

Health and safety during pilot transfers

Maritime New Zealand Position Statement

February 2018

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Whenever a pilot or other person embarks or disembarks from a ship by ladder, they entrust their safety to the pilot transfer arrangements provided by the ship. This is not the only health and safety risk that pilots have to be aware of, but it has been internationally recognized as a dangerous procedure. This position statement summarises the health and safety responsibilities around this transfer.

The Health and Safety at Work Act 2015

Maritime NZ is the regulator for work on board ships and for ships as workplaces under the Health and Safety at Work Act 2015 (HSWA). This legislation broadly requires everyone in New Zealand workplaces to be responsible for health and safety.

A guiding principle of HSWA is that workers and others in the workplace should be given the highest level of protection against harm to their health, safety, and welfare for work risks so far as is reasonably practicable.

Primary Duty on PCBU's

The HSWA imposes a primary duty of care upon a person conducting a business or undertaking (PCBU) to ensure, so far as reasonably practicable, that the health and safety of their workers and that the health and safety of others is not put at risk from the work carried out as part of their business or undertaking.

This duty includes the requirement to ensure that the work place and work systems are without risks to health and safety and that the workers have appropriate information, training, instruction and supervision. It extends to cover workers, regardless of where they are working, including Pilots who are conducting pilotage on foreign flagged vessels.

In this context it would be appropriate for the PCBU to undertake a risk assessment to identify and

decide what action to take in relation to any risks, as well as ensuring that the pilots are appropriately trained and managed and that they have the necessary equipment and support processes in place, including emergency procedures.

As the operators of foreign flagged vessels are not subject to HSWA, they are not normally considered to be PCBUs. This means that they don't have the 'overlapping duty' to consult, cooperate with and coordinate their activities with the New Zealand PCBU providing services to them. But New Zealand PCBU's should take steps to proactively engage with the foreign operator to ensure that adequate safety procedures are in place.

The Duties on Workers

Under the HSWA, workers also have a general duty to take reasonable care of their own health and safety and ensure that their actions – or inactions – don't put others at risk when carrying out work.

In addition, workers have the right to stop work, or refuse to carry out work if they believe that doing so would expose them, or anyone else to a serious health and safety risk of an immediate or imminent hazard.

For Pilots, this would mean that they need to take reasonable care of their own health while on board both domestic and foreign flagged vessels. For example, always wearing a life jacket and life line, if appropriate, that they check the condition of the ladder before climbing it, and ensure that it is secured to the ship. If they are concerned about the state of a boarding ladder, they have the right to refuse to board and should report this to the Master and Port State Control Officers.

Safety Management Systems and International Regulations

Generally, foreign operators may not fall under the jurisdiction of HSWA, but they will be operating the vessel under an international safety management system and should be receptive to coordinating on health and safety matters.

Recognising the uniquely hazardous nature of pilot transfers, the IMO introduced measures through SOLAS Regulation V/23 in July 2012 to improve the safety of pilot transfer arrangements. These requirements prescribe the provision, design, construction, securing, testing and operation of the transfer arrangements for the purpose of enabling pilots to embark and disembark safely on either side of a ship at sea.

These regulations have been given effect by NZ law through Maritime Rule Part 53. Part 53 applies to:

- any New Zealand ship that is engaged on any voyage in the course of which a pilot is required to be engaged or is likely to be engaged;
- any foreign ship that is within, approaching or leaving any port in New Zealand, or any offshore installation located in the internal waters of New Zealand or New Zealand marine waters;
- any offshore terminal located in the internal waters of New Zealand or New Zealand marine waters, where a pilots is required to be engaged or likely to be engaged.

The Maritime Rules, administered under the Maritime Transport Act 1994 provide a much more technical and nuanced approach to pilot transfer than the HSWA which provides an overarching duty to be protected against harm.

Enforcement Powers

Maritime NZ has regulatory powers under both the MTA and HSWA. In broad terms, the MTA and Maritime Rules focus on the safety of the vessel and navigational safety, while HSWA focuses on the health and safety of people on board the vessel. However there is a degree of overlap.

Maritime NZ wants to achieve a high level of voluntary compliance with both pieces of legislation and will generally use guidance, information, education, and engagement when the risks are low and the participants are willing to comply.

Our approach will always be tailored to the circumstances. We will select the tool that we think will have the most impact. Our decision will take into account the harm or risk of harm, the conduct and attitude of those involved, and the public interest or importance. For more information please refer to the Maritime NZ Compliance Operating Model on the Maritime NZ website.

Disclaimer:

This guideline provides information on the general application of the Health and Safety Framework to NZ Pilots. It is not intended to provide comprehensive of specific legal advice.