



Health and Safety

A GUIDE FOR MARINERS

Photo credit

The cover photo was taken aboard the **OTAKOU** in the Cook Strait by Bruce McLaren, a Maritime NZ maritime officer.

Disclaimer

The purpose of this guide is to provide information and guidance on the general application of the Health and Safety at Work Act and its regulations. It is not intended to provide comprehensive or specific legal advice. Maritime New Zealand has made every effort to ensure that the information is accurate and up to date. However, because legislation is amended from time to time we recommend that readers confirm that they are operating to the latest version of the Act.

Health and Safety

A GUIDE FOR MARINERS

About this guide

This guide provides information about your responsibilities under the Health and Safety at Work Act 2015 (HSWA).

This is your essential guide to meeting your health and safety obligations. It is relevant for everyone working in the maritime sector including:

- Owners
- Operators
- Skippers
- Crew
- Stevedores
- Jet boat drivers
- Rafting guides
- Self-employed crew, including sharefishers
- Anyone who employs or contracts crew
- Any other person who works on board, or employs or contracts someone to work on board a ship
- Designers, manufacturers, importers, suppliers and installers of ships and plant and equipment on ships.

What this guide contains

Section one: Health and safety legislation

This section briefly explains the Health and Safety at Work Act, how it impacts you and why it's important. It also explains the relationship between HSWA and maritime legislation.

Section two: Duties, rights and responsibilities

This section explains the health and safety responsibilities of the PCBU, officers, workers and other people in the workplace.

Section three: HSWA in action

This section uses four scenarios to explain how HSWA applies to typical maritime businesses.

Section four: Applying HSWA duties in the maritime sector

This section explains HSWA duties and how they apply on board vessels.

Section five: What to do when accidents happen

This section explains what to do if someone has an accident or is injured while at work.

Contents

Section one: Health and safety legislation	6
Introduction	7
Health and Safety at Work Act 2015	7
Maritime safety management systems	7
How HSWA works with the Maritime Transport Act	8
Section two: Duties, rights and responsibilities	10
Introduction	11
Duty holders under HSWA	11
PCBUs	12
Officers	12
Workers	12
Others	13
Volunteers	13
The role of ship's master	14
Managing duties on foreign-flagged vessels	15
Right to refuse work	16
Section three: HSWA in action	18
Fred's Fish	20
Aotearoa Water Taxis Ltd	22
Seacatch Ltd	24
Fox Island Ferries Ltd	26
Section four: Applying HSWA duties in the maritime sector	30
Introduction	31
Primary duty of care	32
Manage risks	32
Controlling risk	33
Worker engagement, participation and representation	33

Overlapping duties	35
Upstream duties	36
Due diligence	37
Manage asbestos	38
Exposure and health monitoring	39
Provide facilities	40
Emergency management	41
Provide training and supervision to workers	42
First aid	42
Personal protective equipment (PPE)	42
Section five: What to do when accidents happen	44
Introduction	45
When to notify Maritime NZ – notifiable event	45
Reporting and record keeping	45
How to report	46
Review of controls	47
Notifiable injuries and illnesses	47
Notifiable incidents	48
What to do when a notifiable event occurs	48
Appendix one: How HSWA is administered and enforced	50
Appendix two: Frequently asked questions	56
Appendix three: Further information and resources	62
Appendix four: Glossary of terms	64



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Section one

Health and safety legislation

Introduction

The Health and Safety at Work Act 2015 (HSWA) requires everyone in the workplace to be responsible for health and safety.

Maritime New Zealand is the ‘regulator’ under HSWA for work on board ships and for ships as workplaces. WorkSafe NZ is the health and safety regulator for land-based workplaces. Before HSWA, Maritime New Zealand was the regulator for work on ships under the Health and Safety in Employment Act (HSE).

Maritime NZ also administers the Maritime Transport Act 1994 (MTA). Maritime Rules are a type of legislation made under the MTA by the Minister of Transport. The MTA sets out the broad principles of maritime law, and the Rules specify detailed requirements.

In broad terms, the MTA and the Maritime Rules focus on the safety of the vessel and navigational safety, while HSWA focuses on the health and safety of people on board the vessel. However, there is a degree of overlap.

Health and Safety at Work Act 2015

A guiding principle of HSWA is that workers and others in the workplace should be given the highest level of protection against harm to their health, safety, and welfare from work risks so far as is reasonably practicable.

Safe workplaces and healthy workers benefit everyone. When businesses and workers work together to make sure everyone is safe and well-informed about risks, workers are happier and healthier. Safe workplaces are also usually more efficient and productive because fewer injuries and health issues mean less time lost.

An important principle of HSWA is that those people with the most influence or control in the workplace are best placed to manage health and safety risks. In most cases, HSWA doesn’t set out exactly how to do this because there are thousands of New Zealand businesses working in many different circumstances.

It’s not practical to create rules to cover every workplace situation. Instead HSWA sets out a framework of duties for businesses, senior leaders of businesses, workers and other people who might be present in the workplace. Some duties are set out in more detailed regulations that control particular hazards or types of workplaces.

Businesses and workers must take reasonably practicable steps to manage health and safety risks. This duty applies to the extent to which they influence and control the risks.

Maritime safety management systems

The maritime safety management systems administered by Maritime NZ are designed to make owners and operators responsible for the safe operation of their vessels, protect the marine environment and ensure the safety of the vessel and its crew.

A safety management system indicates that an operator is meeting relevant minimum standards. Maritime NZ accepts (but does not approve) an operator’s safety management

system. This acceptance (known as 'entry control') gives the operator permission to operate under the Maritime Transport Act.

New Zealand operates a tiered safety management system that covers all commercial vessels. The systems fall into the following five categories:

- **Maritime Operator Safety System (MOSS)** covers most New Zealand-owned commercial vessels
- **Safe Operational Plans** cover smaller commercially-operated specialist vessels and their operations
- **International Safety Management** covers SOLAS vessels, both New Zealand-owned and foreign-flagged vessels visiting New Zealand. A SOLAS ship (as defined in Maritime Rule Part 21) is any ship to which the International Convention for the Safety of Life at Sea 1974 applies.
- **Safety Case** covers specialised operations or operations that don't fit under existing Maritime Rules
- **Specified Limits Permit** covers a commercial operation within a restricted area.

Safety management systems cover safe operating parameters, the qualifications and training of the crew, vessel maintenance, emergency procedures, and health and safety considerations. Safety management systems also have audit provisions that are designed to drive continuous improvement.

If you operate under a safety management system, your documentation should include information about how you meet your HSWA obligations. It's not necessary to duplicate actions or controls under HSWA that are already addressed by a maritime safety system.

How HSWA works with the Maritime Transport Act

HSWA does not replace any duties you have under other legislation. In the maritime sector this means you must comply with the Maritime Transport Act 1994 and all relevant Maritime Rules, as well as HSWA.

Compliance with the Rules does not automatically mean compliance with HSWA.

HSWA complements the Maritime Rules. Maritime safety systems and HSWA both address safety. The rules go a long way toward compliance with HSWA and in some cases may exceed what might be expected under HSWA. A key difference is that the rules are prescriptive and set minimum standards for 'entry control', whereas the duties under HSWA are on-going and must be met so far as is reasonably practicable.

The HSWA duties sometimes extend beyond complying with the Rules or following a maritime safety system. And some duties in HSWA are new.

In some cases therefore, to comply with the standards in the HSWA, PCBUs will need to achieve a higher standard than the rules, or apply measures that are additional to the requirements of the rules.

For more information about what so far as is reasonably practicable means go to page 31.



Section two

Duties, rights and responsibilities

Introduction

HSWA places health and safety responsibilities on businesses ('PCBUs'), senior leaders ('officers'), workers (anyone doing work) and others (eg passengers or visitors). Workers also have rights under HSWA.

