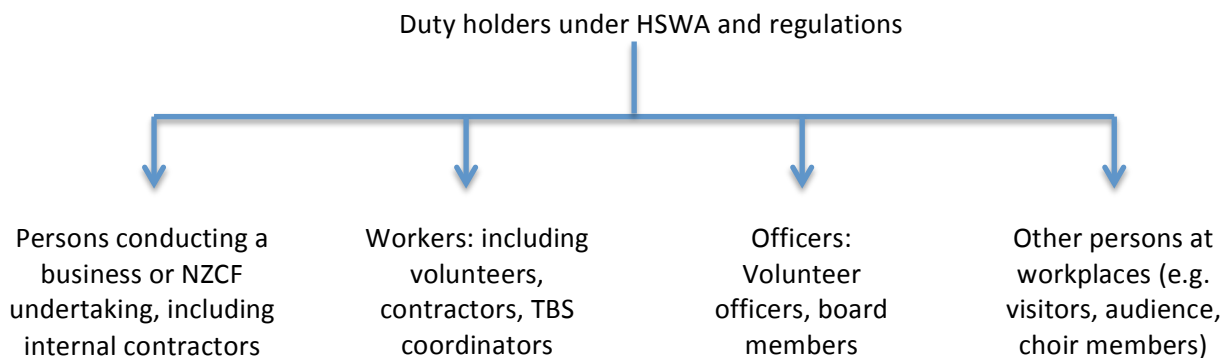

Health and Safety at Work Act 2015 (HSWA)

The Health and Safety at Work Act 2015 (HSWA) is New Zealand's key work health and safety law, and came into effect Monday 4th April 2016.

KEY ROLES



1. A PCBU is a 'person conducting a business or undertaking'. In most cases the PCBU will be an organization (e.g. a business entity such as a company).
2. 'Workers' include employees, contractors, subcontractors, labour hire workers, apprentices and trainees, and volunteer workers. (NB: Volunteers for member choirs (volunteer organization) are exempt).
3. An 'Officer' is a person 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. PCBUs can have more than one officer (including volunteer officers).
4. 'Other persons at workplaces' include workplace visitors, paying 'customers' and casual volunteers at workplaces.

Remember:

- Whoever creates the risk manages the risk.
- A PCBU owes its volunteer workers the same duties as other workers.
- Officers need to exercise due diligence to make sure that the PCBU complies with its health and safety duties.
- Both 'workers' and 'other persons at workplaces', as defined above, also have a duty to take reasonable care for their own health and safety.

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. (This could be the venue or outside area when an event is taking place.)

'OFFICER' DUE DILIGENCE DUTY

Officers 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.

RESPONSIBILITIES OF 'WORKERS'

- 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 or 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.

RESPONSIBILITIES OF 'OTHER PERSONS'

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.

PCBUs should:

- engage with workers who carry out work for them on health and safety matters that may directly affect them.
- 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).

FOCUS ON BOTH WORK-RELATED ILLNESSES AND INJURIES

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.

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

'SO FAR AS IS REASONABLY PRACTICABLE'

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'.

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 be 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 minimizing it (e.g. by removing the source of the risk or using control measures such as isolation or physical controls to minimize it).
- What measures exist to eliminate or minimize 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 minimizing the risk?
- Is the cost grossly disproportionate to the risk?

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

RISK MANAGEMENT

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 a 'hazard' includes behavior that has the potential to cause death, injury or illness (whether or not that behavior 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 minimized 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 process or equipment put in place to eliminate or minimize risk are called 'control measures'. For minimizing risk, if the risk is well known and if there are commonly accepted ways to manage it, these control measures should usually be used.

RISK ASSESSMENT – THINGS TO THINK ABOUT

- Venue and site design
- Temporary and demountable structures
- Crowd management
- Transport management
- Work at height
- Electrical safety
- Fire safety
- Special effects
- Worker welfare
- Handling waste
- Emergency evacuation
- Mobile elevated work platforms
- Rigging
- Portable tools
- Noise

CONSULTING WITH OTHER PCBU's

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

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

OVERLAPPING DUTIES

