

# Overlapping and upstream health and safety duties

HEALTH AND SAFETY AT WORK ACT (2015) | GUIDANCE

## What this guidance document contains

This guidance is aimed at maritime operators. It explains what it means for operators and other businesses carrying out work on board a ship to share health and safety duties. These duties are required under the Health and Safety at Work Act 2015 (HSWA). This document focuses on how these duties apply to the maritime sector.

## Introduction

New Zealand maritime operators, and businesses that work on ships, have responsibilities under health and safety law.

The HSWA introduced some new health and safety requirements, including 'shared duties'. These are:

- > 'Overlapping duties'. This means that responsibility for health and safety is shared by the businesses that share a workplace.
- > 'Upstream duties'. This means that the businesses that design, make, supply, install, and commission plant, or supply substances, share a responsibility to minimise the health and safety impacts of those plant.

New Zealand maritime operators and businesses that work on a ship need to understand and manage their 'overlapping duties' and 'upstream duties' under the HSWA.

## PCBUs that share the same workplace share responsibility for health and safety

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

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

Under the HSWA all PCBUs that share the same workplace share responsibility for health and safety.

That means that a maritime operator shares responsibility for health and safety with any other businesses working on the ship.

## Examples of overlapping duties on a New Zealand ship

SITUATION	PCBUs THAT HAVE OVERLAPPING DUTIES
A fisheries observer working on a fishing ship.	<ul style="list-style-type: none"> <li>&gt; The maritime operator</li> <li>&gt; Ministry for Primary Industries (MPI)</li> </ul>
A pilot taking a ship out of port.	<ul style="list-style-type: none"> <li>&gt; The maritime operator</li> <li>&gt; The port company that employs the pilot</li> </ul>
A diving business working off a ship that it doesn't operate.	<ul style="list-style-type: none"> <li>&gt; The maritime operator</li> <li>&gt; The dive business (e.g. CBA Dive Ltd)</li> </ul>
A catering company contracted to provide catering on a ship.	<ul style="list-style-type: none"> <li>&gt; The maritime operator</li> <li>&gt; The catering company (e.g. DEF Catering Services Ltd)</li> </ul>
A fish processing company that processes fish on a ship.	<ul style="list-style-type: none"> <li>&gt; The maritime operator</li> <li>&gt; The fish processing company (eg HIJ Fish Processors Ltd)</li> </ul>
A tradesperson doing maintenance on a ship when it's in port.	<ul style="list-style-type: none"> <li>&gt; The maritime operator</li> <li>&gt; The contracting company that employs the tradesperson (e.g. ACME Contracting Services Ltd)</li> </ul>
A stevedore loading or unloading goods on a ship when it's in port, using the ships crane.	<ul style="list-style-type: none"> <li>&gt; The maritime operator</li> <li>&gt; The stevedore company that employs the stevedore (e.g. XYZ Stevedores Ltd)</li> </ul>
A stevedore loading or unloading goods on a ship when it's in port, using a crane mounted on the wharf.	<ul style="list-style-type: none"> <li>&gt; The maritime operator</li> <li>&gt; The stevedore company (e.g. xyz Stevedores Ltd)</li> <li>&gt; The port company that owns or operates the crane (e.g. Port of ABC Ltd)</li> </ul>

## PCBUs must consult, cooperate and coordinate their activities

The HSWA requires all PCBUs that work in the same workplace to consult, cooperate and coordinate their activities.

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

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

Other PCBUs working on the ship may have less control or influence over what happens. In most cases they are likely to fulfil their responsibilities by making arrangements with the maritime operator.

## Consultation checklist

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The following are examples of the types of things that should be identified and shared with all PCBUs in the workplace:

All work being carried out and who is doing what	<input type="checkbox"/>
Work activities that will affect the work of other PCBUs	<input type="checkbox"/>
Health and safety risks	<input type="checkbox"/>
How risks will be eliminated or minimised	<input type="checkbox"/>
Emergency procedures (including who will notify Maritime NZ when a notifiable event occurs).	<input type="checkbox"/>

## 'Upstream duties'

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Under the HSWA, the PCBUs involved in the supply chain must ensure (so far as is reasonably practicable) that plant does not pose health and safety risks to the people who use them.

'Plant' has broad meaning under the Act and includes vessels and any machinery or equipment on board. This means that every PCBU involved in the design, manufacture, supply and commissioning of a new ship, or installation of new machinery, has duties under the HSWA.

Upstream PCBUs have duties to downstream PCBUs and their workers. They can influence the safety and potential long-term health impacts of the plant they supply. Health and safety risks increase further down the supply chain, so the design stage is the best time to minimise risks.

For example, designing a hatch with a 1m high coaming, instead of flush with the deck, would prevent crew from falling into the hatch. These are easy decisions on the drawing board but much harder to change once the ship has been launched.



## Designers, manufacturers, importers and suppliers

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Under the HSWA, each PCBU in the supply chain has a duty to ensure (so far as is reasonably practicable) that the plant poses no risk to health and safety.

This means they must:

- > carry out any calculations, analysis, testing, or examination as required.
- > provide adequate information about the:
  - purpose of the plant
  - results of any calculations, analysis, testing, or examination they have done and
  - any conditions of use.

## Ship operators and any businesses that work on ships

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New Zealand maritime operators and businesses that work on ships must ensure (so far as is reasonably practicable) that any plant and equipment they commission and install doesn't pose health and safety risks to the people who install or use it.

Maritime operators must consider safety and health when commissioning equipment for a ship or when purchasing a new ship. For example, if the vessel is to be used for dolphin swimming or diving, the risk of customers being struck by the propeller can be eliminated if the vessel has jet propulsion.

Businesses that work on ships, but don't operate that ship, must consider safety and health when they commission or install new equipment – e.g. by ensuring that catering equipment or machinery for processing fish has no unguarded trapping points.

## Upstream duties are shared

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Upstream duties can be seen as 'shared duties':

- > Designers, manufacturers, importers and suppliers must seek to ensure that their products are safe and must provide information about the results of any analysis, testing, etc. and any conditions of use.
- > Maritime operators and any businesses that work on ships must seek out safety information and any conditions of use when they commission plant.

## More information from Maritime NZ

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This guidance is part of a series of guidance documents produced by Maritime NZ to assist operators and other businesses working on ships to understand their duties under the HSWA. This suite of guidance documents includes:

- > How MOSS and the HSWA work together
- > The roles of the maritime operator and ship's master
- > Overlapping and upstream health and safety duties
- > Worker engagement, participation and representation
- > Duty to provide adequate facilities
- > Duty to safely manage asbestos
- > Officers' due diligence duties

## For general information on the Health and Safety at Work Act

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Visit the WorkSafe New Zealand website: <http://www.business.govt.nz/worksafe/hswa/legislation>