



**SITESAFE**



# **THE NEW HEALTH AND SAFETY AT WORK ACT**

A practical guide for small business owners

*First Edition, April 2016*





- 04** Introduction
- 05** What's changed
- 06** Know your responsibilities and role
- 08** Your responsibilities under the new HSW Act
- 10** Are you ready? What you need to do
- 13** Additional PCBU responsibilities
- 14** How Site Safe can help
- 16** Fact or fiction? Addressing the myths surrounding the HSW Act
- 17** Online Resources



## INTRODUCTION

*This practical guide is designed to help you as a small business owner understand the new health and safety legislation, your new responsibilities and what this means for your business.*

*In Site Safe's view the new law is NOT a cause for panic. If you're doing the right thing under the current law then it's unlikely that you need to make major changes. If you've been neglecting your organisation's health and safety, then the new law presents a great opportunity to review your health and safety practices, your culture and how you manage risks.*

### **About the new Act**

*The focus of the new Health and Safety at Work Act is to protect workers and other people against harm to their health, safety and wellbeing by eliminating or minimising risks at work. It's part of a reform package that aims to reduce New Zealand's work related illness, injury and fatality figures by 25% by 2020. The new law came into effect on 4 April 2016.*

*(Throughout this guide the new law is referred to as the HSW Act).*





## WHAT'S CHANGED?

1. **PCBU** - (person conducting a business or undertaking) is a key new term – the PCBU has the 'primary duty of care' to ensure the safety of workers and anyone affected by its work.
2. **Worker participation** - a stronger emphasis on worker participation and engagement to ensure that workers are engaged with health and safety.
3. **Risk management** - shifts the focus from hazard ID and control to proactively identifying and managing risks.
4. **Safety is everyone's responsibility** - no one can 'opt out' and safety becomes everyone's responsibility. All parties from executives to workers have health and safety responsibilities.
5. **Due diligence for directors** - the Act places more legal responsibility on directors and executives of an organisation to manage risks and keep people safe.
6. **Stronger fines and penalties** - the HSW Act significantly increases the category of offences, with a three-tiered hierarchy being introduced along with a range of other offending provisions.



# KNOW YOUR RESPONSIBILITIES AND ROLE

*Safety is everyone's responsibility*

*The new HSW Act gives everyone from directors, company owners and workers some form of health and safety responsibility. To make the level of responsibilities clear the act uses the following terms:*

- 1. PCBU**
- 2. Officer**
- 3. Worker**
- 4. Other person**





## WHERE DO YOU FIT?

### ARE YOU A PCBU?

The PCBU or 'person conducting a business or undertaking' is one of the key terms introduced in the new Act. Despite the name the PCBU is not necessarily one person. In most cases a PCBU will refer to a business entity, such as company or organisation.

A PCBU may also be an individual in the case of someone running their own business. For example a builder operating as a sole trader will be a PCBU.



### ARE YOU AN OFFICER?

Officers are those people with senior positions, who have significant influence over the management of the business. This includes chief executive officers, directors and anyone else at that level. A person who merely advises or makes recommendations to someone in a senior position is not considered an officer.

Officers are now personally liable under the new Act if they fail to meet their due diligence obligations.

If you are a sole trader then you will have the responsibilities of both a PCBU and an Officer.



### ARE YOU A WORKER?

Workers are individuals who carry out work for the PCBU including employees, contractors and sub-contractors. Under the new HSW Act workers can also be employees of labour hire companies, apprentices, students and some volunteer workers.



### ARE YOU AN OTHER PERSON?

Other persons in the workplace will include visitors or customers. For example a courier driver coming onto site or customers coming into reception.

## YOUR RESPONSIBILITIES UNDER THE NEW HSW ACT

The following responsibilities have been adapted from WorkSafe's Quick Reference Guide to Health and Safety at Work which can be accessed from [www.business.govt.nz/worksafe/](http://www.business.govt.nz/worksafe/)

As you can see under the new Act everyone - including workers and other people have a responsibility (or statutory duty) for health and safety.

***Health and safety is now the responsibility of everyone.***





## ROLE

## RESPONSIBILITIES

## DUTY

**PCBU**  
(e.g. business entity)

- › The PCBU has the 'primary duty of care' to ensure the safety of workers and anyone affected by its work.

