


# **HEALTH & SAFETY**





# ABOUT THIS BOOK

This booklet is the essential guide to meeting your health and safety obligations, and is relevant for everyone working in or with the maritime sector. This includes:

- Owners
- Operators
- Skippers
- Crew
- Stevedores
- Jet Boat Drivers
- Rafting Guides
- Self employed crew, including share fishers
- Anyone who employs or contracts the people described above
- Any other person who comes on board, or employs or contracts someone to go on board a vessel on business.

This booklet provides you with information about your responsibilities under the Health & Safety in Employment Act (HSE Act 1992) and outlines important information for keeping your workplace healthy and safe.

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# HEALTH & SAFETY LEGISLATION FOR THE MARITIME WORKPLACE

## 1.1 Introduction

The Health and Safety in Employment Act 1992 (the HSE Act) requires everyone in the workplace to take some responsibility towards health and safety.

Since 2003, Maritime New Zealand has been responsible for administering the HSE Act for work on board ships and for ships as places of work. Maritime New Zealand also administers the Maritime Transport Act 1994. Maritime and marine protection rules are statutory instruments (or secondary legislation) made by the Minister of Transport pursuant to the Maritime Transport Act 1994 (MT Act). While the MT Act stipulates broad principles of maritime law, the rules contain detailed technical standards and procedures.

In summary the MT Act and the maritime rules made under that Act focus on vessel related safety with the HSE Act focusing on the safety of operations and people on board the vessel. There is however a degree of overlap.

## 1.2 Health and Safety in Employment Act 1992

The purpose of the HSE Act is to make work activities safe and healthy for everyone connected with them.

Healthy and safe workplaces benefit everyone. Staff are happier and healthier, everyone is well informed about hazards, and staff work actively with others to ensure the safety of themselves and everyone else.

A safer workplace also means less time lost through injuries, which leads to a more productive workplace.

The HSE Act creates general duties for employers and others who can influence health and safety in the workplace. In some situations these are supported by more detailed regulations that control particular hazards or types of workplaces.

In most cases the HSE Act recognises that those who are directly involved in the workplace are usually best placed to decide on appropriate measures to make their own workplace safe. The only sure way to do that is by systematic management of all hazards, and by taking reasonable and practicable steps to make work safe.

The HSE Act reinforces that employers, or other people responsible for the work, have the primary responsibility for health and safety at work. The HSE Act also recognises that everyone within a workplace has responsibilities to themselves and others.

### 1.3 Safety Management Systems

Maritime New Zealand operates a tiered safety management system that covers all commercial vessels in New Zealand. The system is broken into four separate categories:

- Safe Ship Management (SSM), which covers most New Zealand-owned commercial vessels
- Safe Operational Plans (SOP), which cover smaller commercially-operated specialist vessels and their operations
- International Safety Management (ISM), which covers SOLAS vessels, both New Zealand-owned, and foreign flagged vessels visiting New Zealand, and
- Safety Case, which covers specialised operations or operations that don't fit under existing maritime rules.

The system makes ship owners and operators responsible for the daily safe operation of their vessels. This ensures that the safety of a vessel and its crew is maintained throughout the year instead of just on the annual 'survey day.'

The system covers construction, stability, equipment, operating limits, operating parameters, the qualifications of crew, training of crew, vessel maintenance and emergency procedures. The system is reflected in documentation which is customised for each individual vessel according to which particular category it fits within. The documentation needs to contain information about how you are meeting your health and safety obligations under the HSE Act.

### 1.4 How the HSE Act affects your responsibilities under other Acts and Codes

The HSE Act does not replace any duties you may have under other pieces of legislation (with the exception of Part II of the Maritime Transport Act 1994 which was replaced by the HSE Act in 2003).

You are still required to comply with other legislation. The requirements of the HSE Act have been developed in order to interact consistently with other legislative requirements. In the maritime sector this means you are still required to comply with the Maritime Transport Act 1994 and all relevant maritime rules.

Some maritime rules already address health and safety issues. These rules exist alongside the HSE Act and are designed to work with other health and safety systems and requirements to make a safer workplace.

### 1.5 Further Information

For further information about the **Maritime Transport Act** and the associated maritime and marine protection rules contact the Manager, Rules and International Standards, at Maritime New Zealand, or email [manager.rules@maritimenz.govt.nz](mailto:manager.rules@maritimenz.govt.nz).

For further information about **Safe Ship Management** contact the Manager, Safety Management Systems, at Maritime New Zealand, or email [ssm@maritimenz.govt.nz](mailto:ssm@maritimenz.govt.nz).



*SECTION TWO*  
*YOUR*  
*RESPONSIBILITIES*



# YOUR RESPONSIBILITIES

## 2.1 Introduction

The HSE Act requirements mean that **everyone** who works on board a vessel needs to make sure things are safe. The types of things you need to do depend upon what your role is on the vessel.

The HSE Act uses the terms **employee** and **self-employed person** rather than skipper or crew. It's important to work out what the legal description of yourself and people who work with you is in terms of the HSE Act. Most of the terms used below to describe roles under the HSE Act are defined in the **Glossary of Terms**.

You have responsibilities under the HSE Act if you:

- work on a New Zealand registered vessel under a New Zealand-based contract as either a contractor or an employee
- engage or employ individuals or contractors to work on a New Zealand registered vessel
- are an employee or contractor who has been employed or engaged to work onboard a foreign vessel carrying coastal cargo, while the foreign ship is on demise charter to a New Zealand-based operator, or performing work on a foreign ship while it is carrying out petroleum operations in New Zealand continental waters
- come onboard or employ or contract someone to go on board a ship on business (i.e. if you are a pilot, ships' agent, stevedore, waterside worker, providedore, surveyor or contractor)
- own or are working on a New Zealand registered vessel out of New Zealand waters (i.e. if your vessel trades or fishes outside of New Zealand waters) which employs staff or engages contractors.

You may also have responsibilities under the HSE Act or regulations if you own a New Zealand vessel or supply plant to be used on a vessel.

Some people have more than one role and so have more responsibilities under the HSE Act. For example, you may be an employer and a principal and a contractor.

You cannot contract out of your obligations under the HSE Act or insure yourself against any fines under the Act.

See Section 2.11 for examples of roles within the maritime workplace.

## 2.2 Employer's Responsibilities (person who pays the wages)

The employer is the person who pays the wages. If you pay the wages, you need to take all practicable steps to make sure the boat is safe and that the people who work on or visit the vessel are safe. This means you are expected to:

- systematically identify hazards
- systematically manage those hazards by either eliminating them, isolating them, or minimising them
- develop and maintain emergency procedures
- provide suitable protective clothing and equipment to staff, and ensure it is used
- provide safety information to employees and their representatives
- provide training or supervision so that work is done safely
- maintain a register of occurrences, or near occurrences, of harm to employees and others through work activities
- notify and report to Maritime NZ all occurrences of serious harm to employees and others
- monitor the health of employees to ensure that their work is not having a detrimental effect of their health
- provide opportunities for their employees to contribute to health and safety
- take all practicable steps to ensure that no action or inaction of any employee while at work harms any other person.

## 2.3 Person who controls the place of work (skipper, stevedoring supervisor etc.)

The skipper or stevedoring supervisor is in most cases considered to be the person who controls the place of work (the vessel). This person has a duty to make sure that the boat and its equipment are safe. This means taking all practicable steps to ensure that any hazards do not harm any people who are:

- lawfully at work on the boat (as employees, contractors, etc)
- there as customers or to undertake an activity, or
- in the vicinity.

