



**Boardroom Excellence:
Fulfilling the Board's
Responsibilities in Relation to
Health and Safety**

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Disclaimer

This webinar is intended to raise awareness and offer practical and general advice. It is not intended to provide comprehensive advice that can be applied in all situations. It should be noted in particular that the new legislation has not yet completed its passage through Parliament.

The following information should not be used as a substitute for professional or legal advice where that is appropriate.

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Webinar structure

- Why is Health and Safety suddenly 'on the agenda'?
- Changing Health and Safety legislation
- Governance challenges and processes

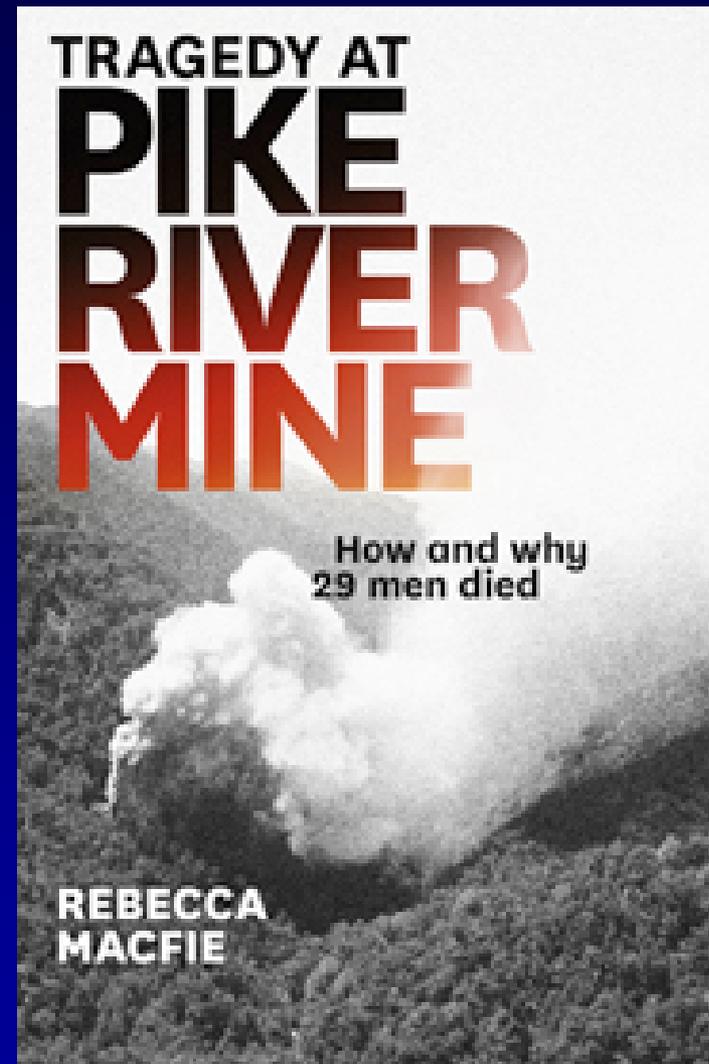


New Zealand has a terrible workplace H&S record

- In 2014, 47 people died at work (2013, 57)
 - Thousands more were hurt, suffered work-related illness or were seriously injured.
 - New Zealand's health and safety record is twice as bad as Australia's and four times worse than the United Kingdom's.
 - The social and economic cost of people being killed and hurt in New Zealand workplaces is conservatively estimated at \$3.5 billion each year.
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A monumental
failure of
governance





Health and Safety Reform Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill introduced under Standing Order 260(a) (dealing with an interrelated topic that can be regarded as implementing a single broad policy).

This Bill reforms New Zealand's workplace health and safety system, following the work of the Independent Taskforce on Workplace Health and Safety and the Royal Commission on the Pike River Coal Mine Tragedy. Its main purpose is to provide for a balanced framework to secure the health and safety of workers and workplaces. The Bill is part of a package of major changes to the health and safety system that has already resulted in the establishment of WorkSafe New Zealand. The new health and safety at work regime in the Bill will replace the Health and Safety in Employment Act 1992 and the Machinery Act 1950. The new regime is based on the Australian Model Work Health and Safety Act, with modifications to take account of differences in the New Zealand context. The new regime recognises that a well-functioning health and safety system relies on participation, leadership, and accountability by government, business, and workers. This includes a law that is flexible enough to work appropriately for small and large businesses and high-risk and low-risk sectors, without imposing unnecessary compliance costs:



Legislative changes – the direction of travel...

