

Introduction to the Health and Safety at Work Act 2015



March 2016

This Guide provides an introduction to New Zealand's key health work and safety law and its regulator.

ACKNOWLEDGEMENTS

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FOREWORD

In 2013 the Independent Taskforce on Workplace Health and Safety reported that New Zealand's work health and safety system was failing. As a result, New Zealand underwent its most significant workplace health and safety reforms in 20 years resulting in the Health and Safety at Work Act 2015 (HSWA) and the formation of WorkSafe New Zealand (WorkSafe).

This Guide provides a plain English explanation of key requirements under HSWA and the role of WorkSafe. It gives examples to explain certain concepts and directs readers to where they can find guidance on how to meet regulatory requirements.

As this Guide will be updated regularly, please check the WorkSafe website for the latest version.

HOW TO READ THIS GUIDE

This Guide is split into 10 sections:

- > [Section 1](#) describes the health and safety law
- > [Sections 2-3](#) describes the duties of persons conducting a business or undertaking (PCBUs)
- > [Section 4](#) describes notifications and authorisations
- > [Section 5](#) describes the duty of officers
- > [Section 6](#) describes the duty of workers
- > [Section 7](#) describes the duty of other persons at workplaces
- > [Sections 8-10](#) describes what to expect from the regulator, the enforcement tools available, and offences and penalties under HSWA.

KEY CONCEPTS TO UNDERSTAND BEFORE READING THIS DOCUMENT

CONCEPT	BRIEF EXPLANATION
The Health and Safety at Work Act 2015 (HSWA)	New Zealand's key work health and safety legislation is the Health and Safety at Work Act 2015 (HSWA) and regulations made under that Act. All work and workplaces are covered by HSWA unless specifically excluded.
WorkSafe New Zealand (WorkSafe)	WorkSafe is the government agency that is the work health and safety regulator.
Designated agencies	Designated agencies are government agencies other than WorkSafe designated to carry out health and safety functions for certain sectors.
Regulator	The regulator means WorkSafe or a relevant designated agency.
Duty holders under HSWA	A duty holder is a person who has a duty under HSWA. There are four types of duty holders – PCBUs, officers, workers and other persons at workplaces.
PCBU	<p>A PCBU is a 'person conducting a business or undertaking'. A PCBU may be an individual person or an organisation.</p> <p>This does not include workers or officers of PCBUs, volunteer associations, or home occupiers that employ or engage a tradesperson to carry out residential work.</p> <p>A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers, and that other persons are not put at risk by its work. This is called the 'primary duty of care'.</p> <p>See Sections 2-3 for more information about PCBUs.</p>
Officer	<p>An officer is a person who occupies a specified position or who occupies a position that allows them to exercise significant influence over the management of the business or undertaking. This includes, for example, company directors and chief executives.</p> <p>Officers must exercise due diligence to ensure the PCBU meets its health and safety obligations.</p> <p>See Section 5 for more information about officers.</p>
Worker	<p>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).</p> <p>Workers have their own health and safety duty to take reasonable care to keep themselves and others healthy and safe when carrying out work.</p> <p>See Section 6 for more information about workers.</p>
Other person at workplace	<p>Examples of other persons at workplaces include workplace visitors and casual volunteers at workplaces.</p> <p>Other persons have their own health and safety duty to take reasonable care to keep themselves and others safe at a workplace.</p> <p>See Section 7 for more information about other persons at workplaces.</p>

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INTRODUCTION

IN THIS PART:

Section 1: About the Health and Safety at Work Act 2015

- 1.1 What the Health and Safety at Work Act 2015 (HSWA) sets out to do
- 1.2 Key concepts in HSWA
- 1.3 So far as is reasonably practicable (section 22 of HSWA)
- 1.4 How HSWA, regulations, safe work instruments, approved codes of practice, and guidance work together

This Part describes New Zealand's key work health and safety legislation.

KEY POINTS:

- > The Health and Safety at Work Act 2015 (HSWA) is New Zealand's key work health and safety law.
- > WorkSafe New Zealand is the work health and safety regulator – although other agencies can be designated functions for certain sectors.
- > HSWA, regulations, safe work instruments, approved codes of practices, and WorkSafe information and guidance work together to support duty holders to improve work health and safety.

01/

**ABOUT THE
HEALTH AND
SAFETY AT
WORK ACT 2015**

1.1 WHAT THE HEALTH AND SAFETY AT WORK ACT 2015 (HSWA) SETS OUT TO DO

The Health and Safety at Work Act 2015 (HSWA) is largely based on the Australian work health and safety law but with changes to reflect the differences between the New Zealand and Australian working environments.

It recognises that a well-functioning health and safety system relies on participation, leadership, and accountability by government, business and workers.

PURPOSE OF HSWA

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

The main purpose of HSWA is to provide for a balanced framework to secure the health and safety of workers and workplaces by:

- > protecting workers and other persons against harm to their health, safety and welfare by eliminating or minimising risks arising from work
- > providing for fair and effective workplace representation, consultation, co-operation, and resolution of issues
- > encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices and assisting PCBUs and workers to achieve a healthier and safer working environment
- > promoting the provision of advice, information, education, and training in relation to work health and safety
- > securing compliance with the Act through effective and appropriate compliance and enforcement measures
- > ensuring appropriate scrutiny and review of actions taken by persons performing functions or exercising powers under the Act
- > providing a framework for continuous improvement and progressively higher standards of work health and safety.

HSWA IS FLEXIBLE AND WORKABLE FOR ALL BUSINESSES AND UNDERTAKINGS

The legislation is designed to be flexible and workable for both small and large businesses and undertakings without imposing unnecessary compliance costs.

The work health and safety legislation:

- > reflects modern working relationships
- > places obligations on the people who create risk and are best placed to manage it
- > provides for worker participation and the sharing of health and safety information
- > has regulations which describe certain requirements to be met for certain duties
- > integrates the regulation of workplace use of hazardous substances
- > has a responsive enforcement regime.

WORK HEALTH AND SAFETY REGULATOR

WorkSafe New Zealand (WorkSafe) is the work health and safety regulator.

In addition, other government agencies (called designated agencies) can be designated to carry out health and safety regulatory functions for certain work eg:

- > Maritime New Zealand for ships as workplaces and work aboard ships
- > Civil Aviation Authority (CAA) for work preparing aircraft for imminent flight and aircraft in operation.

In this Guide, the term 'regulator' means WorkSafe or the relevant designated agency.

To find out who the designated agencies are, and what each is responsible for, see the WorkSafe website www.worksafe.govt.nz.

1.2 KEY CONCEPTS IN HSWA

COVERAGE IS BROAD

HSWA applies to nearly all work in New Zealand.

There are exceptions. For example, HSWA does not apply to:

- > members of the Armed Forces carrying out operational activity
- > civilians working in support of Armed Forces overseas in an area of operational activity
- > any military aircraft or naval ship carrying out operational activity.

BUSINESS AND WORKING RELATIONSHIPS COVERED

All types of modern business and working relationships are covered under HSWA (eg the relationship between franchisors and franchisees).

FOCUS ON WORK

Most duties under HSWA relate to the conduct of work. However, while the focus is on the work being carried out and how it can affect workers and others, there are certain duties that relate to the physical workplace.

A workplace is a place where a worker goes or is likely to be while at work, or where work is being carried out or is customarily carried out. It includes a vehicle, vessel, aircraft, ship or other mobile structure, and any waters and any installation on land, on the bed of any waters, or floating on any waters.

FOCUS ON BOTH WORK-RELATED ILLNESSES AND INJURIES

Whoever creates the risk manages the risk. HSWA requires health and safety work risks to be managed. This means consideration of the potential work-related health conditions as well as the injuries that could occur. Health conditions include both physical and psychological acute and long term illnesses.

FOUR TYPES OF DUTY HOLDERS

There are four types of duty holders that have work health and safety duties:

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

These duties are discussed later in this Guide.

A person may have more than one duty (eg a person can be a PCBU and a worker). More than one person may have the same duty (eg different PCBUs may have the same duty towards the same worker).

Duties are not transferable or able to be contracted out of, but reasonable arrangements can be entered to ensure duties are met.

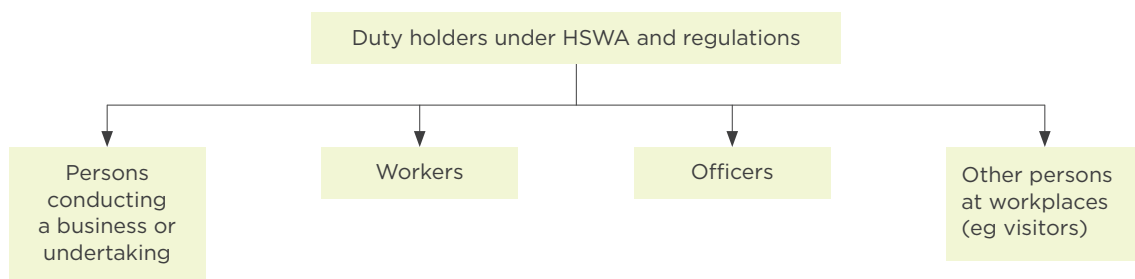


Figure 1: Duty holders under HSWA

1.3 SO FAR AS IS REASONABLY PRACTICABLE (SECTION 22 OF HSWA)

The primary duty of care requires a PCBU to ensure health and safety ‘so far as is reasonably practicable’. When used in this context, something is reasonably practicable if it is reasonably able to be done to ensure health and safety, having weighed up and considered all relevant matters, including:

- > How likely are any hazards or risks to occur?
- > How severe could the harm that might result from the hazard or risk be?
- > What a person knows or ought to reasonably know about the risk and the ways of eliminating or minimising it (eg by removing the source of the risk or using control measures such as isolation or physical controls to minimise it).
- > What measures exist to eliminate or minimise the risk (control measures)?
- > How available and suitable is the control measure(s)?

Lastly weigh up the cost:

- > What is the cost of eliminating or minimising the risk?
- > Is the cost grossly disproportionate to the risk?

For other duties such as worker engagement and participation duties, the above definition does not apply.

1.4 HOW HSWA, REGULATIONS, SAFE WORK INSTRUMENTS, APPROVED CODES OF PRACTICE, AND GUIDANCE WORK TOGETHER

HSWA, regulations, safe work instruments (SWIs), approved codes of practice (ACOPs), and WorkSafe information, guidance and advice work together to improve work health and safety.

THE WORK HEALTH AND SAFETY LEGISLATION

HSWA is the key work health and safety law. It sets out the health and safety duties that must be complied with.

Health and safety regulations sit under HSWA, and prescribe certain requirements to be met for certain duties under HSWA (see Section 12 of this Guide for a list of the health and safety regulations). For example, there are regulations about what workplace facilities are required.

SWIs set out further technical rules in relation to matters covered by regulations (eg variations to control measures for specific substances).

Other legislation may affect work health and safety (eg the Gas Act 1992 and the Building Act 2004). Where two pieces of legislation apply, the duty holder needs to follow both. HSWA addresses such overlaps by providing that other legislative requirements can be considered when deciding if health and safety duties are being met. However, duty holders may need to do more than what other legislation requires to meet HSWA duties.

EXAMPLE

An architect that designs a building has duties under HSWA to ensure health and safety, and must also ensure the design complies with the Building Act. Under HSWA the requirements of the Building Act will be taken into account in determining what is required to comply with the architect's HSWA duties.

There is other legislation that applies to work, such as the Employment Relations Act 2000.

APPROVED CODES OF PRACTICE AND WORKSAFE GUIDANCE AND INFORMATION

WorkSafe produces a range of information and guidance to help people comply with their health and safety duties.

Figure 2 shows the relationship between the law, ACOPs, and WorkSafe guidance and information.

ACOPs are practical guides on how to comply with duties under HSWA and regulations that are approved by the Minister.

WorkSafe guidance and information can be in the form of:

- > Special Guides
- > Good Practice Guidelines
- > Interpretive Guidelines
- > fact sheets
- > bulletins
- > alerts
- > WorkSafe position statements, positions or regulatory function policies.

Figure 2 explains what these are.

Guidance has been produced on the work health and safety duties under HSWA and regulations.

WorkSafe also has an extensive range of industry-specific guidance about how to manage workplace risks for:

- > manufacturing
- > agriculture (there is also a separate Safer Farms website run by WorkSafe at <http://saferfarms.org.nz/>)
- > forestry (there is a separate Safe Tree industry website at <http://safetree.nz/>)
- > construction and building
- > adventure activities
- > the extractives, geothermal, petroleum and energy sectors
- > asbestos
- > mining
- > major hazard facilities
- > work-related health (eg noise, silica, solvents).

All guidance can be found on the WorkSafe website (www.worksafe.govt.nz).

Other guidance is referred to as appropriate in this Guide.

In addition to WorkSafe guidance, there may be industry-directed health and safety guidance available.

