



Contact Information



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Is this health and safety?



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"Some bloke wants to know if we've carried out a thorough risk assessment?"

A4 Activity

- Commence with A4 paper activity



Disclaimer:

All statements made during this presentation are of a general nature and should be used as a guide only. If you have a particular query or issue I recommend you talk to me or seek to receive professional advice.

As was seen from the exercise of folding an A4 piece of paper in half three times, and tearing a piece out of the top right corner, the exact same instructions returned different outcomes. We are different, thereby requiring more details for appropriate responses for individuals and businesses.

This is not advice, please either speak to me or seek other professional advice and guidance.

Forgotten Facts - SMEs



- Some 97 per cent of enterprises in New Zealand are small businesses
- These 459,300 firms include:
 - 326,000 with no employees,
 - 97,400 micro (1-5 employees), and
 - 35,900 small (6-19 employees)



HEALTH AND SAFETY

NOW | REVIEW | REFORMS |





The now of how I see Health and Safety

"...the whole purpose of the Health and Safety in Employment Act, and the Hazard Identification process which underlies it, is to transfer the benefits of hindsight into the existence of foresight, so that preventable injuries and deaths do not happen."

Source: Masterton District Court - CRI - 2009-035-000294

The "now" of Health and Safety is not this!



WHAT HEALTH AND SAFETY PERMITTED

Who is 'caught' by the individual sections of the Health & Safety Act 1992

Table 1: Duties of the Act

Section	Duty	Er	Se	Ee	Pr	Oo	Dm	Ss
3C	Enforceable duty to volunteers	•	•					
3D	Duty to volunteers (non-enforceable)	•	•			•		
3E	Duty to trainees, those gaining work experience	•	•					
6	General duty	•						
7-10	Hazard management	•						
11-12	Information	•						
13	Training and supervision	•						
15	Duty to non-employees	•						
16	Control of places of work	•	•		•	•		
17	Self-employed's duty		•					
18	Principal's duty				•			
18A	Duty of persons selling or supplying plant for use in place of work						•	•
19	Employee's duty			•				
19A-19I	Employee participation	•		•				
20	Compliance with ACOPs	•	•	•	•	•	•	•
21	Compliance with regulations	•	•	•	•	•	•	•
25	Recording/notifying accidents	•	•		•	•		
26	Non-interference after accident	•	•	•	•	•		
31-35	Access by inspectors/ DMPs	•	•	•	•	•		
37	Suspension of employee by DMP	•		•				
39-46	Prohibition/improvement notices	•	•	•	•	•		
47-48	Assistance to inspectors	•	•	•	•	•		
49-50	Offences against the Act	•	•	•	•	•		
51	Harm caused preventing harm	•		•				
56	Offences by directors/agents	•			•	•		

Six key aspects of a Health and Safety Management System (supported through systematic systems and processes)

- **Hazard and risk management:** Organisations must identify all actual and potential hazards and implement controls for those assessed as significant. During organisational change, risk assessments should be undertaken so that the full health and safety impact of the changes can be understood and managed.
- **Incident management:** Organisations should have well-defined processes for reporting and investigating incidents to identify root causes. The aim of incident management is to identify and implement remedial actions to prevent the incident happening again.
- **Source: Good Governance Practices Guideline for Managing Health and Safety Risks - Worksafe NZ/Institute of Directors**



Emergency management: Organisations should develop plans for managing potential emergencies that may arise in the workplace. These plans should be communicated to all persons working on site. Plans should be regularly tested by simulation.

Injury management : Organisations should have processes for ensuring that injured persons are properly cared for. In the case of serious injuries and fatalities this care should extend also to families and work mates.

Participation: Under the Act organisations (**as at now**) with more than 30 employees, or when requested by an employee or a union, must develop and agree a participation agreement.

Continuous improvement : The need to continuously improve the health and safety management system is a fundamental requirement. Directors should hold management to account for doing this.

Source: Good Governance Practices Guideline for Managing Health and Safety Risks - Worksafe NZ/Institute of Directors

One process for helping to manage Hazards and Risks

(supported by hierarchies and different levels of systems and processes)



- Talk to Tim or refer to Worksafe NZ website

Sources of Health and Safety Information



- Talk to Tim or refer to Worksafe NZ website

Occupational Health & Safety



Cave Creek - 28 April 1995

- 11:25 a.m. 14 people were killed when a platform at Cave Creek (Greymouth) fell
- No one was held accountable

- 28 April 2015 – marked 20 years since the Tragedy. Why was it not the last big tragedy?



