

Practical Recommendations for
New and Ongoing H&S Compliance:

HEALTH AND SAFETY COMPLIANCE:

This document has two components.

1. The legislative requirements of the Health and Safety legislation.
2. Recommendations to create supporting evidence to prove compliance.

Background:

In May 4th 2016 the Health and Safety at Work Act 2015 (*HSW Act*) became law.

Worksafe NZ (*the lead agency for the new law*) successfully prosecuted a PCBU (*company*) over an incident, just **two days** after the law had come into force.

<https://worksafe.govt.nz/laws-and-regulations/prosecutions/court-summaries/budget-plastics-limited/>

10 business have been prosecuted every month over the last three years. (*Up until late 2019, there have been 347 prosecutions, and 24 enforceable undertakings against New Zealand PCBUs'*)

<https://worksafe.govt.nz/laws-and-regulations/prosecutions/court-summaries/?start=12>

With my background as a former police officer I have been able to analyse the information from the court judgements, to establish the evidence required by a PCBU to achieve compliance - and avoid prosecution.

*Note that despite the legislation, our workplace injuries are not good.

- *On average, more than **6 workers** are killed every month.*
- *On average more than **570 per week** are injured and off work for a week or more.*

<https://data.worksafe.govt.nz/>

Legislative Requirements:

Primarily the legislation is based around the requirement of a PCBU to manage risk.

([S.30 HSW Act](#)). There is a duty to eliminate risks to H&S, as far as 'reasonably practicable'.

It is important to note that the HSW Act is intended to be user-friendly. It is recorded on the Worksafe NZ website that ***"having lots of paperwork does not equal good health and safety. Use paperwork where appropriate to support your health and safety processes - but it's not a substitute for having good processes and control measures in place"*** [Worksafe NZ – how to manage risks](#)

S30: Management of risks

- (1) A duty imposed on a person by or under this Act requires the person—
- (a) to eliminate risks to health and safety, so far as is reasonably practicable;
- and
- (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.
-

‘Reasonably Practicable’

It is important to note that the legislation is also clear about the term ‘reasonably practicable’
The meaning of ‘reasonably practicable’ is set out in [Section 22 of the HSW Act](#):

There are five criteria.

Section 22

- (a) the likelihood of the hazard or the risk concerned occurring; and
- (b) the degree of harm that might result from the hazard or risk; and
- (c) what the person concerned knows, or ought reasonably to know, about—
 - (i) the hazard or risk; and
 - (ii) ways of eliminating or minimising the risk; and
- (d) the availability and suitability of ways to eliminate or minimise the risk; and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

If a PCBU has workers (employees), there is a legal requirement that the workers who do tasks are engaged in the process and have the ‘right to express their views’
[\(S.58,59,60 HSW Act\)](#).

Once an organisation has gone through and completed these processes, the PCBU now has safe work procedures (SWPs’).

Completed risk assessments show evidence of compliance.

Risk Assessment To Create a Safe Work Procedure			
TASK or ACTIVITY: ESCALATION		LOCATION/SITE	
LIST EVERY STEP taken to PERFORM the TASK		LIST what could POTENTIALLY go WRONG AT EACH STEP	WRITE down the HAZARD CONTROL METHOD to: ELIMINATE, ISOLATE, SUBSTITUTE, ENGINEER, OR MINIMISE the HAZARD. (HSW Regs 5-6) <i>Include PPE, Training, etc required</i>
NO:	NO:	NO:	E/U/M
1	A worker is asked/directed to do something outside of their current scope/schedule of work; (a) That they have not been trained to do. (b) The task has not been assessed for what could potentially go wrong. (c) The time frame has not been assessed to complete the work safely. (d) The original task is interrupted, and the worker is reassigned to another task before completion. (e) The new task has not been assessed for what could potentially go wrong.	*A 10 year study in Finland discovered that 41% of all deaths and serious injuries occurred when a task was escalated as per (a) to (e) Potential conflict with client, contractor, supervisor. Downtime dealing with conflict causing delays to work completion, adds to worker stress Worker distress when they feel that their or others safety is compromised. Potential for bullying, violence. Serious harm Death	In the first instance, STOP WORK. Consult with other party and co-ordinate activities. Train worker to ALWAYS contact their supervisor and to seek advice on what to do next. NOT to go ahead if its (a) (b) or (c) If the supervisor is directing the work, ensure (a) (b) or (c) has been completed and discussed. Report the matter on an incident form, to eliminate the problem.
2			
3			

PCBU Name: _____; Signature: _____

SWPs’ can be used for training, supervision and review. [\(S.9 HSW Regs 2016\)](#)

SWPs’ should include [hazard reporting](#) and [emergency planning](#)

A PCBU must also ensure that fixtures, fittings, and plant are as far as reasonably practicable, are without risk to the health and safety of any person [\(S.40 HSW Act\)](#)

Ensuring Compliance in the Workplace:

A reasonably practical process to ensure compliance:

1. Create a list of all tasks that workers perform in the workplace.
2. Engage with the workers that performed the tasks, assess the risks involved (*hazards*) and create agreed safe work procedures. (*controls*)
3. Create an ongoing review process with the workers - training, supervision, review. (*Recorded in a competency register, together with licences and certificates*)
4. Create a schedule to regularly review fixtures, fittings and plant – including PPE.
5. Create an incident reporting process. (*S.8 HSW Regs 2016*) (\$50k)
6. Create an emergency plan and carry out evacuation procedures. (*S.14 HSW Regs 2016*) (\$50k)

What about going out to Worksites?