In some circumstances there may also be a duty to warn authorised visitors of any significant hazards in a place of work.

## 2.4 Employees (people who are paid wages, e.g. some crew, stevedores etc.)

Employees who are paid wages are defined as employees under the HSE Act. Employees can expect their employer to provide a healthy and safe workplace. However, employees also have a part to play in making sure they are healthy and safe.

The HSE Act states that employees must:

- take all practicable steps to ensure their own health and safety and ensure nothing they do, or don't do, harms any other person
- use protective equipment and wear protective clothing provided by the employer (or by themselves)
- not undertake work which is unsafe or which involves unsafe practices
- make unsafe work situations safe or, if they cannot, inform their supervisor or manager
- be familiar with and follow emergency procedures
- know about and follow their workplace's health and safety practices and procedures, including reporting of work-related accidents, illnesses and injuries, and hazards
- co-operate with the monitoring of workplace hazards and employees' health
- comply with any improvement and prohibition notices issued for their workplace

- have reasonable opportunities to participate in the processes for improving health and safety in their workplaces. Employees face health and safety issues on a daily basis, so their knowledge and expertise should be accounted for when decisions about health and safety are made.

Employees may refuse to do work if they believe it is likely to cause them serious harm. Further information on this right is contained in Section 3.10.

## 2.5 Self-Employed (includes sharefishers)

In addition to employers and employees, self-employed persons also have responsibilities for a healthy and safe workplace. Your contract or conditions of employment should set out which category you fit into. If you are paid wages, you are an employee. If you are paid solely on a share of a catch, for example, you are self-employed. If you are unclear about which category you fit into, make sure you get reliable advice as your responsibilities are different depending upon which you are.

The HSE Act requires that the self-employed:

- take all reasonably practicable steps to ensure that nothing they do at work harms themselves or any other person
- consider health and safety issues in planning work activities
- maintain an accident register of all accidents or incidents that harmed or might have harmed either the self-employed person while at work and any other person, if the harm resulted from the self-employed persons work
- when an accident involving serious harm occurs at work, advise Maritime NZ in accordance with the procedures set out in Section 4.4.

## 2.6 Principal (person who hires self-employed people)

If you hire self-employed people to do work for you, you still have to make sure they are safe on the boat. You should include health and safety issues in your contracts and make sure you talk about health and safety with your contractors.

Principals are required to take all reasonably practicable steps to ensure that no contractor or subcontractor; and no employee of a

contractor or subcontractor, is harmed while doing any work that they are engaged to do.

Principals must also maintain an accident register of all accidents or incidents that have harmed or might have harmed:

- a self-employed person while at work who was contracted to the principal, or
- any other person, resulting from the work of a self-employed person who was contracted to the principal.

Any accidents involving serious harm must be notified to Maritime NZ in accordance with the procedures set out in Section 4.4.

## 2.7 Other people who visit the workplace in the course of their work (observers, compliance officials, contractors etc.)

Other people who visit vessels in the course of their work are equivalent to self-employed persons and have those responsibilities. They are also required to follow the instructions of the skipper as the person in control of the place of work.

## 2.8 Loaned Employees, On-the-job Experience, or Work Experience

A loaned employee is anyone who is loaned by an employer or principal to another person who is an employer or self-employed person.

Examples of situations in the maritime environment include exchanging seafarers to work with other companies due to work shortage, or loaning employees to gain other types of experience at sea.

The employer who is taking another's employee on loan must treat the loaned employee as if they were their own employee and keep them free from harm, once the employee is doing the work.

The employer who is loaning their employee to another employer must ensure the employee is capable of doing the work safely and ensure the other employer is aware of their health and safety duties.

Note: This does not require the original employer to conduct painstaking inquiries as to the legal knowledge of the employer. Instead, the original employer must ensure the potential employer of the loaned employee understands they have duties under the HSE Act to ensure that the loaned employee is unharmed.

## 2.9 Volunteers

The HSE Act applies to all volunteers engaged in work activities. A person is a volunteer if they neither expect nor receive any reward for the work (e.g. Coastguard crew).

Volunteers do not include people receiving training or gaining work experience.

For all volunteers, the HSE Act provides for a general duty of care, in which all practicable steps must be taken to ensure the health and safety of volunteers. All work activities should be planned and organised with health and safety in mind. All workers should be safe when performing work activities.

Where an employer engages volunteers on a regular and ongoing basis, the volunteers may be deemed employees. Therefore, the employer has the same duties towards their health and safety as for employees. Further information on coverage of volunteers under the HSE Act is available through Workinfo on **0800 20 90 20** or at [www.workinfo.govt.nz](http://www.workinfo.govt.nz).

## 2.10 Duties of persons selling or supplying plant for use in place of work

Anyone who hires, leases, or loans plant that can be used in a place of work needs to check whether that plant is going to be used in a place of work and if so, its intended use. The seller or supplier then needs to take all practicable steps to ensure that the plant is designed and made, and has been maintained, so that it is safe for its intended use.

If the person who hires, leases, sells, or otherwise supplies to another person plant to be used in a place of work agrees to install or arrange the plant, the seller or supplier also needs to take all practicable steps to install or arrange the plant so that it is safe for its intended use.

These obligations do not apply if the plant is secondhand and is sold **as is**. **As is** means that the plant is sold without any representations or warranties about its quality, durability, or fitness, and with the entire risk in those respects to be borne by the buyer.

The definition of **plant** includes appliance, equipment, fitting, furniture, implement, machinery, tool, and vehicle. It also includes part of any plant, the controls of any plant, and anything connected to any plant.

## 2.11 Examples of Roles within the Maritime Workplace

These fictional examples illustrate core roles of the employer, employee, principal, contractor and sub-contractor under the HSE Act.

### Employer/Employee/Principal/Contractor

Enterprise Limited owns a vessel, the *Cargo Queen*. The *Cargo Queen* carries cargo between domestic ports. Stevedore Brothers provides stevedores to load and unload cargo on the vessel. All of the stevedores are paid a fortnightly wage.

In this example the relationship between the parties are as follows:

- Stevedores Brothers is the Employer of the stevedores, and
- Enterprise Ltd is the Principal in relation to Stevedore Brothers.

### Self-Employed/Principal/Contractor

Captain Smith owns his own fishing vessel. He asks five of his friends to come and work with him. Captain Smith tells his friends that instead of paying them a salary, he will offer them a share of the value of the catch, by way of payment. They will be responsible for the payment of their own ACC levies and PAYE. This way he thinks they will be more motivated to catch more fish.

In this example the relationships between the parties are as follows:

- Captain Smith is self employed and is also the principal in relation to the five friends he has asked to come and work on the vessel
- The five friends are self-employed contractors.

### Principal/Contractor/Employer/Employee

Fresh Fish Limited is a company that owns a vessel called Fishy Business. Fresh Fish Limited hires Mr Blanks to run their vessel and organise the crewmembers for the fishing operation. Mr Blanks is paid according to his share of the catch and is not paid a retainer. He is also responsible for the payment and accounting of his own PAYE returns and ACC levies. Mr Blanks pays his staff a weekly amount, not related to the catch that they obtain.