Tamahere coolstore was a 'bomb' - April 5, 2008

- It happened on a weekend
- 1 Fireman died – several others seriously hurt.
- Icepak and director Wayne Grattan were fined a total of \$67,200 and Cook \$56,200. Between them they were ordered to pay \$270,000 compensation, to be shared between Milli Lovell and the seven injured firemen.
- Why was it not the last big tragedy?



PIKE RIVER TRAGEDY: 29 Dead - 19 November 2010

Forget this – and we will continue to have preventable tragedies in New Zealand



**TF – a snippet of information from Taskforce Consultation process (1)!
(information obtained and abbreviated from H & S Taskforce documentation)**

- Part of Point 4 - Every workplace needs a system to manage workplace health and safety issues.
- Part of Point 8 - No workplace operates in isolation from the broader economy.
- Part of Point 10 - The knowledge system is an important source of information and expertise for organisations. Workers can bring general and specific knowledge about workplace health and safety issues with them to their job (for example skills related to hazard identification and management and risk assessment) ,or can have specialist health and safety qualifications.
- Many organisations also rely on external health and safety professionals or standards setting bodies for workplace health and safety information, guidance or advice.

**TF – a snippet of information from Taskforce Consultation process (2)!
(information obtained and abbreviated from H & S Taskforce documentation)**

- Point 22 - SMEs are likely to interact with the workplace health and safety system, and the ACC system, in different ways to other workplaces.
- Many SMEs will be contracting to one or more larger enterprise and will be directly influenced by the larger enterprises' practices, systems, processes, requirements, expectations and standards.
- The working culture within SMEs may also be different to that of larger firms, with SME owners and staff potentially less likely to make ACC claims.

**TF – a snippet of information from Taskforce Consultation process (3)!
(information obtained and abbreviated from H & S Taskforce documentation)**

- Part of Point 65 - New Zealand's occupational health and safety regulatory framework is broadly based on the 1974 Robens approach.
- This model seeks to achieve a balance between State and self-regulation.
- An underlying assumption is that those who create or work with the risks to occupational health and safety are best placed to identify and manage the risks, but there needs to be a robust regulatory backstop.
- This has resulted in legislation that imposes duties, particularly on employers but also employees, along with a regulator that sets, monitors and enforces standards and provides guidance.

**TF – a snippet of information from Taskforce Consultation process (4)!
(information obtained and abbreviated from H & S Taskforce documentation)**

- Point 158 - Many directors and senior leaders tend to view workplace health and safety as a issue, not related to business or governance risk practices. The main focus is compliance with the law.
- Workplace health and safety may be seen by directors and senior leaders as a function of human resource management.
- While this may be appropriate it can also lead to a focus on people management and behaviour-based workplace health and safety programmes that do not focus on technical or operational risk.

TF – a snippet of information from Taskforce Consultation process (5)!
(information obtained and abbreviated from H & S Taskforce documentation)

- Point 162 - The Health and Safety in Employment Act 1992 (HSE Act) provides that officers, directors and agents of companies can be held accountable for workplace health and safety issues where they have directed, authorised, assented to, acquiesced in or participated in a failure to address a workplace health and safety issue.
- These requirements are rarely enforced by the Ministry of Business, Innovation and Employment (MBIE), as the standard of evidence required for an officer, director or agent to be held accountable is difficult to establish.