You have responsibilities under HSWA if you:

- own or operate a New Zealand-registered vessel on a commercial basis
- own or operate a New Zealand company that operates a foreign-flagged vessel under a 'demise charter' arrangement
- operate (ie on a regular basis) a foreign-flagged vessel between New Zealand and a workplace in the New Zealand exclusive economic zone or on the continental shelf and that workplace is carrying out an activity regulated under the Exclusive Economic Zone (Environmental Effects) Act 2012 or the Crown Minerals Act 1991. This would apply for example to a drilling platform or fixed ship associated with mineral extraction.
- work on a New Zealand registered vessel in any kind of employment or contract relationship
- are a New Zealand business (PCBU) that carries out work on a New Zealand registered or foreign-flagged vessel (eg a port company, stevedore company, diving business, catering company, fish processing company, Ministry for Primary Industries, Maritime NZ)
- a person doing work in any kind of employment relationship or contract relationship for a PCBU that is contracted to carry out work on a New Zealand-registered or foreign-flagged vessel (eg a pilot, ships' agent, stevedore, provedore, surveyor, maintenance worker, fisheries officer)
- are an officer of a business (PCBU) that does any of the above.

You may also have responsibilities under HSWA or the regulations if you design, manufacture, import or supply plant to be used on a vessel.

Duty holders under HSWA

Four types of duty holders have work health and safety duties:

- persons conducting a business or undertaking (PCBUs) – these may be individuals or organisations
- officers
- workers
- other people at workplaces.

A person may have more than one duty (eg a person can be a worker and an officer).

More than one person may have the same duty (eg several officers of a PCBU may have the same duties).

Duties cannot be transferred or contracted out to others. But reasonable arrangements can be made with other people to make sure that duties are met.

PCBUs

A PCBU is a 'person conducting a business or undertaking'. The word 'person' should not be taken literally. Normally the PCBU is an organisation – eg a company but it can also be a self-employed person or a government agency.

A maritime operator is a PCBU. A business that works on a ship but doesn't operate that ship is also a PCBU.

A PCBU has a 'primary duty of care' to ensure so far as reasonably practicable, that the health and safety of workers and other people is not put at risk by the work it does.

In general, the internal management of a foreign-flagged vessel is not subject to HSWA. This means that the foreign operator is not normally a PCBU.

Officers

An 'officer' is a person with significant influence over the management of the business (PCBU). Company directors, partners in a partnership, and chief executives of businesses are officers. Senior managers and the 'responsible people' named in a Maritime Transport Operator Certificate (MTOC) may be considered 'officers' under HSWA. Whether or not these people are officers will depend on whether their role gives them significant influence over how the whole business (PCBU) is managed.

Officers have a duty to exercise 'due diligence' to ensure the PCBU meets its health and safety obligations. This term is explained in more detail later in this document.

Workers

A worker is an individual who carries out work in any capacity for a PCBU, including:

- an employee
- a sharefisher
- a 'labour only' contractor
- a person working for a contractor or sub-contractor
- a person working for a labour hire company
- a trainee or a person gaining work experience
- a volunteer worker.

Workers can be at any level in an operation. For example, managers are workers too. Although a master has special responsibilities under the MTA, when they work for a

maritime operator as an employee or as a contractor, they are considered a 'worker' under HSWA.

Workers have a duty to take reasonable care of their own health and safety and ensure that their actions – or inactions – don't put others at risk when carrying out work.

Others

Other people at workplaces include passengers, visitors, customers and casual volunteers.

Other people at the workplace have a duty to keep themselves safe and not cause others harm. They must follow reasonable health and safety-related instructions made by the business (PCBU).

People who visit the workplace in the course of their work (for example observers, officials, sales people or contractors) are not 'other' people in that capacity – they are workers.

Volunteers

A person is a 'volunteer' if they do work and don't get paid.

When a person does volunteer work that is essential to the business on an on-going and regular basis – with the knowledge and permission of the PCBU – they are a 'volunteer worker'.

A volunteer worker is a worker, so the duties of workers apply.

A casual volunteer is an 'other person' so the duties of 'others' apply.



PCBUs must treat volunteer workers like any other worker, except that the worker engagement, representation and participation duties don't apply. However volunteer workers can still raise health and safety concerns with the PCBU.

Volunteer associations

A volunteer association is a group of volunteers, working together for a community purpose, who do not employ anyone. If the association employs anyone it is a PCBU and has duties under HSWA.

Volunteer associations in the maritime sector can include organisations like surf life-saving clubs, yacht clubs and rowing clubs. Volunteer associations do not have health and safety duties under HSWA as they are not PCBUs. However, if the association takes in money (for example by charging fees for classes or other services) Maritime Rules may apply.

The role of ship's master

Under the MTA, ships' masters must be certified and they have significant responsibilities. The master:

- is responsible for the safe operation of the ship on a voyage, the safety and wellbeing of all passengers and crew, and the safety of cargo carried
- has final authority (while in command) to control the ship and maintain the discipline of all people on board
- is responsible for compliance with all relevant requirements of the MTA, regulations and maritime rules.

Although a master has special responsibilities under the MTA, when they work for a maritime operator as an employee, or as a contractor, they are also a 'worker' under HSWA.

The operator – not the master – has the primary duties of the PCBU. The master is responsible for the day-to-day operation of the ship, but the operator is responsible for the operation.



In some cases a master may also own the maritime operation. In that situation, the master will be an officer. He or she may also be the PCBU depending on the legal entity that owns the operation.

The relationship between the operator and master

Maritime operators and masters both have duties under HSWA. Some of these duties overlap while others are different. In practice, the maritime operator and the master must work together to meet their duties.

Although the duties of a maritime operator and a master are slightly different, they address the same or similar things with regard to health and safety. The duties are shared or partially shared and the degree of responsibility depends on the circumstances of a given situation.

The duties of the maritime operator and the master apply at the same time. The master is in control of the ship when it is at sea. While the operator may not be present, they must still fulfil their duty to ensure that the ship operates safely. The operator cannot contract out or transfer their duties to the master or anyone else.

In practice, the operator must make appropriate arrangements with the master to ensure that the operator's duties are met when the ship is at sea. For example, the duties of an operator include putting in place processes to manage risks and hazards. The operator and master could agree that part of their employment arrangement includes responsibility for ensuring these processes are followed. The agreement could include training for the master to ensure that he or she is familiar with the systems and processes.

Managing duties on foreign-flagged vessels

New Zealand based maritime operators are PCBUs with obligations under HSWA. However, the operators of foreign-flagged vessels (not on demise charter) are not subject to HSWA.

Operators of foreign-flagged commercial vessels are not normally considered PCBUs so they don't have the 'overlapping duty' to consult, cooperate with and coordinate their activities with the New Zealand PCBUs providing services to them.

The ship's master, however, will be operating the vessel under a safety management system and should be receptive to coordinating on health and safety matters. PCBUs providing services to these vessels (for example stevedores) should attempt to engage the ship's master to ensure the safety of their workers. If the PCBU determines that the work on the foreign-flagged vessels poses health and safety risks to their workers, they can refuse to carry out that work.

PCBUs have a primary duty to manage any risks arising from the work they do. New Zealand workers aboard foreign-flagged vessels are covered by HSWA as is the PCBU. In the case of foreign-flagged vessels that don't fall under HSWA, New Zealand PCBUs that have workers working on board should proactively engage workers, other PCBUs and, where possible, the operator and/or the master to identify and manage health and safety risks.

Right to refuse work

A worker can refuse to work, or stop work at any time, if they believe that doing the work would immediately, or soon after, expose them or another person to a serious health or safety risk.

A worker who stops work needs to tell the person in charge (ie the PCBU) as soon as possible.

A worker can continue to refuse to work if:

- they try to resolve the matter with the business (PCBU) as soon as they can and the matter is not resolved and
- they have good reason to believe that continuing to do the work could pose a serious health or safety risk to them or another person. A good reason includes advice from a trained health and safety representative that the work would expose the worker or other people to a serious risk.

A worker can't refuse to do work that is generally understood to have risks to health and safety (eg commercial fishing) unless that risk has increased beyond what is normal for the work. (See page 41 for discussion on emergency management).

A health and safety representative may direct unsafe work to cease if they have had recognised training as a health and safety representative and

- they follow the right process and
- if the situation involves a very serious and immediate or imminent risk to health and safety.

If a worker refuses to do work or stops work, the PCBU may direct the worker to carry out other duties. That work has to be safe and appropriate, and within the scope of the worker's contract or employment agreement.

A health and safety representative (see page 34), a worker, or the PCBU can ask Maritime NZ to help resolve issues around a worker stopping or refusing to do work.






Section three

HSWA in action

The following four scenarios describe typical maritime businesses and how those involved in the business go about meeting their HSWA duties.