Primary Duty of Care

**The PCBU must (as far as reasonably practicable):**

- › Provide and maintain a workplace that is without risks to health and safety.
- › Provide and maintain safe plant and structures and safe systems of work.
- › Ensure the safe use, handling and storage of plant, structures and substances.
- › Provide adequate facilities for the welfare of workers.
- › Provide information, training, instruction, or supervision that is necessary to protect all persons from risks to their health and safety arising from work.
- › Monitor the health of workers and the conditions at the workplace for the purpose of preventing injury or illness.

**Officer**  
(e.g. chief executive,  
board member or  
director)

**An officer must exercise due diligence by taking reasonable steps to:**

Due Diligence

- › Keep up to date about work health and safety matters.
- › Understand the nature of the hazards and risks associated with the organisations operations.
- › Ensure the organisation has resources and processes to eliminate or minimise risks.
- › Ensure appropriate and timely processes for receiving and responding to incidents, hazards and risks.
- › Ensure there are processes for complying with any duty.
- › Verify that health and safety processes are in place and being used.

**Worker**  
(e.g. employees,  
contractors)

- › Take reasonable care to ensure the health and safety of themselves and others in the workplace.
- › Follow instructions from the PCBU.
- › Cooperate with health and safety policies and procedures of the PCBU.
- › Workers also have the right to refuse to undertake unsafe or dangerous work.

Reasonable Care

**Other Person**  
(e.g. visitors or  
customers)

- › Take reasonable care for their own health and safety.
- › Ensure that their acts or omissions do not adversely affect the health and safety of others persons.
- › Follow instructions given by the PCBU.

Reasonable Care



## ARE YOU READY? WHAT YOU NEED TO DO...

If you were already doing the right thing by the previous law then the changes you will need to make are probably minimal.

For business owners that have been neglecting their health and safety - if you don't have anything in place then right now is the time to start taking steps to ensure that your people go home safe at the end of every workday.

Site Safe suggests that as a **minimum** you have the following systems in place for your business.

### ***Are you ready checklist:***

1. Plans and Procedures



2. Worker Engagement



3. Risk Management



4. Training and Induction



5. Accidents and Emergencies



## Plans and procedures



Check that you have policies and procedures in place for health and safety. Ideally you will have a health and safety system in place that is regularly reviewed and communicated to everyone in your organisation.

## Worker engagement



Ensure that you have practices in place that provide workers with opportunities to participate in improving health and safety at your organisation in an ongoing basis. Get them involved - not just because you legally have to but because your workers can help improve health and safety. This might include electing Health and Safety Reps, setting up a H & S Committee, having regular safety meetings and conducting regular toolbox talks.

## Risk management



As the PCBU you are in the best position to control the risks in the workplace. You can do this by ensuring you have a process in place to:

1. Identify hazards
2. Assess the level of risk for each hazard
3. Control and monitor hazards.

You will need to document the above steps, including the controls you use which will include either eliminating or minimising the hazards.

Common documents/templates for managing hazards include Site Specific Safety Plans (SSSPs), risk/hazard registers, task analysis/safe work method statement (TA/SWMS) and safe operating systems for plant and equipment. Remember that these documents should be reviewed on a regular basis.

## Training and induction



Review your staff training and induction process. Ask yourself if all of your workers have the training and knowledge they need to be able to work safely. If the answer is no, then ensure they are supervised or get them the training they need. Make sure you are keeping a record of your staff's training and any new training - this can be done using Site Safe's Training and Competency Register template.

## Accidents and emergencies



Ensure you have a way of recording, investigating and reporting workplace incidents (including near-misses). You should also be putting preventative measures in place. Check that you have an emergency plan written up for your organisation and remember that you must notify WorkSafe New Zealand of any serious incidents.

## DO YOU NEED A HEALTH AND SAFETY COMMITTEE?



Having a health and safety representative and committee can be a good way of ensuring regular safety conversations are taking place. Under the HSW Act some organisations will have to have a health and safety representative (HSR), or consider a committee, if requested by workers. These organisations will be those with 20 or more workers or those classified as being high risk. Industries that are high risk are still being finalised however it is likely that construction will be one of these.