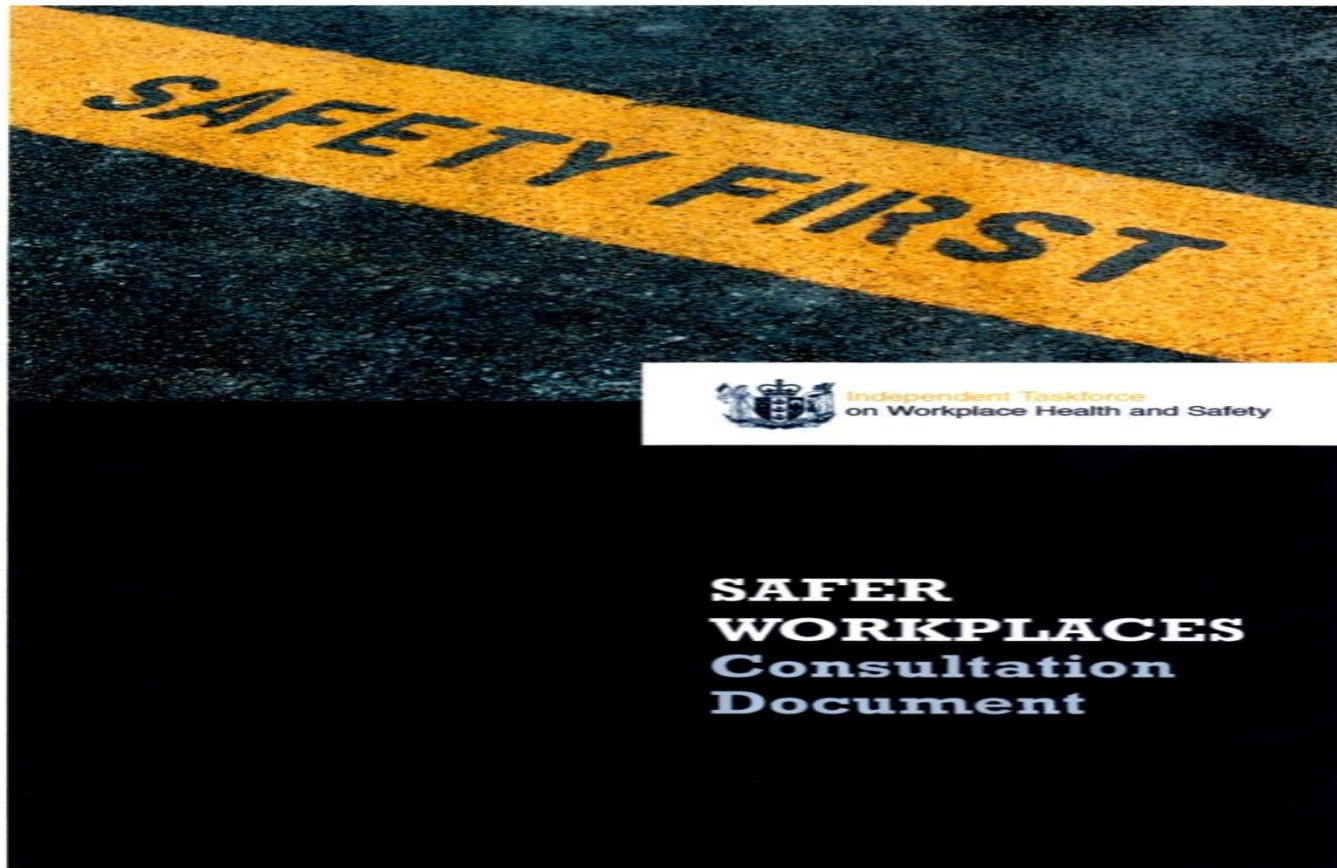
**TF – a snippet of information from Taskforce Consultation process (6)!
(information obtained and abbreviated from H & S Taskforce documentation)**

- Point 166 - There are few examples of qualifications which incorporate workplace health and safety requirements into general management competencies. As a consequence, existing management capacity and capability to deal with workplace health and safety issues is variable.
- Part of Point 181 - Besides central government support, the workplace health and safety system relies on industry leadership for guidance and standard setting across all sectors.
- In some sectors, for example construction, industry-led guidance and standards setting appears to be working effectively..... In other sectors health and safety leadership in standard setting may be less well developed and there is room for a more substantive contribution to improving firm capacity and capability.

**TF – a snippet of information from Taskforce Consultation process (7)!
(information obtained and abbreviated from H & S Taskforce documentation)**

- Point 182 - A further method through which a firm can build or access capability and capacity is through the contracting of health and safety advisors to provide intermittent or on-going advice on practices and/or to build internal competence.
- Point 187 - High quality workplace health and safety related information on standards and advice, or training on how to achieve them, is currently under-developed or not readily accessible for many businesses. The New Zealand education and qualifications system may not be adequately preparing workers, managers and supervisors to effectively recognise and manage workplace health and safety risks.

