

QUICK REFERENCE GUIDE



Health and Safety at Work

www.worksafe.govt.nz/hswa



Te Kaporeihana Āwhina Hunga Whara

WORKSAFE
NEW ZEALAND | MAHI HAUMARU
AOTEAROA

Safer. Healthier. Together.

*Reducing harm in
New Zealand workplaces*

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PURPOSE

This quick reference guide summarises the key components of the Health and Safety at Work Act 2015 (HSWA), including the roles and responsibilities of businesses, officers, workers and others in managing workplace health and safety risks.

For simplicity, **this guide generally uses the term ‘business’** instead of ‘person conducting a business or undertaking’ (PCBU). Where this is used, it’s intended to also encompass undertakings.

More detailed information, plus free tools and resources are available at www.worksafe.govt.nz/hswa

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01/

**THE HEALTH
AND SAFETY
AT WORK ACT**

The Health and Safety at Work Act 2015 (HSWA) is New Zealand's workplace health and safety law.

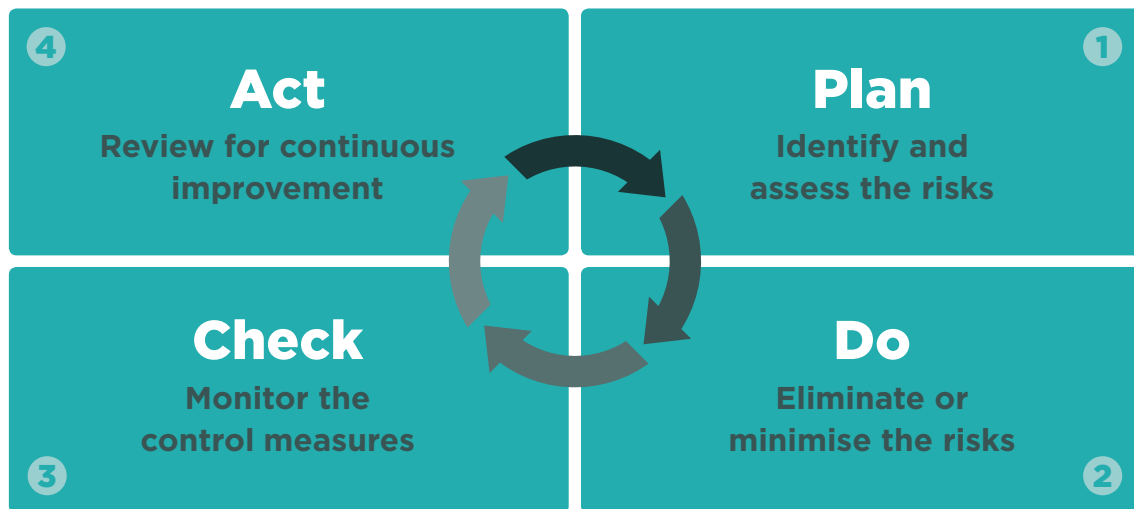
It introduces new responsibilities for managing the work-related risks that could cause serious injury, illness or even death. HSWA recognises that to improve our poor health and safety performance we all need to work together. Government, businesses and workers must establish better leadership, participation in, and accountability for people's health and safety.

Everyone who goes to work should come home healthy and safe. To achieve this, HSWA provides a new way of thinking.

The Health and Safety at Work Act:

- > ensures everyone has a role to play
- > makes everyone's responsibilities clear
- > focuses on managing work risk
- > requires those who create the risk to manage the risk
- > requires businesses to engage with workers and enable them to actively participate in health and safety
- > allows flexibility in managing health and safety risks.

MANAGING HEALTH AND SAFETY RISKS



THE MEANING OF 'SO FAR AS IS REASONABLY PRACTICABLE'

Many duties under HSWA apply 'so far as is reasonably practicable'. It's an important concept that involves doing what is reasonably able to be done to ensure people's health and safety under the given circumstances.

- > Something is '**practicable**' if it is possible or capable of being done. '**Reasonably**' doesn't mean doing everything humanly possible to manage a risk. It means doing what other businesses would reasonably do in the same situation.

Different businesses have different risks – it all depends on the type of work you do.