In this example the relationships between the parties are as follows:

- Between Fresh Fish Limited and Mr Blanks: Mr Blanks is a contractor and Fresh Fish Limited is the principal
- Between Mr Blanks and his crew: Mr Blanks is the employer of the crew and the crew are therefore employees
- Between Fresh Fish Limited and the crew—under the HSE Act, Fresh Fish Limited have a responsibility to the employees of their contractor, who in this case is Mr Blanks. They must take all practicable steps to ensure that no employees of Mr Blanks is harmed while doing any work that Mr Blanks was engaged by Fresh Fish Limited to do.

## 2.12 Further Information

For further information about your roles and responsibilities in relation to the HSE Act or any other maritime legislation, contact the General Manager Maritime Operations at Maritime New Zealand, or email [healthandsafety@maritimenz.govt.nz](mailto:healthandsafety@maritimenz.govt.nz).

# SECTION THREE HOW TO KEEP YOUR **WORKPLACE** SAFE & HEALTHY



# HOW TO KEEP YOUR **WORKPLACE** SAFE & HEALTHY

## 3.1 Providing a Safe Work Environment

Everyone has a responsibility to keep their workplace safe and healthy, and to effectively manage hazards.

Employers in particular have a general duty under Section 6 of the HSE Act to take all practicable steps to ensure the safety of employees while at work. This is the pivotal requirement of the HSE Act. Employers are liable for following the steps set in place by the employer to manage hazards. These duties are also directly relevant to principals who are meeting the all practicable steps requirement in relation to independent contractors working as crew on boats.

The general duty is expanded upon by the following particular duties of employers to take all practicable steps to do all of the following:

### **A** Provide and maintain a safe working environment

The working environment can be taken to include:

- the workplace itself – the vessel
- all machinery on board the vessel
- the physical environment, which includes the level of lighting, ventilation, dust, heat, noise etc.
- the way in which the vessel is boarded and departed
- the work process, including expectations of what is done and how
- work arrangements, including the effects of shift work and overtime arrangements, and
- the psychological environment, including overcrowding, deadlines, and other stress factors.

Coverage of this duty is broad and includes factors such as stress, fatigue, alcohol and drug use, and even such things as inter-personal relationships on board the vessel.

### B Provide and maintain facilities for the safety and health of employees at work

This duty aims to require the provision of facilities and equipment not covered by duty A above. It includes an obligation to provide and maintain first-aid facilities, mealrooms, personal protective equipment, emergency equipment and other facilities that keep employees and the place of work safe and healthy. These requirements are generally specified within the Maritime Rules.

### C Ensure that plant machinery and equipment in the place of work is designed, made, set up and maintained to be safe for employees

Workplace plant machinery and equipment needs to be provided and maintained so that, as far as is practicable, employees are not exposed to hazards. This duty is closely related to the specific hazard management requirements which are covered in Section 3.4. Specific requirements are included in the Maritime Rules relevant to the vessel being operated.

### D Ensure that systems of work do not lead to employees being exposed to hazards in and around their place of work

This duty requires employers to design and plan safe systems of work. The emphasis is on the co-ordination of work activity so that an activity or hazard does not endanger a person who is working elsewhere. This duty is extensive and requires that systems of work take into account the “arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things.” This includes emphasising safe work practices around potential physical hazards such as machinery, knives and chemicals.

**Hazards do not need to be significant**, or even physical (they can include fatigue and stress, as well as such things as machinery, cables and access arrangements). It is implicit that for systems of work to be safe, the people carrying out the task need to have appropriate information, instruction, training and supervision (see Sections 3.6 and 3.9).

### E Develop procedures for dealing with emergencies that may arise while employees are at work

This duty requires procedures to be developed for not only things such as fire or sinking, but also for unintended consequences of work activity, or “mistakes”. When mistakes are foreseeable, employers have a duty to prevent them or limit their effects.

When considering what mistakes might happen, employers need to take into account the risks of danger through inattention or work carried out without suitable instruction or training.

Sections 7–10 of the HSE Act then set out the more detailed steps by which the employer must manage significant hazards in the workplace.

## 3.2 What is a Hazard?

A hazard is any activity, situation or substance that can cause harm. This includes a situation where a person’s behaviour may be an actual source of harm to that person or another person.

Hazards can:

- be actual or potential
- be physical, biological or behavioural, including temporary conditions that can affect a person’s behaviour, such as fatigue, shock, alcohol or drugs
- arise or be caused within or outside a place of work.

Hazards also include events that cause an employee to be at a greater risk of causing themselves or others in the workplace harm. These events could occur in the workplace or elsewhere.

Examples of events that could be identified as hazards are:

- **Continuing events** in the workplace, such as:
  - ▶ the design of shifts and rosters
  - ▶ jobs with inherent stress or pressure
  - ▶ seasonal peak workflows, periods of staff shortage, and high requirements for overtime
  - ▶ jobs that regularly include long days because of travel before, after or during work.

- **Occasional circumstances** where a one-off workplace situation or individual's reasons need to be considered, such as:
  - ▶ periods of restructuring, where employees feel vulnerable or personal relationships are strained
  - ▶ after employees are part of, or witness to, a robbery, fire or accident
  - ▶ after an employee has suffered a bereavement
  - ▶ when there are long-term health problems with an employee or within the employee's family.
- **Personal issues** affecting an employee, including:
  - ▶ impairment caused by alcohol
  - ▶ impairment caused by prescription or other drugs, whether legal or illegal
  - ▶ work related stress
  - ▶ fatigue
  - ▶ depression
  - ▶ difficulty coping with a serious family problem or crisis.

### 3.3 Hazard Identification

Everything in the workplace needs to be looked at as a potential hazard. Methods of hazard identification include:

- physical inspections of the workplace, equipment and work practices
- analysis of tasks and how they are carried out by employees in the workplace
- analysis of processes carried out in the workplace
- analysis of previous 'near miss' incidents.

Hazard identification must be systematic and thorough. How you have identified and assessed hazards should be written down and kept as a record to show you are meeting your obligations.

The HSE Act requires employers to give employees (i.e. the crew) reasonable opportunities to be involved in hazard management processes, including hazard identification.

Procedures must be reviewed regularly to ensure new hazards are identified promptly and that hazard identification systems are working efficiently.

How the employer responds to and manages a particular hazard will depend on the circumstances and whether or not it is a significant hazard (see Section 3.5).

### 3.4 Managing Hazards

Where hazards create a risk of harm to the employee or others, the employer is required to take all practicable steps to provide a safe and healthy environment. The employer's responsibility only extends to matters they can reasonably be expected to recognise or be aware of.

Every employee shares in the responsibility to recognise and manage problems themselves and this includes handling non-work issues sensibly.

Employers need to ensure there are no hazards to which employees and others in the workplace could be exposed, and have an effective system for identifying existing and new hazards.

Employers, in consultation with their employees, should look for hazards in advance as part of their risk management and work planning, so that potential hazards are anticipated and prevented. Hazards need to be assessed to determine whether or not they are significant.

The Act describes a hierarchy of action for managing **significant** hazards. (Hazards that are not significant must still be managed, and this process may be applicable to those hazards also).

The preferred action is to **eliminate** the hazard, by changing things so that the hazard no longer exists. This might include, for example, relocating equipment or instruments which restrict forward visibility, or replacing a hazardous substance with one that is harmless.