Fred's Fish

Fred is a sole operator fisherman who owns his boat, the **Starfish**, and trades as Fred's Fish. 'Fred's Fish' is a business, which makes it a 'PCBU'. Fred is considered both an 'officer' and a 'worker' because Fred's Fish is his business and he works as a fisherman.

Fred's health and safety responsibilities haven't changed much since HSWA came into force. Fred's Fish operates under a Maritime Transport Operator Certificate (MTOC) issued by the director of Maritime NZ. This means he operates in accordance with an operator plan, which addresses many HSWA requirements.

However, Fred's operator plan doesn't address all health and safety requirements such as workplace facilities. The **Starfish** is small and there is nowhere to install a toilet or hand basin. When Fred thought about what was reasonably practicable he took into account that he has no staff, only works during the day and that there are toilets available onshore. When Fred goes fishing he takes along fresh water, a basin, soap and towel for hand washing.

As an officer, Fred needs to meet his due diligence duty. He needs to know about health and safety matters, understand the health and safety risks of his operation and make sure he minimises those risks.

Fred's boat, the **Starfish**, is a workplace.

The **Starfish** is maintained and repaired by ACME Marine. ACME Marine is a business so it's also a PCBU. Fred needs to make sure that he discusses and manages health and safety with ACME Marine or anyone else who works on the boat. This new requirement is called 'overlapping duties'.

Addressing asbestos exposure

Fred has planned some upgrades and maintenance on the boat during the next off-season. He needs to think about asbestos because under HSWA all businesses have a duty to manage asbestos in the workplace. Fred's boat, the **Starfish**, is a workplace.

ACME Marine has told Fred that the **Starfish** could contain asbestos, and he needs to get this checked before the work is carried out. Asbestos use in New Zealand was largely phased out in the 1990s. The **Starfish** was built in New Zealand in 1995 so it could contain asbestos.

Fred contacts Ngaire who works for an asbestos sampling and testing company. Ngaire takes some samples from the typical places where asbestos is found, including the lagging around the exhaust pipe and the insulation around the fish hold. She calls Fred a few days later with the results – the samples don't contain asbestos. Fred doesn't need to take any extra precautions, and ACME Marine can proceed with the planned alterations.

If there had been asbestos on board, Fred would have had to check the regulations and ensure that any asbestos was removed by a licensed removalist.



FRED'S FISH

FRED'S FISH

Aotearoa Water Taxis Ltd

Ted and his partner Alice own Aotearoa Water Taxis Ltd (AWT). They run three boats and employ six staff in addition to themselves. Ted and the staff transport passengers, while Alice manages the office and takes bookings. AWT is a business, which makes it a PCBU. Ted and Alice are both company directors, so they are officers. Ted drives a water taxi and Alice manages the office, which also makes them workers along with their staff.

AWT has an MTOC and operates under an operator plan so many HSWA requirements are already being met. As a passenger service, AWT is particularly focussed on ensuring the health and safety of passengers as well as workers. They regularly practice their emergency procedures and check equipment. AWT makes sure that their staff are well-trained, and always provide safety briefings for passengers before setting out on trips.

Here's how Ted and Alice manage their HSWA duties:

- **Overlapping duties** – No other businesses share the workplace, so this duty doesn't apply to day-to-day operations. However, when AWT contracts work to be carried out on one of their vessels or when a vessel is being surveyed, they will need to consult and manage health and safety issues.
- **Due diligence** – As hands-on directors, Ted and Alice understand the hazards and risks associated with running a water taxi business. They have an operator plan under MOSS that identifies risks and hazards and the appropriate controls to help minimize those risks. They have also joined a monthly safety forum with other maritime operators and their local maritime officer to exchange ideas and stay up-to-date on best practices.
- **Manage asbestos** – AWT's water taxis were built in 2005 and are unlikely to contain asbestos. But Ted and Alice need to be aware that asbestos is a potential hazard, particularly if they purchase an older vessel.
- **Worker engagement and participation** – Health and safety is a regular agenda item at staff meetings. Ted and Alice encourage workers to raise any health and safety issues with them, and have committed to responding within two weeks when staff make suggestions or identify potential issues. Every year in the off season AWT has a day when Ted and Alice review the business with staff. The review always includes a review of the operator plan and any procedures. Ted and Alice also involve their workers when they are buying equipment that could impact people's health or safety.
- **Facilities** – Toilets, drinking water, hand-washing facilities and a place to eat and take breaks are available at the booking office and at the wharf.



**AOTEAROA
WATER TAXIS**

Seacatch Ltd

The Smith family owns Seacatch Ltd, a fishing business that owns and operates three 'day boats'. The Smiths live out of town and employ George as chief executive to run the business.

Seacatch is a business so it's a PCBU. As the chief executive, George is an officer. The Smiths are directors of the company, so they are also officers.

Eight people work on the boats. Five are employed by Seacatch and three work under a sharefishing contract and take a percentage of the catch. Although the three sharefishers work under contract, all eight are considered workers under HSWA.

Seacatch operates under an MTOC under MOSS. They must meet the same new HSWA requirements as Aotearoa Water Taxis. But there are a few differences.

As the PCBU, Seacatch has a 'primary duty of care' to ensure, so far as is reasonably practicable, the health and safety of workers – including the sharefishers. This is new for George because he is used to thinking of sharefishers as being 'self-employed'.

Fishing and aquaculture are classed as 'high risk' under HSWA regulations. That means that George also must organise elections for health and safety representatives at the request of any of the workers.

Apart from setting targets and discussing major purchases, the Smiths have always left operational matters to George. The Smiths now need to address their due diligence duty.

To meet their due diligence duty, the Smiths and George need to be up-to-date with workplace health and safety that relate to their business, understand the hazards and risks at Seacatch, and take a proactive approach to making sure that these risks and hazards are eliminated or minimised.

The Smiths and George discuss ideas on how to meet their due diligence duty. To stay informed, the Smiths join the local fishing association and subscribe to updates from WorkSafe and Maritime NZ. As a result, the Smiths learn about asbestos duties and have the fleet tested. Asbestos was found in the oldest boat – it wasn't respirable but could pose a risk to the crew if it was disturbed. George labels the areas where there is a risk and develops an asbestos management plan which they add to their operator plan.

The Smiths now need to address their due diligence duty.

The Smiths decide to visit the Seacatch vessels several times a year to see for themselves how things are looking and to hear directly from staff. Following these visits they plan to meet George to review their safety system. George also agrees to provide the Smiths with quarterly health and safety updates, and to inform them of any notifiable events that occur on any of the vessels.



Seacatch

Fox Island Ferries Ltd

Fox Island Ferries Ltd (FIFL) operates a fleet of five ferries working the 60 minute trip between Fox Island and the mainland. FIFL operates under an operator plan and recently passed MOSS audits with no non-conformities.

It's a busy operation. The first ferry leaves at 6 am and the last ferry leaves at 11 pm. Forty crew members work in shifts on the ferries and eight people work in the two offices – one on Fox Island and one on the mainland.

Pita Jones is FIFL's general manager and reports to the FIFL board. That makes Pita an 'officer' under HSWA. Pita is named on the MTOC as the person responsible for the maritime transport operation and its resourcing.

Scotty, the company's engineer, is named on the MTOC as the person responsible for operational decisions and Tania, the most experienced master, is named as the person responsible for crew training and competency assessments. Although Scotty and Tania are named as responsible people, they are not officers because they don't have significant influence over how the whole of FIFL is managed.

Pita has read that MOSS doesn't address all of FIFL's duties under HSWA. He calls a meeting with Scotty and Tania to discuss HSWA and make sure everything is covered. They conclude that FIFL already meets most duties.

The FIFL fleet is relatively new and built in Australia which has had a total ban on asbestos since 2003. So Scotty doesn't need to test for asbestos.

Tania has reviewed the current facilities against the HSWA requirements. All the

ferries have good first aid kits, toilets and hand basins for staff and passengers.

The ferry trips are short so there is no requirement for accommodation. The FIFL offices also have bathrooms, first aid kits and staff rooms.

The operation has detailed emergency procedures. FIFL staff are trained and they conduct regular drills to ensure that everyone is up to date. They also ensure that there is enough emergency equipment for the number of passengers they carry. Safety briefings are conducted at the start of each crossing and safety information is visible and clear for passengers. To ensure passengers are safe during crossings, a crew member is assigned to oversee passengers and address safety issues. A public address system is used to communicate safety information and warnings.