What every business needs to understand is:

- > what its work-related health and safety risks are – particularly those that have the potential to cause workers **and others** serious injury or illness
- > the likelihood of those risks occurring
- > the degree of harm that could result from those risks
- > the options to eliminate the risks
- > the options to minimise the risks (where they can't be eliminated)
- > the associated costs.

Consideration of cost should only take precedence over safety when it is grossly disproportionate to the risk.

02/

**BUSINESS
RESPONSIBILITIES**

WHAT IS A PCBU?

- > A PCBU is a 'Person Conducting a Business or Undertaking'.
- > A PCBU may be a person if a sole trader or self-employed, however it usually refers to a business entity such as a company, or an undertaking such as a not-for-profit organisation.
- > The difference between a business and undertaking is:
 - **a business** is an enterprise usually conducted with a view to making a profit
 - **an undertaking** is usually not profit-making or commercial in nature.

Examples of a business:

- > a retailer or wholesaler
- > an importer on-selling imported goods
- > an owner-driver of a transport or courier business
- > a franchisor or franchisee
- > a self-employed person operating their own business
- > partners in a partnership.

Examples of an undertaking:

- > a government department or agency
- > a local council
- > a school
- > a charity like the SPCA or Barnardos.

The following are not PCBUs:

- > officers of a business or undertaking (see page 9)
- > workers (see page 13)
- > home occupiers, unless operating a business at home
- > volunteer associations (see page 18).

WHAT IS THE PRIMARY DUTY OF CARE?

- > A PCBU has the 'primary duty of care' – the primary responsibility for people's health and safety at work. It must ensure, so far as is reasonably practicable, the health and safety of:
 - its workers
 - any other workers it influences or directs.
- > The PCBU must also look after other people who could be put at risk by its work, for example, customers, visitors, children and young people, or the general public.
- > If you are self-employed then you must also ensure, so far as is reasonably practicable, your own health and safety as well as the health and safety of others who could be put at risk by the work you do.
- > The primary duty of care is a broad, overarching duty. It includes, so far as is reasonably practicable, the PCBU having effective practices in place for:
 - Providing and maintaining:
 - a work environment that is without risk to health and safety
 - safe plant and structures
 - safe systems of work
 - adequate facilities for the welfare of workers at work
 - Safe use, handling and storage of plant, substances and structures
 - The provision of information, training, instruction or supervision that is necessary to protect people from risks to health and safety arising from the work carried out
 - That the health of workers and the conditions at the workplace are monitored to prevent illness or injury to workers arising from the work carried out.

03/

**OFFICER
RESPONSIBILITIES**

WHO IS AN OFFICER?

- > A person is an officer if they have a position that allows them to exercise significant influence over the management of a business. Typically, an officer is the director, chief executive, or a general partner in a limited partnership. A business can have more than one officer.
- > A person who merely advises or makes recommendations to a person in a senior position in a business is not considered an officer.
- > The role of an officer is to exercise **due diligence** to ensure that the business meets its health and safety obligations under HSWA. The difference between a business's primary duty of care and an officer's duty is that officers do not have to ensure the health and safety of workers.

WHAT IS DUE DILIGENCE?

Due diligence includes taking reasonable steps to:

- > acquire and keep up-to-date knowledge of work health and safety matters
- > gain an understanding of the nature of the operations of the business and generally of the hazards and risks associated with those operations
- > ensure the business has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety
- > ensure the business has appropriate processes for receiving, considering and responding in a timely way to information regarding incidents, hazards and risks
- > ensure the business has and implements processes for complying with its duties under HSWA
- > verify the provision and use of resources and processes.

The extent of an officer's due diligence duty will depend on the nature of the business' operations and the nature of the officer's role and responsibilities.

The background of the entire page is a teal-colored woven pattern, similar to a basketweave or herringbone texture. A white rectangular box is positioned in the upper left quadrant, containing the chapter number and title.

04/

WORKING WITH OTHER BUSINESSES

Ensuring businesses work together for everyone's health and safety is a fundamental part of HSWA's design.

THE MEANING OF OVERLAPPING DUTIES

- > When two or more businesses operate together, for example at the same location or in a contracting arrangement, they must work together to fulfil their primary duties of care.
- > Where work overlaps, businesses need to communicate, consult, cooperate and coordinate activities to meet their health and safety responsibilities to workers and others, so far as is reasonably practicable.
- > A business cannot contract out its duties. However, reasonable arrangements can be made with the other businesses to fulfil its duty, taking into account the level of influence or control each has over the overlapping work.

