
HEALTH AND SAFETY - RESPONSIBILITY FOR EVENTS RUN BY 'ASSOCIATED PARTIES'

The new Health and Safety at Work Act has been passed, and will come into force on 4 April 2016.

Sport NZ partners have queried the extent of their legal responsibility under the new Act for events run by clubs and other associated parties (eg members, affiliates, event organisers etc).

Currently, there is limited scope for liability unless the national or local organisation is directly involved in some way in the particular event or undertaking. This is reflected in the decision by WorkSafe NZ not to prosecute Speedway NZ following the serious accident in March 2014, in which a volunteer working on the track was badly injured. WorkSafe said in the media at the time that there was a gap in the law, which the new law would address.

Under the new law, the organisation will have to ensure 'so far as is reasonably practicable' the health and safety, not only of their own workers, but of associated parties' workers who they 'influence' or direct. Depending on the closeness of the relationship and interactions between the organisation and the associated party, this duty might extend to the associated party's workers and expand the current scope for liability as a result.

The concept of 'influence' is new to our health and safety legislation, and it is not clear yet how far it will be taken. There is not a great deal of guidance in Australia either, even though they have had the concept for longer.

The explanatory material on which the Australian law was based says that "*influence connotes more than mere legal capacity and extends to the practical effect that the person can have in the circumstances*". Australian commentary suggests that there is likely to be influence as between a parent company and its subsidiary, or a franchisor and franchisee.

As such, if a national or local organisation provides training or guidance to an associated party, or if there are contracts, rules, standards or other requirements or expectations that apply between the organisation and its associated parties, and if those affect in practice how the associated parties' workers operate, that might be considered 'influence' for which the organisation is responsible. Of course, the greater the level of interaction and involvement the greater the level of responsibility and risk.

Taking the Speedway NZ example above, the outcome would likely be the same under the new law because of the definition of 'volunteers'. (Only volunteers who carry out work integral to the business or undertaking on an ongoing and regular basis are 'workers', and the definition expressly excludes volunteers "*assisting with sports or recreation for an educational institute, sports club or recreation club*"). Had the volunteer been a 'worker' over whom Speedway NZ had influence, for example through its event guidelines, WorkSafe may have made a different decision and prosecuted.

This is not to say that organisations should cease to support and interact with associated parties – quite the opposite. Helpfully, changes were made before the new Act became law to expressly recognise that the duties apply to the extent to which the organisation has, or would reasonably be expected to have, the ability to influence and control the matter to which the risks relate.

In other words, local and national organisations who have influence over associated parties will not suddenly become responsible for everything those parties do. Rather, they need to ensure that they exert the influence they have when needed, and that the influence they exert is safe. So, if training is provided, the organisation needs to ensure that it is effective and safe. If the organisation has rules that govern events and affect worker safety, those need to be clear, thorough and safe. If an organisation identifies that an associated party is not applying the training or rules the organisation provided correctly, it should say so. If having done all that the associated party then goes away and applies the training and rules, and runs the event, the associated party ought to be responsible for the implementation, not the local or national organisation.

Key to all of this is to ensure that there is a clear understanding between the organisation and its associated parties as to the parties' respective responsibilities. These should be discussed and documented. This is not about contracting out of the Act or shifting liability – that's not possible. It is simply about making sure the different parties understand what they are responsible for.

Finally, this concept of 'influence' and the responsibilities that apply as a result apply only to 'workers' (including volunteer workers). Organisations will not have any greater responsibility than they do now for participants and members of the public attending events run by associated parties.

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