They could encourage more staff participation.

Shared duties are not an issue during normal operations because only FIFL staff work on the ferries. Scotty thinks they manage the induction of the other businesses they work with pretty well, but they realise that their approach is not recorded anywhere. They agree that Scotty will amend FIFL's safety plan to formalise the process, and Tania will discuss it next time she runs staff training.



TIF

Scotty has been thinking about noise exposure for a while. FIFL buys a sound level meter and Scotty checks whether workers in the engine rooms are at risk of hearing damage. One FIFL vessel doesn't comply with the regulations and, after some research, Scotty gets baffles fitted. The noise is reduced but not eliminated and, as a secondary protection, FIFL provides the workers with good quality hearing protection.

Pita, Scotty and Tania have a good chat about worker engagement, participation and representation.

Tania oversees training and induction of new staff and thinks that they have a strong health and safety culture. While there are no particular concerns, they conclude that FIFL's approach has been 'top down'. They are good at training and induction but could improve on engagement and encourage more staff participation.

With so many scheduled sailings and staff working different shifts it's hard to get everyone together. After consulting with staff, they decide to focus separately on the crews that work each vessel. They agree to look for health and safety 'champions' in each crew. They plan

to work with the 'champions' to create opportunities in the daily routine for crew to discuss health and safety, identify issues and feed these through to management.

FIFL doesn't have any formal health and safety representatives (HSRs). They agree that Tania will explain how it works at the next staff training session, and take it from there. If staff want HSRs, then FIFL will arrange elections.

In recent years the FIFL board has taken more interest in safety. For a while now Pita has advised the board chair whenever FIFL reports an accident, incident or mishap to Maritime NZ under the MTA, and the board has just extended this to include notifiable events under HSWA.

Now the board decides to adopt a positive and proactive approach to health and safety. At a special board meeting, they combine training on due diligence duties with a tour of several boats in the fleet accompanied by Pita, Scotty and Tania. Health and safety is made a standing agenda item at FIFL board meetings and a safety review is added to the board's annual programme. Pita reports to the board monthly on health and safety and the board follows up on agreed actions at subsequent meetings.

DUTIES IN ADDITION TO MOSS

Duty to manage asbestos



Duty to provide facilities for workers*



Shared duties



Worker engagement and participation



Duty to initiate an election of a health and safety representative (if requested)



Officers' due diligence



*Note: The facilities requirements under HSWA may exceed the requirements of the Rules for some vessels.



FIF

FOX ISLAND FERRIES

Section four

Applying HSWA duties in the maritime sector



Introduction

Maritime operators and other businesses that carry out work on ships need to meet a range of health and safety duties. This section describes the HSWA duties and, where there are special considerations, how the duties apply in maritime situations. Many of the duties were required under the HSE. The duties under HSWA that are new or that have been extended include:

- overlapping duties
- upstream duties
- due diligence
- worker engagement, participation and representation
- manage asbestos.

Maritime operators should already be operating under a safety system that will address some health and safety matters. It's not necessary to duplicate actions or controls under HSWA that are already addressed to the required standard by a maritime safety system.

Reasonably practicable

HSWA sets out the principle that workers and other persons should be given the highest level of protection as is reasonably practicable.

Many duties under HSWA apply 'so far as is reasonably practicable'. This standard is an objective one – ie what the person *would reasonably be expected to know, control, or influence* – not what they actually know.

Something is 'practicable' if it is possible or capable of being done. 'Reasonably' doesn't mean that an operator or businesses must do everything humanly possible – but it does mean doing what a reasonable operator or business would do in the same situation.

When a PCBU decides what is reasonably practicable they should take into account:

- how likely the hazard or the risk is to occur
- the degree of harm that could result
- what measures exist to control the risk
- whether ways to eliminate or minimise the risk are available and suitable.

Cost shouldn't be the main factor when considering what is reasonably practicable. A PCBU should *only* consider cost after assessing the risk and the available ways to eliminate or minimise it. Once these steps are taken, the PCBU should assess whether the cost is grossly disproportionate to the risk.

Primary duty of care

A business (PCBU) must make sure that its work doesn't put the health and safety of people at risk. This is called the 'primary duty of care'.

This means taking care of the health and safety of:

- workers – employees, contractors, subcontractors and so on, while they are doing work for the business
- other workers whose work is influenced or directed by the business
- visitors, members of the public and so on who could be affected by the work.

The primary duty of care applies so far as is reasonably practicable. An operator's primary duty of care is broad and may mean in some cases exceeding the minimum requirements of the Maritime Rules or applying measures that are additional to the requirements of the Rules.

This includes considering health and safety when buying new plant or equipment. For example, a passenger vessel with no propeller guard may comply with the Rules, but pose a safety risk to people if the vessel is used for swimming operations. Under HSWA, it would be reasonably practicable to take additional measures, such as fitting a suitable propeller guard. This is consistent with Maritime NZ safety guidelines.

A PCBU who is a self-employed person must also ensure, so far as is reasonably practicable, his or her own health and safety while at work.

Manage risks

Risks to health and safety must be eliminated so far as is reasonably practicable. If a risk cannot be eliminated, it must be minimised so far as is reasonably practicable.

A hazard is something that can harm. A risk is the chance that a hazard will actually cause somebody harm, and how severe the harm will be. For example, it's more common for workers to get caught in an unguarded winch and the consequences, are severe. While being attacked by a shark has severe consequences, it's unlikely to happen. A focus on risk helps businesses and workers to think about where they should pay attention.

Where more than one PCBU is involved, the PCBUs must manage risks to the extent that they influence and control a matter.

To manage risks to health and safety a PCBU must:

- identify hazards that create risk (a hazard is anything that can cause harm and includes behaviour)
- eliminate or minimise risks
- apply effective controls.

Controlling risk

An action to eliminate or minimise risk is called a control measure. This could be, for example, using a process or some equipment.

Businesses should review and revise control measures, including when:

- the control may not be working
- things in the workplace change or a new hazard is identified.

PCBUs with overlapping duties must work together to manage work risks.

PCBUs must also engage with their workers when identifying and managing work risks.

Worker engagement, participation and representation

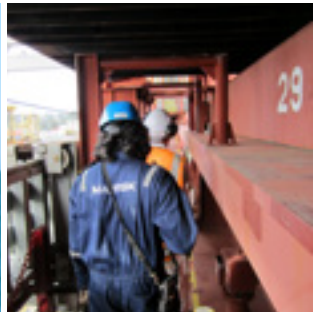
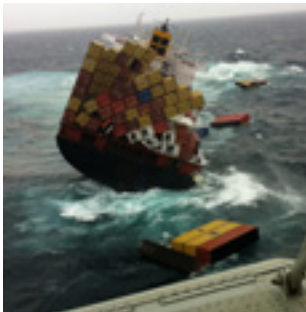
All businesses (PCBUs) must involve their workers in workplace health and safety.

Workers are safer and healthier when everyone involved identifies hazards and risks, talks with each other about health and safety, and works together to find solutions.

PCBUs must:

- Talk with their workers about health and safety matters. This is known as ‘worker engagement’.
- Give their workers opportunities to work with them to improve health and safety. This is known as ‘worker participation practices’. Opportunities to take part must be meaningful and on-going.

These duties only extend to workers who carry out work for the business or undertaking.



Representation

Workers can elect one or more health and safety representatives (HSRs) to speak or act on their behalf. Workers can also ask the PCBU to establish a health and safety committee (HSC).

The functions of an elected HSR include:

- representing workers on health and safety issues
- entering workplaces to conduct inspections
- making recommendations on health and safety
- promoting the interest of workers who have been harmed at work.

HSRs who have completed recognised transition training or who have completed the recognised initial training and achieved NZQA unit standard 29315 have the power to:

- direct workers to cease work that exposes them to serious or imminent danger
- issue a provisional improvement notice to address a health and safety problem.

PCBUs with 20 or more workers must hold elections for HSRs if requested to do so by a worker. PCBUs in sectors or industries designated as high risk such as fishing and aquaculture, must hold HSR elections if requested by a worker – regardless of the number of workers.

HSWA and the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 contain detailed provisions addressing worker engagement, participation and representation. People wishing to know more should read the guidance published by WorkSafe NZ.



