could result in prosecution under the current or future health and safety regimes:

1. Training and competency assessments: Initial and ongoing driver training, supported by resources and updates, especially for specialist vehicle use (difficult terrain, passengers, mobile plan, etc).



Yoogo offers driver training for new employees or as a result of our driver behaviour exception reporting.



2. Monitoring workers: Monitoring mechanisms, especially to: locate remote and/or solo workers, assess dangerous driving practices, manage fatigue, etc.



Yoogo provides extensive telematics reporting, including: stationary reports, stop reports, over-speed summary reports, geofence reports.

3. Vehicle compliance: Ensuring that vehicles are compliant with regards to: warrants of fitness, licensing and registration, maintenance and servicing, etc.



Yoogo provides electronically monitored compliance checks with regarding all vehicle compliance obligations within, and outside of, the safety sphere.

4. Safe driving policies: It is generally WorkSafe's preference that safety practices are formally documented. Safe driving policies assist in reducing liability from WorkSafe but they also ensure that workers understand what is expected of them and what they need to communicate.



Yoogo is able to provide legally compliant bespoke driving policies (including management of: driver's licence restrictions, minimum expertise levels, medical checks, drug and alcohol policies, etc.) through its preferential client programme with Meredith Connell. For Yoogo clients this means savings on cost and sensible price certainty.

5. Fit for purpose assessments: Vehicle assessments regarding design and load suitability, necessary safety features, access, visibility, etc.



Yoogo is able to arrange pre-purchase vehicle inspections, fit-for-purpose assessments and safety feature assessments; for instance whether reversing cameras are required.

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