WHY BUSINESSES NEED TO CONSULT

- > Under HSWA, businesses have responsibilities for all workers and others affected by their work – not just those they directly employ or engage. Issues arise when:
 - there is a lack of understanding about how the work of each business may add to the health and safety risks in the workplace as a whole or in a chain of work activities
 - one business assumes the other business is taking care of a particular health or safety issue
 - the business who manages the risk is not the one in the best position to do so
 - businesses do not know what other work is happening and when.

- > Consultation means businesses can avoid unnecessary duplication of effort and help prevent gaps in managing health and safety risks by establishing clear roles and responsibilities.

TIPS FOR EFFECTIVE CONSULTATION

- > Plan ahead, think about the stages of your work and who will be affected by it.
- > Identify the risks to be managed and together agree how to control those risks and who is best placed to do so.
- > Define roles, responsibilities and actions, and explain these to workers and other businesses so they know what to expect.
- > Carry out reasonable and proportionate monitoring to ensure health and safety risk management is maintained.

UPSTREAM ACTIVITIES

- > In addition to their primary duty of care, there are now specific duties on businesses that are upstream in the supply chain (eg architects, engineers, manufacturers and importers).
- > Upstream businesses who design, manufacture, import, supply or install plant, substances or structures must, so far as is reasonably practicable, make sure that what they provide to workplaces doesn't create health or safety risks.
- > Why? Because upstream businesses are in a strong position to eliminate or minimise risks to health and safety within the design and manufacturing process.

05/

**WORKERS
AND OTHERS**

THE MEANING OF WORKERS

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

- > employees, contractors or sub-contractors
- > employees of contractors or sub-contractors
- > employees of labour hire companies
- > apprentices or trainees
- > people doing work experience or work trial
- > outworkers (including home workers)
- > volunteer workers (see page 18).

THE MEANING OF OTHERS

Others in a workplace include:

- > visitors to a workplace
- > customers
- > members of the public who come into contact with a business' work activity
- > casual volunteers (see page 18).

WORKERS' AND OTHERS' RESPONSIBILITIES

Workers and others in a workplace must:

- > take reasonable care of their own health and safety and reasonable care that others are not harmed by something they do or don't do
- > follow any reasonable health and safety instructions given to them by the business, as far as they are reasonably able to.

And workers must:

- > cooperate with any reasonable business policy or procedure relating to the workplace's health and safety that they have been told about.

Note: Workers have the right to stop work if they believe it is unhealthy or unsafe.



06/

**WORKER
ENGAGEMENT,
PARTICIPATION AND
REPRESENTATION**

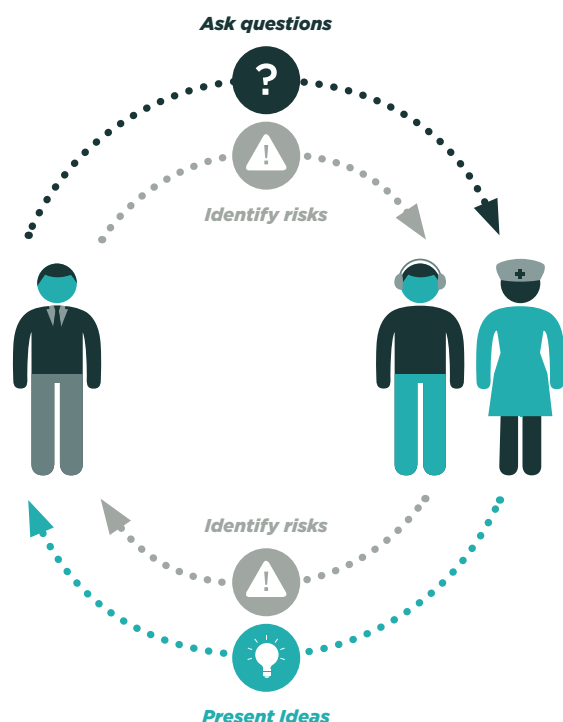
WHAT IS WORKER ENGAGEMENT AND PARTICIPATION?