WORK HEALTH AND SAFETY LAW



APPROVED CODES OF PRACTICE AND WORKSAFE GUIDANCE AND INFORMATION

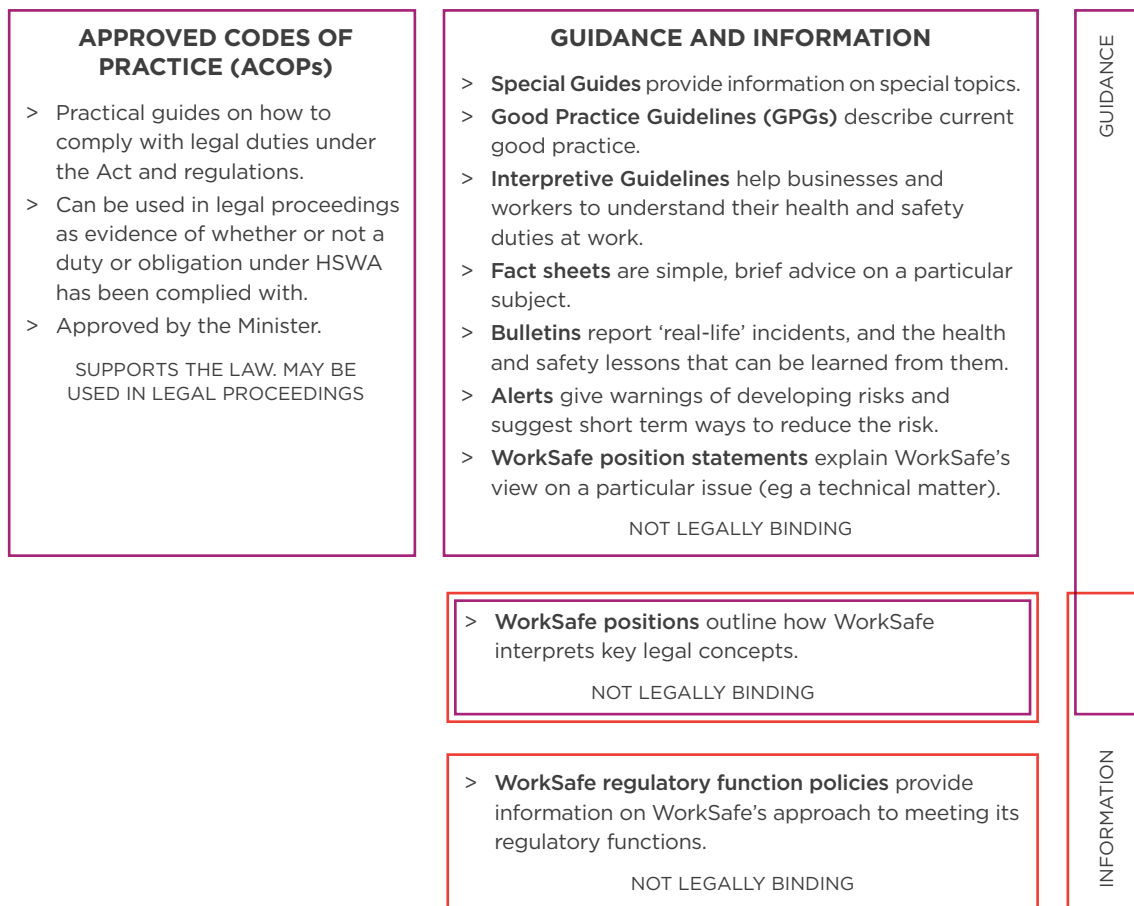


Figure 2: The relationship between HSWA, regulations, SWIs, ACOPs and WorkSafe guidance and information

For more information about the different types of WorkSafe guidance and information, see the WorkSafe website www.worksafe.govt.nz.

PERSON CONDUCTING A BUSINESS OR UNDERTAKING (PCBU)

IN THIS PART:

Section 2: What is a PCBU?

- 2.1 The meaning of a PCBU (section 17 of HSWA)
- 2.2 Examples of PCBUs
- 2.3 People and organisations that are not PCBUs

Section 3: PCBU duties

- 3.1 Primary duty of care (section 36 of HSWA)
- 3.2 Duties of PCBUs with volunteers
- 3.3 PCBUs who manage or control workplaces (section 37 of HSWA)
- 3.4 PCBUs who manage or control fixtures, fittings or plant at a workplace (section 38 of HSWA)
- 3.5 'Upstream' PCBUs (sections 39-43 of HSWA)
- 3.6 Worker engagement and participation duties (Part 3 of HSWA)
- 3.7 Managing work risk (section 30 of HSWA)
- 3.8 Consulting with other PCBUs (section 34 of HSWA)

This Part explains the duties of a person conducting a business or undertaking (PCBU).

KEY POINTS:

- > A PCBU is a 'person conducting a business or undertaking'.
- > In most cases the PCBU will be an organisation (eg a business entity such as a company).
- > A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers, and that other persons are not put at risk by its work – this is called the 'primary duty of care'.
- > PCBUs have a number of duties under HSWA.

02/

WHAT IS A PCBU?

2.1 THE MEANING OF A PCBU (SECTION 17 OF HSWA)

A PCBU is a 'person conducting a business or undertaking'. While a PCBU may be an individual person (eg a sole trader) or an organisation, in most cases the PCBU will be an organisation (eg a business entity such as a company).

While the terms 'business' and 'undertaking' are not defined in HSWA, the usual meanings of these terms are:

- > 'business': an activity carried out with the intention of making a profit or gain
- > 'undertaking': an activity that is non-commercial in nature (eg certain activities of a local authority or a not-for-profit group).

2.2 EXAMPLES OF PCBUs

Individuals or organisations can be PCBUs. A PCBU will usually be a legal entity, but HSWA also makes it clear that it could be a body of persons. Examples of PCBUs are:

- > A business in the form of a limited liability company.
- > A sole trader or self-employed person.
- > A limited partnership.
- > A partner in a partnership (if the partnership is not a limited partnership).
- > An entity created by legislation (eg a statutory body such as an university).

2.3 PEOPLE AND ORGANISATIONS THAT ARE NOT PCBUs

The following are not PCBUs:

- > volunteer associations (see following)
- > home occupiers who employ or engage someone to do work around the home (see following)
- > persons to the extent they are solely a worker or an officer in the business or undertaking
- > statutory officers to the extent they are officers or workers in the business or undertaking
- > other persons declared by regulations not to be PCBUs for the purposes of HSWA or any provision of the Act.

EXAMPLE

Kitchen Construction Limited (KCL) operates a small business which specialises in building and renovating kitchens. Simon is KCL's sole director. KCL employs several full-time staff and regularly contracts Jill, a self-employed electrician, to do electrical work for KCL's projects.

- > KCL is a PCBU conducting the business of building and renovating kitchens.
- > KCL's employees are workers of KCL (so are not PCBUs).
- > Simon is an officer of KCL (so is not a PCBU).
- > Jill is a PCBU conducting her electrical business.
- > Jill is also a worker of KCL because she is engaged by KCL to complete electrical work on KCL's projects.

VOLUNTEER ASSOCIATIONS

Volunteer groups that meet the definition of 'volunteer associations' are not PCBUs.

A volunteer association is a group of volunteers working together for one or more community purpose, where none of the volunteers, nor the association as a whole, employs anyone to carry out work for them. Community purposes could include the promotion of art, culture, science, religion, education, medicine, or for charity, sport or recreation purposes.

Volunteer groups that only engage contractors (eg instead of having employees) are not classed as PCBUs. Contractors are PCBUs in their own right.

EXAMPLE

Monica, a nurse at the local hospital, set up a group of keen knitters to knit clothing for babies (Knitting for Babies) two years ago. At first the knitting was only donated to the hospital, where it was used for premature babies. Recently the group has grown substantially and now also knits jumpers and other clothes for older babies. These jumpers are given to Plunket and the Salvation Army to distribute more widely in the community to those in need.

- > Knitting for Babies is not a PCBU as it is a volunteer association that does not have employees.

EXAMPLE

The demand for knitted baby clothes became so great that there is not enough donated wool. Knitting for Babies decided to raise money by selling a wider range of knitting at community fairs and on the group's newly established website. The group became an incorporated society, Knitting for Babies Incorporated, and employed Roger on a part-time basis to take care of all administration and accounting matters.

- > Knitting for Babies Incorporated is now a PCBU as it employs a person to work for it.

EXAMPLE

Happier Homes is a charity organisation that finds homes for abandoned pets. It is run by volunteers. Happier Homes contracts an IT specialist to create a website to promote their cause.

- > Happier Homes is not a PCBU as volunteer associations can engage contractors without being classed as PCBUs.
- > The IT specialist is a PCBU.

EXAMPLE

Happier Homes has now expanded and needs someone to manage the administration of the organisation.

- > If it employs a part-time accountant to manage the organisation's funds, the organisation is a PCBU.
- > However, if the accountant was a contractor rather than an employee, Happier Homes would not be classed as a PCBU. The accountant is a PCBU.

HOME OCCUPIERS

A home occupier who employs or engages another person to only do residential work (domestic work done in the home, or other work on the home itself) is not a PCBU. However, a home occupier is a PCBU if they operate a business from their home.

EXAMPLE

Mary owns a small lifestyle block and wants to keep chickens and plant a large garden to provide fresh eggs and vegetables for her family of eight. The property is not connected to the town water supply. Mary has engaged Maximum Plumbing Limited (MPL) to upgrade the house's plumbing and secondary water tank to make sure there is enough water for the animals, garden and her family. Three plumbers from MPL will be working in and around Mary's home for several days to finish the upgrade.

- > Mary is not a PCBU as she engaged MPL only to undertake residential work on her home.
- > MPL is a PCBU. It is in the business of providing plumbing services and needs to ensure so far as reasonably practicable the health and safety of its workers and ensure that others (including Mary) so far as reasonably practicable are not put at risk by the work to upgrade the house's plumbing and water tank.

EXAMPLE

Peter, a self-employed chef, has started his own business to provide healthy, home-cooked meals to people. Peter runs the business from his home and contracts a local courier company (who employs a driver called Sandy) to deliver the pre-cooked meals to customers. Peter purchased a larger oven to put in his kitchen and engaged Todd, a self-employed electrician, to install the oven and complete some necessary upgrades to his house's wiring to accommodate the larger oven.

- > Todd is doing work at Peter's home for Peter's home-cooked meal business. This is not residential work.
- > Peter is a PCBU conducting his home-cooked meal business. Peter has a duty of care to Todd and Sandy as workers.
- > Todd is a PCBU conducting his electrical business. He has health and safety duties in respect of Peter, as an 'other person'. He also has health and safety duties in respect of himself as a self-employed person.
- > The courier company is a PCBU conducting its delivery business. It has health and safety duties in respect of Sandy.

03/

PCBU DUTIES

3.1 PRIMARY DUTY OF CARE (SECTION 36 OF HSWA)

A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers, and that other people are not put at risk by its work. This is called the 'primary duty of care'.

This means ensuring, so far as is reasonably practicable:

- > *the health and safety of workers* who work for the PCBU (eg employees or contractors, including their subcontractors or workers) while they are at work in the business or undertaking
- > *the health and safety of workers whose work activities are influenced or directed by the PCBU while the workers are carrying out the work* (eg a franchise company whose franchise requirements influence or direct the workers of the franchisee)
- > *that other persons are not put at risk by the work of the business or undertaking* (eg a visitor to the workplace, or members of the public who could be affected by a work activity).

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.

The primary duty of care is a broad overarching duty. It includes, but is not limited to, so far as is reasonably practicable:

- > providing and maintaining a work environment that is without risks to health and safety
- > providing and maintaining safe plant and structures
- > providing and maintaining safe systems of work
- > ensuring the safe use, handling and storage of plant, structures and substances
- > providing adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities
- > providing any information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking
- > monitoring the health of workers and the conditions at the workplace for the purpose of preventing injury or illness of workers arising from the conduct of the business or undertaking.

PCBUs must also maintain any worker accommodation that is owned or managed by the PCBU and provided because other accommodation is not reasonably available. The PCBU must, so far as is reasonably practicable, maintain the accommodation so the worker is not exposed to health and safety risks arising from the accommodation.

PCBUs cannot contract out of their duties, but can enter reasonable agreements with other PCBUs to meet their duties.

These duties are explained below.

PROVIDING AND MAINTAINING A WORK ENVIRONMENT THAT IS WITHOUT RISKS TO HEALTH AND SAFETY

PCBUs must, so far as is reasonably practicable, provide and maintain a work environment that is without health and safety risks.

The work environment includes:

- > the physical work environment, including lighting, ventilation, dust, heat and noise
- > the psychological work environment, including overcrowding, deadlines, work arrangements (eg the effects of shift-work and overtime arrangements), and impairments that affect a person's behaviour, such as work-related stress and fatigue, and drugs and alcohol.

The health and safety regulations that sit under HSWA cover duties to manage certain work risks.

For information on workplace requirements, see the WorkSafe website www.worksafe.govt.nz.

PROVIDING AND MAINTAINING SAFE PLANT AND STRUCTURES

PCBUs must, so far as is reasonably practicable, provide safe plant and structures, and maintain them in good condition.

'Plant' includes:

- > machinery
- > vehicles
- > vessels
- > aircraft
- > equipment (including personal protective equipment)
- > appliances
- > containers
- > implements
- > tools
- > any component of one of these items or anything fitted or connected to one of these items.

'Structure' means anything that is constructed. It can be fixed, movable, temporary or permanent, and includes any component or part of a structure. The following are examples of structures:

- > buildings
- > masts
- > towers
- > frameworks
- > pipelines
- > quarries
- > bridges
- > underground works (including shafts and tunnels).

PROVIDING AND MAINTAINING SAFE SYSTEMS OF WORK

PCBUs must, so far as is reasonably practicable, provide and maintain safe systems of work (eg work processes).

Developing a safe system of work is a formal procedure carried out by a person with sufficient knowledge and experience. It involves:

- > the systematic examination of a task to identify risks that may arise from carrying it out
- > the identification of safe methods including control measures to eliminate or minimise the identified risks
- > the setting of methods to safely carry out the task.

The development of safe systems of work can involve looking at the physical layout of the workplace and its access and egress, tools, plant, procedures and people (eg instruction, information, training).

For risky work, safe work methods can be formalised using a permit-to-work system.

Systems of work should be reviewed on a regular basis and updated as appropriate.

For guidance on safe work systems, see the WorkSafe website www.worksafe.govt.nz.

ENSURING THE SAFE USE, HANDLING AND STORAGE OF PLANT, STRUCTURES, AND SUBSTANCES

PCBUs must, so far as is reasonably practicable, make sure that plant, structures, and substances are safely used, handled and stored.

For guidance on the safe use, handling and storage of certain plant, structures, or substances, see the WorkSafe website www.worksafe.govt.nz.

PROVIDING ADEQUATE FACILITIES FOR THE WELFARE AT WORK OF WORKERS IN CARRYING OUT WORK FOR THE BUSINESS OR UNDERTAKING, INCLUDING ENSURING ACCESS TO THOSE FACILITIES

PCBUs must, so far as is reasonably practicable, provide adequate facilities (that are clean, safe, accessible, in good working order and maintained to stay that way) for the welfare of workers.

For workplace and facility requirements, see the WorkSafe website www.worksafe.govt.nz.

PROVIDING ANY INFORMATION, TRAINING, INSTRUCTION, OR SUPERVISION THAT IS NECESSARY TO PROTECT ALL PERSONS FROM RISKS TO THEIR HEALTH AND SAFETY ARISING FROM WORK CARRIED OUT AS PART OF THE CONDUCT OF THE BUSINESS OR UNDERTAKING

PCBUs must, so far as is reasonably practicable, make sure its workers and others are provided training, information, instruction or supervision to protect them from risks to health and safety.

The type of training, instruction or supervision required will depend on the nature of the work carried out and the experience of the workers, and the risk that workers and others, such as clients and customers, are exposed to.

