

Better provision for due diligence

A new health and safety act, which came into force this month, will provide paid time and training for staff to ensure their workplace is safe.

The Health and Safety at Work Act 2015 has been the cause of much discussion, debate and confusion.

A brief outline of the changes and how they might impact on schools is available in the October 2015 *PPTA News* (vol. 36 no. 8).

The act's key emphasis is on everyone in the workplace being involved in health and safety.

One of the most positive features is its focus on supporting more effective worker engagement and participation in health and safety, PPTA advisory officer with responsibility for the health and safety portfolio Doug Clark said.

Through the act the Ministry of Education promotes health and safety representatives and health and safety committees as crucial to the safe operation of a school.

It emphasises the rights of all workers to participate and engage in health and safety and to have health and safety representatives and committees by law. It also asserts the rights of health and safety representatives and committees to have paid training and paid time for the job.

The newly published *Health and Safety at Work Act 2015 – A practical guide for boards of trustees and school leaders* (a joint New Zealand School Trustees Association and Ministry of Education resource which PPTA had a role in developing) lists obligations to a health and safety representative (HSR) to:

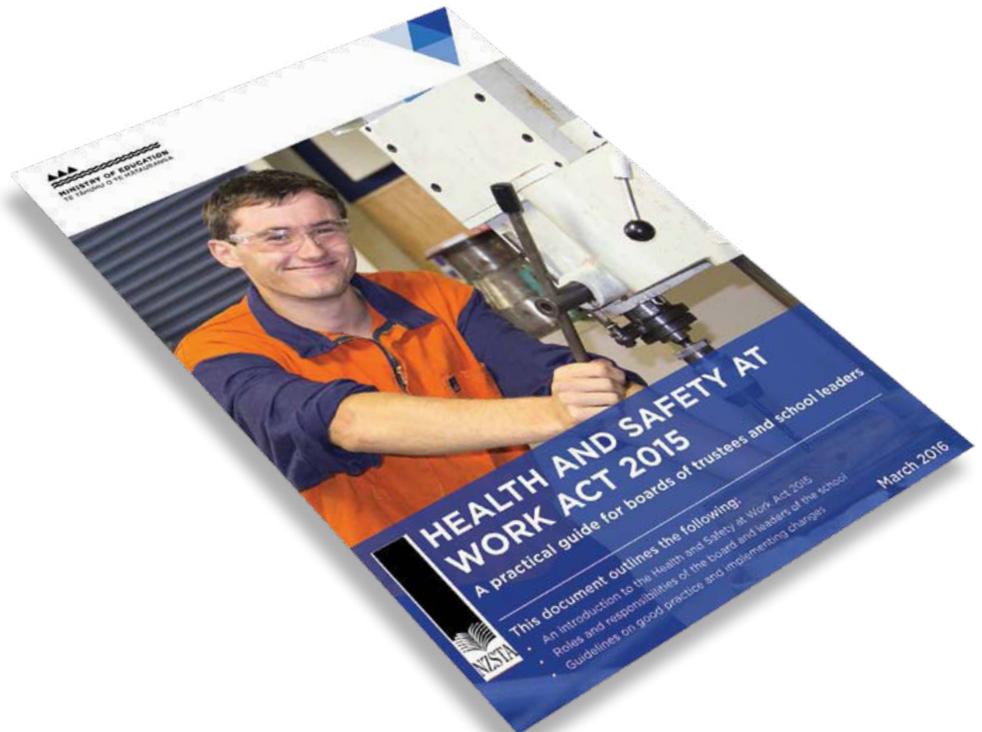
“Allow an HSR paid time and provide any resources, facilities and assistance to enable them to perform their role and exercise their powers.

“Pay the HSRs’ training fees and any reasonable expenses incurred in attending the training.”

Under "obligations to a health and safety committee" (HSC) it agrees to “allow each member of an HSC paid time to attend meetings of the committee and carry out functions as a member of the committee”.

The document also emphasises the role of unions in health and safety.

Concerns have been voiced about



the potential impact of penalties on principals, but if a school has current robust systems then it should be business as usual, Doug said.

“The principal can be held liable if, and only if, they have been negligent in their duties. If a principal has done due diligence (including having a health and safety group with trained and qualified representatives) then there should not be any issues,” he said.

Legally a board of trustees may have liability as an entity but its individual members are exempted as elected volunteers.

Doug has been surprised by recent comments made on the issue. He has regularly sat on a cross sector health and safety forum with representatives of all agencies involved in education and said those issues had been debated, argued and resolved. The liability and ability to sue individual teachers and principals has been around since the 1992 Health and Safety in Employment Act.

The fines were for failure to provide duty of care and gross negligence and as such nothing much has changed, he said.

In 1992 the top penalty for individuals was \$500,000 (approximately \$808,000 in today's money) and in the 2015 act it is \$600,000.

“So prior to the new act fines of up to \$500,000 caused no issues but \$600,000 is now a problem? That means individual houses have to be put in trust? Who is kidding who?,” he said.

“The new law clarifies and tightens up lines of responsibility and post Pike River that is a good thing, but to qualify for these fines you must have done something extremely bad.

“As the cross sector forum has said all along, if you have sound, robust, current systems then you have nothing to worry about.”

If you are a PPTA member you can get the latest updates by contacting hands@ppta.org.nz.