- > Under HSWA all businesses must have worker engagement and participation practices, regardless of size, level of risk or the type of work carried out. Under HSWA, a business must:
 - ensure workers' views on matters that could affect their health and safety are asked for and taken into account (**engagement**)
 - have clear, effective and ongoing ways for workers to raise concerns or suggest improvements on a day-to-day basis (**participation**).
- > Workplaces have better health and safety outcomes when workers have a say about health and safety. Workers are the eyes and ears of the business and know where the health and safety pressure points are. Workers:
 - are directly affected by any risks created by the work a business does
 - are in the best position to know how a job is done and how it affects them
 - can provide practical solutions for improving work health and safety.
- > How a business decides to engage with workers and ensure their participation in health and safety will depend on the views and needs of workers, the size of the business, the nature of the risks, and how, when and where work is carried out.
- > The focus needs to be on effective practices rather than whether any particular system or processes are in place.

WHAT IS WORKER REPRESENTATION?

- > Worker representation is about having one or more people representing workers on health and safety matters. There are several well-established ways to do this, including Health and Safety Representatives (HSRs), Health and Safety Committees (HSCs), and unions.
- > Worker representation has a number of health and safety benefits, including:
 - giving workers a clear, well-known way to raise issues and suggest improvements
 - providing a link between workers and management
 - helping where it's not practical for the business to engage one-on-one with its entire workforce
 - providing a voice for workers who might not otherwise speak up.

WORKER ENGAGEMENT, PARTICIPATION AND REPRESENTATION



WHAT IS A HEALTH AND SAFETY REPRESENTATIVE?

- > A health and safety representative (HSR) is a person chosen by other workers to speak or act on their behalf about health and safety matters.
- > HSRs can benefit a business by:
 - working with the business to help to identify and manage risks
 - providing a different perspective given they are involved in day-to-day work activities
 - being knowledgeable about health and safety laws and everyone's rights and responsibilities.
- > Any worker can ask for an HSR and any business can choose to have an HSR.
- > Some businesses must arrange an election for an HSR if asked, including those with 20 or more workers or those in a high-risk sector or industry specified in the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.

WHAT IS A HEALTH AND SAFETY COMMITTEE?

- > Health and safety committees (HSCs) bring together HSRs, workers and representatives of the business to improve health and safety at work.
- > The main functions of an HSC are to:
 - make it easy for the business and workers to cooperate on ways to ensure workers' health and safety
 - assist in developing standards, rules, and policies or procedures for work health and safety
 - make recommendations relating to work health and safety
 - carry out other tasks as agreed between the business and the HSC.
- > Five or more workers or an HSR can request that the business consider establishing an HSC.
- > Any business can choose to set up an HSC even if an HSR or workers have not asked for one.

07/

VOLUNTEERS

WHAT IS A VOLUNTEER ASSOCIATION?

- > A volunteer association is a group of volunteers working together for a community purpose with **no employees**. A volunteer association is not a PCBU and has no duty, responsibility or liability under HSWA.
- > If the group of volunteers has employees (even only one part-time) it is classed as a PCBU and therefore has duties under HSWA.
- > If the group of volunteers engages individuals to work for them under a contract for service instead of having employees, then it is classed as a volunteer association and is not a PCBU. Note that the contractor may be a PCBU and will have duties under HSWA.

- helping with activities for an educational institution outside the premises of the educational institution
- providing care for another person in the volunteer's home (for example care for a foster child in the foster parent's home).

THE MEANING OF CASUAL VOLUNTEER

- > Casual volunteers (those who do not meet the criteria of a volunteer worker) are covered by a business' primary duty to ensure others are not put at risk by its work.

THE MEANING OF VOLUNTEER WORKER

- > Volunteer workers are people who regularly work for a business or an organisation, with its knowledge and consent, on an ongoing basis, and are integral to the operation of the business or organisation. For example, volunteer firefighters.
- > Volunteer workers are covered by a business' primary duty of care to workers.
- > Even if a person fulfils the test of 'volunteer worker', they will not be classed as such if they are:
 - participating in a fundraising activity
 - helping with sports or recreation for an educational institute, sports or recreation club

08/

NOTIFICATIONS

NOTIFIABLE EVENTS

Under HSWA you must notify WorkSafe when certain work-related events occur, including:

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

Under HSWA, you are required to:

- > notify us as soon as possible, when a notifiable event occurs
- > preserve the site of the incident until a WorkSafe inspector arrives, or you are otherwise directed by the regulator or the Police.
- > keep records of all notifiable events.

