

# How MOSS and the HSWA work together

HEALTH AND SAFETY AT WORK ACT (2015) | GUIDANCE

## What this guidance document contains

This guidance is aimed at maritime transport operators and outlines the additional health and safety responsibilities required under the Health and Safety at Work Act 2015 (HSWA). It explains the relationship between the Maritime Operator Safety System (MOSS) and the HSWA.

## Introduction

Maritime transport operators have duties under both maritime law and health and safety law. They must meet their responsibilities under both sets of laws. The HSWA introduced some new requirements.

MOSS goes some way towards addressing an operator's health and safety responsibilities. However, the laws and the duties can be different:

- > some MOSS requirements are not found in the HSWA
- > some MOSS and HSWA requirements overlap
- > some HSWA requirements are not found in MOSS.

## MOSS

The Maritime Operator Safety System (MOSS) is based on Maritime Rules made under the Maritime Transport Act 1994.

Maritime Rules Part 19 requires that maritime transport operators document and operate to a safety plan. The goal of Part 19 (together with Part 44<sup>1</sup>) is to improve the safety of commercial ships operating in New Zealand waters.

However, a Maritime Transport Operator Plan (MTOPlan) approved under Part 19 is unlikely to address all of the requirements that the HSWA places on the operator. This is discussed in more detail below.

In addition, MOSS applies to the activities of the ship operator. An MTOPlan may not address (or fully address) the activities of other businesses that are working on the ship.

<sup>1</sup> Maritime Rules Part 44: Surveyor responsibilities and survey, certification, and maintenance for ships in maritime transport operations

## Workplaces and PCBUs

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### Workplace

The HSWA applies to most work and most workplaces in New Zealand<sup>2</sup>. A commercial ship is a workplace.

### PCBU

Under the HSWA, a PCBU is a 'person conducting a business or undertaking'. The word 'person' should not be taken literally. Normally a PCBU will be an organisation – e.g. a company.

A maritime transport operator is a PCBU.

Businesses that work on ships, but don't operate that ship, are also PCBUs. Examples include:

- > a dive school working off a ship or vessel
- > a company providing catering services on a ship
- > a marine surveyor engaged to undertake a survey of the ship
- > a fish processor working on the ship as a separate company
- > the Ministry for Primary Industries when a fisheries observer is on the ship
- > a port company where a pilot comes on board the ship
- > a stevedore company when stevedores are loading or unloading a ship.

## PCBUs sharing a workplace share responsibility for health and safety

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Under the HSWA, PCBUs sharing the same workplace share responsibility for health and safety. That means that maritime transport operators share responsibility for health and safety with any other businesses (PCBUs) also working on the ship.

The operator and any other PCBUs must consult, cooperate and coordinate their management of health and safety in the workplace.

## The relationship between MOSS and the Health and Safety at Work Act

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MOSS and the HSWA both address safety. However, the scope of the HSWA is broader than the scope of MOSS.

While MOSS addresses many of the duties required of a PCBU under the HSWA, some duties under the HSWA are not addressed by MOSS. This is discussed below.

## HSWA duties that are addressed by MOSS

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It is not necessary to duplicate actions or controls under the HSWA that are already addressed by MOSS.

An operation that is run in accordance with an approved MTOP will generally meet the following HSWA duties:

- > duty to manage risks
- > duty to ensure the safety of other persons in the workplace
- > duty to develop emergency management plans
- > duty to notify events
- > duty to periodically review workplace controls
- > duty to provide health and safety information to workers

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<sup>2</sup> Some special conditions apply to the armed forces and intelligence and security agencies

## Duties under the HSWA that MOSS does not address

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Some requirements in the HSWA are not specifically addressed by MOSS. These include:

- > overlapping duties
- > upstream duties
- > officers' due diligence
- > duty to manage asbestos
- > worker engagement, participation and representation
- > facilities.

Operators must comply with these duties in addition to working to their approved MTOP under MOSS.

## More information from Maritime NZ

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This guidance is part of a series of guidance documents produced by Maritime NZ to assist operators and other businesses working on ships to understand their duties under the HSWA. This suite of guidance documents includes:

- > How MOSS and the HSWA work together
- > The roles of the ship operator and ship's master
- > Overlapping and upstream health and safety duties
- > Worker engagement, participation and representation
- > Duty to provide adequate facilities
- > Duty to safely manage asbestos
- > Officers' due diligence duties

## For general information on the Health and Safety at Work Act

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Visit the WorkSafe New Zealand website: <http://www.business.govt.nz/worksafe/hswa/legislation>