For information on training and supervision, see the WorkSafe website www.worksafe.govt.nz.

MONITORING THE HEALTH OF WORKERS AND THE CONDITIONS AT THE WORKPLACE FOR THE PURPOSE OF PREVENTING INJURY OR ILLNESS OF WORKERS ARISING FROM THE CONDUCT OF THE BUSINESS OR UNDERTAKING

Exposure to certain hazards can injure workers or make them ill. This can include exposure to:

- > airborne contaminants such as dusts, fibres, fumes
- > chemicals that can make people ill after breathing in, getting on their skin, or eating or drinking them
- > biological hazards such as bacteria, viruses or fungi
- > physical hazards such as noise, vibrations, UV radiation, heat
- > ergonomic hazards such as repetitive motions, eye strain.

A PCBU must, so far as is reasonably practicable, monitor its workers' health and the workplace conditions. Monitoring is not a control measure to manage risk and does not replace the need for control measures to reduce exposure. Results from monitoring should be used to improve control measures where needed.

WORKPLACE MONITORING

Workplace monitoring can involve measuring a hazard (eg a substance, fumes, noise or vibrations arising from the work). The purpose of the monitoring is to assess the effectiveness of controls being used to minimise the risk of workers developing a work-related condition or getting injured on an ongoing basis.

HEALTH MONITORING

Health monitoring involves specific and targeted testing of the health of workers to identify potential signs of potential harm to their health and any changes on an ongoing basis. As well as identifying the development of work-related conditions, the purpose of monitoring is to assess the effectiveness of control measures designed to minimise potential harm to worker health on an ongoing basis.

For information on monitoring, see the WorkSafe website www.worksafe.govt.nz.

PROVIDING HEALTHY AND SAFE WORKER ACCOMMODATION

In some situations a PCBU provides its workers with accommodation that it owns, or manages or controls, where this is necessary because other accommodation is not reasonably available.

If this is the case, a PCBU must, so far as is reasonably practicable, maintain the worker accommodation so that workers are not exposed to health and safety risks arising from the accommodation.

For information on worker accommodation, see the WorkSafe website www.worksafe.govt.nz.

3.2 DUTIES OF PCBUs WITH VOLUNTEERS

Certain volunteers are classed as volunteer workers. A volunteer is a 'volunteer worker' when:

- > they work for a PCBU who knows they are doing that work or has given consent for the volunteer to do the work, and
- > the volunteer does the work on an ongoing and regular basis, and
- > the work is an integral part of the business or undertaking, and
- > the work is not:
 - participating in fundraising
 - assisting with sports or recreation for an educational institute, sports club or recreation club
 - assisting with activities for an educational institute outside its premises or
 - providing care for another person in the volunteer's home (eg foster care).

A PCBU owes its volunteer workers the same duties as other workers (eg must provide health monitoring) with the exception of the duties in Part 3 of HSWA (worker engagement and participation).

All other volunteers (eg casual volunteers) are owed the primary duty of care as 'other persons'.

For information on volunteers, see the WorkSafe website www.worksafe.govt.nz.

DUTIES FOR SPECIFIC PCBUs

There are some duties that apply to PCBUs in certain situations. These are outlined in sections 3.3 to 3.5 of this Guide. They expand on the primary duty of care. These PCBUs still have the primary duty of care.

3.3 PCBUs WHO MANAGE OR CONTROL WORKPLACES (SECTION 37 OF HSWA)

Most duties under HSWA relate to the conduct of work. However, certain duties relate to workplaces.

A PCBU who manages or controls a workplace must ensure that, so far as is reasonably practicable, the workplace, the means of entering and exiting the workplace, and anything else arising from the workplace are without health and safety risks to any person.

A 'workplace' is any place where a worker goes or is likely to be while at work, or where work is being carried out or is customarily carried out.

This workplace duty recognises that a workplace may not permanently be a workplace for the PCBU.

PCBUs who manage or control workplaces do not owe this duty to anyone who is at the workplace for an unlawful purpose.

EXAMPLE

A builder is making repairs to a commercial property. This property is only classed as the builder's workplace while the builder is working there.

EXAMPLE

Lines workers are carrying out a one-off repair of a power pole. Once they complete the work and leave, it is no longer a workplace for the lines company PCBU as the workers are not usually at that location for work.

There is a clarification of these duties for farming businesses or undertakings. For these, the duty of a PCBU who manages or controls a workplace applies only in relation to the farm buildings (and any structures and part of the farm immediately surrounding the buildings) needed for the operation of the farm. They do not apply to the family home, or to any other part of the farm unless work is being carried out there. However, the primary duty of care to ensure people are not put at risk by the conduct of work still applies.

3.4 PCBUs WHO MANAGE OR CONTROL FIXTURES, FITTINGS OR PLANT AT A WORKPLACE (SECTION 38 OF HSWA)

PCBUs who manage or control fixtures, fittings or plant at a workplace must, so far as is reasonably practicable, ensure that the fixtures, fittings or plant are without risks to the health and safety of any person. This could include consideration of the potential health effects from using the plant (eg the long-term use of a vibrating tool causing damage to nerves or blood vessels in the arms or hands).

PCBUs who manage or control fixtures, fittings or plant do not owe this duty to anyone who is at the workplace for an unlawful purpose.

3.5 'UPSTREAM' PCBUs (SECTIONS 39-43 OF HSWA)

There are further duties for PCBUs (called here 'upstream' PCBUs) who:

- > design plant, substances, or structures
- > manufacture plant, substances, or structures
- > import plant, substances, or structures
- > supply plant, substances, or structures
- > install, construct or commission plant or structures.

Here, commission can be described as ordering structure or plant to be produced specially.

The duties apply in respect of plant, substances, or structures that are to be used, or that could reasonably be expected to be used, at a workplace.

Upstream PCBUs are in a strong position to eliminate or minimise risk. Upstream PCBUs can influence and sometimes eliminate health and safety risks through designing or manufacturing products that are safe for the end user.

Upstream PCBUs must also consider potential health effects of products before they are used in a workplace by other PCBUs (called 'downstream PCBUs' here) and their workers (eg a plant manufacturer should consider whether the noise level of their equipment could increase the risk of noise induced hearing loss).

Upstream PCBUs owe duties to downstream PCBUs and their workers and others.



Figure 3: Duties of upstream PCBUs

EXAMPLE

A poorly designed or manufactured saw (eg that is not guarded as outlined in ASNZ4024) creates the risk that it may injure the user. This risk is created by the saw designer and manufacturer (the upstream PCBU). The risk will flow through to the downstream PCBU business that purchases the saw, and the workers who have to use the saw as part of a daily work activity.

PCBUs who are designers, manufacturers, importers or suppliers must, so far as is reasonably practicable, make sure that the plant, substances, and structures designed, manufactured, imported or supplied (as relevant) are without health and safety risks when they are used for their intended purpose in a workplace.

Importers must ensure imported goods meet all New Zealand regulatory requirements.

Table 1 provides an overview of the duties of these PCBUs.

These duties do not apply to the sale (by suppliers) of second-hand plant sold as is.

	DUTIES OF PCBU DESIGNERS, MANUFACTURERS, IMPORTERS AND SUPPLIERS OF PLANT, SUBSTANCES AND STRUCTURES	DUTIES OF PCBU INSTALLERS, CONSTRUCTORS AND COMMISSIONERS OF PLANT AND STRUCTURES
<p>Duty to, so far as is reasonably practicable, ensure plant, substances, or structures are without health and safety risks</p>	<p>Make sure, so far as is reasonably practicable, the plant, substance or structure designed/manufactured/imported/supplied is without health and safety risks to people who:</p> <ul style="list-style-type: none"> > use the plant, substance or structure at a workplace for its designed or manufactured purpose > handle the substance at a workplace > store the plant or substance at a workplace > construct the structure at a workplace > carry out reasonably foreseeable workplace activities (such as inspection, cleaning, maintenance or repair) in relation to: <ul style="list-style-type: none"> - the manufacture, assembly or use of the plant, substance or structure for its designed or manufactured purpose - the proper storage, handling, decommissioning, dismantling or disposal of the plant, substance or structure > are at or in the vicinity of a workplace, and are exposed to the plant, substance or structure, or whose health and safety may be affected by a work activity listed. 	<p>Make sure, so far as is reasonably practicable, the way that the plant or structure is installed, constructed or commissioned is without health and safety risks to people who:</p> <ul style="list-style-type: none"> > install or construct the structure at a workplace > use the plant or structure at a workplace for its installed, constructed or commissioned purpose > carry out reasonably foreseeable workplace activities in relation to the proper use, decommissioning, dismantling, demolition or disposal of the plant or structure > are at, or in the vicinity of a workplace, and whose health and safety may be affected by a work activity listed.
<p>Duty to test</p>	<p>Carry out calculations, analysis, tests or examinations needed to make sure the plant, substance or structure designed/manufactured/supplied is without health and safety risks so far as is reasonably practicable (or arrange the carrying out of such tests).</p>	
<p>Duty to provide information</p>	<p>Provide adequate information to people who are provided with the design or the plant, structure or substance manufactured/imported/supplied. This includes information about:</p> <ul style="list-style-type: none"> > each purpose for which the plant, substance or structure was designed or manufactured > the results of any calculations, analyses, tests or examinations carried out to ensure the plant, substance or structure is without health and safety risks (in relation to a substance, this includes any hazardous properties of the substance identified by testing) > any conditions necessary to make sure the plant, substance or structure is without health and safety risks (when used for its designed or manufactured purpose, or when being inspected, cleaned maintained or repaired, etc). <p>On request, make reasonable efforts to give the current relevant specified information to a person who carries out or is to carry out work activities listed above with the plant, structure or substance.</p>	

Table 1: Overview of duties of PCBU designers, manufacturers, importers, suppliers, installers, constructors and commissioners

WORKER ENGAGEMENT AND PARTICIPATION

3.6 WORKER ENGAGEMENT AND PARTICIPATION DUTIES (PART 3 OF HSWA)

All PCBUs must involve their workers in workplace health and safety. A safe workplace is more easily achieved when everyone involved in the work communicates with each other to identify hazards and risks, talks about any health and safety concerns and works together to find solutions.

PCBUs have two duties:

- > to **engage** with workers who carry out work for them on health and safety matters that may directly affect them
- > to have practices that give their workers reasonable opportunities to participate effectively in improving health and safety in the business or undertaking on an ongoing basis (these are known as **worker participation practices**).

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

Worker engagement and worker participation practices can be direct or through representation.

Health and Safety Representatives (HSRs) and Health and Safety Committees (HSCs) are two well established methods of representation.

Workers can also be represented by unions, community or church leaders, lawyers, respected members of ethnic communities, or people working on specific projects.

For information on worker engagement, participation and representation including information about HSRs and HSCs, see the WorkSafe website www.worksafe.govt.nz.

HOW TO MEET HEALTH AND SAFETY DUTIES

3.7 MANAGING WORK RISK (SECTION 30 OF HSWA)

To meet health and safety duties, risks that arise from work must be effectively managed.

Risks to health and safety arise from people being exposed to hazards. A hazard is anything that can cause harm. HSWA clarifies that 'hazard' includes behaviour that has the potential to cause death, injury or illness (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock or another temporary condition that affects behaviour).

Before deciding how to manage work risks PCBUs should think about risks more broadly across the work being conducted and the contributing factors.

Risks 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. PCBUs must take these steps to the extent within their ability to influence and control the matter to which the risks relate.

The processes or equipment put in place to eliminate or minimise risk are called control measures. For minimising risk, if the risk is well-known and if there are commonly accepted ways to manage it, these control measures should usually be used.

PCBUs with overlapping duties must, so far as is reasonably practicable, work together to manage work risks (see section 3.8 of this Guide).

PCBUs must, so far as is reasonably practicable, engage with their workers when managing work risks (see section 3.6 of this Guide).

For information on managing risks, see the WorkSafe website www.worksafe.govt.nz.

3.8 CONSULTING WITH OTHER PCBUs (SECTION 34 OF HSWA)

PCBUs must, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other PCBUs who have health and safety duties in relation to the same matter (overlapping duties).

WHY SHOULD PCBUs CONSULT WITH EACH OTHER ABOUT OVERLAPPING DUTIES?

Consultation will help to avoid unnecessary duplication of effort (eg when providing welfare or first aid facilities).

Consultation will help to prevent any gaps in managing health and safety risks. It can help PCBUs reach a common understanding and establish clear roles, responsibilities and actions.

Gaps can happen when:

- > there is a lack of understanding about how each PCBU's work activities may add to the health and safety risks in the workplace as a whole or in a chain of work activities
- > a PCBU assumes another PCBU is taking care of a particular health and safety issue
- > the PCBU who manages the risk is not the PCBU in the best position to do so
- > PCBUs do not know what other work is happening and when.

The broader benefits of consultation include:

- > helping to ensure working arrangements on shared worksites and in contracting chains run smoothly and efficiently, which can lead to productivity gains
- > PCBUs on a shared worksite or in a contracting chain needing to work together to sort out problems-this will avoid the head contractor or landlord, for example, having to step in and sort out every problem on site or further down the contracting chain.

WHAT DO PCBUs NEED TO DO WHEN WORKING WITH OTHER PCBUs?

More than one PCBU can have a duty in relation to the same matter (overlapping duties).

This can occur where there are multiple PCBUs at the same location. Common examples of this are construction sites, shopping centres and multi-tenanted buildings.

However, PCBUs do not need to share a workplace to have overlapping duties such as in contracting chains (eg forestry work).

PCBUs with overlapping duties must so far as is reasonably practicable consult, co-operate and co-ordinate activities with other PCBUs so that they can all meet their joint responsibilities. PCBUs do not need to duplicate each other's efforts.

A PCBU cannot contract out of its duties, but can enter reasonable agreements with other PCBUs to meet duties. However, these PCBUs still retain the responsibility to meet their duties. The PCBUs should also monitor each other to ensure everyone is doing what they agreed.

HOW CAN PCBU_s WORK OUT THE EXTENT OF THEIR DUTY?

The extent of the duty to manage risk depends on the ability of each PCBU to influence and control the matter.

The extent of each PCBU's responsibility to carry out their duties will most likely be different. This will depend on what ability the PCBU has to influence and control the health and safety matter (ie the more influence and control a PCBU has over a health and safety matter, the more responsibility it is likely to have).