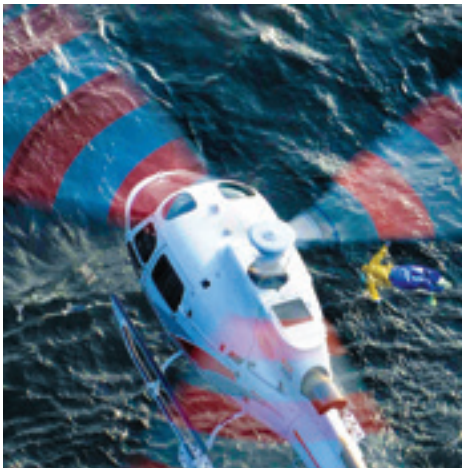
Overlapping duties

Under HSWA, PCBUs share responsibility for health and safety when they have duties regarding the same matter. In a maritime setting this will happen when a business other than the maritime operator works on a vessel. When duties overlap, businesses are required, so far as is reasonably practicable, to consult, cooperate with, and coordinate their activities with each other.

A New Zealand maritime operator and any other PCBUs working on the vessel should discuss what work is being carried out, agree on the health and safety controls that should be in place, and agree who is responsible for what.

A vessel operator has a lot of influence and control on a vessel, and is usually in the best position to ensure health and safety risks in relation to the operation of the vessel are being appropriately managed.

Other PCBUs working on the vessel will be in a position to influence and control matters relating to their own business. For example, a diving operator will have control and influence over diving related health and safety matters such as ensuring that diving gear is well maintained and properly used, and that divers are trained and monitored. Where their areas of control and influence overlap, the parties need to work together to fulfil their responsibilities – for example having effective procedures for ensuring the safety of divers exiting and diving near the vessel.



Examples of overlapping duties

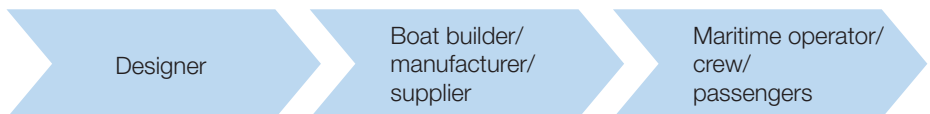
SITUATION	PCBUs THAT HAVE OVERLAPPING DUTIES
<ul style="list-style-type: none"> A fisheries officer working on a fishing ship as an observer 	<ul style="list-style-type: none"> The maritime operator Ministry for Primary Industries (MPI)
<ul style="list-style-type: none"> A diving business working off a ship that it doesn't operate 	<ul style="list-style-type: none"> The maritime operator The dive business
<ul style="list-style-type: none"> A catering company contracted to provide catering on a ship 	<ul style="list-style-type: none"> The maritime operator The catering company
<ul style="list-style-type: none"> A fish processing company that processes fish on a ship 	<ul style="list-style-type: none"> The maritime operator The fish processing company
<ul style="list-style-type: none"> Tradesperson doing maintenance on a ship when it's in port 	<ul style="list-style-type: none"> The maritime operator The port operator The contracting company that employs the tradesperson
<ul style="list-style-type: none"> Stevedore loading or unloading goods on a New Zealand registered ship when it's in port, using the ship's crane 	<ul style="list-style-type: none"> The operator The port operator The stevedore company that employs the stevedore

Upstream duties

Preventing risks at the supply stage is more efficient and effective than trying to address the risk downstream at the workplace.

PCBUs involved in the supply chain must ensure (so far as is reasonably practicable) that that the design, manufacture or supply of plant is without risks to the health and safety of the people who use it.

Plant includes a maritime vessel and any machinery or equipment on board.



Designers, manufacturers, importers and suppliers of plant must ensure that their products are safe and must provide information about any conditions of use and the results of any analysis, testing, etc.

As part of their primary duty, maritime operators and any businesses that work on ships should make reasonable enquiries about safety information and any conditions of use when they purchase plant and equipment.

Due diligence

'Officers' of a PCBU must exercise due diligence to ensure that the PCBU fulfils its health and safety duties.

An 'officer' is a company director, a partner in a business partnership or a chief executive. Owner-operators are officers because they own and run their businesses.

People in other roles can also have duties as an officer if they exercise significant influence over the management of the business. 'Responsible people' named in a Maritime Transport Operator Certificate (MTOC) may be considered officers. Whether they are depends on whether their role gives them significant influence over how the whole business (PCBU) is managed.

'Due diligence' includes taking reasonable steps to:

- have up-to-date knowledge of health and safety matters
- understand the hazards and risks associated with the work of their PCBU
- make sure that their PCBU has appropriate processes and resources to minimise risks
- make sure their PCBU has appropriate processes for receiving and considering information about incidents, hazards and risks
- make sure their PCBU has processes for complying with HSWA, and applies them.

How officers exercise their due diligence duty depends on the size of their operation, the way it's run and the level of risk involved. Owner operators can exercise due diligence by being directly involved in health and safety within the maritime operation. Land-based directors and chief executives with limited involvement in day-to-day activities on ships still need to be sufficiently knowledgeable and take steps to ensure that the PCBU is meeting its duties. However, in doing so, they are likely to need to rely on information from others – for example the master or the person in charge. This means that they will need to ensure that good communication and reporting procedures are in place.

Officers may need to set up some reporting or review processes to make sure that they get the right information about their business.

Manage asbestos

The Health and Safety at Work (Asbestos) Regulations 2016 require operators and other businesses that work on ships to take specific steps to manage asbestos.

Exposure to asbestos can have serious health impacts. Asbestos has been widely used in ship construction – packed around engines, boilers, pipes and ducts; in floor and wall coverings; in insulation, glues and sealants, electrical cables, lagging, gaskets and mooring ropes.

Asbestos use was phased out in New Zealand during the 1990s and the Safety of Life at Sea (SOLAS) Convention banned asbestos use in new ship construction internationally from 2011.

Maritime operators and other businesses that work on ships have a general duty to eliminate or minimise exposure to airborne asbestos in the workplace. They need to apply the following measures to meet the requirements of the asbestos regulations:

- Take steps to identify whether asbestos is present if there is a risk of exposure to respirable asbestos. This could apply, for example, if the vessel was built in NZ before 2000, or built in Asia before 2011 – and has lagging around exhaust pipes, refrigerant pipes, or boilers; or has insulation around a fish hold or freezer.
- Include management of asbestos in safety plans if asbestos is present or if it is not known if asbestos is present.
- Engage a ‘competent person’* before refurbishing a vessel to assess whether asbestos is present if the vessel was built or altered before 1 January 2000; or asbestos has already been identified; or asbestos is likely to be present.
- Ensure that asbestos is removed by a licensed asbestos removalist.
- When routine maintenance and servicing work is being done around asbestos-containing materials they must follow the requirements for testing, workplace controls, training and information that are prescribed in the regulations.

The Asbestos Regulations contain detailed provisions for managing asbestos. For more information, please see the guidance published on the websites of Maritime NZ and WorkSafe NZ.

* competent person means someone with the knowledge, experience, skills and qualifications to carry out a particular task under the Asbestos Regulations, including any knowledge, experience, skills and qualifications prescribed in a safe work instrument.

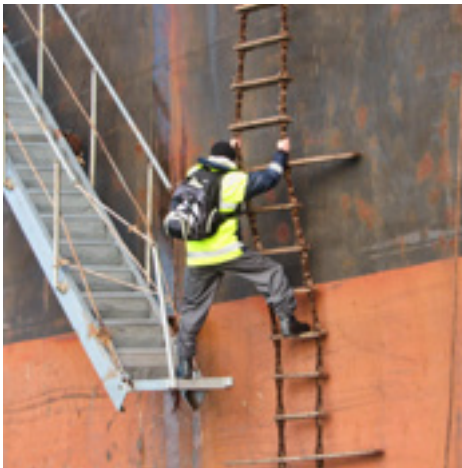
Exposure and health monitoring

Health monitoring is a way to check if the health of workers is being harmed from exposure to hazards while carrying out work, and aims to detect early signs of ill-health or disease. Health monitoring can show if control measures are working effectively. Monitoring does not replace the need for control measures to minimise or prevent exposure.

At present, health monitoring is only required for licensed asbestos removal work or on-going asbestos-related work. However, in future WorkSafe NZ may require health monitoring for people working with certain hazardous substances.