If this can't reasonably be done, **isolate** the hazard, by putting in place a process or mechanism that keeps employees away from the hazard. This might include:

- permanently fixing a guard to cover a dangerous part of a particular machine
- fitting an acoustic enclosure around noisy machinery; or
- putting a releasable door catch inside a freezer.

If this can't reasonably be done, the hazard must be **minimised**, by doing what can reasonably be done to lessen the likelihood of harm being caused by the hazard and to protect employees. This might include:

- providing employees with suitable protective clothing or equipment
- monitoring employees' exposure to the hazard
- with their informed consent, monitoring employees' health in relation to the hazard.

*This process is set out on the Significant Hazard Management Worksheet contained in Appendix 5 which is suitable for copying.*

The way in which a hazard is controlled may not necessarily be physical. It may be a rule of practice designed to reduce the risk from the hazard.

It is necessary to ensure that once hazard controls are put in place they stay in place and are used. It is also necessary to provide a feedback mechanism for ensuring whether or not the controls are adequate and responsibilities are understood by all.

Hazard controls that are common to all hazards (and therefore need to be addressed in order to meet your obligations) include:

- employee participation in the development of health and safety procedures
- an information system to ensure employees are informed about and understand the risks from hazards they work with
- an accident reporting and investigation system
- regular surveys of the workplace, supplemented by the use of hazard notices where applicable
- responsibilities being assigned to ensure hazard controls are implemented and remain effective
- an audit system for checking that the controls for specific hazards are in place and working
- an adequate training programme and adequate supervision for all staff
- implementing emergency procedures to limit the consequences of an emergency.

### 3.5 What is a 'Significant' Hazard?

This definition is important as significant hazards are required to be managed as described in Section 3.4. Hazards that aren't significant need to be noted and re-examined in the future as necessary, to re-assess whether they have become significant as time has passed.

A significant hazard is one that is an actual or potential cause, or source of one or more of the following:

#### A Serious Harm

The full definition of serious harm is included in the Glossary of Terms. This includes death and many occupational illnesses and injuries that can occur in a place of work.

#### B Harm, the severity of which may depend on how often or how long a person is exposed to the hazard

This harm must be **more than trivial** and includes such things as occupational overuse syndrome.

#### C Harm that cannot be detected until a significant time after exposure

This includes diseases caused by exposure to hazardous substances, such as asbestosis, neurotoxicity, emphysema, and other occupational diseases.

The assessment of whether a hazard is significant or not is effectively a matter for the judgement of the employer (and should involve discussion with employees). If you identify a hazard and then judge that it is not significant, you should record the reasons why you believe it is not significant, and specify when you will re-look at the hazard to ensure it hasn't become significant over time.

### 3.6 Providing Information to Employees

Even when hazards are managed, and safe systems are in place, employees need the correct information about how to do their work safely, to ensure their own health and safety and that of others around them.

**Employers** are required to provide information to employees (and their representatives) about:

- hazards in the workplace
- hazards that may arise from the type of work that the employee is doing
- the steps to be taken to minimise the likelihood that the employees or any other person will be harmed by those hazards
- where to find safety clothing and equipment
- how to deal with any emergencies that arise.

Information must be provided in a way that employees can understand. This may be in a spoken form, or it might include printed information in relevant languages, using easily understood words, and perhaps including diagrams.

The information must be readily available to employees, so they can access it whenever they need it.

Employers must ensure that health and safety representatives have ready access to information about health and safety systems and issues in the workplace.

### 3.7 Definitions of All Practicable Steps and Reasonable

The phrases **all practicable steps** and **reasonable** frequently appear in this publication and in the HSE Act itself.

Employers, employees, self-employed people, people in control of workplaces, and principals, are required to take **all reasonably practicable steps**, in circumstances they know or should reasonably know about, to ensure their own safety and the safety of others.

**All practicable steps** means those steps that it is reasonably practicable to take. A step is practicable if it is possible or capable of being done.

The word **reasonable** indicates that not everything that is humanly possible needs to be done. Instead, it is only necessary to do what a reasonable and prudent person would do in the same situation.

Whether a step is reasonable takes into account:

- the nature and severity of any injury or harm that may occur
- the degree of risk or probability of injury or harm occurring
- how much is known about the hazard and the ways of eliminating, isolating or minimising the hazard
- the availability and cost of safeguards.

The costs of dealing with a hazard are only one factor in deciding if a step is reasonably practical. Costs should be measured against other factors, including the risk and seriousness of harm that might occur if nothing is done. If there is a risk of serious or frequent injury or harm, spending a greater amount of money to deal with the hazard is considered reasonable.

### 3.8 Providing Protective Clothing and Equipment

Where appropriate, employers must provide suitable protective clothing and equipment to employees to protect them from a hazard.

Employers must also instruct employees in the use of any protective clothing or equipment provided, and ensure that it is worn or used by the employee.

An employer **does not** comply with this duty if they:

- give money to an employee instead of providing the protective clothing or equipment
- require an employee to provide his or her own protective clothing or equipment as a pre-condition or condition of employment.

An employee may voluntarily choose to provide their own protective clothing. The choice must be genuine and for their own comfort and convenience, and if the clothing is suitable, the employer may accept this offer. This only applies where the employee wants it to, not where the employer creates pressure for it to happen.

If a crew member is an independent contractor and is exposed to the same hazards as they would if they were an employee, then the standard of care that is expected of the principal is the same as it would be if they were an employer. The principal is expected to take all practicable steps to ensure that the worker is protected by suitable protective clothing or equipment.

## 3.9 Training and Supervision

Employers must do what is reasonably practicable to ensure all employees have knowledge and experience of relevant similar workplaces, work, equipment or substances, or that they are supervised by someone who has that knowledge and experience.

Employers must also ensure that employees are adequately trained in using the types of objects, substances and protective clothing and equipment that the employees are required to work with.

## 3.10 Right to Refuse Work

An employee can refuse to do work if they believe that the work is likely to cause serious harm to him or her. The employee can continue to refuse to do the work if they have attempted to resolve the matter with the employer as soon as practicable after first refusing to do the work, **and** the matter is not resolved, **and** the employee believes on reasonable grounds that the work is likely to cause serious harm to him or her.

If the employee's work is inherently dangerous, such as firefighting, then the employee may refuse to work only if the danger of harm has become greater than what it usually is.

Employees who refuse to work on these grounds must still do any other work that is part of their job that the employer asks them to do.

## 3.11 Employee Participation

Employers and employees need to work co-operatively and in good faith to establish effective health and safety arrangements in the workplace.

Good faith requires being open and honest, and understanding that all involved have a legitimate interest in a safe and healthy workplace. The HSE Act uses the same definition of good faith as the Employment Relations Act.

Employees who carry out work are well placed to advise employers about actual or potential hazards that arise in the course of that work and suggest how their employer could manage those hazards. By working together and communicating these issues, employers and employees will get the best health and safety outcomes in their workplace.

All employers have a duty to provide reasonable opportunities for their employees to participate effectively in processes for improving health and safety at work.

An employer of more than 30 employees must develop and seek agreement with their employees and the employee's representatives on a system of employee participation. The same requirement applies if an employer of less than 30 is asked to develop and agree on a system by one or more employees. The HSE Act does not impose any particular system of employee participation, and if an agreed system exists, there is no need to replace it. However, the system must be developed in good faith and must have a date for review.

If the employer, employees and any unions representing them cannot agree on an employee participation system within six months of the requirement applying, the HSE Act sets out what procedures must be followed.