Health and Safety review



REVIEW LEVERS: KNOWLEDGE, ACCOUNTABILITY, MOTIVATION



Health and Safety Reform Bill - Updates

(www.worksafe.govt.nz (scroll down to the bottom left))

The screenshot shows a web browser window displaying the 'Health and Safety Reform Bill - Updates' page on the Worksafe website. The browser's address bar shows the URL <http://www.business.govt.nz/worksafe/about/reform>. The page features a dark sidebar on the left with a list of 10 navigation items, including '1. Who Has The Primary Duty to ensure Health and Safety? Person Conducting a Business Or Undertaking' and '10. Guidance on the Health and Safety Reform Bill'. The main content area is titled 'Why we're here' and contains several paragraphs of text. A light blue callout box on the right provides additional context, stating 'Working Safer: a blueprint for health and safety at work reforms New Zealand's health and safety system...' and includes links for 'Discussion Document' and 'Health and Safety Reform Bill'. At the bottom, there are sections for 'Reform Bill Updates' with links to PDFs from February 2015 and December 2014, and 'Additional information' with links for 'Information for officers' and 'Information on HSNO'. The Windows taskbar at the bottom shows various application icons and the system clock indicating 9:47 a.m. on 29/04/2015.

1. Who Has The Primary Duty to ensure Health and Safety? Person Conducting a Business Or Undertaking

2. What Is The Primary Duty Of Care?

3. How Do I Meet The Primary Duty Of Care Under The Bill?

4. What are the duties of upstream PCBUs under the Bill?

5. What Are The Duties Of Workers And Others?

6. What Is The Due Diligence Duty Of Officers?

7. How Are Volunteers Covered By The Bill?

Some Volunteer Scenarios

8. What are the worker engagement duties?

9. Proposed compliance and enforcement under the Health and Safety Reform Bill

10. Guidance on the Health and Safety Reform Bill

Why we're here

No one goes to work expecting to get hurt, sick or killed. But in New Zealand, far too many people do.

On average, 75 people per year die on the job, 1 in 10 is harmed and 600 -900 die from work-related diseases—all coming at a cost of \$3.5 billion per year. And that's doesn't count the social and psychological costs on the friends, family, loved ones and co-workers of those people hurt on the job.

We're here to change that.

In 2013, government announced its Working Safer reform package, aimed at bringing down New Zealand's workplace injury and death toll by 25 per cent by 2020. Perhaps the most important part of this is the new Health and Safety Reform Bill , which will make every workplace responsible for the health and safety of all workers.

Progress of the legislation

The Bill is currently before parliament. The new select committee has a report back of 29 May 2015 and then the Bill will continue its progression through the parliamentary process. The Bill is on course to be passed in the second half of 2015. There will be adequate time of some months between when the Bill is passed and when it comes into force to make sure duty holders are aware of their responsibilities under the new law.

With the legislation still being finalised, we can't answer every question yet, but this page will link you to the key information you need to know now. We'll update it regularly to keep you informed.

Working Safer: a blueprint for health and safety at work reforms New Zealand's health and safety system following the recommendations of the Independent Taskforce on Workplace Health and Safety and the Royal Commission on the Pike River Coal Mine Tragedy.

When the new Health and Safety at Work Act comes into force, it will replace the Health and Safety in Employment Act 1992 and the Machinery Act 1950.

It's useful to read these updates alongside the relevant sections of the Bill and the proposals for supporting regulations developed by the Ministry of Business, Innovation & Employment (MBIE).

[Discussion Document](#)

[Health and Safety Reform Bill](#)

Reform Bill Updates

- [Feb 2015 \[59 KB PDF\]](#)
- [Dec 2014 \[79 KB PDF\]](#)

Additional information

- [Information for officers](#)
- [Information on HSNO](#)

PROSECUTION: Easy Rider Tragedy - Widows Emotional Plea - 28 May 2014

*“Widow Gloria Davis stepped out of the Invercargill courthouse, took a breath and made an emotional plea to company directors. **“When you have no control over the farm or the boat or the business, you should really remove yourself from the director role.”**”*

*The plea was levelled **at spouses also serving as directors of family-owned companies** and came after Davis, the sole director of AZ1 Enterprises, was sentenced yesterday on three charges relating to the 2012 sinking of the Easy Rider.*

Az1 Enterprises was found guilty of the same charges. Davis was sentenced to 350 hours' community work and fined \$3000. AZ1 Enterprises was fined \$204,500.”