The PCBU must ensure health monitoring is carried out or supervised by an occupational health practitioner (a medical doctor, registered nurse or nurse practitioner) with knowledge, skills and experience in health monitoring. Workers must be consulted about the selection of the occupational health practitioner who will carry out the monitoring and the PCBU must pay all health monitoring costs.

Health monitoring results must be provided to the worker but must not be disclosed to anyone else without the worker's permission.



Provide facilities

HSWA and the General Risk and Workplace Management Regulations 2016 require PCBUs to provide a range of facilities for workers. These include:

- facilities required in all workplaces (eg toilets, hand washing facilities, drinking water, a place where workers can eat and take breaks, a suitable place where sick workers can rest)
- facilities that must be provided if they are reasonably likely to be required (including bath or shower, and places to change clothes, keep clothes dry, and sit and rest)
- general workplace facilities (eg adequate lighting, ventilation, space to work).

Maritime Rules set requirements for vessels, including requirements for facilities. In some cases, particularly on larger ocean-going vessels, the facilities prescribed by the Rules exceed what might be expected under HSWA.

However, depending on the vessel, the requirements under HSWA may be broader than what is required by the Rules. For these vessels, meeting the standard required by HSWA and the regulations may require a higher standard than the Rules, or providing things that are additional to the requirements of the Rules.

PCBUs must provide facilities 'so far as is reasonably practicable' (see explanation of reasonably practicable page 31).

What is reasonable and practicable is an objective standard and will depend on the type of operation and a range of factors such as:

- the size of the vessel
- the number of crew/passengers
- how long the vessel is away from land
- how risky the operation is
- the accepted industry standard
- what facilities it is possible to provide on the vessel.

Facilities on existing vessels

A vessel may comply with the Maritime Rules but fall short of the requirements for facilities under HSWA.

What facilities it is reasonably practicable to provide on an existing vessel will depend on the context in which the vessel is operating and the kind of factors listed above.

Facilities and refurbishment of vessels

If a vessel does not meet the requirements for facilities under HSWA and the regulations, the operator should consider what would meet these requirements to a reasonably practicable standard when they are planning a refurbishment or upgrade. This consideration could include how extensive the work would be.

Before a refurbishment, the operator will also need to consider asbestos – see page 38.

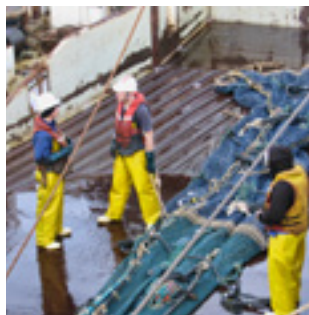
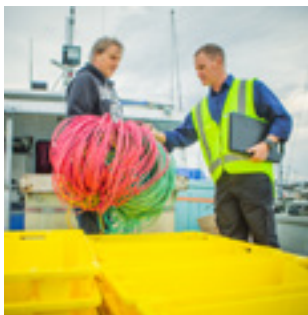
Facilities and new vessels

It should be more straightforward for newly designed vessels to meet the facilities requirements. PCBUs and people with upstream duties such as designers and architects need to meet the HSWA and the General Risk and Workplace Management Regulations facilities requirements (so far as reasonably practicable).

Emergency management

PCBUs must have in place an up-to-date emergency management plan and conduct regular training for workers on what to do in an emergency. Maritime operators operating under a safety management system should already be meeting this duty.

PCBUs have a duty to consult with workers when developing the emergency plan. This is the time for the master and crew to agree on roles and procedures during an emergency, understand the risks and how to manage those risks. The agreed plan can then be followed if an emergency occurs. It isn't a good time to debate what to do during an actual emergency when everyone is under pressure.



Provide training and supervision to workers

PCBUs must provide workers (so far as reasonably practicable) with training and supervision to protect them from risks to health and safety. Training includes information or instruction and must be easy to understand.

Workers must have enough knowledge and experience from similar situations to work safely. If not, they must be adequately supervised by a person who has that knowledge and experience.

All workers must be given enough training to safely use the equipment they handle and the personal protective equipment they wear or use. This should include training for the safe handling of any hazardous substances they may encounter.

The type of training or supervision a PCBU provides will depend on the kind of work being done, the level of risk involved and the control measures the PCBU has put in place.

First aid

PCBUs must provide adequate first aid equipment for the workplace. The business must also ensure that enough workers are trained to administer first aid, or that workers can access people who have been trained.

A vessel at sea will generally experience a delay accessing outside help, so operators should consider having crew trained in first aid.

Personal protective equipment (PPE)

PCBUs must provide personal protective equipment (PPE) to workers if it is necessary to minimise risks to health and safety. PPE on a vessel could include lifejackets, suitable gloves, foul weather gear, steel-toed gumboots and sunblock. PPE must be suitable for the purpose, reasonably comfortable and well maintained. Workers must be trained in how to properly use PPE.

A PCBU must not impose a levy on a worker or charge for providing PPE. A PCBU cannot require an employee to provide their own PPE as a pre-condition of employment or as a term or condition in an employment agreement.

A worker can voluntarily choose to provide their own PPE for reasons of comfort or convenience, provided the PCBU is satisfied that the PPE is suitable. That worker can also change their mind and, with reasonable notice, ask the PCBU to provide the PPE.



Section five

What to do when accidents happen

The background of the lower half of the page features a series of overlapping, wavy, horizontal bands in various shades of blue, creating a sense of motion and depth. The colors range from a deep, dark blue to a lighter, more vibrant blue, with the waves appearing to flow from the left towards the right.

Introduction

PCBUs should have robust processes and procedures in place to ensure that workers are well-trained and equipped to deal with accidents. This includes having and maintaining emergency equipment and conducting regular training and drills. Passengers on board a vessel should be fully briefed on safety and what to do in an emergency.

The first thing to do when an accident or event happens is make sure that the people on board and the vessel are safe, and that people who are hurt or sick get medical attention.

After that, Maritime NZ must be notified and the event must be recorded.

This section explains what events to notify, when to do it and what to record.

When to notify Maritime NZ – notifiable event

A 'notifiable event' is when:

- someone dies as a result of work
- someone has a serious injury or illness as a result of work
- a serious accident happens at work.

PCBUs must notify Maritime NZ of all notifiable events that happen on board a vessel.

Notifications allow Maritime NZ to investigate or follow up on significant events immediately.

Reporting and record keeping

After ensuring that the vessel, crew and passengers are not in immediate danger and that medical attention is provided to those who need it. The skipper's next priority should be to report an accident, incident or mishap to Maritime NZ.

Under HSWA, Maritime NZ must be notified as soon as possible after the event. Under the MTA, the master must notify Maritime NZ of accidents, incidents and mishaps. There may also be other agencies that need to be notified – for example, if a death has occurred the Police should be informed.

HSWA requires PCBUs to keep records of all notifiable events for at least five years from the date Maritime NZ was notified. The MTA (Section 30) requires maritime operators to maintain a register of accidents, incidents and mishaps, and to record particulars relating to those events. The same register can meet the requirements under both Acts.

Minor injuries, such as a small cut or sprain, do not have to be reported to Maritime NZ, but should still be recorded on the accident register.

How to report

Reporting a maritime event is an easy two-step process.

- 1 First you need to report your event verbally as soon as possible. Verbal reports can be made by:

phoning Rescue Coordination Centre New Zealand (RCCNZ).
This service operates around the clock. Free phone 0508 222 433

OR

contacting Maritime NZ's Maritime Operations Centre on VHF Channel 16.
This service also operates around the clock. Information will be transferred to RCCNZ immediately after it is received.

- 2 Fill out an online event form at www.maritimenz.govt.nz as soon as you can. Follow the easy to use, step by step form and submit. Your information will automatically be sent to Maritime NZ.

If you do not wish to fill out an online notification, you can print the appropriate form and post or fax it to:

Fax to:

RCCNZ at +64 4 577 8038

Post to:

Maritime New Zealand
Accident Reports
PO Box 27006
Wellington 6141



Review of controls

Maritime operators should periodically review their safety systems to check that the controls they have in place are working as they should.

It's a good idea to review controls after an event. This helps everyone to understand and learn from what happened, and put in place measures to prevent the event from happening again.

