



# Understanding your Health and Safety responsibilities under the new Act

A guide for vehicle fleet operators

**June 2016**



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# The new emphasis on safety



Under the new Health and Safety at Work Act, vehicles are expressly included as a 'workplace'. It is clear that organisations of all sizes need to look seriously at their responsibilities around vehicle and fleet safety, and gain an understanding of the risks associated with work that is completed partly or wholly in a vehicle.

New Zealand's road safety affects us all. Each year, approximately 330 people die and 12,100 people are injured as a result of motor vehicle related accidents. Despite substantial progress, New Zealand still lags behind many developed countries in road safety performance. Every company uses vehicles – some more than others.

The use of fleet vehicles in New Zealand has increased by 40% since 2000 (Source: [www.transport.govt.nz](http://www.transport.govt.nz) – Annual fleet statistics 2014).

The relaxed use of personal vehicles for work purposes (known as the 'grey' fleet), is also increasing in New Zealand.

With the introduction of the Health and Safety at Work Act 2015 (HSWA), the Government has set the ambitious target of reducing all workplace fatalities and serious incidents by at least 25% by 2020.

**The new Act came into force on April 4, 2016. If your organisation operates a vehicle fleet – or your workers drive a 'grey fleet' – you need to consider how the Act will impact you.**

Here are some recent examples from New Zealand, where employers have got it wrong:

In 2014, a company was fined  
**\$139,040**  
for a faulty handbrake resulting in fatality.

In 2014, a company was fined  
**\$99,000**  
for failure to maintain a vehicle's brake resulting in fatality.

In 2015, a company was fined  
**\$65,000**  
for inadequate reversing system causing severe injury.

(Source: WorkSafe NZ)

These fines were under the old Health and Safety in Employment Act 1992, and are very likely to increase substantially under HSWA.

The first step in shaping your response is to understand the new legislative framework.

In 2015, a company was fined  
**\$128,000**  
for failing to ensure worker adequately trained to drive (forklift) causing fatality.

In 2016, a company was fined  
**\$151,000**  
for not managing the lifting mechanism of a truck causing fatality.

In 2016, a company was fined  
**\$102,300**  
for an inadequately secured truck hoist causing severe injury.



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# Step 1:

## Understanding the key changes under the new Act (HSWA)

HSWA, and its supporting regulations, represents the most significant change in the regulatory framework for Health and Safety in New Zealand for over 24 years.

What's more, there is now a dedicated entity, WorkSafe NZ that is responsible for proactively regulating Health and Safety in the workplace, and enforcing Health and Safety law.

Here are some of the key changes:

### HSWA brings increased duties for everyone:

- **Person Conducting Business or Undertaking** ('PCBU') – a PCBU has replaced the term 'employer'. PCBUs can range from a large organisation through to self-employed people with their own company.
- **Officers** – those in very senior roles serving a PCBU. This includes Board members, the Chief Executive Officer, and potentially other senior members of a PCBU such as the Chief Operating Officer and Chief Financial Officer.
- **Workers** – Anyone completing work for a PCBU (e.g. employees, contractors and subcontractors).

Importantly, duties for PCBUs, officers and workers are all personal. Duties cannot be transferred, and they cannot be delegated.

**HSWA brings tougher penalties for everyone:**

<b>Role</b>	<b>Uninsurable costs</b>	<b>Criminal Record</b>
PCBU	\$3M max. fine	Applicable
Officers	\$600K max. fine	Applicable
Workers	\$300K max. fine	Applicable

**Health & Safety in Employment Act 1992:**

<b>Role</b>	<b>Uninsurable costs</b>	<b>Criminal Record</b>
Employer	\$500k max	Not applicable

**HSWA defines a vehicle as a workplace:**

A workplace now explicitly includes places where a worker goes, or is likely to be, while at work. The wording of the new Act expressly includes vehicles.



**New responsibility for contracting owner/drivers:**

The definition of a worker under the Act now extends to include contractors and subcontractors in the workplace.

So if your organisation (PCBU) contracts work to a third party driver or company, you are now responsible for the Health and Safety of those workers (to the extent you can influence or control the situation and risks).