What's a Person Conducting a Business or Undertaking?

(Refer to Health and Safety Reform Bill updates)



Despite its name, a Person Conducting a Business or Undertaking (PCBU) will usually be a business entity, such as a company, rather than an individual person. A person might be a PCBU if they are a sole trader or a self-employed person.

Examples include:

A **retail** business | A **wholesale** business | A **manufacturing** business | An **import** business | An **owner-driver** of their own **courier** business | A **fast food franchisor** and the **operator** of the **fast food outlet** (the franchisee) | A **self-employed** person operating their own business | A **government department** | A **local council** | A **school** | A **partnership** | A **building company**, including principal contractors and sub-contractors | A **not-for-profit organisation** that employs admin staff

Source and more information: www.worksafe.govt.nz and DRAFT Health and Safety Reform Bill (If passed to be know as Health and Safety At Work Act)



What is the definition of an “officer”? (Refer to Health and Safety Reform Bill updates)

- **Companies:** For a PCBU that is a company, the officers are its directors.
- **Partnerships:** For a PCBU that is a partnership, the officers are its partners (but note in limited partnerships, only general partners are officers).
- **Other types of undertakings:** For other types of business structures or undertakings, people who hold a position comparable to a director of a company, such as board members, will be an officer.
- In addition to these specified positions, an officer is any person who ‘makes decisions that affect the whole, or a substantial part, of the business of the PCBU’. Exactly who comes under this definition will depend on the individual structure and governance of the business or undertaking in question. It will almost certainly include the chief executive. The test is whether the person has sufficient authority to make governance decisions that affect a substantial part of the business.



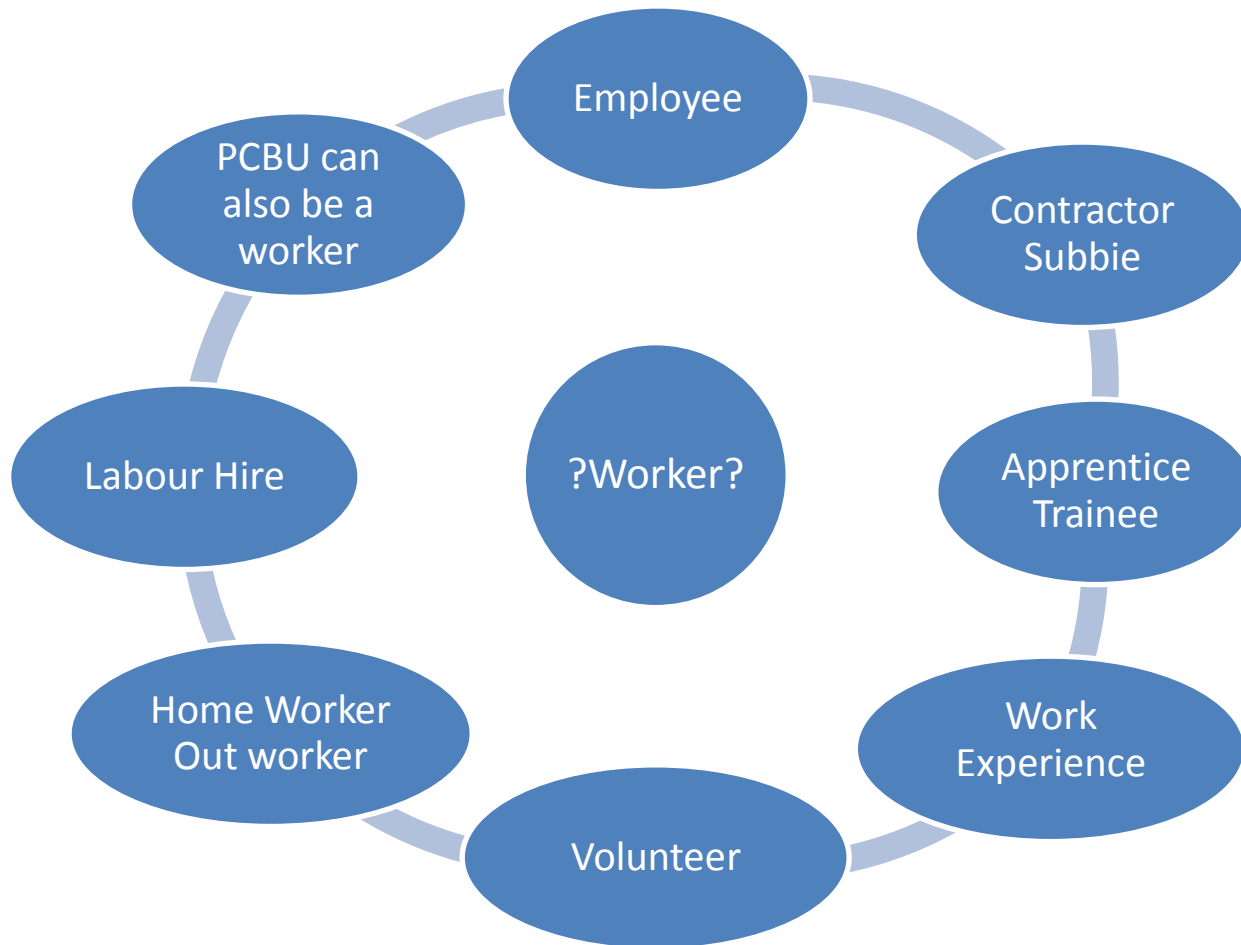
What is “due diligence”?

