

The roles of the ship operator and ship's master

HEALTH AND SAFETY AT WORK ACT (2015) | GUIDANCE

What this guidance document contains

This guidance explains the health and safety obligations of maritime operators and ship's masters under the new Health and Safety At Work Act 2015 (HSWA). It outlines how the Maritime Transport Act (MTA) and the HSWA work together, and the relationship between the duties of a maritime operator and the role of the ship's master under the HSWA.

Introduction

Maritime operators and ship's masters have responsibilities under both health and safety law and the MTA. The HSWA introduced some new health and safety requirements and some new terms.

Operators (PCBUs)

Maritime operators are certified under the MTA. Under the HSWA, a maritime operator is also a PCBU. The term PCBU is short for a 'person conducting a business or undertaking'. The word 'person' should not be taken literally. Normally the PCBU will be an organisation – e.g. a company.

Under the HSWA, a PCBU must ensure, so far as is reasonably practicable, the health and safety of workers.

The role of the master

Under the MTA, ships' masters have significant responsibilities and must also be certified. The master:

- > is responsible for the safe operation of the ship on a voyage, the safety and wellbeing of all passengers and crew, and the safety of cargo carried
- > has final authority (while in command) to control the ship and maintain the discipline of all people on board
- > is responsible for compliance with all relevant requirements of the MTA, regulations and maritime rules.

Although a master has special responsibilities under the MTA, when they work for a maritime operator as an employee or as a contractor, they are also a 'worker' under the HSWA.

In some cases a master may also own the maritime operation. In that situation, the master will always be an officer. He or she may also be the PCBU depending on the legal entity that owns the operation.

How HSWA duties work together

Maritime operators and masters both have duties under the HSWA. Some of these duties overlap while others are different.

In practice, the maritime operator and the master must work together to ensure that their duties are met under the HSWA.

HSWA duties exist at the same time (concurrent)

The duties of the maritime operator and the master apply at the same time. The master is in control of the ship when it is at sea. While the operator may not be present, they must still fulfil their duty to ensure that the ship operates safely. The operator cannot contract out or transfer their duties to the master or anyone else.

In practice, the operator must make appropriate arrangements with the master to ensure that the operator's duties are met when the ship is at sea.

The HSWA duties overlap

Although the duties of a maritime operator and a master are slightly different, they address the same or similar things in regard to health and safety. The duties are shared or partially shared and the degree of responsibility depends on the circumstances that apply in a given situation.

In practice an operator and a master must work together to ensure that they both meet their HSWA duties.

How maritime operators (PCBUs) and masters work together to fulfil their HSWA duties

PCBU RESPONSIBILITIES	MASTER'S RESPONSIBILITIES
<p>Overview</p> <p>The maritime operator (PCBU) has overall responsibility for the operation of the business.</p> <p>This includes the fleet, and all plant, resources, systems and processes necessary to run the whole operation.</p>	<p>The master has the specific responsibility for the ship they are master of.</p> <p>This applies to direct and factual matters – the day-to-day operational decisions required to run the ship.</p>
<p>Resources</p> <p>The maritime operator (PCBU) is responsible for ensuring that appropriate resources are available to eliminate or minimise risks to health and safety. For example:</p> <ul style="list-style-type: none">> machinery and equipment is fit for purpose, properly guarded and maintained> electrical equipment is regularly checked and maintained> facilities (e.g. ventilation, lighting, workspaces, toilets, drinking water, washing facilities, accommodation) are appropriate for the operation and properly maintained> appropriate personal protective equipment (PPE) and first aid resources are available.	<p>The master is responsible for monitoring the condition of machinery, equipment, and facilities etc.; and informing the PCBU when repairs and maintenance are required.</p> <p>The master is responsible for taking appropriate steps where machinery, equipment, and facilities etc., are damaged, or otherwise represent a risk to health and safety.</p>

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PCBU RESPONSIBILITIES	MASTER'S RESPONSIBILITIES
<p>Systems and processes</p> <p>The maritime operator (PCBU) is responsible for ensuring that appropriate systems and processes are in place. For example, in regard to:</p> <ul style="list-style-type: none"> > identifying, recording and responding to incidents, hazards, and risks > fatigue management > working in confined spaces > hygiene / food preparation > safe handling and storage of equipment and substances > information, training, instruction, and or supervision > emergency management > notifiable events > managing asbestos. 	<p>The master is the operator's representative on the ship.</p> <p>The maritime operator (PCBU) must rely on the master as the person 'on the spot' to ensure that the systems and processes developed by the PCBU are adhered to.</p>
<p>Roles</p> <p>The maritime operator (PCBU) appoints the master, knowing that the master has high level of responsibility and independence.</p> <p>Appointing a master does not absolve operators of their duties under the HSWA. The duties are concurrent and overlapping – one does not take away from the other.</p>	<p>The master has a high level of responsibility under maritime law and a high degree of control over the ship while at sea. This is necessary due to the potential dangers involved and the degree of isolation from shore-based support.</p> <p>As the person 'on the spot' the master is the operator's representative on the ship. At the same time, the master must keep in mind that the duties specified in the MTA are independent of instructions provided by the PCBU.</p> <p>This situation is comparable with that of registered professions. For example a lawyer may be given instructions as an employee of a company but always remains bound by overriding duties as an 'officer of the High Court'.</p>

More information from Maritime NZ

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

General information on the Health and Safety at Work Act

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