- Greater clarity about directors' responsibilities
- Higher duty of care
- Higher penalties
- More active enforcement



More active engagement by boards in the 'governance' of health and safety matters



Penalties for 'Officers' (i.e. board members)

Reckless conduct in respect of a health and safety duty	Five years jail and/or \$600,000 fine
Failing to comply with a health and safety duty that exposes individual to risk of death or serious injury or illness	\$300,000
Failing to comply with a health and safety duty	\$100,000



Key terms

PCBU: 'person' conducting a business or undertaking

- **All PCBUs have a primary duty of care in relation to the health and safety of workers and others affected by the work carried out by the PCBU.**
 - **The primary duty of care requires all PCBUs to ensure, so far as is reasonably practicable:**
 - ▶ **the health and safety of workers employed or engaged or caused to be employed or engaged, by the PCBU or those workers who are influenced or directed by the PCBU (for example workers and contractors)**
 - ▶ **that the health and safety of other people is not put at risk from work carried out as part of the conduct of the business or undertaking (for example, audiences and visitors).**
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PCBU

A person conducting a business or undertaking—

- whether the person conducts a business or undertaking alone or with others; and
- whether or not the business or undertaking is conducted for profit or gain

NB: There are some exclusions which include a ‘volunteer association’ (a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association)



The PCBU's specific obligations – so far as is reasonably practicable to:

- provide and maintain a work environment, plant and systems of work that are without risks to health and safety
- ensure the safe use, handling and storage of plant, structures and substances
- provide adequate facilities at work for the welfare of workers, including ensuring access to those facilities
- provide information, training, instruction or supervision necessary to protect workers and others from risks to their health and safety
- monitor the health of workers and the conditions at the workplace for the purpose of preventing illness or injury



'Upstream' PCBUs

- **Work health and safety is everyone's responsibility.**
- **This means that PCBUs who are upstream from the workplace (for example designers, such as architects and engineers, manufacturers, suppliers or installers of plant or structures) also have a role to play in managing risks to health and safety at work.**
- **Specifically they have a duty to ensure, so far as is reasonably practicable, that the work they do or the things they provide to a workplace don't create health and safety risks there.**



'Officers'

- any person occupying the position of a director of a company:
- any partner in a partnership (other than a limited partnership):
- any general partner in a limited partnership:
- any person occupying a position in a body corporate or an unincorporated body that is comparable with that of a director of a company
 - ▶ NB: this includes any other person who makes decisions that affect the whole, or a substantial part, of the business of the PCBU (for example, the chief executive).



