

Workers travelling in the course of their contracts or employment

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With the upgraded legislation contained in the Health and Safety at Work Act 2015 comes useful reconsideration of many aspects of health and safety. Sports organisations will be particularly mindful of this with the Rio Olympics looming and travelling internationally for sport an everyday occurrence.

While this paper focusses on the Act there are other liabilities. Players injured in Australia retain their rights to ACC but may also sue in Australia and possibly New Zealand. Local rights will arise in other jurisdictions where versions of the Major events Management Act 2007 with its crowd management provisions and in Australia a more relevantly comprehensive Major Sporting Events Act 2009 may exist for example¹. Such local controls may reassure if they enhance safety or concern if they do not exist or require the same standards as New Zealand. Certainly what is permitted in a stadium in Australia is more controlled than in New Zealand.

It seems many volunteers will come within scope of the legislation either through one of their number employing a worker or through their obligations while in a workplace². Not only are there proactive obligations there are also record keeping and reporting or administrative obligations. Not only will sports organisations need to consult internally they will also need to consult with others involved at the same venue.

How does the Act apply when an employee or contractor is overseas? Frequently they will be in countries which lack legal or healthcare reciprocity with New Zealand. Often private rights and obligations are different and sometimes less paternalistic than ours. This might mean going to places where crime is more common, communicable diseases are prevalent, construction standards are different and less safe.

The purpose stated in the Act, providing a balanced framework to secure health and safety of workers and their workplaces does not announce extraterritorial effect or territorial confines. The focus is on the workplace and the workers.

The Armed Forces are expressly exempted whilst carrying out operational activity overseas. This type of activity is defined but may readily be extended. The Act applies to New Zealand ships and ships chartered to New Zealand wherever they happen to be. It also applies to workplaces within the exclusive economic zone of New Zealand and any ships travelling to those workplaces. Part 3 of the Act, which focusses on the machinery of the scheme not the duties, does not apply to volunteers seemingly wherever they are.

The Act does not purport to extend its reach offshore. Is a breach of the Act offshore within scope especially of the enforcement and penal provisions?

First it seems clear that the Person Conducting a Business or Undertaking (“PCBU”) is within scope even if their workers are overseas. They will need to comply with their obligations as officers which includes Directors or their equivalent, partners and senior decision makers. Workers are extensively

¹ Trans-Tasman Sport and Law- Some Observations Hayden Opie and Elizabeth Toomey Canterbury Law revue Vol 16, 2010.

² Health and Safety at Work Act 2015 S45, s46 via s51.

defined and include some types of volunteers. Volunteers are more likely to be included if they are important to the PCBU or consistently part of that PCBU. Senior sports administrators are quite likely to be workers.

The workplace is sufficiently broadly defined to encompass anywhere the PCBU is carrying out its business or undertaking.

The PCBU must, as far as reasonably practicable, ensure the health and safety of the workers when they are at work. This would appear to extend to those who are engaged locally overseas to work with them or for them.

This means the organisation will need to consider the workplace and activities together with their health and safety implications wherever they might be. They will need to arrange suitable information, training and supervision including monitoring. Where accommodation is owned or controlled by the PCBU it must be maintained so as to secure health and safety.

In practical terms the organisation will need to research risks at the place where the workers will be, formulate a plan for the avoidance or mitigation of those risks and then monitor the situation. Buying the tickets and waving is no longer an option. Risks must be managed so as to eliminate or if that is not reasonably practicable minimise them. That obligation falls on all those who would reasonably be expected to have influence or control of the context of the risk. The definition of reasonably practicable warrants reading.

Meaning of reasonably practicable³

This means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including—

- (a) the likelihood of the hazard or the risk concerned occurring; and
- (b) the degree of harm that might result from the hazard or risk; and
- (c) what the person concerned knows, or ought reasonably to know, about—
 - (i) the hazard or risk; and
 - (ii) ways of eliminating or minimising the risk; and
- (d) the availability and suitability of ways to eliminate or minimise the risk; and
- (e) 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 or minimising the risk, including whether the cost is grossly disproportionate to the risk.

Sports New Zealand and the Australian Sports Commission have posted some guidelines. None of these specifically deal with touring overseas. Care and planning including consideration of any relevant guidelines will achieve much of what a sporting organisation will need to meet its obligations. The intention of this piece is to encourage that as the answers will be very fact specific.

³ Defined by s22.