In their quick reference guide WorkSafe states the following:

*"Where there is overlap, and more than one PCBU has a duty in relation to the same matter, PCBU's need to **consult, co-operate and coordinate** activities to meet their shared responsibility in regard to the health and safety of their workers, so far as reasonably practicable."*



# ADDITIONAL PCBU RESPONSIBILITIES

Depending on the size and type of your organisation you may have additional PCBU responsibilities

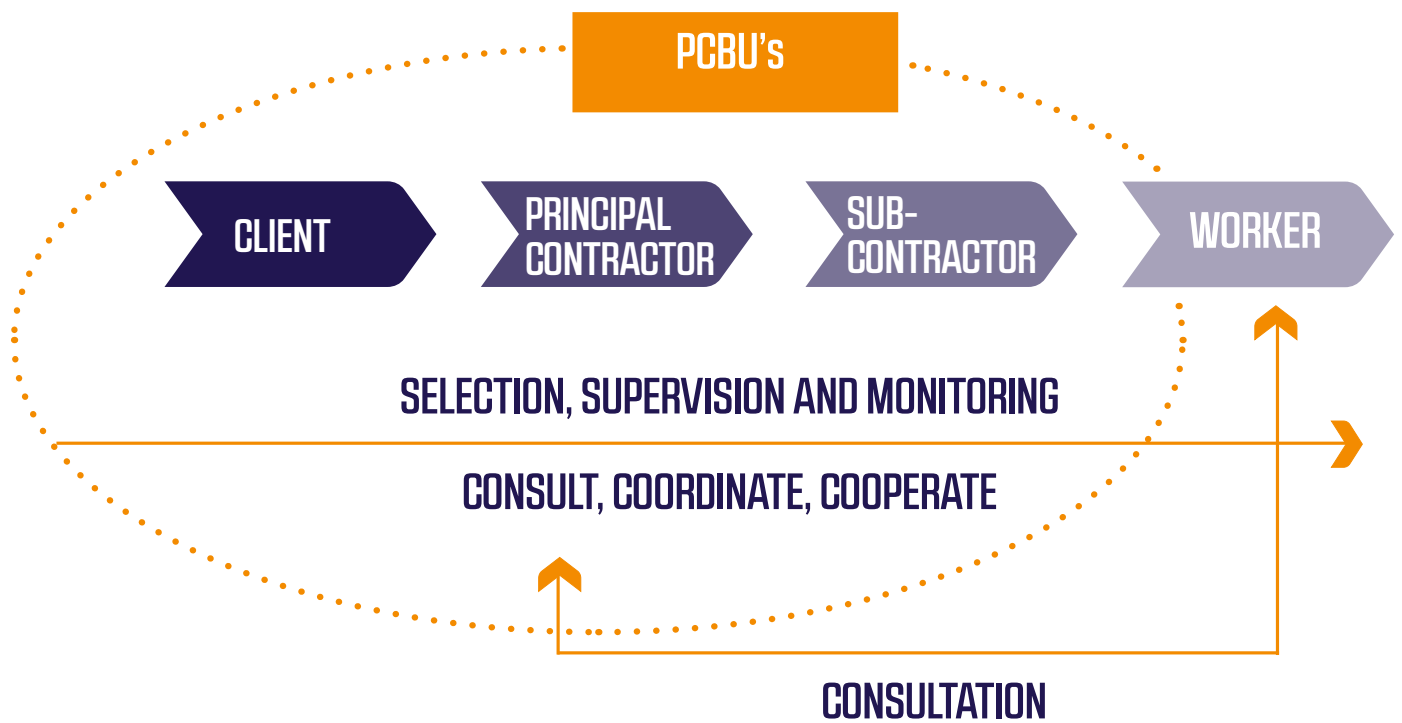
### More than one PCBU - collaboration

There can be more than one PCBU on a site or project. Clients, principal contractors and sub-contractors can all be PCBUs. The example below shows how three different companies can all be PCBUs on one project.

### Upstream PCBUs

The HSW Act also places duties on any upstream PCBUs. This term means upstream in the supply chain, for example designers or architects can be upstream PCBUs.

These upstream PCBUs have a primary duty to ensure, so far as 'reasonably practicable' that plant, substances or structures are designed without risks to health and safety.



## HOW SITE SAFE CAN HELP

Site Safe has a nationwide team of expert health and safety consultants who can help you get the right systems and culture in place, so you're ready for the new HSW Act. Our consultants can help you improve your existing systems, or put the basics in place if you're starting from scratch.

Our services include:

- › SiteWise - our pre-qualification database
- › Training - from basic passport courses through to leadership in safety
- › Consultancy - with discounted rates available for members
- › Auditing
- › Small Business Safety Package
- › Health and Safety Management Systems
- › Hazard boards and posters

You can also show your commitment to safety by joining us as a Site Safe member, you'll gain access to a range of benefits including discounts on training and consultancy, member branding, free toolbox talks and templates.