A PCBU can have influence and control over health and safety matters through:

- > control over work activity: A PCBU in control of the work activity may be in the best position to control the health and safety risks.
- > control of the workplace: A PCBU who has control over the workplace (and/or plant and structures at the workplace) will have some influence and control over health and safety matters relating to work carried out by another PCBU.
- > control over workers: A PCBU will have more influence and control over its own employees and contractors than those of another PCBU.

A PCBU with a higher level of influence and control (and with the greatest share of the responsibilities) will usually be in the best position to manage the associated risks.

A PCBU with less control or influence may fulfil their responsibilities by making arrangements with the PCBU with the higher level of influence and control.

The size of the PCBU or its financial resources (eg a large company versus a sole trader) does not equal a PCBU's ability to have control or influence over health and safety matters. This means that the PCBU with the most financial resources does not automatically have most of the responsibilities.

All PCBU_s should:

- > discuss what work activities are being carried out
- > agree on the degree of influence and control each PCBU has
- > agree on who will manage what and how it will be managed
- > agree on the use of shared facilities
- > monitor and check how things are going on an ongoing basis.

HOW CAN PCBU_s CONSULT WITH EACH OTHER?

Consultation can be as simple as exchanging important health and safety information about the following.

TOPIC	QUESTIONS
Work activities	<p>What work activities will each PCBU carry out (ie what will each PCBU do, how will they do it, when will they do it, where will it be done, what plant or substances may be used)?</p> <p>Which workers will be involved in the work activity?</p> <p>What other people may be affected by the work activity (other than workers)?</p> <p>How could one PCBU's work activities affect the work of other PCBUs?</p> <p>Will one PCBU's work activities introduce or increase the health and safety risks to other PCBUs (and other people) at the workplace or down a contracting chain?</p> <p>How could each PCBU's work activities affect the work environment?</p>
Health and safety risks	<p>What does each PCBU know about the health and safety risks associated with a work activity they carry out?</p> <p>How will each PCBU manage (eliminate or minimise) risks associated with a work activity they carry out?</p>
Other important health and safety information	<p>What information may one PCBU need to provide to another PCBU for health and safety purposes?</p> <p>How will PCBUs communicate with workers and others (eg site meetings, shared newsletters)?</p> <p>How will the PCBUs co-ordinate their emergency procedures including who will notify the regulator when a notifiable event occurs?</p> <p>What further consultation or communication may be required to monitor health and safety, or identify changes in the work or environment?</p> <p>What facilities could be shared (eg first aid or sick rooms)?</p>

Table 2: Questions to ask during consultation

EXAMPLE

A finance company leases a multi-storey office block from a building owner. Several lifts operate in the building. The building owner contracts a company (the maintenance contractor) to maintain and repair the lifts.

PCBUs involved	<p>The finance company is a PCBU and has health and safety duties towards its workers and clients visiting its offices.</p> <p>The building owner is a PCBU (who manages and controls the building) and has a duty to ensure people can safely enter and exit the building, and that the building is without risk to people.</p> <p>The maintenance contractor is a PCBU and has health and safety duties towards its workers and other people.</p>
How does the duty to consult, co-ordinate and co-operate operate in this situation?	<p>The finance company consults the building owner to find out what arrangements are in place for maintaining plant, such as air-conditioning systems and lifts.</p> <p>Before maintenance is carried out on the lifts, the building owner consults the maintenance contractor and the finance company. This is so that all PCBUs know about the work and what they each need to do to ensure the safety of people in the building. These tasks include identifying the best time for the work to be done, how the work area will be barricaded, and what information the finance company will need to give to its workers and clients.</p> <p>As the work proceeds, the finance company tells the building owner and the maintenance contractor about any concerns or incidents, so they can review them and make any changes needed.</p> <p>The following week the finance company became aware that the maintenance contractor had not fixed a faulty barricade they had been told about. As this faulty barricade could potentially harm clients, the finance company moved all client meetings to the ground floor until this was fixed.</p> <p>Workers were notified of the faulty barrier and told to use the alternative lifts at the rear of the building.</p>

NOTIFICATIONS AND AUTHORISATIONS

IN THIS PART:

Section 4: Notifications and Authorisations

NOTIFIABLE EVENTS

- 4.1 When must PCBUs notify the regulator?
- 4.2 What does a PCBU need to do if a notifiable event occurs (sections 55-57 of HSWA)?
- 4.3 Investigating notifiable events

AUTHORISATIONS AND OTHER NOTIFICATIONS

- 4.4 What are authorisations and when are they needed?
- 4.5 WorkSafe needs to be told about certain work activities before the work begins

This Part explains when the regulator needs to be notified about notifiable events, and how PCBU's should do this. It also explains about authorisations and other notifications required.

KEY POINTS:

- > PCBU's need to ensure the regulator is told when notifiable events occur arising from the conduct of the business or undertaking.
- > A notifiable event is when someone dies, or a notifiable incident, illness or injury occurs.
- > Authorisations are only required for certain work, workplaces or workers.
- > WorkSafe needs to be told before certain work activities are carried out.

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**NOTIFICATIONS
AND
AUTHORISATIONS**

NOTIFIABLE EVENTS

The regulator must be told about notifiable events that arise from work. Depending upon the work, the 'regulator' is either WorkSafe or a designated agency (see section 1.1 of this Guide). In most cases, it will be WorkSafe.

4.1 WHEN MUST PCBU_s NOTIFY THE REGULATOR?

A notifiable event is when the following occurs as a result of work:

- > a death
- > a notifiable illness or injury or
- > a notifiable incident.

Notifiable injuries, illnesses and incidents are specified in HSWA.

The regulator must be informed of all notifiable events. This notification allows the regulator to investigate or follow up on significant events immediately.

NOTIFIABLE INCIDENTS (SECTION 24 OF HSWA)

A notifiable incident is an unplanned or uncontrolled incident in relation to a workplace that exposes the health and safety of workers or others to a 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
- > the collapse or failure of an excavation or any shoring supporting an excavation
- > the inrush of water, mud, or gas in workings in an underground excavation or tunnel
- > the interruption of the main system of ventilation in an underground excavation or tunnel
- > a collision between 2 vessels, a vessel capsize, or the inrush of water into a vessel
- > any other incident declared in regulation to be a notifiable incident (eg specified incidents in the Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016).

Notifiable incidents do not include controlled activities that form part of the business or undertaking (eg the controlled release of water from a dam).

NOTIFIABLE ILLNESSES AND INJURIES (SECTION 23 OF HSWA)

Follow the flowchart below to find out what notifiable illnesses and injuries are.

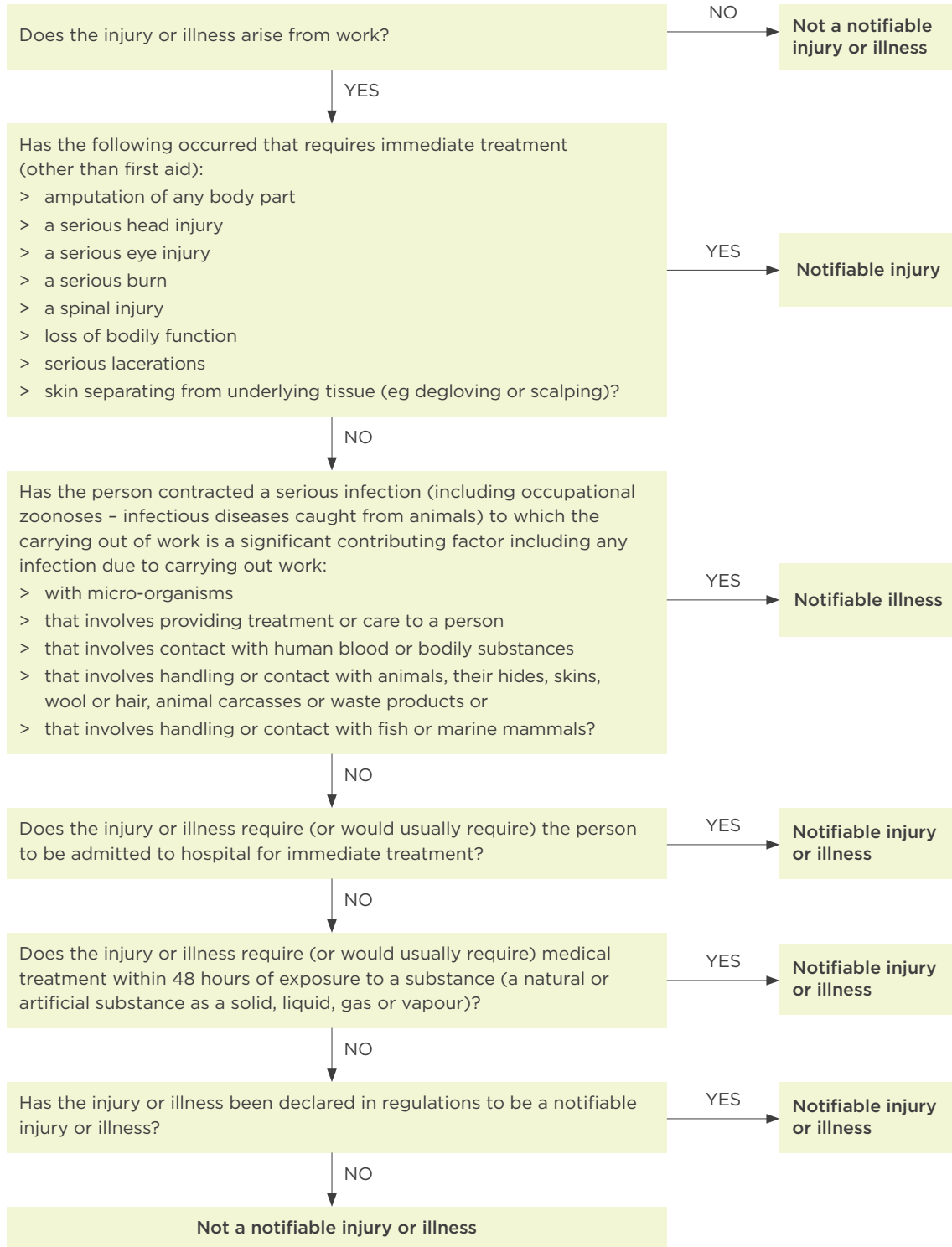


Figure 4: Flowchart to work out what injuries or illnesses need to be notified

For more information on notifiable events, see the WorkSafe website www.worksafe.govt.nz.

4.2 WHAT DOES A PCBU NEED TO DO IF A NOTIFIABLE EVENT OCCURS (SECTIONS 55-57 OF HSWA)?

If a notifiable event occurs, PCBUs should follow the steps below.

STEP 1: THE PCBU WHO MANAGES OR CONTROLS THE WORKPLACE WHERE THE NOTIFIABLE EVENT OCCURRED MUST PRESERVE THE SITE

The PCBU who manages or controls the workplace must take all reasonable steps to ensure the site of a notifiable event is not disturbed until authorised by an Inspector (ie an Inspector gives permission for normal work to resume at the site of a notifiable event)¹.

There are exceptions to this. These are if the disturbance is:

- > to help an injured person
- > to remove a deceased person
- > essential to make the site safe or to minimise the risks of a further notifiable event
- > by or under direction of a constable (police officer)
- > permitted by the regulator or an Inspector.

Regulations can also exclude particular sites from the requirement to preserve sites in particular circumstances (**note**: there are none at present).

To ensure that the site is not disturbed:

- > the work set-up should not be changed
- > any plant, substances or other things involved in the event should stay where they are
- > work that could interfere with the scene of the event should stop
- > no alterations should be made to the plant, vehicles, or structures involved.

Work can continue in other parts of the workplace. The most important thing is preventing further harm.

EXAMPLE

Bill is a farm worker. His jacket becomes entangled in a spinning shaft on a harvester, and in trying to free himself he crushes his hand. His farmhand cuts the power and detaches the device to free Bill's hand and provides first aid until the ambulance arrives. The rest of the set-up needs to be left as it is until an Inspector releases the scene. Any work being carried out nearby that could interfere with the incident scene is stopped.

¹ This does not apply if the event is being investigated under the *Armed Forces Discipline Act 1971* or the *Transport Accident Investigation Commission Act 1990*.

STEP 2: A PCBU MUST NOTIFY THE REGULATOR AS SOON AS POSSIBLE

A PCBU must ensure the regulator is notified as soon as possible after it becomes aware of a notifiable event arising out of the conduct of the business or undertaking. This notification must be done even if emergency services attend.

Only one notification is required for each notifiable event. If multiple PCBUs are involved, one PCBU should be nominated to notify the regulator. However, all PCBUs are responsible for ensuring a notification is made.

The regulator must be notified by the fastest means possible given the circumstances.

WorkSafe can be notified as follows.

MEANS	HOW	WHAT INFORMATION IS REQUIRED
By telephone	Ring 0800 030 040	The person giving the notification must provide the details about the incident as requested by the regulator. The regulator will send an acknowledgment that the notification has been received.
In writing	Email healthsafety.notification@worksafe.govt.nz Forms and alternative ways to notify can be found through the website www.worksafe.govt.nz	An approved form must be used or the notice must contain the details requested by the regulator.

Table 3: Notifying WorkSafe

For details about what information needs to be provided, see the WorkSafe website www.worksafe.govt.nz.

STEP 3: PCBUs MUST KEEP RECORDS OF NOTIFIABLE EVENTS

The PCBU must keep records of notifiable events for at least five years from the date the regulator was notified about the event.

4.3 INVESTIGATING NOTIFIABLE EVENTS

Although HSWA does not explicitly state that PCBUs must investigate notifiable events², such investigations form part of good practice to identify and manage work risk.

EXAMPLE

Construction Management Limited (CM Ltd) is a large company that oversees several construction projects. It engages ABC Ltd to manage one of its sites. ABC Ltd engages a contractor, Sue, to do plumbing work. Sue has an employee, Jim, working for her.

Jim amputates his finger on an angle grinder and is taken to hospital. As required, the accident site was preserved and WorkSafe was notified.

Independently of the WorkSafe investigation, the PCBUs (CM Ltd, ABC Ltd and Sue) investigated the accident. They looked at the machine, the task, Jim's experience and the training, and the hours worked. They identified what caused it and, so far as was reasonably practicable, revised existing control measures and put in place new ones to prevent it happening again.

AUTHORISATIONS AND OTHER NOTIFICATIONS

4.4 WHAT ARE AUTHORISATIONS AND WHEN ARE THEY NEEDED?

Certain workplaces, work activities, plant or substances must have appropriate approvals (authorisations). Authorisations are licences, permits, consents, certificates, registrations or other authorities described in health and safety regulations, and must be obtained before relevant work begins.