Notifiable injuries and illnesses

Under HSWA a notifiable injury or illness means:

- the following injuries or illnesses that require immediate treatment (other than first aid):
 - amputation of any part of the body
 - a serious head, or eye injury
 - a serious burn
 - the separation of the skin from underlying tissue (such as de-gloving or scalping)
 - a spinal injury
 - the loss of a bodily function
 - serious lacerations.
- an injury or illness that requires (or would usually require) a person to be admitted to hospital for immediate treatment
- an injury or illness that requires (or would usually require) medical treatment within 48 hours of exposure to a substance
- any serious infection (including occupational zoonoses) to which the carrying out of work is a significant contributing factor, including any infection that is attributable to carrying out work that involves handling or contact with fish or marine mammals.



Notifiable incidents

Under HSWA a notifiable incident means an unplanned or uncontrolled incident that exposes a worker or other person to serious risk arising from immediate or imminent exposure to:

- a substance escaping, spilling, or leaking
- an implosion, explosion or fire
- gas or steam escaping
- a pressurised substance escaping
- electric shock
- the fall or release from height of any plant, substance or object
- damage to or collapse, overturning, failing or malfunctioning of any plant that is required to be authorised for use
- the collapse or partial collapse of a structure
- a collision between two vessels, a vessel capsize, or the inrush of water into a vessel.

What to do when a notifiable event occurs

The site of a notifiable event is not allowed to be disturbed until an inspector says so. This means:

- the work set-up should not be changed and work that could interfere with the scene of the event should stop
- any plant, substances or other things involved in the event should stay where they are and not be altered.

The PCBU can still help an injured person, or remove a deceased person, or make the site safe so that another notifiable event doesn't happen.

Work can continue in other parts of the workplace. The most important thing is to prevent further harm. A PCBU can also do things at the site if they are told to by a police officer, or if an inspector says they can.



Appendix one

How HSWA is administered and enforced

Introduction

Maritime NZ is the designated authority to administer HSWA with respect to work on board ships (except naval ships). This appendix describes how Maritime NZ carries out this work.

Maritime NZ's functions include to:

- provide guidance, advice and information on work health and safety
- foster a cooperative and consultative relationship between the people who have health and safety duties, and the people to whom they owe those duties and their representatives
- monitor and enforce compliance with work health and safety legislation.

Maritime NZ works collaboratively with PCBUs, workers and their representatives to embed and promote good workplace health and safety practices, and the highest level of protection reasonably practicable; and will enforce the health and safety law.

Maritime NZ wants to achieve a high level of voluntary compliance. We will generally use guidance, information, education, and engagement when the risks are low and the operator is willing to comply.

Our approach will be tailored to the circumstances. We will select the tool that we think will have the most impact. Our decision will take into account the harm or risk of harm, the conduct and attitude of those involved, and the public interest or importance. For more information refer to the Maritime NZ compliance operating model on the Maritime NZ website.



The role of inspectors

Under the Maritime Transport Act 1994, the people who perform compliance and enforcement roles are called 'maritime officers'. Under HSWA the people who perform these roles are called 'inspectors'.

Maritime NZ field staff are warranted under both Acts – they are maritime officers and health and safety inspectors for the maritime sector.

Health and safety Inspectors work to ensure that duty holders (eg PCBUs and workers) comply with HSWA by:

- providing information
- assessing workplaces
- investigating incidents
- enforcing health and safety law.

Information and education

Inspectors work with duty holders to improve workplace health and safety. They can:

- advise PCBUs and workers of their responsibilities and rights under HSWA and regulations
- provide guidance material on HSWA and regulations.



Workplace assessments

Assessments focus on high risk parts of the sector, specific hazards, and the causes of common injury. Inspectors generally conduct planned inspections in these areas. Maritime NZ may run campaigns targeting specific HSWA topics or issues.

Normally HSWA assessments will be aligned with maritime safety audits. Operators are charged for a scheduled Maritime Transport Act audit but will not have to pay for any HSWA work, so maritime officers will keep a clear distinction between these two functions.

Observations made during an assessment will inform whether any targeted follow-up work under HSWA is needed.

Investigations

We will conduct investigations when we have information indicating that duties are not being complied with, including where there have been workplace incidents or accidents such as fatalities, serious injuries, dangerous incidents and emergencies.

Worker engagement, participation and representation

Inspectors may also visit workplaces to:

- review disputed provisional improvement notices issued by health and safety representatives
- help resolve matters from determining work groups
- help resolve issues arising from disputed work stoppages due to suspected immediate threats to health and safety
- help PCBUs, workers, and others resolve other health and safety issues unable to be resolved through workplace issue resolution procedures
- decide an issue in relation to the membership of a health and safety committee.

Compliance and enforcement measures

Inspectors have a range of tools available to address non-compliance if they reasonably believe that HSWA or regulations have been breached, or there is an immediate risk to health and safety.

An improvement notice can require a person (eg the operator) to take action in a given time period to fix a breach (or imminent breach) of the act or regulations.

A prohibition notice can require a workplace activity to stop if the inspector reasonably believes that it is causing (or will cause) a serious and immediate risk to health and safety.

A non-disturbance notice can require the person in charge not to disturb a site where a notifiable event has occurred.

An infringement notice may be issued for prescribed offences against HSWA or regulations.

Maritime NZ may **prosecute** when this is required. This could be the case for example in cases of active or intentional non-compliance, where serious harm has occurred (or could have occurred) or where action is necessary to deter others.

Inspectors' powers of entry and inspection


Inspectors may enter any workplace at any reasonable time and:

- conduct examinations, tests, inquiries or direct a PCBU to do these
- take photographs or measurements, and make sketches and recordings
- require the workplace (or a specified thing at the workplace) to not be disturbed for a reasonable period
- require PCBUs to:
 - produce information about the work, workplace or workers
 - produce information relating to the PCBU's compliance with relevant legislation
 - permit the inspector to examine or make copies of the information.
- require a PCBU to make or provide a statement.



Appendix two

Frequently asked questions

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I have an approved Maritime Transport Operator Certificate (MTOC) under MOSS. What more do I need to do?

Operators must meet both MOSS and HSWA requirements. MOSS addresses many duties required under HSWA and it isn't necessary to duplicate these.

If you follow your approved operator plan you will generally have in place processes to:

- manage risks
- ensure the safety of others in the workplace
- develop emergency management plans
- notify events
- periodically review workplace controls
- provide health and safety information to workers.

However, as noted earlier in this document, the standards required in HSWA may be more extensive and require additional steps to be taken. In addition, the following HSWA duties are not specifically addressed by MOSS:

- overlapping duties
- upstream duties
- officers' due diligence
- duty to manage asbestos
- worker engagement, participation and representation
- the requirement to provide facilities.

There is more detailed guidance on these duties on our website.

Do I need to complete a document, like my operator plan, for the new Act?

HSWA doesn't require formally documented health and safety systems approved by Maritime NZ.

However, written records are a good way to keep track of the processes you have in place and to verify you are following your own system. For example how you respond to the suggestions that workers have made about health and safety.

If you are a maritime transport operator, you don't need different systems for MOSS and HSWA – develop one system that covers both sets of requirements. If you are part of an ACC 'incentive' scheme, you can include those requirements as well.

I have a water taxi business. If one of my passengers ignores safety instructions and, as a result, gets hurt on my boat, am I responsible?

HSWA requires that passengers:

- take reasonable care of their own health and safety
- take reasonable care that the things they do not harm the health and safety of other people
- follow reasonable instructions given by the operator so that the operator can comply with their duties under HSWA.

Operators must have safe operating procedures for passengers as part of their certification under MOSS. These procedures will address things such as induction and safety management. So long as the operator is meeting its duties under HSWA, it is unlikely that an operator will be responsible for injuries to passengers who ignore their safety instructions.

I am self-employed and I run my own boat with crew. What do I need to know about the new Act?

Under HSWA you are a 'PCBU' – a 'person conducting a business or undertaking'. You are also classed as a 'worker' because you are doing work.

As a PCBU you have a duty to look after:

- your own health and safety
- the health and safety of other workers that work on your boat and
- the health and safety of other people who might be affected by the work you do (including passengers).

If your operation follows an approved operator plan, you already meet many of the duties required under HSWA.

You will need to address 'overlapping duties'. This means when you work with other businesses, for example when another PCBU (eg a contractor) is carrying out work on your boat, you need to consult with them and coordinate your health and safety approach.

Maritime NZ has published guidance on our website explaining this requirement.

I own one boat, which I operate by myself, with no crew – I am the skipper whenever the boat is used. How much difference does the HSWA make to what I have to do?