If you're looking at implementing our 'get ready' checklist then a great place to start is the Site Safe website. We offer a free electronic Site Specific Safety Plan (SSSP) and in this document you'll find many of the individual templates that you need to get a basic system in place including:

- › Hazard register
- › Task Analysis / SWMS
- › Emergency Response Plan
- › Training and Competency Register
- › Accident/injury register
- › Hazardous Products and Substances Register
- › Accident and Incident Investigation Report

### **Good health and safety = good for your business**

- › Protecting your company image
- › Improving employment and contractor relations
- › Better planning and efficiency
- › Safer sites
- › Engaged staff
- › Higher commitment
- › Improved planning, productivity and profitability.

### **ACC Safety Discount**

With the right systems in place we can also help you apply for ACC's Workplace Safety Discount (WSD) programme which recognises self-employed or small businesses that have effective health and safety systems and practises in place. Qualifying businesses receive 10% off their annual work cover levies for three years.

**For more information on our services or to contact your local advisor visit [sitesafe.org.nz](http://sitesafe.org.nz) or call 0800 SITE SAFE (748 372).**

## FACT OR FICTION?

### *Addressing the myths surrounding the HSW Act*

WorkSafe New Zealand Sector Engagement Manager Bryce Fleury explains some of the myths surrounding the new act. A full copy of this article is available from [sitesafe.org.nz](http://sitesafe.org.nz)

#### **Myth: Extra paperwork and compliance costs**

"One myth is that the Act will prompt extra paperwork and compliance costs. This doesn't have to be the case. The new law recognises that each business is best placed to know what it should do to meet requirements. If an organisation already takes a responsible approach to health and safety then little will need to change. Businesses need to do what is 'reasonably practicable' and proportional; balancing the level of risk, the chance of an incident happening and how much control the organisation has in managing it."

#### **Myth: You must eliminate all risk**

"Another myth is that an organisation (which, as an entity, has the primary duty of care for the health and safety of its workers and anyone affected by its work) and its officers must eliminate all risks. They can't. The nature of any work is that there will always be risks; and in the construction industry these have greater potential consequences than some other industries. What's important is that they can be managed and mitigated. First they must be identified. Remember, it's not just safety, health is also at stake. For example, construction workers are twenty times more likely to die as a result of respiratory disease than any other construction incident."

***The question is no longer 'Am I liable', but 'How do I improve health and safety'.***





## MORE ONLINE RESOURCES

### **ACC**

[www.acc.co.nz/wsd](http://www.acc.co.nz/wsd)

Visit ACC's website for more information about applying for their Workplace Safety Discount.

### **Site Safe New Zealand**

[www.sitesafe.org.nz](http://www.sitesafe.org.nz)

Visit Site Safe's website for more information on our training, products and services plus a range of free templates including our Site Specific Safety Plan (SSSP).

### **The Ministry of Business, Innovation and Employment (MBIE)**

[www.mbie.govt.nz](http://www.mbie.govt.nz)

MBIE have released new regulations to underpin the HSW Act. These are based on the Australian Model and provide specific guidance on these five areas of workplace health and safety:

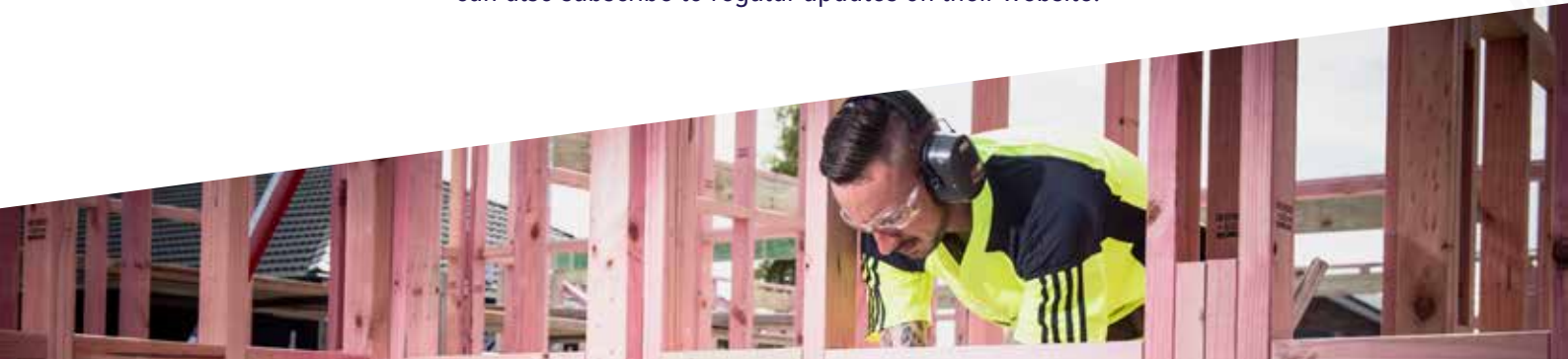
1. General risk and workplace management
2. Worker participation, engagement and representation
3. Asbestos
4. Hazards substance
5. Major hazard facilities

Visit MBIE's website for more information on these regulations.