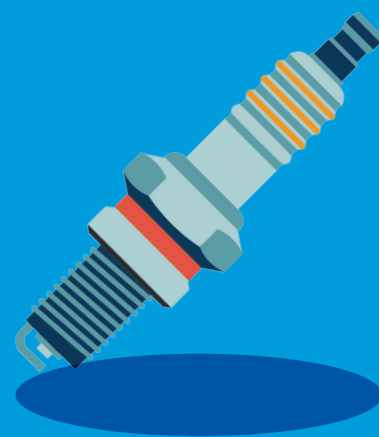


**HSWA sets an obligation for PCBUs, Officers and Workers to make the workplace risk free – as far as is reasonably practicable.**



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# Step 2: Understand how to manage Health and Safety risks



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Under HSWA, your organisation, as a PCBU, has an obligation to:



## WHAT KIND OF CONTROLS ARE NEEDED?

HSWA, and its supporting General Workplace Risk and Workplace Management Regulations identified a “hierarchy of controls” that should be used to manage risks. Organisations should maximise the use of the highest levels of control (i.e. elimination and minimisation).

### Hierarchy of Controls:

**Elimination** – The hazard is eliminated to avoid the risk

**Minimisation** through:

**Isolation** – Preventing contact

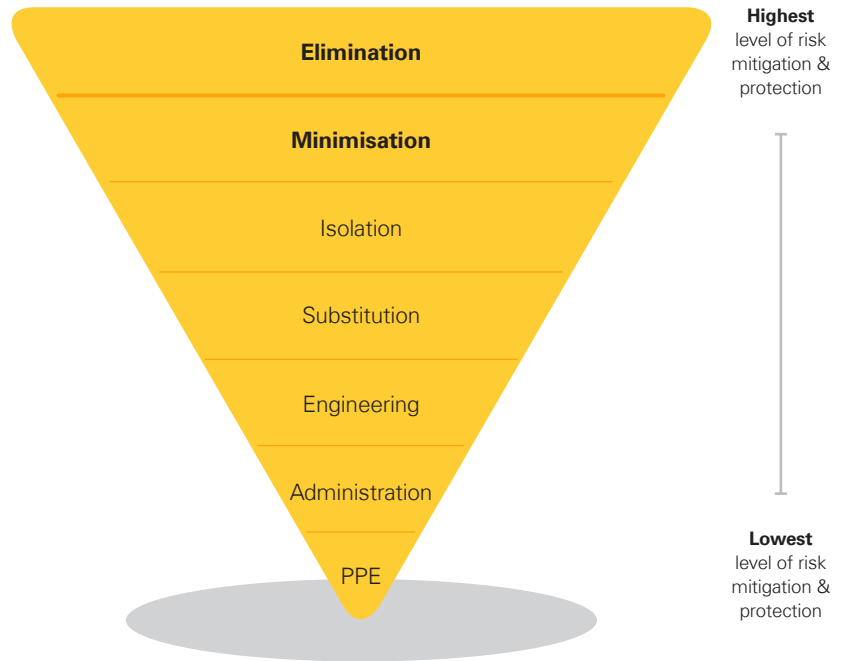
**Substitution** – The activity, process and/or material is substituted for one less hazardous

**Engineering** – The hazard is controlled through automated processes or physical enclosures (guarding)

**Administration** – The hazard is controlled through management strategies, procedures, training and signage

**PPE** – The hazard is controlled through the use of Personal Protective Equipment (PPE)

### HIERARCHY OF CONTROLS

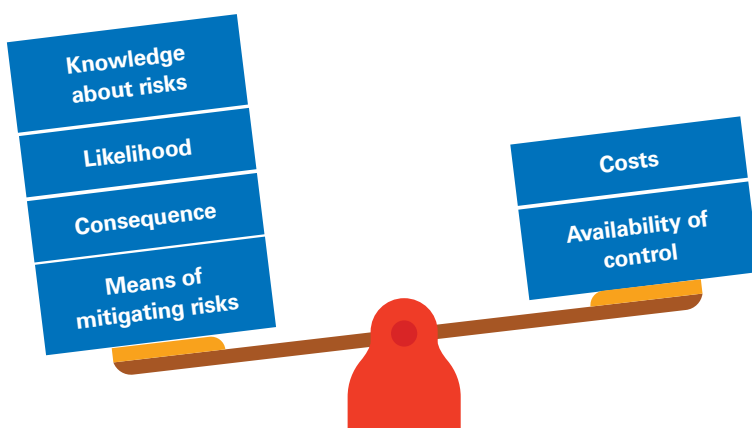


*NOTE: Control types are not mutually exclusive. The parallel use of multiple controls is encouraged for effective risk mitigation.*

### What level of control is needed?

HSWA states you must do what is “reasonably practicable” to manage the risk. The cost of a control cannot be used a reason for not implementing that control (unless the cost is grossly disproportionate to the level of risk). Using a risk-based approach to assess the level of risk (likelihood and consequence) provides the basis for determining what level of control is needed. If the likelihood and/or impact of a risk occurring is high then a combination of controls may be needed.