Dispute resolution follows the processes set out in the Employment Relations Act 2000.

If you need assistance in agreeing on a system for employee participation in managing health and safety matters, the mediation services provided by Employment Relation Services can help you work towards a solution. You can contact them through WorkInfo on **0800 20 90 20**.

## 3.12 Health and Safety Representatives

Employees may choose to elect a health and safety representative.

The elected employee's role is to represent the employees in their workplace about health and safety.

The details of the role of a health and safety representative should be defined by employees, their unions and employers, as part of an agreed employee participation system.

As a guideline, the representative should:

- foster positive health and safety management practices in the workplace
- identify and bring to the employer's attention hazards in the workplace, and discuss with the employer ways that hazards may be dealt with
- consult with inspectors on health and safety issues

- promote the health and safety interests of employees, especially employees who have been harmed at work and who need assistance with rehabilitation
- Perform other duties as set out in the agreed system of employee participation.

As a health and safety programme develops, additional roles may be created for the health and safety representative(s). These may include participating in employee induction programmes, employee training, and decisions on purchasing equipment.

Trained health and safety representatives may issue hazard notices. A hazard notice is a notice that describes a hazard identified in a place of work and may set out steps to deal with the hazard. It needs to be on a prescribed form. Before issuing the hazard notice the trained health and safety representative needs to believe on reasonable grounds that there is a hazard in the place of work, to have brought the hazard to the attention of the employer and to have discussed or attempted to discuss with the employer steps for dealing with the hazard. The hazard notice can be issued if:

- The employer refuses to discuss, or take steps to deal with, the hazard, or
- The employer and representative do not agree on the steps that must be taken or the time within which the steps must be taken to deal with the hazard, or
- The representative believes on reasonable grounds that the employer has failed to meet the requirement under the HSE Act to provide a safe working environment in relation to the hazard within a time agreed during the discussion.

Elected health and safety representatives are entitled to paid leave each year to attend approved courses. They should discuss the timing of leave with their employer to avoid disruption to business. If the potential disruption is unreasonable the employer can refuse the leave at a particular time. This leave entitlement is subject to a cap in each workplace, so that in those workplaces where there are a number of health and safety representatives, the leave provisions are not an excessive burden to the business.

Any employee representative should be given reasonable time in which to carry out their role and be provided with the necessary resources.

Further information on courses or leave entitlements is available through WorkInfo on [0800 20 90 20](tel:0800209020) or at [www.workinfo.govt.nz](http://www.workinfo.govt.nz).

### 3.13 Further Information

For further information or advice on your responsibilities in providing a safe working environment, contact the Manager, Safety Management Systems at Maritime NZ, or email [healthandsafety@maritimenz.govt.nz](mailto:healthandsafety@maritimenz.govt.nz).

Maritime New Zealand is currently working with industry representatives to develop specific hazard management guidelines and advice for specific maritime sectors. For information on the status of these guidelines, check the Maritime New Zealand website, or contact the Manager, Safety Management Systems at Maritime NZ, or email [healthandsafety@maritimenz.govt.nz](mailto:healthandsafety@maritimenz.govt.nz).



**SECTIONFOUR**  
WHAT TO DO WHEN  
**ACCIDENTS HAPPEN**

# WHAT TO DO WHEN **ACCIDENTS** HAPPEN

Call the **24 hour accident line** to report all accidents

**0508 222 433**

## 4.1 Introduction

Your first obligation when an accident, incident or serious harm occurs in the workplace is to ensure that the workplace is made safe and that first aid or other medical assistance is rendered promptly. You then have requirements to report what has happened and to investigate causes to avoid repeat occurrences.

The HSE Act requires employers, the self-employed and principals to record all accidents and incidents in places of work. It requires employers to investigate all accidents and incidents to determine whether or not they were caused by a significant hazard, and if so to manage the hazard.

The HSE Act also requires notification by employers, the self-employed and principals, of all accidents or cases of occupational illness involving serious harm to employees on board a vessel, to Maritime New Zealand as soon as practicable after the event occurs. This must then be followed by a written report in a prescribed form within seven days.

## 4.2 What is an accident?

The HSE Act defines **accident** broadly, as any event that:

- causes any person to be harmed, or
- in different circumstances may have caused any person to be harmed.

Maritime New Zealand interprets this in a maritime context as meaning:

- **Accidents** include events such as any damage to a vessel, which may affect its strength or seaworthiness, groundings, collisions, machinery failures and steering loss.
- **Incidents** include a near collision or a near grounding. If there is any doubt as to whether an incident should be reported, the best thing to do is to report it to Maritime New Zealand.

- **Serious harm injuries** include, but are not limited to:
  - ▶ death
  - ▶ amputation of a body part
  - ▶ burns
  - ▶ loss of consciousness, and
  - ▶ any harm that causes a person to be hospitalised for a period of 48 hours or more.

Fuller definitions are set out in the **Glossary of Terms**.

### 4.3 Reporting and Recording Obligations

The skipper of a vessel must notify all accidents resulting in the death of, or serious harm to, a person, or any other accident or incident, to Maritime NZ as soon as practicable. The notification must be followed up by a written report within seven days.

The words **as soon as practicable** mean as soon as possible in the circumstances. After ensuring that the vessel, crew and passengers are not in immediate danger, reporting an accident, incident or mishap to Maritime NZ should be the skipper's first priority.

The MT Act (Section 30) requires employers of seafarers on a New Zealand vessel to maintain a register of accidents, incidents and mishaps, and to record particulars relating to those events. The HSE Act requires employers, the self-employed and principals to maintain a register of accidents and serious harm. The same register can meet both requirements.

Minor injuries, such as a small cut or sprain, do not have to be reported to Maritime NZ but should still be recorded on the accident register.

### 4.4 How to Report

**RCCNZ Freephone: 0508 222 433**

Phone Maritime New Zealand's Rescue Coordination Centre NZ (RCCNZ) to let them know as soon as possible about the accident, incident or serious harm.

RCCNZ has staff working 24 hours a day, seven days a week, who will record what happened and provide assistance if required.

Alternatively, contact the Maritime NZ Maritime Operations Centre on VHF Channel 16. This Centre is also manned round the clock, and they'll immediately relay the information to RCCNZ.

After you make an initial verbal report, send RCCNZ a completed Accident/Incident reporting form MAR AI 4 or Serious Harm form MAR AI 2 as soon as possible. These forms can be printed from the Maritime NZ website [www.maritimenz.govt.nz](http://www.maritimenz.govt.nz) or copies obtained by phoning Maritime New Zealand on **0508 22 55 22**.

Complete the form, and then fax it to RCCNZ: **Fax: 04 914 8388**

If you do not have access to a fax machine, mail the form to:

**RCCNZ**  
**PO Box 30050**  
**Lower Hutt**  
**(Attn: reporting form)**

### 4.5 Self-Investigation, Follow-Up and Review

Following any accident, incident or mishap the HSE Act provides that the employer must review hazard identification and control procedures to ensure the cause of the accident is adequately dealt with, to prevent it happening again.

The accident and serious harm register needs to be reviewed periodically to identify any trends in accidents and injuries. This information needs to be made available to managers, supervisors and employees.

### 4.6 Further Information

For further information relating to the reporting, recording and investigation of accidents, contact the Chief Investigator of Accidents at Maritime New Zealand or email [accidents@maritimenz.govt.nz](mailto:accidents@maritimenz.govt.nz).