Authorisations may be given by WorkSafe, another regulator or a third party authorised to do this.

Only prescribed workplaces, plant or substances, or work requires authorisation. Sometimes the authorisation is in the form of certain qualifications, experience or supervision required by workers to carry out the work.

All conditions on an authorisation must be complied with.

To find out what work, workplaces and workers require authorisation, and how to seek authorisations, see the WorkSafe website www.worksafe.govt.nz.

4.5 WORKSAFE NEEDS TO BE TOLD ABOUT CERTAIN WORK ACTIVITIES BEFORE THE WORK BEGINS

WorkSafe needs to be told within specified times before certain work activities are carried out such as certain asbestos removal work.

To find out what work requires notification, see the WorkSafe website www.worksafe.govt.nz.

² **Note:** some health and safety regulations do require notifiable events to be investigated (eg the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016).

OFFICERS

IN THIS PART:

Section 5: Officers

WHO IS AN OFFICER?

- 5.1 The meaning of an officer (section 18 of HSWA)
- 5.2 Who is not an officer?

THE DUTY OF AN OFFICER

- 5.3 Due diligence duty (section 44 of HSWA)
- 5.4 How can officers carry out their duty?
- 5.5 Which officers are not legally liable?

This Part explains how officers of a PCBU must exercise due diligence to ensure the PCBU is meeting its health and safety obligations.

KEY POINTS:

- > An officer includes, for example, company directors and chief executives.
- > Officers need to exercise due diligence to make sure that the PCBU complies with its health and safety duties.

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OFFICERS

WHO IS AN OFFICER?

5.1 THE MEANING OF OFFICER (SECTION 18 OF HSWA)

An officer is a person who occupies a specified position or who occupies a position that allows them to exercise significant influence over the management of the business or undertaking. Organisations can have more than one officer.

Officers are:

- > company directors (even if they do not have 'director' in the title)
- > any partner in a partnership (other than a limited partnership)
- > any general partner in a limited partnership
- > any person who holds a position comparable to a director in a body corporate or an unincorporated body
- > any person who occupies a position that allows them to exercise significant influence over the management of the business or undertaking (eg the Chief Executive).

Each officer has a duty – it is not a joint duty. Officers have a duty to exercise due diligence because they make policy and investment decisions that can affect workers' health and safety.

5.2 WHO IS NOT AN OFFICER?

People who provide health and safety or other advice, or make recommendations to senior leadership are not officers solely on this basis.

Some examples of people who are not officers (unless they also fall into one of the officer categories described above) include:

- > health and safety managers
- > team leaders, line managers and supervisors
- > workplace health and safety officers and advisors
- > people that have 'officer' in their job title, such as Corrections Officer, Police Officer or Administration Officer.

EXAMPLE

Bill, Anne and Alan are on the Board of Directors of Endless Aisles Supermarkets. Together they make decisions about strategies and policies such as spending and investment. They determine the annual health and safety budget and sign off large purchases of safety equipment.

Bill, Anne and Alan are all officers because they are directors of the Endless Aisles Supermarkets business.

EXAMPLE

Ruth is the Chief Executive Officer. She is responsible for managing all three Endless Aisles supermarkets. She makes decisions about resource allocation, spending, store and people management. Ruth is an officer because she exercises significant influence over the management of the business.

Troy is the Quality and Compliance Manager (middle management). He is responsible for co-ordinating health and safety and quality management. He organises safety training, collects incident reports and statistics, and conducts safety audits. He provides health and safety advice to the CEO and directors. The directors allocate Troy a budget to spend on health and safety. Troy is not an officer because he merely advises and makes recommendations to the directors and CEO. Troy does not exercise significant influence over the management of the business.

EXAMPLE

Craig and Linda are the owner-operators of ShipShape Construction Ltd. Craig and Linda work together to run the business.

Craig is listed as the director of the company at the Companies Office; because he is a director, Craig is an officer.

Linda is not a director, but she is an officer because she exercises significant influence over the management of ShipShape Construction.

Maurice is a supervisor at ShipShape. He is responsible for overseeing the construction work done at the supermarket site. One of his responsibilities is to monitor workers and ensure they are complying with safe work procedures. As Maurice does not exercise significant influence over the management of the business, he is not an officer.

THE DUTY OF AN OFFICER**5.3 DUE DILIGENCE DUTY (SECTION 44 OF HSWA)**

Officers must exercise due diligence to make sure that the PCBU complies with its health and safety duties. They must exercise the care, diligence and skill a reasonable officer would exercise in the same circumstances, taking into account matters including the nature of the business or undertaking, and the officer's position and nature of their responsibilities.

HOW MUCH INVOLVEMENT IS REQUIRED?

What is required of an officer will depend on the officer's particular circumstances, such as their responsibilities and ability to influence and control.

The duty does not require officers to be directly involved in the day-to-day management of health and safety. However they are still required to take reasonable steps to do the things set out in Table 4.

Officers of large PCBUs cannot rely on the fact that their organisation has a health and safety management system in place. They should understand how it works, and take steps to make sure it is working. In smaller PCBUs, officers are more likely to have a hands-on role in health and safety. They might talk directly with workers, supervise health and safety practices and investigate incidents.

Officers that only have a passive role or interest in work health and safety are not taking 'reasonable steps'.

5.4 HOW CAN OFFICERS CARRY OUT THEIR DUTY?

Table 4 outlines what due diligence includes.

DUE DILIGENCE INCLUDES OFFICERS TAKING REASONABLE STEPS TO:	EXAMPLES OF GOOD PRACTICE:
Acquire, and keep up to date, knowledge of work health and safety matters.	<ul style="list-style-type: none"> > Get general and industry-specific health and safety information from places like WorkSafe, safety publications, safety websites and industry associations. > Obtain independent expert advice where appropriate.
Gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations.	<ul style="list-style-type: none"> > Review the PCBU's health and safety risks and how they are controlled. > Talk with workers (eg through focus groups, surveys and talking to health and safety representatives). > Consider the health and safety implications and resources needed when making decisions.
Ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking.	<ul style="list-style-type: none"> > Create or review the health and safety budget so resources are available when needed. > Make sure staff have a mix of operational and health and safety expertise to operate the business safely and effectively. > Make sure that the PCBU has processes to control health and safety risks, and uses them (eg documented 'buy safe' and 'buy quiet' processes for buying plant and equipment).
Ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under HSWA.	<ul style="list-style-type: none"> > Decide which people in the PCBU will have health and safety management responsibilities. > Make sure the PCBU has a health and safety management system (reporting notifiable incidents, consultation, acting on improvement notices, training, personal protective equipment, etc) and that everyone complies with it. > Make sure the PCBU has effective worker engagement and work participation practices.

DUE DILIGENCE INCLUDES OFFICERS TAKING REASONABLE STEPS TO:	EXAMPLES OF GOOD PRACTICE:
Ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information.	<ul style="list-style-type: none"> > Make sure a process is in place for workers and others at the workplace to report incidents, hazards and risks. > Make sure there is a process for responding to information in a timely way and taking action. > Make sure the risk assessment process is thorough, covers all work tasks and workplaces, and that everyone uses it. > Make sure the PCBU has emergency response plans, and that they are regularly tested.
Verify the provision and use of the resources and processes referred to above.	<ul style="list-style-type: none"> > Include processes to plan, deliver and review leadership of health and safety in the board charter. > Arrange for a periodic independent review of health and safety systems, processes and resources. > Review health and safety systems and processes after health and safety incidents.

Table 4: How officers can carry out their duties

EXAMPLE

As the officers of Endless Aisles, Anne, Alan and Bill need to meet the due diligence requirements to make sure their PCBU is operating in a healthy and safe way. They decided to meet their obligations by:

- > taking an 'Introduction to health and safety for directors' course to familiarise themselves with good governance of health and safety and after this course, individually keeping up-to-date with any changes
- > finding out more about health and safety in their business by arranging regular meetings with Ruth (CEO) and Troy (Quality and Compliance Manager) to discuss the health and safety risks and hazards
- > evaluating the adequacy of the resources and processes the PCBU uses to eliminate or minimise work risk and comply with other health and safety requirements
- > putting a plan in place to address the risks and ask for updates on the progress at the monthly board meeting
- > asking themselves what the potential health and safety implications of the business decisions they are making are (eg what are the implications of increasing production?)
- > reviewing health and safety risks and hazards, incident statistics and corrective actions taken to fix health and safety problems at the board meeting
- > asking Troy (Quality and Compliance Manager) to work with Endless Aisles' health and safety committee to review the incident reporting process
- > asking Ruth (CEO) to review the health and safety budget to ensure it is adequate and report back on how the previous year's resources were provided and used.

5.5 WHICH OFFICERS ARE NOT LEGALLY LIABLE?

Certain officers have the due diligence duty but cannot be prosecuted if they fail to meet their due diligence duty. These officers are:

- > elected members of governing bodies of territorial authorities or regional councils
- > elected or appointed members of a local board
- > elected or appointed members of a community board
- > elected or appointed members of a school board of trustees
- > volunteer officers.

An elected member of a governing body of a territorial authority or regional council does not have a duty of due diligence to ensure that a council-controlled organisation complies with its duties or obligations under HSWA, unless they are also an officer of that council-controlled organisation.

For information on volunteer officers, see the WorkSafe website www.worksafe.govt.nz.

WORKERS

IN THIS PART:

Section 6: Workers

WHO IS A WORKER?

- 6.1 The meaning of a worker (section 19 of HSWA)
- 6.2 Volunteer workers

WHAT IS THE DUTY OF A WORKER?

- 6.3 The duty of a worker (section 45 of HSWA)

OTHER INFORMATION

- 6.4 Worker engagement, participation and representation
- 6.5 Prohibition of adverse, coercive or misleading conduct against a worker (sections 88-93 of HSWA)
- 6.6 Right of a worker to cease work (section 83 of HSWA)

This Part explains who is a worker and what their duty is.

KEY POINTS:

- > Workers include employees, contractors, subcontractors, labour hire workers, apprentices and trainees, and volunteer workers.
- > Workers need to take reasonable care for their own health and safety and that of others.
- > Workers need to comply with reasonable instructions from the PCBU and cooperate with policies and procedures.

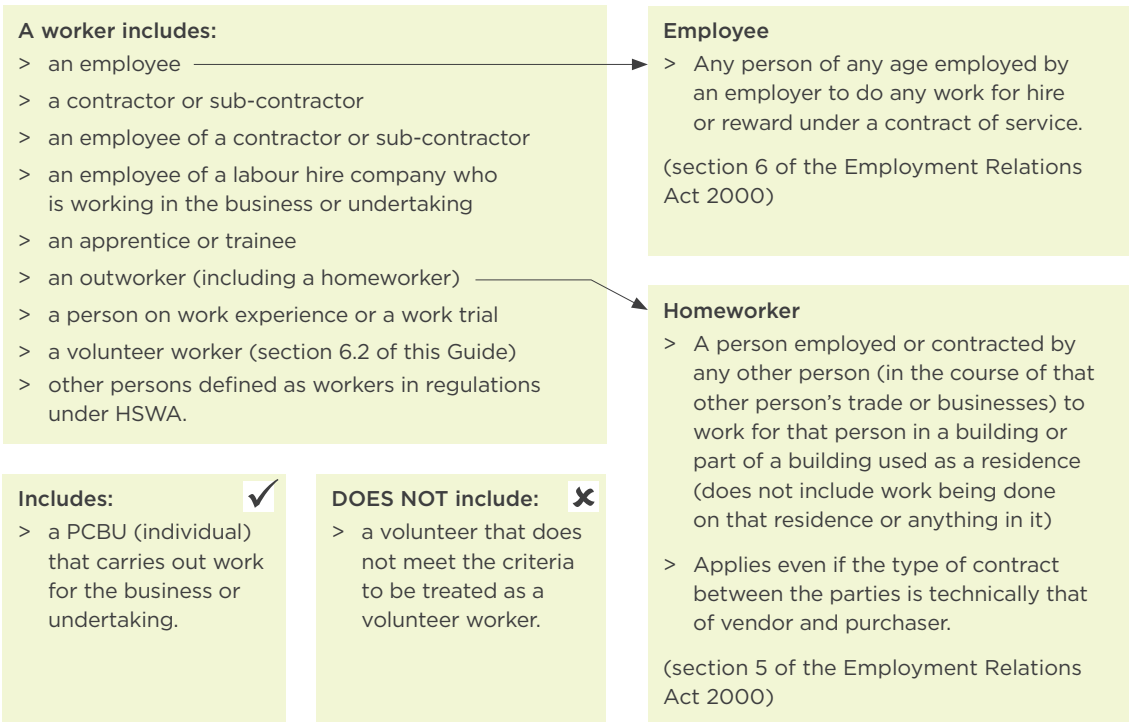
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WORKERS

WHO IS A WORKER?

6.1 THE MEANING OF A WORKER (SECTION 19 OF HSWA)

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



Note: A constable or member of the Armed Forces is a worker, but they only owe duties as a worker when they are on duty or lawfully performing their functions.

Figure 5: Who is a worker?

EXAMPLE

- > Cathy is a student on unpaid work experience with Bob, a self-employed builder (Bob's Building). Sam is an apprentice builder who is contracted to Bob during his apprenticeship. Bob has recently hired a contractor, Pete, to take on a project he does not have the capacity to do.
- > Cathy, Sam, Bob and Pete are all workers. Cathy is a worker because she is doing work experience. Sam is a worker because he is an apprentice.
- > Bob is a PCBU as he is self-employed. He has duties which apply to self-employed people, and owes Cathy, Sam and Pete the same duties he owes to all workers that work for Bob's Building.

EXAMPLE

- > Tim bakes goods at home for Ruth's catering company. Ruth sells the goods from her shop 'Ruth's'.
- > Both Tim and Ruth are workers.
- > Ruth's company is also a PCBU, and owes to Tim the same duties it owes to all workers that work for 'Ruth's'.

6.2 VOLUNTEER WORKERS

Certain volunteers are classed as volunteer workers.

A volunteer is a 'volunteer worker' when:

- > they work for a PCBU who knows they are doing that work or has given consent for it to be done, and
- > the volunteer does the work on an ongoing and regular basis, and
- > the work is an integral part of the business or undertaking, and
- > the work is not:
 - participating in fundraising
 - assisting with sports or recreation for an educational institute, sports club or recreation club
 - assisting with activities for an educational institute outside its premises or
 - providing care for another person in the volunteer's home (eg foster care).