Under HSWA you are a ‘PCBU’ – a person conducting a business or undertaking’. Your duty is to ensure the health and safety of yourself and anyone else affected by your work (for example people in other vessels that are operating in the same area as you). But if you have no workers (crew), it is likely that the biggest change will be the ‘overlapping duties’ requirement, outlined above.

I’m the chief executive of a large maritime operation. How can I discharge my responsibilities for health and safety obligations when I work in an office and my ships are at sea?

Under HSWA, ‘officers’ of PCBUs must exercise due diligence to ensure that their operation fulfils its health and safety duties. Chief executives and directors are officers.

Ways you can exercise due-diligence include:

- keep up-to-date with workplace health and safety matters, especially as they relate to your business
- understand the work of the business and the hazards and risks involved
- have in place processes and resources to minimise risks
- have in place a process for receiving and considering information about incidents, hazards and risks
- undertake audits
- have in place HSWA key performance indicators for managers and the chief executive.

You may need structured processes to ensure that you meet your due diligence duty. If you are land-based, you will likely need to rely on information from your staff and you need to be able to collect and consider that information.

While you don’t have to be a health and safety expert, you need to make a reasonable effort to provide health and safety leadership and understand what questions to ask. For example, if your operation has three ships and you notice in the monthly health and safety reports that one vessel never reports any injuries while the other two do, this could be a cue to ask questions and dig into the situation to understand more about what is happening.

As a master under the MTA I call the shots, but under HSWA I'm considered a 'worker'. How can I tell what act applies at what time? How do I manage these different requirements?

Under maritime law, ships' masters have a great deal of responsibility and control over the ship while at sea. At the same time, masters working for a maritime operator as an employee or contractor are considered a 'worker' under HSWA.

The maritime operator (as the PCBU) has the primary duty to ensure the health and safety of workers and other people in the operation. In practice, operators and masters must work together to ensure their duties are met.


Maritime operators (PCBUs) also have overall responsibility for the operation. They must have in place systems and processes to ensure the safety of workers and provide appropriate resources – eg safe machinery, equipment and facilities. While the operator may not be physically present, they have a duty to ensure that the ship operates safely, and can't contract out or transfer this duty.

The master controls the ship when it is at sea, and makes the day-to-day decisions required to run the ship. They are responsible for looking after the ship and crew and must take appropriate steps when machinery, equipment etc. needs maintenance or poses a risk to health and safety. As the person 'on the spot' it's the master's job to make sure that everyone understands and uses the health and safety systems and processes put in place by the PCBU.



Appendix three

Further information and resources

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Your primary sources of information on health and safety in the maritime sector are Maritime NZ and WorkSafe New Zealand

Maritime NZ

Information and guidance can be found on the Maritime NZ website:

www.maritimenz.govt.nz

If you have a general enquiry, please contact our Wellington office:

NEW ZEALAND (TOLL FREE)

0508 22 55 22

CALL FROM OUTSIDE OF NEW ZEALAND

+64 4 473 0111

FAX

+64 4 494 1263

EMAIL

hswa@maritimenz.govt.nz

PHYSICAL ADDRESS

Level 11
1 Grey Street
Wellington 6011
New Zealand

POSTAL ADDRESS

PO Box 25620
Wellington 6146

WorkSafe New Zealand

More information and guidance on HSWA can be found on the WorkSafe website at

www.worksafe.govt.nz

WorkSafe runs a Contact Centre that answers general questions about health and safety issues. The Contact Centre operates during business hours and can be reached on 0800 030 040.

Legislation

Legislation is available at the Parliamentary Counsel Office of New Zealand –

www.legislation.govt.nz

- Health and Safety at Work Act 2105
- Health and Safety at Work (General Risk and Workplace Management) Regulations 2016
- Health and Safety at Work (Asbestos) Regulations 2016
- Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.

Appendix four

Glossary of terms

The background of the page features a series of overlapping, wavy, semi-transparent blue bands that create a sense of depth and movement. The bands are in various shades of blue, from a deep navy to a lighter, almost white-blue, and they curve across the lower half of the page.

Accident under the MTA means an occurrence that involves a ship and:

- a person is seriously harmed or lost at sea
- the ship sustains damage or structural failure
- a complete or partial failure of machinery or equipment affects the seaworthiness of the ship
- the ship's cargo is lost, damaged or moves and poses a risk to the ship or other ships
- there is a significant loss of, or significant damage to, property
- there is a loss or escape of any substance or thing that poses a risk to people, ships or other property
- the ship is foundering, capsizing, being abandoned, stranding, has been in a collision, or has had a major fire on board.

Asbestos – see page 38

Due diligence – see page 37

Duty holder – Means a person who has a duty under HSWA. There are four duty holders – PCBUs, officers, workers and other persons at workplaces.

Facilities – see page 40

Hazard – Any source of potential damage, harm or adverse health effects on something or someone under certain conditions at work. It includes a person's behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour).

Health and Safety at Work Act 2015 – HSWA is the key work health and safety law in New Zealand. This covers nearly all work and workplaces.

HSWA – short for the Health and Safety at Work Act 2015

MOSS – Maritime Operator Safety System

MTOC – Maritime Transport Operator Certificate

Officer – An officer is a person who has the ability to significantly influence the management of a business or undertaking. This includes, for example, company directors and chief executives. Officers must exercise due diligence to ensure the PCBU meets its health and safety obligations.

Operator plan – Maritime Transport Operator Plan

Overlapping duties – Means when more than one PCBU has health and safety duties in relation to the same matter.

PCBU – A PCBU is a ‘person conducting a business or undertaking’. A PCBU may be an individual person or an organisation. It does not include workers or officers of PCBUs, volunteer associations with no employees, or home occupiers that employ or engage a tradesperson to carry out residential work.

Personal protective equipment (PPE) – Means anything used or worn by a person (including clothing) to minimise risks to the person’s health and safety; and includes air-supplied respiratory equipment.

Plant – Includes any machinery, vehicle, vessel, aircraft, equipment (including personal protective equipment), appliance, container, implement or tool.

Reasonably practicable – In relation to a PCBU’s primary duty, the duty of PCBUs who manage or control a workplace, or who manage or control fixtures, fittings or plant at workplaces, and the upstream PCBU duty 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
- (b) the degree of harm that might result from the hazard or risk
- (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
- (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.

Risk – Risks arise from people being exposed to a hazard (a source of harm).

Sharefisher – In the fishing industry, one of the traditional methods of payment to crewmen/women working on board fishing vessels is by ‘share’ of the value of the catch. If you work in the fishing industry and are paid solely by ‘share’ of the catch you are a sharefisher.

Upstream duties – This means that the businesses that design, make, supply, install, and commission plant, share a responsibility to minimise the health and safety impacts of that plant.

Upstream PCBUs – In this guide means PCBUs who design, manufacture, import or supply plant, substances or structures, or who install, construct or commission plant or structures. Here ‘design’ includes–

- the design of part of the plant, substance, or structure and
- the redesign or modification of a design.

Volunteer – Means a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses).

Volunteer association – Means a group of volunteers working together for a community purpose who do not employ anyone. Volunteer associations do not have health and safety duties under HSWA as they are not PCBUs. If the association takes in money, Maritime Rules may apply.

Volunteer worker – Means a volunteer who carries out work in any capacity for a PCBU with the knowledge or consent of the PCBU on an on-going and regular basis and is an integral part of the business or undertaking. It does not include volunteers undertaking voluntary work activities such as participating in a fund-raising activity or assisting with sports or recreation for an educational institute, sports club or recreation club.

Worker – A worker is an individual who carries out work in any capacity for a PCBU.

A worker may be an employee, a contractor or sub-contractor, an employee of a contractor or sub-contractor, an employee of a labour hire company, an outworker (including a homeworker), an apprentice or a trainee, a person gaining work experience or on a work trial, or a volunteer worker. Workers can be at any level (eg managers are workers too).

Worker engagement and participation – see page 33

HELP US TO PREVENT ACCIDENTS



Knowing more about how and why accidents happen means more can be done to prevent them.

Call the 24-hour emergency line **0508 472 269** to report all accidents.

For more on how to report accidents, go to the commercial area of the Maritime NZ website.

www.maritimenz.govt.nz

Nō te rere moana Aotearoa
 **MARITIME**
NEW ZEALAND