# APPENDIX



# APPENDIX ONE

## HOW THE HSE ACT IS **ADMINISTERED** & ENFORCED

### Introduction

Maritime New Zealand is the designated authority to administer the HSE Act with respect to the operation of vessels (except naval). This appendix describes how Maritime New Zealand carries out this work.

### Health & Safety Inspectors

Health and safety inspectors in the maritime sector are employees of Maritime New Zealand. When an inspector has completed the necessary training and experience, they are issued with a certificate of appointment by the Director of Maritime New Zealand. The certificate of appointment must be produced when entering a place of work under the authority of the HSE Act, and at any later time if requested by a person apparently in charge of a place of work.

The broad functions of inspectors are set out in Section 30 of the HSE Act as:

- to provide information and education to employers, employees, and other persons to improve safety at places of work, and the safety of people at work
- to ascertain whether or not the Act has been, is being, or is likely to be complied with
- to take all reasonable steps to ensure that the Act is being complied with, and
- other functions as set out in the HSE Act or any other legislation.

## Powers of Entry

Health and safety inspectors may enter a place of work for the purpose of carrying out any of the functions described above. An inspector cannot gain access to a place of work through, or within, a home without the consent of the occupier. A visiting inspector is not required to give notice, except where the visiting time or circumstances may be other than what is **reasonable** in the circumstances. Access is therefore available to any place of work during its regular working hours, and where there are not other circumstances which would make the timing of the visit unreasonable – i.e., there is no hazard to employees or others, and the circumstances are not irregular or disruptive to the employer, employees or others in the place of work.

## Powers of Inspection and Investigation

The inspector may:

- conduct examinations, tests, enquiries and inspections or direct others to conduct them, and/or
- take photographs or measurements, or make sketches or recordings.

The inspector may also **require** the employer or other person who controls the place of work:

- not to disturb the place of work for a reasonable period while any examination, test, inquiry or inspection is carried out, and/or
- to produce documents or information relating to the place of work or the employees who work there, and permit the inspector to make copies of or extracts from them, and/or
- to make or provide statements in a specified form or manner about conditions, material, or equipment that affects the safety or health of employees who work there.

The inspector's functions all relate to events in a place of work. However, the inspector may still perform them, **whether or not:**

- the inspector or person they are dealing with is in the place of work
- the place of work is still a place of work

- the employer's employees work in the place of work
- the employer's employees are still employed by the employer
- the person who was in control of the place of work is still in control of it, or
- in respect of a document or information, it is in the place of work, in the place where the inspector is, or in another place.

## Duties to assist and not obstruct inspectors

The HSE Act (Section 47) creates a positive duty for people to assist inspectors in their role. This duty applies to every person with duties under the Act, or their employees or agents. It requires that at all reasonable times the inspector is furnished with the means required for entry, inspection, examination, inquiry or the exercise of any other power under the Act.

It is an offence under the HSE Act (Section 48) to obstruct, delay, hinder or deceive any health and safety inspector while they are lawfully exercising or performing any power, function or duty under the Act. It is also an offence to cause any other person to do any of these. There is an exemption to the duty where there is **reasonable cause**.

## Powers to take samples, objects and other things

An inspector may take samples, objects and other things from a place of work, or former place of work, for the purposes of:

- monitoring conditions in the workplace
- determining the nature of any material or substance in the place
- determining whether or not the Act has been, is being, or is likely to be complied with, or
- gathering evidence to support the taking of enforcement action.

The inspector must have lawfully entered the place of work or former place of work.

## Enforcement

There are a number of different enforcement tools that Maritime NZ can use to achieve compliance under the HSE Act or to deal with a breach of the HSE Act.

The enforcement tools are:

- improvement notices
- prohibition notices
- infringement notices
- prosecution
- penalties.

### ► Improvement notices

These can be used in situations where an inspector believes there has been or is, a failure to comply with the provisions of the HSE Act and that the failure is likely to occur again. It is a formal document to rectify non-compliance. The improvement notice requires the recipient to take some action to comply with the HSE Act within a specified period, usually between 7 and 30 days.

If a person receiving a notice disagrees with its content they can appeal to the District Court within 14 days, but an appeal doesn't mean the person doesn't have to meet its requirements in the meantime. The Court will then decide whether or not the notice is unreasonable in the circumstances.

### ► Prohibition notices

These can be issued where an inspector finds a workplace situation so dangerous that it has to be stopped.

In order to issue such a notice, the inspector has to be satisfied that unless the matter is stopped serious harm is likely to occur to someone. The notice will require the employer or recipient to immediately stop the activity, machine or process etc.

The person receiving the notice must stop the activity or process and fix the problem. If they disagree with the notice, they can appeal to the District Court within 14 days. Even if they do elect to do this, they must comply with the notice in the meantime. The Court will then decide whether the notice is unreasonable in the circumstances.

### ► Infringement notices

An inspector can issue these when they find an unsatisfactory workplace situation (a breach of the HSE Act) that the employer or other person responsible has already been warned about. The warning may have been:

- a written warning
- an improvement notice
- a prohibition notice
- a previous infringement notice
- a prosecution
- a hazard notice
- a compliance order.

The infringement notice requires the offender to pay an infringement fee of between \$800 and \$4,000 for a breach of Section 7(1) and between \$100 and \$3,000 for other breaches of the Act (sometimes referred to as an 'instant fine'). The inspector is required to use their discretion and consider various factors in setting the infringement fee.

When an inspector issues a prohibition notice, he or she must affix it to plant or in the immediate place of work that is affected, and issue a copy to the person apparently in control of the place of work.

Unless the offender clearly disagrees with the inspector, the offender should fix the problem and arrange to pay the infringement fee in accordance with the notice. If they disagree with the notice or just with the amount of the fee, they can take the matter to the District Court. The Court will then decide whether the notice is justified in the circumstances.

## ► Prosecutions

Where a breach of the HSE Act is serious, or the consequences are significant, an inspector may, in consultation with the Director of Maritime New Zealand, decide it is in the public interest to take formal Court action against the offender. This is known as a prosecution.

Maritime NZ then has to be able to prove beyond reasonable doubt that the person who has been charged with the offence committed the offence.

Under the HSE Act the proceedings have to be started in the District Court by Maritime NZ within six months of Maritime NZ finding out about the offence or within six months of when they should reasonably have found out about it.

## ► Penalties

Where a prosecution occurs, in the vast majority of cases it involves a failure to take all practicable steps to achieve a safe workplace and the offender is liable to a fine up to a maximum of \$250,000. These prosecutions are taken under Section 50 of the HSE Act.

The Court will set the fine with regard to all the circumstances of the particular case, such as:

- what ability does the offender realistically have to pay a fine?
- what harm was caused by the offending?
- what is the safety record of the offender?
- what has been the attitude of the offender since the offending (e.g. guilty plea, remorse, cooperation, corrective action).

The Court cannot order that any of the fine be paid to the victim. The fine goes to the Government. However, the Court must look separately at whether any victim should receive any reparation for emotional harm or consequential loss. Reparation cannot be paid for physical harm.

You cannot insure against any fines imposed under the HSE Act.

## Knowledge of Potential Serious Harm (Section 49 offences)

In some cases it may be established that the defendant had knowledge beforehand that what they were doing was likely to cause someone else serious harm. This has happened, for example, where a second offence that results in serious harm is identical to an earlier offence.