Notifications must be done by phone or in writing, and must be given by the fastest means possible in the circumstances.

Phone 0800 030 040 (24/7)

Online forms www.worksafe.govt.nz/forms

WHAT IS A NOTIFIABLE INJURY OR ILLNESS?

A notifiable injury or illness includes:

- > Any of the following injuries or illnesses that requires a person to have immediate treatment (other than first aid):
 - the amputation of any part of the body
 - a serious head injury
 - a serious eye injury

- a serious burn
 - the separation of skin from underlying tissue (such as de-gloving or scalping)
 - a spinal injury
 - the loss of a bodily function
 - serious lacerations.
- > An injury or illness that requires (or would usually require) a person to be admitted to a hospital for immediate treatment.
 - > An injury or illness that requires (or would usually require) a person to receive medical treatment within 48 hours of exposure to a substance.
 - > A person contracts a serious infection (including occupational zoonoses) to which the carrying out of work is a significant contributing factor, including any attributable to:
 - working with micro-organisms
 - providing treatment or care to a person
 - contact with human blood or bodily substances
 - handling or contact with animals, their hides, skins, wool or hair, animal carcasses or waste products
 - handling or contact with fish or marine mammals.
 - > Any other injury or illness declared by regulations to be a notifiable injury.

For more detail, see our online notifiable events tool: www.worksafe.govt.nz/forms



WHAT IS A NOTIFIABLE INCIDENT?

A notifiable incident is an unplanned or uncontrolled incident in a workplace that exposes a worker, or any other person, to a serious health or safety risk arising from an immediate or imminent exposure to one of the following categories of events:

- > a substance escaping, spilling or leaking
- > an implosion, explosion or fire
- > escape of gas or steam
- > escape of a pressurised substance
- > electric shock (from anything that could cause a lethal shock)
- > the fall or release from height of any plant, substance, or thing
- > collapse, overturning, failing or malfunction of, or damage to, any plant that is required to be authorised for use under regulations
- > 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 two vessels, a vessel capsizes, or the inrush of water into a vessel*
- > any other incident declared in the regulations to be a notifiable incident.

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

* Maritime New Zealand is the designated agency for ships as workplaces and work aboard ships.



09/

**WHERE TO
GET MORE
INFORMATION**

www.worksafe.govt.nz/hswa



MEET STEVE AND THE YAPPERS

These animated videos have been created to help you and your workers understand some of the key workplace health and safety concepts in a unique way.



Where's the risk?

Keeping healthy and safe at work is all about identifying and managing risk...



Is it practicable?

The new health and safety law is not about demanding the impossible...



We're all responsible

Work together and get home healthy and safe...



KNOW THE RISK

These animated videos and risk hot spots help contextualise risk management for different business types as well as some HSWA concepts.



Managing risk in manufacturing



Managing risk in construction



Knowing the risks in your industry



CASE STUDIES

These are just some of the case studies available providing great examples of what every day New Zealand businesses are doing to manage workplace health and safety.



Keeping it simple boosts on-site reporting

This approach is paying off for the family-owned and operated earthmoving business – Goodmans.



Worker participation in risk management improves efficiency

A strong ongoing focus on worker participation transformed the health and safety culture at Real Steel.



Involving everyone in learning reaps benefits for Contact Energy

Learning to 'fail safely' has transformed Contact Energy's health and safety culture.



QUIZZES

Test your HSWA knowledge in the following areas:

- > primary duty of care
- > directors' responsibilities
- > overlapping duties
- > worker engagement and participation
- > notifiable events.

DISCLAIMER

WorkSafe New Zealand has made every effort to ensure the information contained in this publication is accurate, but makes no guarantee of its completeness. WorkSafe may change the contents of this guideline at any time without notice.

This document is a guide only. It should not be used as a substitute for legislation or legal advice. WorkSafe is not responsible for the results of any action taken on the basis of information in this document, or for any errors or omissions.

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