### ‘REASONABLY PRACTICABLE’ TEST:



Reasonably practicable



Are you comfortable you are doing enough to keep your workers safe?



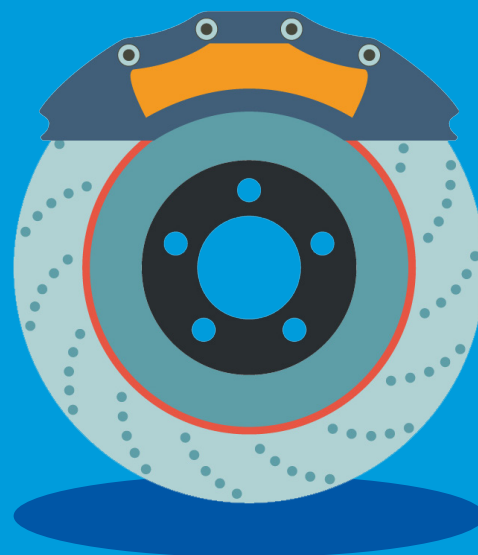
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# Step 3:

## Understand how to choose the right risk control(s) for your Vehicle & Fleet

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Fleet operators are responsible for the safety of vehicles and the workers using them. The effective identification of hazards and selection of appropriate control measures is critical in providing a safe working environment for all workers.



You need to take the right precautions to control risks.

The controls you implement must meet the following criteria.

**CRITERIA**  
for selection  
of controls  
(legislated)



**1**  
IS THE CONTROL FIT-FOR-PURPOSE?

**2**  
IS THE CONTROL SUITABLE FOR THE NATURE AND DURATION OF WORK?

**1**  
**4**

**2**  
**3**

**4**  
DOES IT ALLOW FOR ROUTINE MONITORING OF ITS EFFECTIVENESS?

**3**  
CAN IT EASILY BE INSTALLED, SET-UP AND USED CORRECTLY?





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# Step 4: Assess key areas of your Vehicle & Fleet management

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To get you thinking about your risk management approach, we have outlined a broad checklist for vehicle fleet operators overleaf. This includes some key risk areas, control examples, and other specifics to consider.