PCBUs owe the same duties they owe to workers to volunteer workers – except for worker engagement and participation duties. Although volunteer workers are not covered by these duties, they can still raise health and safety concerns with the PCBU.

Volunteer workers have the same duties as other workers (as described in the following section of this Guide).

EXAMPLE

Robert is a volunteer who occasionally runs painting classes for the elderly at the local retirement village. He does not get paid for this work.

Robert is not a volunteer worker as the volunteering he undertakes is not an integral part of the business of the retirement village, and nor does he work on a regular or ongoing basis. As Robert is not a volunteer worker, he is classed as an 'other person' at the workplace.

For information on volunteer workers, see the WorkSafe website www.worksafe.govt.nz.

WHAT IS THE DUTY OF A WORKER?

6.3 THE DUTY OF A WORKER (SECTION 45 OF HSWA)

A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers.

This means ensuring, so far as is reasonably practicable:

- > *the health and safety of workers* who work for the PCBU (eg employees or contractors, including their subcontractors or workers) while they are at work in the business or undertaking
- > *the health and safety of workers whose work activities are influenced or directed by the PCBU while the workers are carrying out the work* (eg a franchise company whose franchise requirements influence or direct the workers of the franchisee).

Workers have their own health and safety duties.

Workers must:

- > take reasonable care for their own health and safety
- > take reasonable care that what they do or do not do does not adversely affect the health and safety of other persons
- > co-operate with any reasonable workplace health and safety policy or procedure that has been notified to workers
- > comply, so far as reasonably able, with any reasonable instruction given by the PCBU, so the PCBU can comply with HSWA and regulations.

OTHER INFORMATION

6.4 WORKER ENGAGEMENT, PARTICIPATION AND REPRESENTATION

Workers must be engaged about health and safety issues likely to directly affect them, and be given reasonable opportunities to participate in the ongoing improvement of health and safety of the PCBU they work for.

Worker engagement and worker participation practices can be direct or through representation. Health and Safety Representatives (HSRs) and Health and Safety Committees (HSCs) are two well established methods of representation. Workers can also be represented by unions, community or church leaders, lawyers, respected members of ethnic communities, or people working on specific projects.

HSRs elected under HSWA have functions and powers including representing workers on health and safety, entering and inspecting workplaces, making recommendations relating to work health and safety and promoting the interest of workers who have been harmed at work.

An HSC enables PCBU representatives, workers and other HSC members to meet regularly and work co-operatively to ensure workers' health and safety. The functions of HSCs include to assist in the development of health and safety standards, rules, policies or procedures, and to make recommendations relating to work health and safety.

PCBUs have obligations towards HSRs and HSCs.

For information about worker engagement, representation and participation, HSRs and HSCs, see the WorkSafe website www.worksafe.govt.nz.

6.5 PROHIBITION OF ADVERSE, COERCIVE OR MISLEADING CONDUCT AGAINST A WORKER (SECTIONS 88-93 OF HSWA)

Workers should be able to carry out health and safety-related activities or functions without worrying that there may be negative consequences.

All current or prospective workers are protected from discrimination and dismissal by a PCBU for carrying out health and safety-related activities or raising health and safety issues or concerns.

Adverse conduct is specifically defined in HSWA, but generally means behaving in a way that discriminates against a worker or other person (as set out below). It is an offence under HSWA for a person to engage in adverse conduct for a prohibited health and safety reason. It is also an offence to influence another person to engage in this type of conduct (eg by requesting, encouraging or assisting them to engage in it).

Actions that constitute adverse conduct include:

- > dismissing an employee, or terminating the contract or a contractor
- > retiring a worker, or forcing a worker to retire or resign, or terminate a contract
- > denying a person a role that is available and that they are qualified to do
- > refusing or failing to offer a worker the same work terms and conditions as those available to other workers with the same or substantially similar qualifications, experience, or skills (working in the same or substantially similar circumstances)
- > disadvantaging a worker in a situation where other workers doing similar work are not disadvantaged
- > ending, or refusing or failing to enter into, a commercial arrangement with another person.

Adverse conduct for a prohibited health and safety reason involves engaging in adverse conduct because a worker or other person is, has been, or intends to be:

- > a health and safety representative (HSR), or a member of a health and safety committee (HSC)
- > involved in resolving a work health and safety issue under HSWA

or is, has been, or intends to:

- > perform a function as an HSR, a member of an HSC, or under HSWA
- > refrain from performing a function under HSWA
- > exercise a power as an HSR, or under HSWA
- > refrain from exercising a power under HSWA
- > take action to seek compliance with a duty or obligation under HSWA
- > carry out another role under HSWA
- > help, or give information to, a person exercising a power or performing a function under HSWA (eg an Inspector)
- > raise an issue or concern about work health and safety
- > has ceased work as described in section 6.6 of this Guide.

An employee who wishes to take action against an employer (or former employer) in respect of adverse conduct for a prohibited health and safety reason may bring a personal grievance under the Employment Relations Act 2000. A person who has been affected by adverse conduct may apply to the District Court for an appropriate order (eg to restrain someone from engaging in adverse conduct).

HSWA also prohibits a person from taking or organising (or threatening to take or organise) action that is intended to coerce or induce another person to perform or exercise, or not to perform or exercise, powers or functions under HSWA, or to hold back from seeking or undertaking a HSWA-related role (such as being an HSR).

A person must also not knowingly or recklessly make a false or misleading representation to another about that person's rights or obligations under HSWA, their ability to make a complaint or an inquiry to a person who can seek compliance with the Act (such as the regulator), or their ability to initiate or participate in a process or proceedings under the Act.

EXAMPLE

Phil works on the factory floor in a manufacturing plant dealing with dangerous chemicals. He is concerned that he and other workers have not been provided with safety goggles.

Phil approaches his Team Leader, Tim, to discuss getting safety goggles. Tim tells Phil to sort out his own goggles, so Phil speaks to his health and safety representative (HSR).

A couple of weeks later Phil applies for a supervisory position, but Tim tells Phil he will not be considered as he should not have raised the safety goggle issue with his HSR.

Tim displayed adverse conduct for a prohibited health and safety reason by obstructing Phil's chances of promotion because Phil raised a health and safety concern with his HSR.

EXAMPLE

Bob from Bob's Building accepts a contract with Jaspers Building Ltd (Jaspers Ltd).

During his first day onsite, Bob has concerns about the lack of scaffolding, guard rails and safety mesh, particularly as his workers are working at heights over five metres. Bob raises this with Jaspers Ltd with no success, who say this is the way they do things. Bob calls the WorkSafe call centre for advice, and subsequently meets with a WorkSafe Inspector to discuss his concerns. The Inspector issues an improvement notice to Jaspers Ltd to remedy the hazard.

After Jaspers Ltd receives the notice, they complained to others that they could not work with someone who was going to complain to WorkSafe about how they do things and ended their contract for services with Bob. Jaspers Ltd displayed adverse conduct for a prohibited health and safety reason by ending their contract with Bob because he reported his concerns to an Inspector.

EXAMPLE

Fred works in a printing factory. He is elected health and safety representative (HSR) and receives training.

Several workers raise concerns with Fred about not having adequate hearing protection, saying they are concerned this is leading to hearing damage. Fred raises the workers' concerns with his PCBU; however, the PCBU does not act. Fred subsequently issues a provisional improvement notice that includes a recommendation to remedy the situation.

After receiving the provisional improvement notice, the PCBU told Fred that they were unhappy with his actions as an HSR and because of this he would not be allowed to attend a training course with the rest of his team. The PCBU displayed adverse conduct for a prohibited health and safety reason by refusing Fred training opportunities because he exercised his power and performed a function as an HSR.

6.6 RIGHT OF A WORKER TO CEASE WORK (SECTION 83 OF HSWA)

A worker can refuse to work, or stop work, if they believe that doing the work would expose them or another person to a serious health or safety risk arising from immediate or imminent exposure to a hazard. A trained HSR may direct unsafe work to cease.

The worker needs to tell the PCBU as soon as possible that they have stopped work. The PCBU may direct the worker to carry out alternative work, as long as that work is safe and appropriate, and within the scope of their contract or employment agreement.

Workers can continue to refuse to work if:

- > they try to resolve the matter with the PCBU as soon as possible after first refusing to work and
- > the matter is not resolved and
- > they believe on reasonable grounds that doing the work would put them or another person at a serious health or safety risk (including where they are told by an HSR that this is the case).

Workers cannot refuse work if the nature of the work usually carries understood health and safety risks and these risks have not materially increased.

An HSR, a worker, or the PCBU can ask the regulator to assist in resolving any issues relating to a worker stopping or refusing to do work.

For information, see the WorkSafe website www.worksafe.govt.nz.

OTHER PERSONS AT WORKPLACES

IN THIS PART:

Section 7: Other persons at workplaces

WHO ARE OTHER PERSONS AT WORKPLACES?

7.1 The meaning of other persons at workplaces

WHAT IS THE DUTY OF OTHER PERSONS AT WORKPLACES?

7.2 The duty of other persons at workplaces (section 46 of HSWA)

This Part explains the duty of other persons at workplaces.

KEY POINTS:

- > Other persons at workplaces include workplace visitors and casual volunteers at workplaces.
- > Other persons have their own health and safety duty to keep themselves safe and not cause others harm.

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**OTHER PERSONS
AT WORKPLACES**

Other persons at workplaces have their own health and safety duty to keep themselves safe and not cause harm to others.

WHO ARE OTHER PERSONS AT WORKPLACES?

7.1 THE MEANING OF OTHER PERSONS AT WORKPLACES

Examples of other persons at workplaces are:

- > workplace visitors eg:
 - people shopping (ie the shop is the workplace)
 - people on tours of the workplace
 - people visiting the PCBU or its workers, eg for meetings
- > people who pay the PCBU (with money or something else) to do something at the workplace eg:
 - people attending a concert
 - clients or customers of companies providing adventure activities
 - people picking strawberries at a commercial 'pick your own' strawberry field
- > casual volunteers at workplaces (not volunteer workers).

WHAT IS THE DUTY OF OTHER PERSONS AT WORKPLACES?

7.2 THE DUTY OF OTHER PERSONS AT WORKPLACES (SECTION 46 OF HSWA)

Other persons at workplaces need to:

- > take reasonable care for their own health and safety
- > take reasonable care that others are not harmed by something they do, or do not do
- > comply, as far as they are reasonably able, with the PCBU's reasonable health and safety instructions that are given so that the PCBU can comply with HSWA or regulations.

Other persons need to take reasonable care that anything they do (or do not do) will not cause others harm. They can be held legally responsible if they cause someone harm and did not take reasonable care.

For information on volunteers, see the WorkSafe website www.worksafe.govt.nz.

EXAMPLES OF HOW ACTIONS OR INACTIONS CAN CAUSE HARM IN THE WORKPLACE

A customer with a full shopping trolley refuses to leave the checkout line even though the supermarket's fire alarms are ringing and smoke is pouring from the ceiling.

One of the supermarket's fire wardens re-enters the building to convince her to leave and suffers a serious asthma attack, triggered by the smoke.

- > The customer refused to leave the workplace. This inaction harmed a worker.

A customer at a hardware store wanted a product stored on a high shelf. Rather than asking staff to get the item, the customer used a staff ladder (clearly labelled that customers must not use) to reach the high shelf. While reaching for the product, the customer knocked down a box that hit another customer.

- > The actions of the customer harmed others in the hardware store.

THE ROLE OF THE REGULATOR AND ENFORCEMENT OF HSWA

IN THIS PART:

Section 8: The role of the regulator

- 8.1 Who is the regulator?
- 8.2 What is the role of Inspectors?

Section 9: Enforcement

- 9.1 Tools available to the regulator

Section 10: What are the offences and penalties under HSWA?

- 10.1 Offences and penalties
- 10.2 Health and safety duty offences in relation to sections 36 to 46 of HSWA
- 10.3 Offences that apply to other obligations
- 10.4 Prosecutions

This Part explains the role of the regulator, and the offences and penalties under HSWA.

KEY POINTS:

- > WorkSafe is New Zealand's work health and safety regulator, along with the designated agencies.
- > The regulator has a range of tools available to enforce compliance with HSWA.

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**THE ROLE OF
THE REGULATOR**

8.1 WHO IS THE REGULATOR?

New Zealand's work health and safety regulator is:

- > WorkSafe New Zealand (WorkSafe)
- > other government agencies (called designated agencies) that are designated to carry out health and safety regulatory functions for certain sectors (see section 1.1 of this Guide).

WorkSafe carries out the work health and safety functions previously undertaken by the Ministry of Business, Innovation and Employment (MBIE) and, earlier, the Department of Labour (OSH).

WorkSafe's functions include to:

- > monitor and enforce compliance with work health and safety legislation
- > collect, analyse, and publish statistics and other information relating to work health and safety
- > provide guidance, advice and information on work health and safety
- > foster a co-operative and consultative relationship between the people who have health and safety duties and the persons to whom they owe those duties and their representatives.

The regulator will work collaboratively with PCBUs, workers and their representatives to embed and promote good work health and safety practices and the highest level of protection reasonably practicable, and will enforce the health and safety law.

Some of the functions of the regulator include:

- > **engaging** with duty holders
- > **educating** duty holders about their work health and safety responsibilities (eg through guidance)
- > **enforcing** health and safety law.

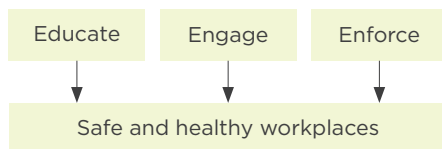


Figure 6: Regulator functions

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

8.2 WHAT IS THE ROLE OF INSPECTORS?

The role of Inspectors is to ensure duty holders (eg PCBUs and workers) comply with health and safety law.

They do this by:

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

All Inspectors carry an identity card.

INFORMATION AND EDUCATION

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

- > advise PCBUs, officers, workers and others at workplaces of their responsibilities and rights under HSWA and regulations
- > provide guidance material on HSWA and regulations.

WORKPLACE ASSESSMENTS

Workplace assessment activities focus on risky industries, specific hazards that pose serious risks including the potential for work-related ill-health, and the causes of common injury. Inspectors generally conduct planned inspections in these areas.

INVESTIGATIONS

Investigations may be conducted after work events such as fatalities, serious injuries, dangerous incidents and emergencies.