In such cases the maximum fine is \$500,000 and the offender can be sent to prison for up to two years.

In setting the fine, the Court looks at the same criteria as it does for Section 50 offences.

## Further Information

For further information contact the Legal Manager at Maritime New Zealand or email [legal.advisor@maritimenz.govt.nz](mailto:legal.advisor@maritimenz.govt.nz).

For further information about the powers of health and safety inspectors, read the Department of Labour publication *A Guide to the Health and Safety in Employment Act 1992*.

You can contact the Department of Labour on **0800 209 020** or visit their website [www.dol.govt.nz](http://www.dol.govt.nz).

## APPENDIX TWO

# FREQUENTLY ASKED QUESTIONS

### Introduction

This section answers some questions which have arisen around health and safety issues in the maritime sector.

If you have any questions which aren't answered in this section, email them to [healthandsafety@maritimenz.govt.nz](mailto:healthandsafety@maritimenz.govt.nz) and also check the Health & Safety section on the Maritime NZ website for current questions and answers.

### As an employee, do I have a right to refuse to do dangerous work?

Employees have the right to refuse to do work if they think it is likely to seriously harm them.

If an employee does so, the employee must first discuss the problem with the employer.

If the problem isn't resolved, then the employee can continue to refuse to do the work. While the employee continues to refuse to do work, the employee must do any other work within the scope of the employment agreement that the employer reasonably requests.

An employee cannot refuse to do work that is understood to carry a risk of serious harm, unless the risk has materially increased beyond the understood risk.

The right to refuse to do work is covered by the duty to act in good faith, as with other interactions in the employment relationship. Employees, employers and health and safety representatives are required to conduct their dealings with each other in good faith, when the right to refuse to do work is being exercised.

Disputes which arise from an employee refusing to do dangerous work under the HSE Act are classified as employment relationship problems. Should you wish to get further information on employment relationship problems, contact the Employment Relations Service of the Department of Labour, on **0800 800 863** or [www.ers.dol.govt.nz](http://www.ers.dol.govt.nz).

### Sometimes I have trainees on board my vessel so that they can get experience and on-the-job training. What are my responsibilities in respect of these individuals under the HSE Act?

Everyone in a workplace is entitled to feel and remain safe.

Some people do unpaid work in a workplace so that they can get some practical work experience or so that they can be trained in a skill by doing an actual job that requires it.

Both of these groups are entitled to be treated for safety purposes as if they were employees. This means that they have most of the same rights as employees and that the employer must keep them safe.

The only right that they don't enjoy is the right to formally participate in health and safety issues but there is nothing to stop an employer letting them participate.

### If I contract a skipper to run my vessel, who controls the vessel as a workplace?

If you are the **employer** then you have the responsibilities that the HSE Act provides, you cannot remove yourself from these responsibilities by employing a skipper and handing over the responsibilities of the HSE Act – **you cannot contract out of the compliance that is required of you under the HSE Act**. The skipper would be your employee. However, the skipper still has responsibilities as the master under the Maritime Transport Act. In addition, under the HSE Act the skipper may be seen as the owner's representative and have responsibilities for ensuring the safety of others in the workplace.

### Are there extra things I'm required to know about the Maritime Transport Act and Maritime Rules?

Yes. However, these things are not new. Compliance with the HSE Act is about being a good employer and good manager of the workplace – something that all operators and employers should have been doing previously under the MT Act.

### I am the owner of a boat, but all my crew are private independent contractors so I don't have to do anything under the HSE Act do I?

Yes you do. You still have some responsibilities under the HSE Act. Not all of the responsibilities under the HSE Act relate only to the employer and employee relationships. The HSE Act sets out responsibilities for self-employed persons in the workplace and for those who engage them. The HSE Act provides that a self-employed person is required to take all practicable steps to ensure that no action or inaction of the self-employed person while at work harms the self-employed person or any other person. The person who engages a self-employed person or a contractor or contracting company is referred to as a **principal** under the HSE Act. They are required to take all practicable steps to ensure that no employee of a contractor or of a sub-contractor is harmed while doing any work that the contractor was engaged to do, as discussed above.

### What responsibilities do my employees have? Why do I have to do everything as the employer?

Employees do have some responsibilities under the HSE Act. Not all the responsibilities lie on the employer or the person who is in control of the place of work.

The employee is required to take all practicable steps to ensure their own safety while at work, and to ensure no action or inaction of the employee while at work causes harm to any other person.

## APPENDIX THREE FURTHER INFORMATION & RESOURCES

Each section of this publication contains details of who to contact or where to find further information about particular topics contained within that section.

For **further information** about anything to do with health and safety on board vessels please contact Maritime New Zealand on freephone **0508 22 55 22**. Information is also contained on the Maritime New Zealand website [www.maritimenz.govt.nz](http://www.maritimenz.govt.nz). For more detail on the contents of the HSE Act, you may also wish to look at the following website [www.workinfo.govt.nz](http://www.workinfo.govt.nz).

For **health and safety issues on land**, contact the Occupational Safety and Health Service of the Department of Labour (OSH) on freephone **0800 20 90 20** or visit their website [www.osh.dol.govt.nz](http://www.osh.dol.govt.nz).

For **health and safety issues relating to crew working on aircraft**, contact the Civil Aviation Authority (CAA) on **04 560 9400** or visit their website [www.caa.govt.nz](http://www.caa.govt.nz).

## APPENDIXFOUR

# GLOSSARY OF TERMS

### Accident

The HSE Act defines **accident** broadly, as any event that:

- causes any person to be harmed, or
- in different circumstances may have caused any person to be harmed (Section 2).

Maritime New Zealand interprets **accident** in a maritime context as including events such as any damage to a vessel, which may affect its strength or seaworthiness, groundings, collisions, machinery failures and steering loss.

### All practicable steps

A person required by the HSE Act to take **all practicable steps** is required to take those steps only in respect of circumstances that the person knows or ought to reasonably know about.

In relation to achieving any result in any circumstances, all practicable steps means all steps required to achieve the result that it is reasonably practicable to take in the circumstances, having regard to:

- (a) the nature and severity of the harm that may be suffered if the result is not achieved, and
- (b) the current state of knowledge about the likelihood of harm of that nature and severity that will be suffered if the result is not achieved, and
- (c) the current state of knowledge about harm of that nature, and
- (d) the current state of knowledge about the means available to achieve the result, and about the likely efficacy of each of those means, and
- (e) the availability and cost of each of those means.

### At work

In relation to any person, means present, for gain or reward, in the person's place of work.

### Contractor

Means a person engaged by any person (otherwise than as an employee) to do any work for gain or reward.

### Employee

Means any person of any age employed by an employer to do any work (other than residential work) for hire or reward under a contract of service and, in relation to any employer, means an employee of the employer.

### Employer

Means a person who or that employs any other person to do any work for hire or reward; and, in relation to any employee, means an employer of the employee.

## Enforcement action

Means:

- (a) in relation to an inspector:
  - (i) the laying of an information under the HSE Act, or
  - (ii) the issuing of an infringement notice under the HSE Act, or
  - (iii) the making of an application for a compliance order, and
- (b) in relation to a person other than an inspector:
  - (i) the laying of an information under the HSE Act, or
  - (ii) the making of an application for a compliance order.

