

# How Maritime NZ will regulate health and safety issues relating to both the Maritime Transport Act 1994 and the Health and Safety at Work Act 2015

## Position Statement (PS 06)

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The Maritime Transport Act 1994 (MTA) and Health and Safety at Work Act 2015 (HSWA), with their associated rules or regulations, both regulate the health, safety, welfare, and wellbeing of people undertaking commercial activity in the maritime domain.

This statement clarifies our position on how the MTA requirements and duties under HSWA work together and in particular, the position we will take to compliance and enforcement action of the requirements and duties.

## Our position

HSWA and the MTA both aim to, among other things, achieve the same outcome, which is to ensure the health, safety, welfare, and wellbeing of people undertaking commercial activity in the maritime domain. HSWA and the MTA are equally important and must both be complied with.

HSWA sets out duties for people involved in commercial activities for their own health and safety and for the health and safety of workers and others. This includes people impacted by the work carried out by the operation. It requires any health and safety risks to be managed so far as is reasonably practicable (by either elimination, or minimisation if elimination is not reasonably practicable).

The MTA sets out general requirements including that people cannot cause unnecessary risk or danger to any other person. It also sets out prescriptive requirements. These general and prescriptive requirements allow for:

- the control of risks to the health and safety and wellbeing of people involved with commercial activity in the maritime domain; and
- the safety of vessels on the water.

Controls put in place in accordance with the MTA must be reviewed and maintained where there is a requirement for a safety management system, such as on a commercial vessel.

Both HSWA and MTA set out duties and requirements for people and operators undertaking commercial activity in the maritime domain.



HSWA was intended to work in conjunction with other regulation, as evidenced by section 35 of the HSWA.

People must meet their HSWA duties and MTA requirements. Where maritime legislation, rules or standards set requirements in relation to controlling a risk, we will deem this to be what is reasonably practicable under the HSWA and will not seek to enforce to a higher standard.

Where a risk is not addressed by the MTA requirements due to the nature or circumstances of a commercial operation, the duty holder must put in place effective risk controls, so far as is reasonably practicable. Controls put in place in accordance with HSWA must be reviewed and maintained.

Not meeting the requirements of the MTA and/or duties under HSWA, may result in Maritime New Zealand taking action under either or both Acts depending on the circumstances.

## Legislative basis for this position statement

Maritime Transport Act 1994 and its regulations and Maritime Rules.

Health and Safety at Work Act 2015 and its regulations.

## Key Terms

<b>Operator</b>	in relation to a commercial vessel, means –  (a) the maritime transport operator who is responsible for the maritime transport operation in which the vessel is used; or  (b) if there is no maritime transport operator, the owner.
<b>Others</b>	for the purposes of this statement, others means visitors, casual volunteers, and passengers at a work place.
<b>Owner</b>	is defined in detail in section 2 of the MTA. For the purposes of this statement, the owner includes the registered owner of a ship, or, if there is no registered owner, the person who is for the time being responsible for the management of the ship. For demise charter, the owner includes the charterer or other person who is for the time being responsible for the ship.
<b>PCBU</b>	means a person conducting a business or undertaking.
<b>Reasonably practicable</b>	is defined in detail in section 22 of HSWA. For the purposes of this statement it means something that is, or was, reasonably able to be done in relation to ensuring health and safety.
<b>Vessel</b>	for the purposes of this statement means a vessel, ship, or boat and is a generic term that is not associated with the size of the craft.
<b>Worker</b>	is defined in detail in section 19 of HSWA. For the purposes of this statement, a worker is an individual who carries out work in any capacity for a PCBU. A PCBU is also a worker if the PCBU is an individual who carries out work in that business or undertaking.



## Further information

Further information can be found on Maritime NZ's website including:

- information and resources for commercial maritime operators on their safety obligations;
- relevant published operational policies;
- all Maritime rules; and
- HSWA information for commercial operators.

The Maritime Transport Act 1994, the Health and Safety at Work Act 2015 and associated regulations can be found at New Zealand legislation online.

Further information on HSWA can be found on WorkSafe's website.