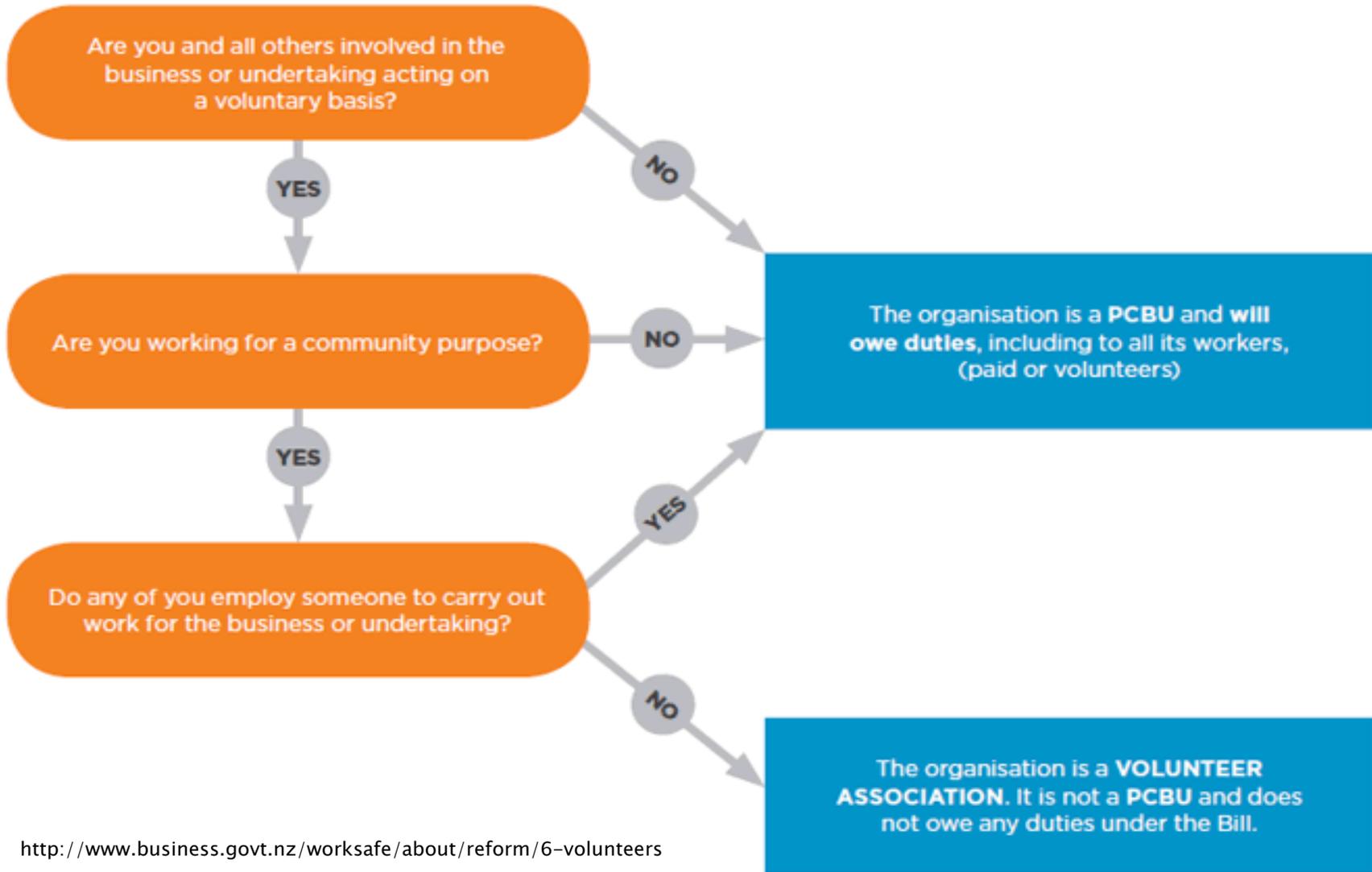
Responsibilities of 'Officers'

- The officers' duty is not the same as the PCBU's duty
- Officers do not have to ensure the health and safety of the PCBU's workers.
- BUT: the officer must exercise **due diligence** to ensure that the PCBU is meeting its health and safety obligations
- The due diligence duty complements and supports the primary duty of care of the PCBU – it does not replace it



Volunteer Officers

- **Exemption: volunteer officers have a duty under the Act to exercise due diligence, but will not be held personally liable under the Act for breaching that duty**
- **Different standards within the board: if you are a chair who receives payment that is not simply an allowance to cover expenses, and are the only person remunerated on the board, you will be personally liable but other board members will not.**





Undertaking 'Due diligence' means Officers must take reasonable steps to:

- know about work health and safety matters and keep up-to-date
- gain an understanding of the operations of the organisation and the hazards and risks generally associated with those operations
- ensure the PCBU has appropriate resources and processes to eliminate or minimise those risks
- ensure the PCBU has appropriate processes for receiving information about incidents, hazards and risks, and for responding to that information
- ensure there are processes for complying with any duty, and that these are implemented
- verify that these resources and processes are in place and being used



Individuals

A worker (including ‘volunteers’) must—

- take reasonable care to ensure his or her own health and safety while at work
- ensure that his or her acts or omissions do not adversely affect the health and safety of other persons
- comply, as far as the person is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with their responsibilities under the Act.



‘Reasonably practical’

- Means what is or was reasonably able to be done at a particular time to ensure health and safety, taking into account and weighing up all relevant matters
- All relevant matters include:
 - ▶ the likelihood of the hazard or risk occurring
 - ▶ the degree of harm that might result from the risk or hazard
 - ▶ what is known or would be reasonably expected to be known about a risk or hazard, and how to eliminate or minimise the risk



Questions?



Implications for what boards and board members must do...

Continuing education

- Obtain information about work health and safety matters generally and keep up-to-date
- Take active steps to gain an understanding of the specific operations of the organisation and the hazards and risks generally associated with those
 - ▶ Briefings from staff
 - ▶ Go see for yourselves
- Learn more about decision making biases that might diminish a board's ability to address H&S risks



MARGARET HEFFERNAN



**WILFUL
BLINDNESS**

**WHY WE IGNORE THE OBVIOUS
AT OUR PERIL**

**Be aware that boards
are vulnerable to
decision making
biases that may
(will?) affect
individual and
collective judgement**



Implications for what boards and board members must do...