## Fail

Includes refuse; and failure includes refusal.

## Harm

- (a) means illness, injury, or both, and
- (b) includes physical or mental harm caused by work-related stress.

## Hazard

- (a) means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance (whether arising or caused within or outside a place of work) that is an actual or potential cause or source of harm, and
- (b) includes:
  - (i) a situation where a person's behaviour may be an actual or potential cause or source of harm to the person or another person, and
  - (ii) without limitation, a situation described in subparagraph (i) resulting from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour.

## Hazard notice

Means a notice that:

- (a) describes a hazard identified in a place of work, and
- (b) is in the prescribed form, and
- (c) may set out suggested steps to deal with the hazard.

## Health and safety committee

Means a committee established to support the ongoing improvement of health and safety in a place of work.

## Healthy

Means unharmed. Health has an equivalent meaning.

## Incident

Means any occurrence, other than an accident, that is associated with the operation of a vessel and affects or could affect the safety of operation.

## Infringement notice

Means a notice given under Section 56B of the HSE Act. These are sometimes referred to as instant fines. An inspector will issue an infringement notice if:

- (a) the inspector has reasonable grounds to believe that a person has failed to comply with their duties as outlined in the Act
- (b) that person has had prior warning of their offence.

An inspector can issue an infringement notice for any breach of the Act. Infringement notices will be issued for clear breaches of the Act in cases where the inspector considers that prosecution is not warranted. An infringement notice informs a person that they have breached the Act, and that they are required to pay a penalty. Only an inspector can issue an infringement notice.

## Inspector

Means a health and safety inspector appointed under Section 29(1) of the HSE Act.

## Machinery

Means an engine, motor, or other appliance that provides mechanical energy derived from compressed air, the combustion of fuel, electricity, gas, gaseous products, steam, water, wind or any other source, and includes:

- (a) any plant by or to which the motion of any machinery is transmitted, and
- (b) a lifting machine, a lifting vehicle, a machine whose motive power is wholly or partly generated by the human body, and a tractor.

## Person who controls a place of work

In relation to a place of work, means a person who is:

- (a) the owner, lessee, sublessee, occupier, or person in possession of, the place or any part of it, or
- (b) the owner, lessee, sublessee, or bailee, of any plant in the place.

Section 16 of the HSE Act (which describes the duties of persons who control places of work) does not apply to a vessel while it is at sea.

## Place of work

Means a place (whether or not within or forming part of a building, structure or vehicle) where any person is to work, is working, for the time being works, or customarily works, for gain or reward; and, in relation to an employee, includes a place, or part of a place, under the control of the employer (not being domestic accommodation provided for the employee):

- (a) where the employee comes or may come to eat, rest, or get first-aid or pay, or
- (b) where the employee comes or may come as part of the employee's duties to report in or out, get instructions, or deliver goods or vehicles, or
- (c) through which the employee may or must pass to reach a place of work.

## Principal

Means a person who or that engages any person (otherwise than as an employee) to do any work for gain or reward).

## Safe

In relation to a person means not exposed to any hazards; and in every other case, means free from hazards; and unsafe and safety have corresponding meanings.

## Serious harm

**Serious harm** means death, or harm of a kind or description declared by the Governor-General by Order in Council to be serious for the purposes of the HSE Act; and “seriously harmed” has a corresponding meaning.

Until such an Order in Council is made, the following types of harm are defined in Schedule 1 of the HSE Act as **serious harm** for the purposes of the Act:

- (a) Any of the following conditions that amounts to or results in permanent loss of bodily function, or temporary severe loss of bodily function: respiratory disease, noise-induced hearing loss, neurological disease, cancer, dermatological disease, communicable disease, musculoskeletal disease, illness caused by exposure to infected material, decompression sickness, poisoning, vision impairment, chemical or hot-metal burn of eye, penetrating wound of eye, bone fracture, laceration, crushing.
- (b) Amputation of body part.
- (c) Burns requiring referral to a specialist registered medical practitioner or specialist outpatient clinic.
- (d) Loss of consciousness from lack of oxygen.
- (e) Loss of consciousness, or acute illness requiring treatment by a registered medical practitioner, from absorption, inhalation, or ingestion, of any substance.
- (f) Any harm that causes the person harmed to be hospitalised for a period of 48 hours or more commencing within 7 days of the harm’s occurrence.

## Sharefisher

In the fishing industry, one of the traditional methods of payment to crewmen/women working on board fishing vessels is by ‘share’ of the value of the catch. If you work in the fishing industry and are paid solely by ‘share’ of the catch you are a Sharefisher.

## Ship

Within the HSE Act has the same meaning as in s2(1) of the Ship Registration Act 1992, which means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes:

- (a) A barge, lighter, or other like vessel.
- (b) A hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates.
- (c) A submarine or other submersible.

## Significant hazard

Means a hazard that is an actual or potential cause or source of:

- (a) Serious harm, or
- (b) Harm (being harm that is more than trivial) the severity of whose effects on any person depend (entirely or among other things) on the extent or frequency of the person’s exposure to the hazard, or
- (c) Harm that does not usually occur; or usually is not easily detectable, until a significant time after exposure to the hazard.

## Subcontractor

Means a person engaged (otherwise than as an employee) by any contractor or subcontractor to do for gain or reward any work the contractor or subcontractor has been engaged (as contractor or subcontractor) to do.

## Substance

Includes a thing that is an organic material, whether living or not.

## Union

Is a union registered under Part 4 of the Employment Relations Act 2000 with the Registrar of Unions.

## Volunteer

- (a) means a person who:
  - (i) does not expect to be rewarded for work to be performed as volunteer, and
  - (ii) receives no reward for work performed as a volunteer, and
- (b) does not include a person who is in a place of work for the purpose of receiving on the job training or gaining work experience.

# APPENDIX FIVE SIGNIFICANT HAZARD MANAGEMENT WORKSHEET

## Section One: Background

Hazard:

Is this hazard significant?  Yes  No

Why is the hazard significant or not significant?

## Section Two: Elimination

Can the hazard be eliminated?  Yes  No

If yes, list the steps to achieve this, allocate responsibility, then go to Section Five:

Step	Timeline	Responsible

If no, why not?

Test your reasons against the **all practicable steps** requirement.

## Section Three: Isolation

Can the hazard be isolated?  Yes  No

If yes, list the steps to achieve this, allocate responsibility, then go to Section Five:

Step	Timeline	Responsible

If no, why not?

Test your reasons against the **all practicable steps** requirement.

APPENDIX FIVE  
SIGNIFICANT HAZARD MANAGEMENT WORKSHEET

Section Four: Minimise

List the steps you will take to minimise the likelihood of harm from the hazard:

Step	Timeline	Responsible

List the equipment and clothing that are required to protect employees from the harm:

Equipment/Clothing	Timeline for Provision	Responsible

Section Five: Review and Monitoring

Have you tested your answers against the **all practicable steps** requirement?  Yes  No

How will the employees' exposure to the hazard, and their health in relation to the exposure, be monitored?

Monitoring Step	Timeline	Responsible

How and when will you review the success of your control measures?

Review Step	Timeline	Responsible

Were employees involved in this hazard management process?  Yes  No

If no, why not?

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Section Six: Sign-Off

Vessel Name:

Name and position of person filling out this sheet:

Date:

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# LEADING SAFETY, SECURITY AND ENVIRONMENTAL PROTECTION

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