WORKER ENGAGEMENT, PARTICIPATION AND REPRESENTATION ACTIVITIES

Inspectors may also visit workplaces to:

- > review disputed provisional improvement notices (PINs) issued by health and safety representatives (HSRs)
- > help resolve matters from determining work groups
- > help resolve issues arising from ceasing unsafe work
- > help PCBUs, workers, and others resolve other health and safety issues unable to be resolved through workplace issue resolution procedures.

COMPLIANCE AND ENFORCEMENT MEASURES

If an Inspector reasonably believes that HSWA or regulations have been breached or there is an immediate risk to health and safety, there are a range of measures they can use to ensure the unsafe situation is remedied. In addition, where HSWA or regulations have been breached Inspectors may consider issuing notices (eg improvement notices, prohibition notices) or the regulator may take prosecution action.

Under certain circumstances, instead of taking enforcement action, WorkSafe Inspectors may provide directive advice (eg directive letters or verbal directions). Letters and verbal directions are recorded by WorkSafe and may be referred to in the future if a similar breach occurs.

INSPECTORS' POWERS OF ENTRY AND INSPECTION

Inspectors' powers under HSWA include the power to, at any reasonable time, enter any workplace 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 pending inspection
- > require PCBUs or the person who appears to be in charge to:
 - produce information about the work, workplace or workers
 - produce information relating to the PCBU's compliance with relevant health and safety legislation
 - permit the Inspector to examine or make copies of the information
- > require a PCBU or the person who appears to be in charge to make or provide a statement.

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ENFORCEMENT

The regulator has a range of tools to:

- > promote and achieve compliance with the law
- > make sure duty holders take appropriate action to manage risk
- > make sure duty holders who breach health and safety requirements are held to account.

9.1 TOOLS AVAILABLE TO THE REGULATOR

The regulator has a range of tools available.

Appropriate tools will be used, depending on the circumstances, including the level of risk or potential risk to health and safety, the willingness of the PCBU to comply with the law, and any harm that has been suffered.

These can range from improvement notices and prohibition notices to prosecution.

Professional judgement, guided by relevant regulator policies, and the details of each situation will be used to determine which enforcement option is appropriate.

The tools available to the regulator include the following:

IMPROVEMENT NOTICES

Improvement notices can be issued by an Inspector who reasonably believes that a breach of HSWA or regulations is occurring or is likely to occur. An improvement notice requires changes to be made to remedy the breach or likely breach within a stated (reasonable) time period (the compliance period). Notices must be displayed.

A Provisional Improvement Notice (issued by an HSR) that has been confirmed by an Inspector must be treated as an improvement notice issued by an Inspector.

The person who has been issued with an improvement notice must comply with the notice within the compliance period or be liable on conviction to a fine. Inspectors may extend the compliance period before it expires.

PROHIBITION NOTICES

An Inspector may issue a prohibition notice if they reasonably believe a workplace activity involves or will involve a serious risk to health and safety arising from an immediate or imminent exposure to a hazard. Prohibition notices can also be issued in respect of certain activities or workplaces requiring authorisation (including mining operations) where the Inspector believes there is a serious risk to health and safety or there is likely to be such a risk, because of a failure to comply with HSWA or regulations. Notices must be displayed.

Once a prohibition notice has been issued then the activity has to stop until an Inspector is satisfied that the risks have been remedied. A prohibition may be given orally at first, but must be by a written notice as soon as practicable.

Remedial action may be taken by the regulator when a person fails to take reasonable steps to comply with the requirements of a prohibition notice, or if a prohibition notice could be issued but the person cannot be found. Remedial action is taken to ensure that a workplace or situation is made safe. The regulator can recover the costs of doing this from the relevant person.

NON-DISTURBANCE NOTICES

A non-disturbance notice is a written notice issued by an Inspector requiring a PCBU who manages or controls a workplace to preserve a site where a notifiable event has occurred, or prevent a particular site (including the operation of plant) being disturbed for a specified period. A non-disturbance notice may be issued if the Inspector reasonably believes it is necessary to facilitate the exercise of his or her compliance powers. Notices must be displayed.

A non-disturbance notice does not prevent any action to assist anyone who has been injured, remove a deceased person, or to make the site safe, or action done or directed by a constable, or authorised by an Inspector.

It is important to note that, even without the issue of a non-disturbance notice, the PCBU who manages or controls a workplace where a notifiable event occurs has a duty to take all reasonable steps to ensure that the site where the event occurred is not disturbed until released by an Inspector.

For further information on notifiable events, see [Section 4](#) of this Guide.

INFRINGEMENT NOTICES

Infringement notices may be issued by the regulator for prescribed offences against HSWA or regulations.

The law does not require the regulator to give prior warning before issuing an infringement notice. A person issued with an infringement notice may challenge the notice in court, or otherwise must pay the fee set out in the notice. A notice may be revoked by WorkSafe, but only if the infringement fee has not yet been paid or ordered to be paid by the court.

ENFORCEABLE UNDERTAKINGS

An enforceable undertaking is an alternative to prosecution. When agreed to by the regulator, it allows a person to voluntarily enter a binding agreement to take action to remedy an alleged breach of the law. Once an enforceable undertaking has been agreed to, it is enforceable against the person who made it. While it is in effect, the regulator cannot bring a prosecution for the relevant breach of the law. A person can, with the regulator's agreement, vary or withdraw an enforceable undertaking.

If the person contravenes an enforceable undertaking, the regulator can apply to the District Court for appropriate orders. The District Court could order the person to comply, or make other orders, including an order for the person to pay the regulator's costs in applying to the court. A person could also be subject to a prosecution for the contravention.

PROSECUTIONS

The regulator may prosecute duty holders for breaches of HSWA or regulations.

The decision to prosecute is influenced by a number of factors, as set out in the regulator's prosecution policy. This includes consideration of whether there is sufficient evidence to provide a reasonable prospect of conviction and if prosecution is in the public interest.

HSWA also allows a person to bring a private prosecution (see section 10.4 of this Guide).

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**WHAT ARE THE
OFFENCES AND
PENALTIES
UNDER HSWA?**

10.1 OFFENCES AND PENALTIES

There are a range of offences and penalties under HSWA and regulations. Imprisonment is reserved for the most serious offences.

Penalties depend on the offence and what type of duty holder the offender is:

- > an individual who is not a PCBU (eg a worker or other person at the workplace)
- > an individual who is a PCBU (eg self-employed) or an officer of a PCBU or
- > any other person, such as an organisation that is a PCBU (eg a company, government department or non-profit organisation).

In addition to court-imposed penalties, infringement notices can be issued by a regulator for specified offences against HSWA or regulations. The person receiving the infringement notice is required to pay an infringement fee or may dispute against the notice, which means that the matter turns into a criminal proceeding against that person heard in the District Court.

The following sections briefly summarise offences and penalties under HSWA, and provide answers to common questions about prosecutions.

For specific information about offences and penalties see the fact sheet *Offences and penalties under the Health and Safety at Work Act 2015*.

10.2 HEALTH AND SAFETY DUTY OFFENCES IN RELATION TO SECTIONS 36 TO 46 OF HSWA

The most serious offences under HSWA are for failures to comply with health and safety duties under sections 36 to 46 of HSWA. These cover the duties of PCBUs, officers, workers and other persons at workplaces.

The offences are:

- > reckless conduct in respect of duty, without reasonable excuse, that exposes an individual to a risk of death or serious injury or illness (section 47 of HSWA)
- > failure to comply with a duty that exposes an individual to a risk of serious injury, serious illness or death (section 48 of HSWA)
- > failure to comply with a duty (section 49 of HSWA).

WorkSafe, as the prosecutor, must prove the offence beyond reasonable doubt.

The **maximum** penalties for these offences are found in Table 5.

OFFENCE	INDIVIDUAL WHO IS NOT A PCBU OR OFFICER (EG A WORKER OR OTHER PERSON AT A WORKPLACE)	OFFICER OF A PCBU OR AN INDIVIDUAL WHO IS A PCBU (EG SELF-EMPLOYED)	ANYONE ELSE (EG AN ORGANISATION THAT IS A PCBU)
Section 47 (reckless conduct in respect of duty that exposes an individual to a risk of serious injury, serious illness or death)	Five years in prison or \$300,000 fine, or both	Five years in prison or \$600,000 fine, or both	\$3 million fine
Section 48 (failure to comply with a duty that exposes an individual to a risk of serious injury, serious illness or death)	\$150,000 fine	\$300,000 fine	\$1.5 million fine
Section 49 (failure to comply with a duty)	\$50,000 fine	\$100,000 fine	\$500,000 fine

Table 5: Maximum penalties for health and safety duty offences

10.3 OFFENCES THAT APPLY TO OTHER OBLIGATIONS

There are offences under HSWA for failing to meet or comply with other health and safety obligations.

Depending on the offence, maximum penalties range from \$5,000 - \$100,000 fines for an individual (eg a self-employed PCBU) and \$25,000-\$500,000 fines for other persons (eg a company).

These include offences in relation to:

- > charging workers for doing or providing anything that is required under HSWA
- > notifiable events (eg not informing the regulator, keeping records or preserving the site of a notifiable event as required)
- > authorisations (eg doing work or allowing it to be done without the appropriate authorisations in place)
- > worker engagement and participation (eg not engaging with workers when required, not providing reasonable opportunities for workers to participate in improving health and safety, engaging in adverse conduct for a prohibited health and safety reason)
- > improvement, prohibition or non-disturbance notices (eg not complying with these notices, not displaying a notice, or removing, destroying or damaging a displayed notice still in force)
- > court orders given as part of sentences for an offence (eg not complying with an order)
- > working with Inspectors and health and safety medical practitioners (eg failing to assist an Inspector, obstructing an Inspector or a health and safety medical practitioner).

10.4 PROSECUTIONS

WHO CAN BRING A PROSECUTION?

The regulator prosecutes offences committed against HSWA (section 143 of HSWA). A private prosecution can be brought if:

- > the person bringing the prosecution has notified the regulator of their interest, and
- > the person has been informed that:
 - the regulator has not and will not be bringing a prosecution or issuing an infringement notice under HSWA in relation to the same incident, situation or set of circumstances and
 - a regulatory agency has not and will not be bringing a prosecution under any other Act in respect to the same incident, situation or set of circumstances (sections 142 and 144 of HSWA).

Under certain circumstances, the court may give leave to bring a private prosecution.

WHAT IS THE TIME LIMIT FOR PROSECUTION?

Prosecution for offences may be brought within the latest of:

- > one year of the regulator finding out about the offence (or when the regulator should have found out about the offence) - this can be extended by the District Court
- > six months of a coroner's report, if it appears that an offence has occurred
- > six months of a breach of an enforceable undertaking (or the regulator discovers a breach of an enforceable undertaking), or an enforceable undertaking being withdrawn (section 146 of HSWA).

There are different time limits for a private prosecution (section 148 of HSWA).

WHAT PENALTIES CAN THE COURT ORDER?

The court can make a number of orders when sentencing for offences, in addition to fines and imprisonment as follows:

- > *Adverse publicity orders (section 153 of HSWA)* - requires the offender to publicise or notify particular people of the offence, including the consequences of the offence and the penalty imposed.
- > *Orders for restoration (section 154 of HSWA)* - requires the offender to put right the effects of the offence.
- > *Work health and safety project orders (section 155 of HSWA)* - requires the offender undertake a specified project to improve health and safety.
- > *Court-ordered enforceable undertaking (section 156 of HSWA)* - the court can adjourn a proceeding and release the offender if the offender gives an undertaking with specified conditions.
- > *Injunctions (section 157 of HSWA)* - requires the offender to stop particular actions that are an offence.
- > *Training orders (section 158 of HSWA)* - requires the offender do specified training, or arrange for workers to do specified training.

It is an offence not to comply with any of the court-imposed orders (other than injunctions or court-ordered enforceable undertakings) (section 159 of HSWA). The maximum penalties are:

- > \$50,000 for an individual
- > \$250,000 for any other person (eg a company).

The court can order the offender to pay money towards the regulator's costs in prosecuting the offence, including investigation and legal costs (section 152 of HSWA).

CAN INSURANCE BE USED TO PAY FINES OR REPARATION?

Insurance policies cannot be used to pay fines or infringement fees imposed under HSWA. It is an offence to offer or enter into an insurance policy to pay a fine or infringement fee (section 29 of HSWA). The maximum penalties are:

- > \$50,000 for an individual
- > \$250,000 for any other person (eg a company).

However, insurance can be used to make reparation payments ordered as part of a sentence by the court.

HOW WILL THE COURT DECIDE WHAT THE RIGHT SENTENCE IS?

Courts use a range of information to decide what the right sentence is (section 151 of HSWA), including:

- > how serious the offence is
- > the risk of illness, injury or death
- > whether injury, illness or death happened or could reasonably have been expected to happen
- > the safety record of the offender, such as previous enforcement action, to the extent it shows any aggravating factors
- > the degree of departure from prevailing industry or sector standards
- > the financial capacity or ability to pay a fine to the extent it has the effect of increasing the amount of fine imposed.

CAN A CONVICTION BE APPEALED?

Anyone convicted of an offence under HSWA or regulations may appeal to a higher court. Guidance on how to appeal a conviction is available on the Ministry of Justice website.

WHO CAN BE LIABLE FOR OFFENCES?

As previously noted, the four duty holders can be convicted for failing to meet health and safety duties. An officer of a PCBU can be convicted for failing to meet the due diligence obligation, whether or not the PCBU has been convicted of an offence (section 50 of HSWA).

There are exceptions in HSWA that mean some people will not be prosecuted for health and safety duty offences as described below.

Volunteers cannot be prosecuted for failing to comply with a health and safety duty under HSWA (section 51 of HSWA), unless it is a duty under:

- > section 45 (duties of workers) or
- > section 46 (duties of other persons at workplaces).

Some officers cannot be prosecuted for failing to meet their due diligence obligations (section 52 of HSWA). These are:

- > a member of the governing body of a territorial authority or regional council elected in under the *Local Electoral Act 2001*
- > a member of a local board elected or appointed under the *Local Electoral Act 2001*
- > a member of a community board elected or appointed under the *Local Electoral Act 2001*
- > a trustee of a board of a school appointed or elected under the *Education Act 1989*.

APPENDICES

IN THIS PART:

Section 11: Terms and definitions

Section 12: Work health and safety regulations

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**TERMS AND
DEFINITIONS**

The following terms are used in this Guide.