<p><b>Vehicle selection</b></p>	<ul style="list-style-type: none"> <li>• Same type of vehicle as you have always used</li> <li>• ANCAP rating of vehicles</li> <li>• Fuel economy rating of vehicles</li> <li>• Look at the market best practice</li> </ul>	<ul style="list-style-type: none"> <li>• Is the vehicle fit for purpose, including the distance and type of roads that are being driven?</li> <li>• Have you considered loading and unloading the vehicle?</li> <li>• Have you considered driver comfort and ergonomics?</li> <li>• Is the type of vehicle going to be fit for purpose in the changing environment that your business operates?</li> </ul>
<p><b>Licensed for driving</b></p>	<ul style="list-style-type: none"> <li>• Requirement within Organisation Driving for Work Policy</li> <li>• Check driver licenced at on boarding stage</li> <li>• Annual check of licence</li> <li>• Licence details logged with Driver check for status change updates</li> <li>• Endorsements and training requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Would you know if a worker lost their licence?</li> <li>• Do you have a system to gain assurance that all drivers are correctly licensed at all times?</li> </ul>
<p><b>Lone worker</b></p>	<ul style="list-style-type: none"> <li>• Diary management system</li> <li>• A buddy system</li> <li>• A communication system in place (Mobile phone, Radio Transmitter)</li> <li>• A "on person" GPS tracking system</li> <li>• Telematics unit in the vehicle</li> </ul>	<ul style="list-style-type: none"> <li>• What are the risks which your lone workers are faced with on a daily basis?</li> <li>• Do you have a system where, if something did go wrong, for example if a worker did not return home at the expected time, you would know the last movements of that worker?</li> <li>• Does your communication system with lone workers work in all areas of NZ?</li> </ul>
<p><b>Vehicles serviceability</b></p>	<ul style="list-style-type: none"> <li>• Manual record of dates</li> <li>• Automated reminders sent to drivers and fleet managers</li> </ul>	<ul style="list-style-type: none"> <li>• Do you have the resources and systems in place to ensure the whole fleet has servicing, maintenance and certification current?</li> </ul>
<p><b>Driver behaviours</b></p>	<ul style="list-style-type: none"> <li>• Communication of safety messages / Driver safety guidelines</li> <li>• One off driver training</li> <li>• Annual driver training</li> <li>• Monitoring driver infringements</li> <li>• Real time monitoring of behaviours through telematics</li> </ul>	<ul style="list-style-type: none"> <li>• Are you happy that a one-off communication or training is changing and monitoring behaviours for an extended period?</li> <li>• What assurance do you have that drivers' behaviour is to the standard you expect whenever they are behind the wheel for work related purposes?</li> <li>• How quickly are you affecting any behaviour issues?</li> </ul>
<p><b>Driver fitness for work and fatigue</b></p>	<ul style="list-style-type: none"> <li>• Requirement within Organisation Driving for Work Policy</li> <li>• General question on health conditions at on boarding stage</li> <li>• Annual health checks</li> <li>• Real time monitoring of hours behind the wheel / break times</li> <li>• Logbook for work time rule compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Do you have a level of assurance that your drivers are always fit to drive?</li> <li>• Are you comfortable that drivers are complying with your current controls regarding driver fatigue?</li> </ul>
<p><b>Grey fleet</b> <i>(using personal vehicles for work purposes)</i></p>	<ul style="list-style-type: none"> <li>• Requirement within Driving for Work Policy</li> <li>• Implement the same controls as you would the driver of a company issued vehicle – including licence checking, driver behaviour monitoring, WOF registration checks, etc.</li> <li>• Replace grey fleet with pool vehicles</li> </ul>	<ul style="list-style-type: none"> <li>• Are you comfortable that drivers of grey fleet are driving a safe vehicle?</li> <li>• Do they have a licence? How do you know?</li> <li>• What assurance do you have that they are driving in the way you would expect?</li> <li>• Is their car road worthy? How do you know?</li> </ul>

# Need further advice?



## Health and Safety Services

KPMG provides a comprehensive suite of services that will assist your business build resilience and improve your Health and Safety performance. From developing or enhancing your Health and Safety management system and/or business strategies, through to implementing a broad range of Health and Safety focused assurance and performance improvement services; we can assist you on your Health and Safety journey.

## Health and Safety advisory

- Policy and strategy development and review – enable Health and Safety risk to be identified, understood and managed.
- Governance structures and reporting frameworks – gap analysis against due diligence director requirements and development and/or review of board and committee reporting frameworks.
- Health and Safety compliance assessments – to assist directors understand their operations and Health and Safety risks.
- Contractor management systems – development, auditing and review.
- Senior leadership safety training – officers learn their responsibilities, obligations and ‘better practice’ governance requirements.
- Due diligence – pre and post transaction Health and Safety assessments, vendor and buy-side, with a focus on director assurance.

## Health and Safety assurance

- Performance assurance and auditing programs – development and evaluation of internal and external Health and Safety assurance programs.
- Audits – delivery of internal and external assurance programs.
- Health and Safety management system reviews – assessing system effectiveness and whether its fit-for-purpose.
- Independent reviews – assistance in the annual Health and Safety reviews for directors, including peer reviews recommended for officers as part of their due diligence duties.
- Safety culture assessments – review and improve culture associated with Health and Safety.

# Contact us

**David Sutton**

Partner

**T:** +64 (9) 367 5844

**E:** [davidsutton@kpmg.co.nz](mailto:davidsutton@kpmg.co.nz)

**Souella Cumming**

Partner

**T:** +64 (4) 816 4519

**E:** [smcumming@kpmg.co.nz](mailto:smcumming@kpmg.co.nz)

**Erica Miles**

Director

**T:** +64 (9) 363 3664

**E:** [EMiles@kpmg.co.nz](mailto:EMiles@kpmg.co.nz)

[kpmg.com/nz](http://kpmg.com/nz)

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