(Refer to Health and Safety Reform Bill updates)

Due diligence means that officers must make sure they perform certain functions to ensure the PCBU complies with its duties. These include taking 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.

Who is a worker - under the proposed new Health and Safety at Work Act (currently a Bill) (refer to health and safety reforms update and proposed Bill)





S 15 - MEANING OF WORKPLACE

(refer to health and safety reforms update and proposed Bill)

Section 15 Meaning of workplace

- (1) In this Act, unless the context otherwise requires, a *workplace*—
- (a) means a place where work is carried out for a business or undertaking; and
 - (b) includes any place where a worker goes, or is likely to be, while at work.
- (2) In subsection (1), *place* includes—
- (a) a vehicle, vessel, aircraft, ship, or other mobile structure; and
 - (b) any waters and any installation on land, on the bed of any waters, or floating on any waters.

Compare: Model Work Health and Safety Act (Aust) s 8



Section 17 Meaning of reasonably practicable (refer to health and safety reforms update and proposed Bill)

Section 17 Meaning of reasonably practicable

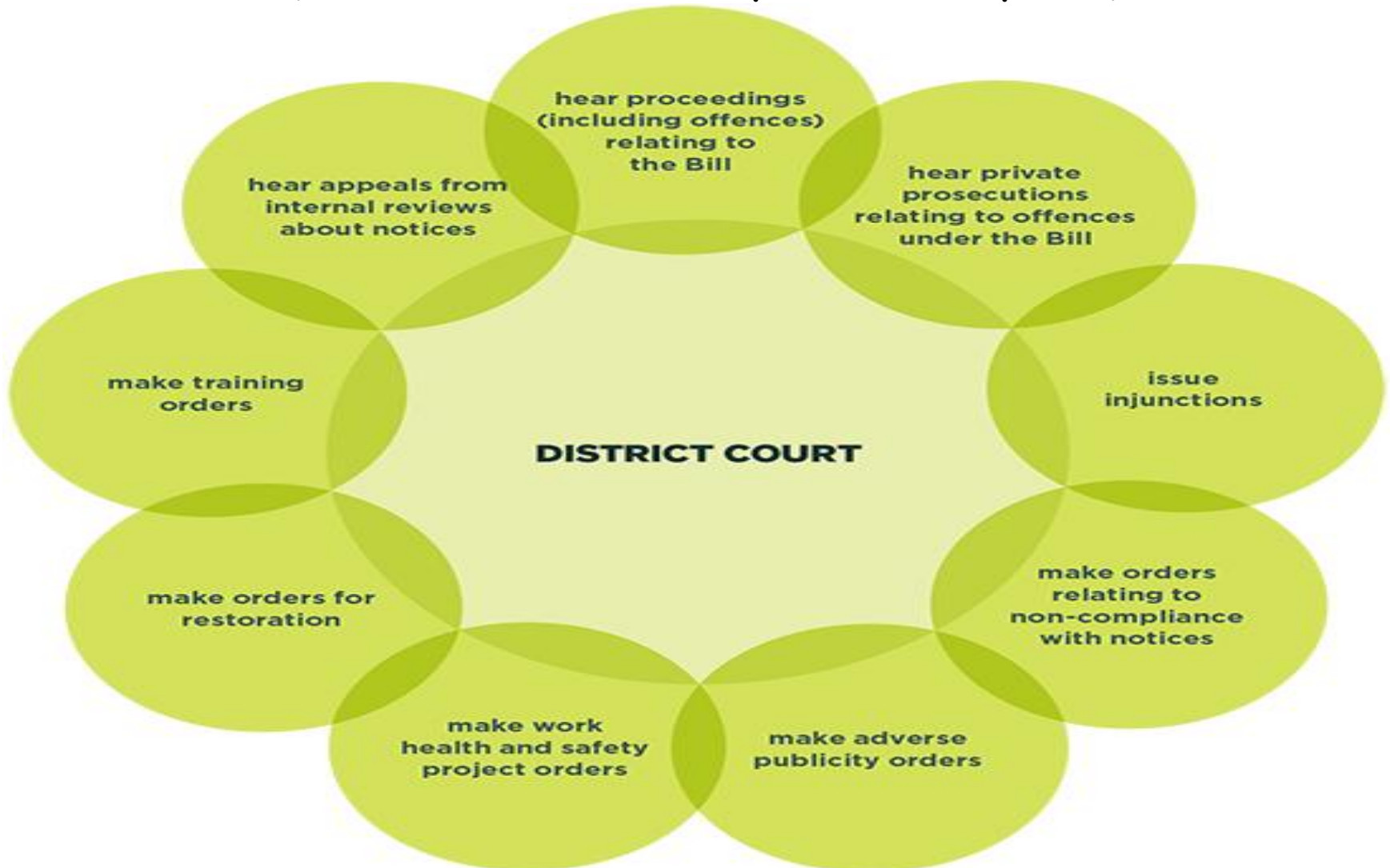
In this Act, unless the context otherwise requires, *reasonably practicable*, in relation to a duty to ensure health and safety, means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters, including—

- (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.

Compare: Model Work Health and Safety Act (Aust) s 18



Proposed District Court powers under the Bill.
The Bill specifically provides that the District Court can:
(Refer to Health and Safety Reform Bill updates)