TERM	LEGAL DEFINITION (AS NOTED) OR BRIEF EXPLANATION
Control measure	Is a way of eliminating or minimising risks to health and safety.
Designated agency	Is a government agency other than WorkSafe designated to carry out certain health and safety functions.
Duty holder	Means a person who has a duty under HSWA. There are four types of duty holders – PCBUs, officers, workers and other persons at workplaces.
Hazard (section 16 of HSWA)	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)	HSWA is the key work health and safety law in New Zealand. This covers nearly all work and workplaces.
Health and safety committee (HSC)	Supports the ongoing improvement of health and safety at work. An HSC enables PCBU representatives, workers and other HSC members to meet regularly and work co-operatively to ensure workers’ health and safety.
Health and safety representative (HSR)	<p>Is defined in HSWA as a worker elected as an HSR in accordance with subpart 2 of Part 3 of HSWA.</p> <p>HSRs are elected by members of their work group to represent them in health and safety matters. Throughout this Guide, the term HSR means an elected representative who meets the requirements of HSWA and the Health and Safety At Work (Worker Engagement, Participation and Representation) Regulations 2016. It does not apply to people who are referred to as HSRs under other arrangements, but who are not elected under HSWA.</p>
Health monitoring	Involves testing workers’ health to identify potential signs of harm to their health arising from work and any changes on an ongoing basis.
Notifiable event (sections 23, 24 and 25 of HSWA)	<p>Means any of the following events that arise from work–</p> <ul style="list-style-type: none"> (a) the death of a person; or (b) a notifiable injury or illness; or (c) a notifiable incident. <p>See Section 5 for more information about notifiable events.</p> <p><i>Notifiable injury or illness</i> means</p> <ul style="list-style-type: none"> (a) any of the following injuries or illnesses that require the person to have immediate treatment (other than first aid): <ul style="list-style-type: none"> (i) the amputation of any part of his or her body; (ii) a serious head injury; (iii) a serious eye injury; (iv) a serious burn; (v) the separation of his or her skin from an underlying tissue (such as degloving or scalping); (vi) a spinal injury; (vii) the loss of a bodily function; (viii) serious lacerations; (b) an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment; (c) an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance:

TERM	LEGAL DEFINITION (AS NOTED) OR BRIEF EXPLANATION
	<p>(d) 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</p> <ul style="list-style-type: none"> (i) with micro-organisms; or (ii) that involves providing treatment or care to a person; or (iii) that involves contact with human blood or bodily substances; or (iv) that involves handling or contact with animals, animal hides, animal skins, animal wool or hair, animal carcasses, or animal waste products; or (v) that involves handling or contact with fish or marine mammals: <p>(e) any other injury or illness declared by regulations to be a notifiable injury or illness for the purposes of this section.</p> <p>Despite above, notifiable injury or illness does not include any injury or illness declared by regulations not to be a notifiable injury or illness for the purposes of this Act.</p> <p><i>Notifiable incident</i> means an unplanned or uncontrolled incident in relation to a workplace that exposes a worker or any other person to a serious risk to that person's health or safety arising from an immediate or imminent exposure to:</p> <ul style="list-style-type: none"> (a) an escape, a spillage, or a leakage of a substance; or (b) an implosion, explosion, or fire; or (c) an escape of gas or steam; or (d) an escape of a pressurised substance; or (e) an electric shock; or (f) the fall or release from a height of any plant, substance, or thing; or (g) the collapse, overturning, failure, or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with regulations; or (h) the collapse or partial collapse of a structure; or (i) the collapse or failure of an excavation or any shoring supporting an excavation; or (j) the inrush of water, mud, or gas in workings in an underground excavation or tunnel; or (k) the interruption of the main system of ventilation in an underground excavation or tunnel; or (l) a collision between 2 vessels, a vessel capsize, or the inrush of water into a vessel; or (m) any other incident declared by regulations to be a notifiable incident for the purposes of this section. <p>Despite above, notifiable incident does not include an incident declared by regulations not be a notifiable incident for the purposes of this Act.</p>
<p>Officer (section 18 of HSWA)</p>	<p>In relation to a PCBU,-</p> <p>(a) means, if the PCBU is-</p> <ul style="list-style-type: none"> (i) a company, any person occupying the position of a director of the company by whatever name called: (ii) a partnership (other than a limited partnership), any partner: (iii) a limited partnership, any general partner: (iv) a body corporate or an unincorporated body, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company; and

TERM	LEGAL DEFINITION (AS NOTED) OR BRIEF EXPLANATION
	<p>(b) includes any other person occupying a position in relation to the business or undertaking that allows the person to exercise significant influence over the management of the business or undertaking (for example, a chief executive); but</p> <p>(c) does not include a Minister of the Crown acting in that capacity; and</p> <p>(d) to avoid doubt, does not include a person who merely advises or makes recommendations to a person referred to in paragraph (a) or (b).</p> <p>See Section 5 for more information about officers.</p>
Other person at workplace	<p>Examples of other persons include workplace visitors and casual volunteers at workplaces.</p> <p>See Section 7 for more information about other persons at workplaces.</p>
Overlapping PCBU duties	<p>Means when more than one PCBU has health and safety duties in relation to the same matter.</p>
PCBU (section 17 of HSWA)	<p>(a) means a person conducting a business or undertaking-</p> <ul style="list-style-type: none"> (i) whether the person conducts a business or undertaking alone or with others; and (ii) whether or not the business or undertaking is conducted for profit or gain; but <p>(b) does not include-</p> <ul style="list-style-type: none"> (i) a person to the extent that the person is employed or engaged solely as a worker in, or as an officer of, the business or undertaking; (ii) a volunteer association; (iii) an occupier of a home to the extent that the occupier employs or engages another person solely to do residential work; (iv) a statutory officer to the extent that the officer is a worker in, or an officer of, the business or undertaking; (v) a person, or class of persons, that is declared by regulations not to be a PCBU for the purposes of this Act or any provision of this Act. <p>See Sections 2-3 for more information about PCBUs.</p>
Personal protective equipment (PPE) (section 16 of HSWA)	<p>(a) means anything used or worn by a person (including clothing) to minimise risks to the person's health and safety; and</p> <p>(b) includes air-supplied respiratory equipment.</p>
Plant (section 16 of HSWA)	<p>Includes-</p> <ul style="list-style-type: none"> (a) any machinery, vehicle, vessel, aircraft, equipment (including personal protective equipment), appliance, container, implement, or tool; and (b) any component of any of those things; and (c) anything fitted or connected to any of those things.

TERM	LEGAL DEFINITION (AS NOTED) OR BRIEF EXPLANATION
Reasonably practicable (section 22 of HSWA)	<p>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-</p> <ul style="list-style-type: none"> (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- <ul style="list-style-type: none"> (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.
Regulator	Is WorkSafe or the relevant designated agency.
Risk	Risks arise from people being exposed to a hazard (a source of harm).
Structure (section 16 of HSWA)	<ul style="list-style-type: none"> (a) means anything that is constructed, whether fixed, moveable, temporary, or permanent; and (b) includes- <ul style="list-style-type: none"> (i) buildings, masts, towers, frameworks, pipelines, quarries, bridges, and underground works (including shafts or tunnels); and (ii) any component of a structure; and (iii) part of a structure.
Supply (section 21 of HSWA)	<p>Supply, in relation to a thing,-</p> <ul style="list-style-type: none"> (a) includes the supply (or resupply) of the thing by way of sale, exchange, lease, hire, or hire purchase, whether as a principal or an agent; but (b) does not include- <ul style="list-style-type: none"> (i) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement; or (ii) the supply of a thing by a person who does not control the supply or has no authority to make decisions about the supply (for example, a registered auctioneer who auctions a thing without having possession of the thing or a real estate agent acting in his or her capacity as a real estate agent); or (iii) a prescribed supply. <p>Note that supply does not include financiers in certain circumstances.</p>
Union	<p>Is an organisation that supports its membership by advocating on their behalf. The Employment Relations Act 2000 gives employees the freedom to join unions and bargain collectively without discrimination. Workers can choose whether or not to join a union.</p> <p>A union is entitled to represent members' employment interests, including health and safety matters.</p>

TERM	LEGAL DEFINITION (AS NOTED) OR BRIEF EXPLANATION
Upstream PCBUs	<p>In this guide means PCBUs who design, manufacture, import or supply plant, substances or structures, or who install, construct or commission plant or structures.</p> <p>‘Design’ is defined in HSWA as including–</p> <ul style="list-style-type: none"> (a) the design of part of the plant, substance, or structure; and (b) the redesign or modification of a design. <p>See Section 3.5 for more information about upstream PCBU duties.</p>
Volunteer (section 16 of HSWA)	<p>Means a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses).</p>
Volunteer association (section 17(2) of HSWA)	<p>Means a group of volunteers (whether incorporated or unincorporated) working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.</p> <p>See Section 2.3 for more information about volunteer associations.</p>
Volunteer worker (section 19(3) of HSWA)	<p>Means a volunteer who carries out work in any capacity for a PCBU–</p> <ul style="list-style-type: none"> (i) with the knowledge or consent of the PCBU; and (ii) on an ongoing and regular basis; and (iii) that is an integral part of the business or undertaking; but <p>(b) does not include a volunteer undertaking any of the following voluntary work activities:</p> <ul style="list-style-type: none"> (i) participating in a fund-raising activity; (ii) assisting with sports or recreation for an educational institute, sports club, or recreation club; (iii) assisting with activities for an educational institute outside the premises of the educational institution; (iv) providing care for another person in the volunteer’s home. <p>See Section 6.2 for more information about volunteer workers.</p>
Worker (section 19 of HSWA)	<p>Means an individual who carries out work in any capacity for a PCBU, including work as–</p> <ul style="list-style-type: none"> (a) an employee; or (b) a contractor or subcontractor; or (c) an employee of a contractor or subcontractor; or (d) an employee of a labour hire company who has been assigned to work in the business or undertaking; or (e) an outworker (including a homemaker); or (f) an apprentice or a trainee; or (g) a person gaining work experience or undertaking a work trial; or (h) a volunteer worker; or

TERM	LEGAL DEFINITION (AS NOTED) OR BRIEF EXPLANATION
	<p>(i) a person of a prescribed class.</p> <p>A constable is-</p> <ul style="list-style-type: none"> (i) a worker; and (ii) at work throughout the time when the constable is on duty or is lawfully performing the functions of a constable, but not otherwise. <p>A member of the Armed Forces is-</p> <ul style="list-style-type: none"> (i) a worker; and (ii) at work throughout the time when the member is on duty or is lawfully performing the functions of a member of the Armed Forces, but not otherwise. <p>A PCBU is also a worker if the PCBU is an individual who carries out work in that business or undertaking.</p> <p>See Section 6 for more worker information.</p>
<p>Workplace (section 20 of HSWA)</p>	<ul style="list-style-type: none"> (a) means a place where work is being carried out, or is customarily carried out, for a business or undertaking; and (b) includes any place where a worker goes, or is likely to be, while at work. <p>In this section, place includes-</p> <ul style="list-style-type: none"> (a) a vehicle, vessel, aircraft, ship, or other mobile structure; and (b) any waters and any installation on land, on the bed of any waters, or floating on any waters.
<p>Workplace monitoring</p>	<p>Involves measuring exposure to a hazard arising from work (eg noise, vibrations).</p>
<p>WorkSafe New Zealand (WorkSafe)</p>	<p>WorkSafe is the government agency that is the work health and safety regulator.</p>

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**WORK HEALTH
AND SAFETY
REGULATIONS**

Table 6 below provides a summary of the work health and safety regulations and what they cover. Some of these regulations are still under development. All regulations can be found at www.legislation.govt.nz.

Some of these regulations will be reviewed in the second phase of the health and safety law update. See the WorkSafe website for updates on this.

REGULATION	THESE ARE...?
Health and Safety at Work (General Risk and Workplace Management) Regulations 2016	Regulations covering managing general and specific work risks, and workplace facilities requirements. Parts apply to all workplaces.
Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016	Regulations covering requirements for health and safety representatives and health and safety committees.
Health and Safety at Work (Asbestos) Regulations 2016	Regulations covering work that deals with asbestos.
Health and Safety at Work (Hazardous Substances) Regulations 2016	Regulations covering work that deals with hazardous substances. Note: These regulations are not in place yet.
Health and Safety at Work (Major Hazard Facilities) Regulations 2016	Regulations covering facilities that fit the criteria of major hazard facilities.
Health and Safety at Work (Adventure Activities) Regulations 2016	Regulations covering the registration of adventure activity operators.
Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016	Regulations applying to mining and quarrying operations including competency requirements of safety critical roles, health and safety management systems, principal hazard management plans, and principal control plans.
Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016	Regulations applying to petroleum installations and well operations including general duties, safety case requirements, certificates of fitness, and verification schemes.
Health and Safety at Work (Infringement Offences and Fees) Regulations 2016	Regulations covering the infringement offences and fees, and infringement notices.
Health and Safety at Work (Rates of Funding Levy) Regulations 2016	Regulations prescribing the levy required to be paid by employers and self-employed people.
HSE Regulations 1995	Regulations covering a range of general requirements including requirements relating to noise, machinery, working at height, scaffolding, excavation, and certificates of competence.
HSE (Pipelines) Regulations 1999	Regulations covering certain pipelines carrying petroleum, natural gas or other potentially hazardous substances, including general duties, requirements for design, construction, operation, maintenance, suspension and abandonment, certification and notification.
HSE (Pressure Equipment, Cranes and Passenger Ropeways) 1999	Regulations covering pressure equipment, cranes, and passenger ropeways, including duties of controllers, designers, manufacturers and suppliers, and certificates of design verification, inspection, and competence.

REGULATION	THESE ARE...?
Amusement Devices Regulations 1978	Regulations including registration and incident notification of amusement devices.
Geothermal Energy Regulations 1961	Regulations including granting authorities and licences, manager duties, safety and consents in relation to geothermal operations.
Lead Process Regulations 1950	Regulations including requirements for equipment, personal protection clothing, cleaning, and health monitoring where lead processing takes place.
Spray Coating Regulations 1962	Regulations including requirements for booths, ventilation, drying and health monitoring where spray coating is done.
Electricity (Safety) Regulations 2010 - Part 8	Regulations with Part 8 covering health and safety requirements for electrical work.

Table 6: Health and safety regulations

DISCLAIMER

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