Create an appropriate policy framework

- Spell out the board's role and responsibility for H&S (board charter, policy manual etc.)
- Up the ante on H&S within the board's usual approach to the characterisation of risk
- Explicitly set out the board's H&S expectations and embody these in a H&S policy framework within which it expect management and staff to operate
 - ▶ Results to be achieved – high level strategy
 - ▶ Situations and circumstances to be avoided



Implications for what boards and board members must do...

Align your strategic planning and resource allocation' with the risks in your business

- Are the potential organisational rewards overbalancing the risks?
- Are performance pressures (including incentives) creating perverse incentives
- Do budgets make adequate provision for the management of H&S risks



Implications for what boards and board members must do...

Active monitoring/holding management to account

- Obtain regular information on H&S related systems, issues and incidents
- Expect to see an analysis, not just a dump of raw data, and look to ensure that thoughtful action is being taken in the organisation on the back of experience
- Be explicit about the desired culture of the organisation (what is really valued – i.e. rewarded). Support a ‘learning culture’
- Provide feedback

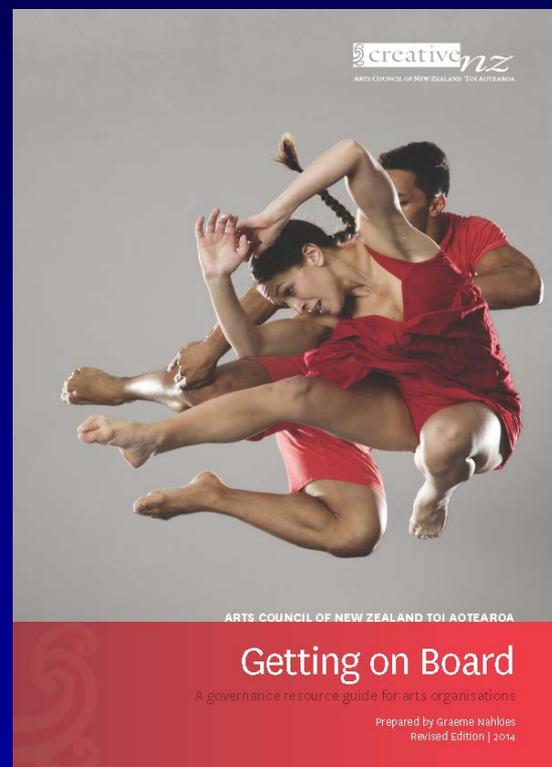
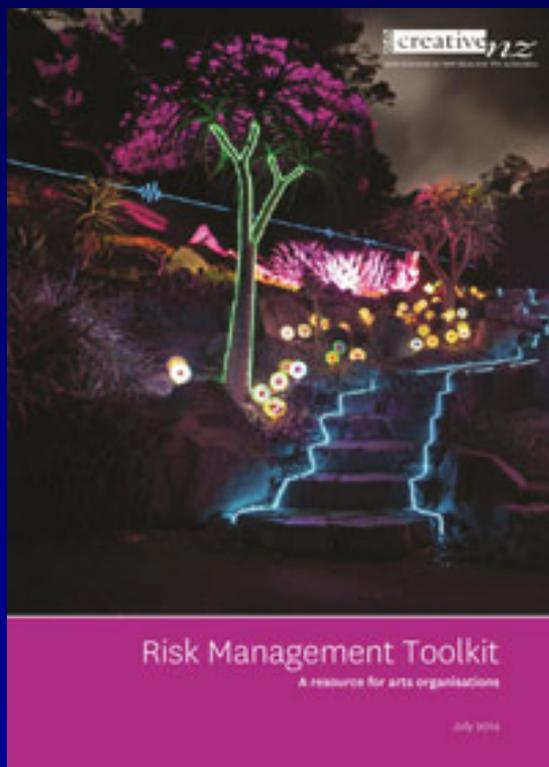


Resources

- <http://www.mbie.govt.nz/what-we-do/workplace-health-and-safety-reform>
- MBIE/IoD: 'Good Governance Practices Guidelines for Managing Health and Safety Risks' (See especially the 'diagnostic questions' for directors)



Also refer to...





Conclusion

"The board and directors are best placed to ensure that the company effectively manages health and safety. They should provide the necessary leadership and are responsible for the major decisions that must influence health and safety: the strategic direction, securing and allocating resources and ensuring the company has appropriate people, systems and equipment."

Royal Commission on the Pike River Coal Mine Tragedy





Questions?

Thank you for your participation