		Max. prison term	Max. fine
Offence of reckless conduct in respect of a health and safety duty (clause 42)	A person who has a health and safety duty, without reasonable excuse, engages in conduct that exposes a person to a risk of death or serious injury or illness, and the person is reckless as to the risk	Individual (eg a worker or a self-employed PCBU)	5 years and/or \$300,000
		Officer of a PCBU	5 years and/or \$600,000
		Body Corporate (eg a company)	- \$3 million

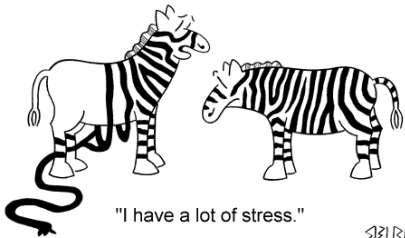
			Max. prison term	Max. fine
Offence of failing to comply with a health and safety duty that exposes individual to risk of death or serious injury or illness (clause 43)	A person who has a health and safety duty fails to comply with the duty and that failure exposes a person to risk of death or serious injury or illness	Individual (eg a worker or a self-employed PCBU)	-	\$150,000
		Officer of a PCBU	-	\$300,000
		Body Corporate (eg a company)	-	\$1.5 million

		Max. prison term	Max. fine	
Offence of failing to comply with a health and safety duty (clause 44)	A person that has a health and safety duty fails to comply with that duty	Individual (eg a worker or a self-employed PCBU)	-	\$50,000
		Officer of a PCBU	-	\$100,000
		Body Corporate (eg a company)	-	\$500,000

“STRESSED” is just “DESSERTS” spelt backwards! QUESTIONS?



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"I have a lot of stress."

SHANNON BURNS

Stress Reduction Kit

**Bang
Head
Here**

Directions:

1. Place kit on FIRM surface.
2. Follow directions in circle of kit.
3. Repeat step 2 as necessary, or until unconscious.
4. If unconscious, cease stress reduction activity.



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