Although the tasks to be performed at the worksite have been assessed, the site itself should be assessed for hazards before work commences. (*S.5 HSW Regs*)

Typically, hazards are present;

- Inside the worksite, and in the immediate vicinity of the worksite.
- From workers onsite.

If there is more than 1 PCBU at a worksite, there is a duty to, so far as is reasonably practicable, **consult, co-operate, and co-ordinate** activities with all other PCBUs. (*S.34 HSW Act*)

It is this area which, I believe, has caused the greatest amount of confusion – particularly in construction. Training and pre-audit organisations have tried to mix the old law with the new, and it is a convoluted mess. There's even admission of adding confusion and tension while conducting their 'turf wars' Meanwhile the death/injury rate climbs...

There is no legal requirement in the legislation to have policies, or hazard registers. Toll Networks Ltd were fined \$500K because their "administrative controls, like rules and procedures, were not enough"

NEW ZEALAND / BUSINESS

Training organisations call truce to make construction industry safer

5:11 pm on 4 July 2019



Phil Pennington, Reporter
@pjppenn phil.pennington@rnz.co.nz

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Construction industry deaths at a 10 year high

1 Jul 2019

Workplace construction deaths are at their highest level in a decade, with 11 people dying on the job in the construction sector so far this year.



Ensuring Compliance at a Worksite:

A reasonably practical process to ensure compliance:

1. A signed subcontractor agreement as evidence that they are complying with the legislation - prior to starting at the worksite.
2. Conduct initial and regular site assessments to identify and control potential hazards.
3. Communicate the hazards and control methods to all persons onsite, by way of inductions and ongoing toolbox meetings.

If a PCBU cannot show evidence of these processes, then there is the potential for severe consequences. Not only potentially serious harm to persons, but also criminal prosecution.

WORKSAFE
Mahi Haumarū Aotearoa

SEARCH 

Companies must consult, coordinate and cooperate when working together on site

12 June 2019

When more than one company is working on site there is a legal requirement that they consult, cooperate and coordinate with each other to ensure the health and safety of everyone.

And WorkSafe says meeting this legal requirement could have prevented serious injuries to two workers in 2017.

In a reserved decision released by the Invercargill District Court this week, Phil Stirling Building Limited and Duncan Engineering Limited were both sentenced after two workers were seriously injured while building a milking shed in Southland.

Two workers from Phil Stirling Building were installing horizontal beams on the shed's ceiling, but did not bolt them in place securely and as a result they fell on two workers below. One worker was left with a brain injury and post-traumatic stress disorder as a result of the incident, while the other suffered a fracture to his vertebrae.

A WorkSafe investigation found the companies failed to ensure other workers on site knew to keep clear of the risk area.

Phil Stirling Building had **failed to ensure a risk assessment was carried out before work commenced**, WorkSafe says. The investigation also found Duncan Engineering, who was hired to install a milking platform in the shed, had not consulted with Phil Stirling Building about the scope of its health and safety duties.

WorkSafe says there were no formal discussions between contractors on site regarding what each party was working on, hazards present, or management of risks.

Phil Stirling Building Limited was fined \$150,000, which was reduced for financial reasons, and ordered to pay reparation of \$6,000. Duncan Engineering was fined \$191,250 and ordered to pay reparation of \$4,000.

Providing site assessments have been undertaken, and 'reasonably practicable' controls are put in place and communicated to all concerned, then the intention of the health and safety legislation is satisfied.

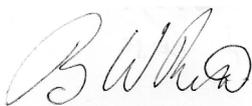
If you're looking for a simple, and effective way to gather evidence, we recommend a paperless app that works for people with 6 thumbs! [Click on this link to find out more.](#)

Recommendations:

- Use this report as a reference document going forward.
- Regularly review 'reasonably practicable' processes that are simple to use for all concerned.

If there any questions, please do not hesitate the writer in the first instance.

Nga Mihi



Brent Rice
Director
Safe Work NZ Ltd
<https://www.worksafeservices.co.nz/>

Director and Company Profile:

Safe Work NZ Ltd (*formerly Worksafe Services Ltd*) has been a health and safety service since 2009.

Safe Work NZ Ltd has created Health & Safety setup and compliance for PCBUs including Australasian entities (*ie Pepsico, Woodlands Shopfitting, Flamingo Scooters*), national entities (*ie Chemwash, Centra Forklifts*), small to medium enterprises, and self-employed contractors.

The entity also provides ongoing training and support to it's large database.
This has been it's core business for the last four years.

Since 2016, 39 clients have been the subject of audits by Worksafe NZ Inspectors, and in every case, the inspectors have been satisfied with the processes put in place by Safe Work NZ Ltd.

Brent Rice is a former police officer with a Diploma in New Zealand Policing Studies and formal qualifications in health & safety.
His years in the police, with time spent in the district and high courts, gave him the background to review the HSW Act 2015 and relevant regulations, then create and implement practical processes for PCBUs.
His advice has been sought by international organisations, the Environment Court, and various Boards of Directors.

Safe Work NZ Ltd is a member of the NZ Safety Council and the Auckland Chamber of Commerce.

As a socially responsible business it provides pro bono support to a number of charitable organisations.