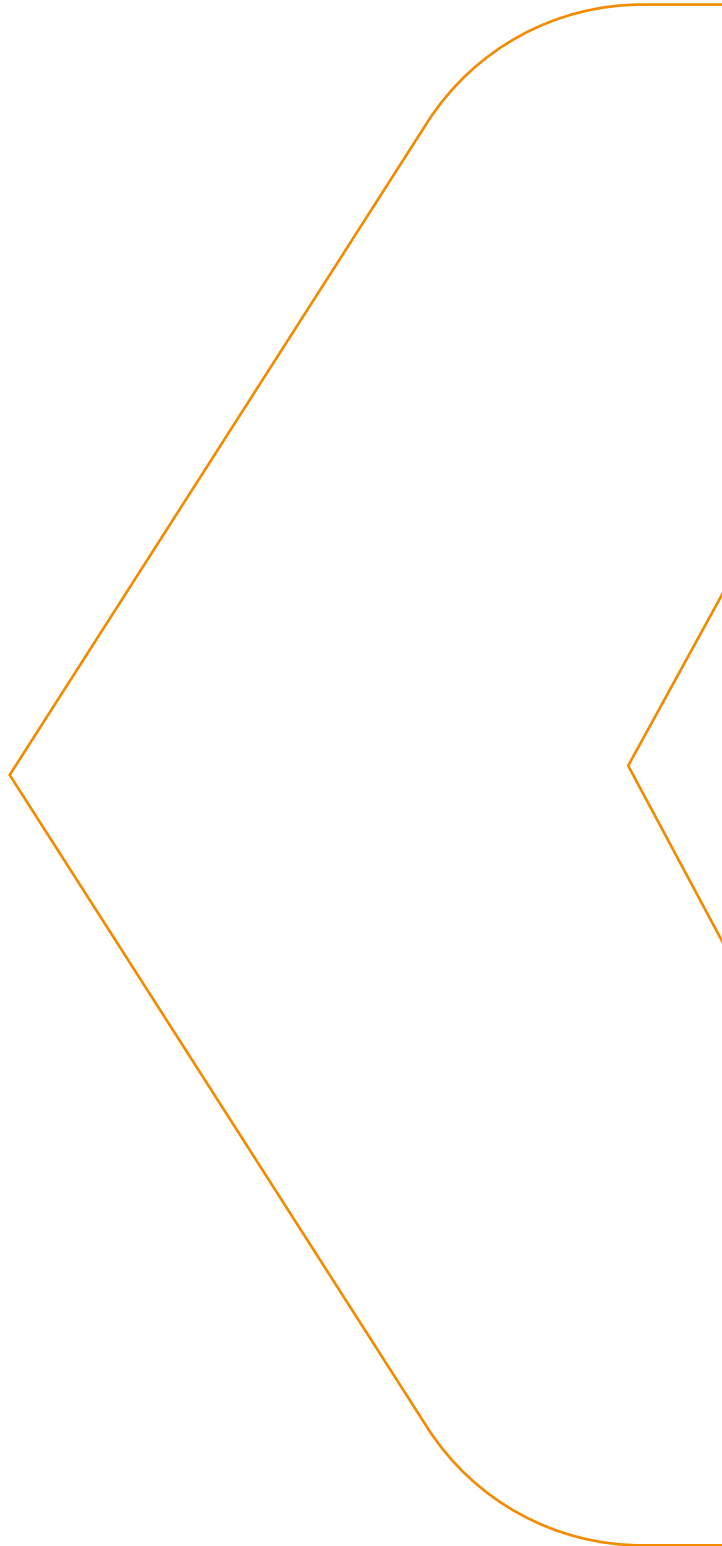
### **WorkSafe New Zealand**

[www.business.govt.nz/worksafe](http://www.business.govt.nz/worksafe)

WorkSafe have released guidance around the HSW Act, you can also subscribe to regular updates on their website.









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