

Foreign-flagged vessels

Health and Safety at Work Act (2015) Guidance

Last updated: 8 March 2017

What this guidance contains

This document provides guidance to assist New Zealand businesses that do work involving a foreign-flagged vessel to manage their duties under the Health and Safety at Work Act 2015 (HSWA).

Introduction

HSWA sets out the health and safety duties that senior leaders, businesses and workers must follow. These duties apply to all work carried out by a NZ business.

HSWA contains provisions that affect how duties apply where the work involves foreign vessels. These provisions take account of the international law principle that foreign vessels are subject to the law that applies in the flag state they are registered under.

This means that generally New Zealand law does not apply to the management of a foreign-flagged vessel, but does apply to a NZ business that does work on that vessel.

Duties of a PCBU that does work on a foreign-flagged vessel

Under HSWA, a New Zealand business is known as a PCBU - short for a person conducting a business or undertaking. Normally a PCBU will be an organisation – e.g. a company but it can also be a self-employed person or a government agency.

Two duties under HSWA are particularly relevant to PCBUs (eg stevedores, engineering companies) that do work on a foreign-flagged vessel:

- A 'primary duty' to ensure (so far as is reasonably practicable) that its work activities don't put the health and safety of workers and other people at risk.

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- The duty (so far as is reasonably practicable) to consult, co-operate with, and co-ordinate their activities with other PCBUs when duties overlap. PCBUs share responsibility for health and safety when they share the same workplace and their work activities could affect each other. Examples can include a construction site, a port and a ship.

Shared duties and foreign-flagged vessels

In general, the management of a foreign-flagged vessel is not subject to HSWA. The operator of a foreign-flagged vessel is not normally a PCBU, so they won't have HSWA duties, including the duty (under section 34) to consult, co-operate with and co-ordinate their activities with NZ PCBUs.

The exceptions are:

- where a New Zealand company (i.e. a PCBU) is operating a foreign-flagged vessel under a 'demise charter' arrangement; or
- when a foreign-flagged vessel is
 - a) operating between New Zealand and a workplace in the New Zealand exclusive economic zone or on the continental shelf; and
 - b) that workplace is carrying out an activity associated with mineral extraction (e.g. a drilling platform or fixed ship) that is regulated under the Exclusive Economic Zone (Environmental Effects) Act 2012 or the Crown Minerals Act 1991.

PCBUs should consult with the master of a foreign-flagged vessel to identify health and safety risks

A foreign-flagged vessel is not normally subject to NZ health and safety law. However, it is still subject to the laws of the state where the vessel is registered, including any health and safety obligations and international conventions that address safety.

This means that foreign-flagged commercial vessels are likely to be operating to a safety management system (SMS). Under the International Safety Management Code ("ISM Code") the master is responsible for implementing and periodically reviewing the SMS.

Under HSWA a New Zealand business has a duty (so far as is reasonably practicable) to manage any risks arising from the work they are contracted to do on-board a foreign-flagged vessel. Doing this effectively means consulting with other relevant parties to identify health and safety risks on the vessel and the controls that are in place.

Relevant parties include any other PCBUs that are working on-board and, where possible, the operator and/or the master of the foreign-flagged vessel.

Examples of PCBU duties on a foreign-flagged vessel

Worker	PCBU	PCBUs duties
A pilot piloting the vessel	The Port company that employs the pilot	Duty to ensure the health and safety of its workers, other workers whose activities it influences or directs, and other persons who may be affected. Duty to consult, co-operate and co-ordinate activities with any other PCBU working in relation to the vessel. Note: these duties are likely to include a general duty to engage where possible with the operator and/or master of a foreign-flagged vessel in order to identify and manage risks to health and safety
Customs official on board the vessel	NZ Customs Service	
Immigration official on board the vessel	MBIE	
Maritime Officer	Maritime NZ	
Biosecurity Officer	Ministry for Primary Industries	
Contractor doing maintenance on the vessel	The company that employs the tradesperson	
Stevedore using the vessels crane	The stevedore company	

More information

This guidance is part of a series of guidance documents produced by Maritime NZ to assist operators and other businesses working on vessels to understand their duties under the HSWA. These documents are available at: <http://www.maritimenz.govt.nz/commercial/safety/health-and-safety>

For general information on the Health and Safety at Work Act visit the WorkSafe New Zealand website: <http://www.business.govt.nz/worksafe/hswa>